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(3) For the foregoing reasons I allow this petition, set aside the judgment and order of the Appellate Authority and of the Rent Controller, and remand this case to the Rent Controller, Ferozepore, for rehearing and redeciding the case on merits in the light of the observations herein made after allowing the landlord-respondent an opportunity to amend his petition for ejection. The amended petition may be filed by the landlord before the Rent Controller on May 12, 1975, when the parties will appear before him for further proceedings. The landlord may serve an advance copy of the amended petition on the counsel for the tenant in the trial Court. The tenant would be entitled to file his fresh written statement in reply to the amended petition. As it is an old case, the Rent Controller shall make an effort to dispose it of as expeditiously as possible. There is no order as to costs incurred by the parties in this Court.

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B.S.G.

Before A. S. Bains, J.

MEHAR SINGH ETC.,—Petitioners

versus

THE STATE OF PUNJAB ETC.,—Respondents.

Civil Writ Petition No. 1474 of 1975

April 18, 1975.

*The Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Sections 17 and 113-A—The Punjab Panchayat Samitis and Zila Parishads Chairman and Vice-Chairman (Election) Rules, 1961—Rules 2(d) and 3—Election of Chairman and Vice-Chairman of Panchayat Samiti—State Government—Whether has power to interfere in and postpone such election.*

*Held*, that from a reading of section 113-A of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, it is evident that the Government has no power either to fix the date for the election of the Chairman or Vice-Chairman of Panchayat Samitis or to postpone it afterwards. It has only the power upto the co-option stage to issue the election programme etc. Section 17 of the Act shows that it is the Deputy Commissioner or any other Officer not below

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the rank of Extra Assistant Commissioner authorised by the Deputy Commissioner who can call the first meeting of the Panchayat Samiti in the manner prescribed as soon as the election and co-option of the members of the Panchayat Samiti is notified to elect Chairman and Vice-Chairman from amongst the primary and co-opted members. From the various provisions of the Act and the rules framed thereunder it is clear that the State Government has no power to interfere in or postpone the Election of the Chairman or the Vice-Chairman of a Panchayat Samiti.

(Paras 4, 5 and 6)

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus or any other appropriate writ, order or direction be issued quashing the order dated 21st March, 1975, contained in Annexure P/2 to the writ petition and holding the elections of respondents No. 2 and 3 as per schedule already announced, i.e., 2nd April, 1975.*

S. S. Kang, Advocate, for the Petitioners.

K. S. Keer, Advocate, for Advocate-General, Punjab, for the Respondents.

#### JUDGMENT

Bains, J.—(1) This petition has arisen out of the elections to be held to the offices to the Chairman and Vice-Chairman, Panchayat Samiti, Ghal Khurd, Tahsil and District Ferozepore. The admitted facts are that the Government issued a notification No. DP-EI-75/607, dated 2nd January, 1975 under section 113-A of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (hereinafter called the 'Act'), for holding general election to the members of the Panchayat Samitis in the State of Punjab. The notification is reproduced as below :—

“In exercise of the powers conferred by sub-section (1) of section 113-A of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, the Governor of Punjab is pleased to direct that :—

- (i) the third general election of primary members of all the Panchayat Samitis referred to in clause (á) of sub-section (2) of section 5 of the said Act shall be held in the State of Punjab by 8th March, 1975;
- (ii) the co-option of members to all Panchayat Samitis in the State of Punjab, where necessary, shall be made by **March 20, 1975;**

- (iii) the third general election of members of all Zila Parishads referred to in sub-sections (3) and (4) of section 86 of the said Act shall be held in the State of Punjab by 2nd April, 1975; and
- (iv) the co-option of members to all Zila Parishads in the State of Punjab, where necessary, shall be made by April 15, 1975."

(2) In accordance with this notification, sixteen primary members of the Panchayat Samiti, Ghal Khurd were elected. Both the petitioners were also elected as members of the Panchayat Samiti, Ghal Khurd. Two ladies and 4 Scheduled Caste/Tribes members were co-opted by the elected members in a meeting held on 19th March, 1975. After the co-option the Deputy Commissioner under section 17 of the Act, appointed respondent 3 as the Presiding Officer for convening the meeting of the Panchayat Samiti for the election to the offices of the Chairman and the Vice-Chairman. Accordingly, respondent 3 issued notices for the holding of a meeting for the election of the Chairman and the Vice-Chairman for April 2, 1975. In the meantime, the petitioners came to know on March 29, 1975, just 3-4 days prior to the election, that the Government had postponed the election indefinitely *vide* Memo. No. DP-E-I-75/16343-54, dated 21st March, 1975 (Annexure P. 2). It is against this order that the present writ petition has been filed.

(3) The main contention of the learned counsel for the petitioner is that the State Govt. had no authority to postpone the elections; and that it had no jurisdiction and authority to interfere in the election of the Chairman and Vice-Chairman of the Panchayat Samitis, as the function of the Government under section 113-A is limited only to the co-option of Panchayat Samiti members. I have perused the notification issued under section 113-A of the Act and also the provisions of section 113-A. Section 113-A of the Act is in the following terms :—

"(1) Notwithstanding anything contained in this Act or the rules made thereunder, the Government may by notification direct that, by such date as may be specified in the notification,—

- (i) a general election of primary members of all Panchayat Samitis and co-option of Members to all Panchayat Samitis; and

- (ii) a general election of members of all Zila Parishads referred to in clause (a) of sub-section (3) of section 86 and co-option of Members of all Zila Parishads referred to in clause (e) of that sub-section;

shall be held and made in the State of *Haryana*; and different dates may be appointed for different areas or for different Panchayat Samitis or Zila Parishads or groups thereof.

- (2) As soon as a notification is issued under sub-section (1), the Deputy Commissioners and all other authorities concerned shall take all necessary steps for such election and co-option under and in accordance with the provisions of this Act and the rules made thereunder.
- (3) The power of holding a general election or making a co-option under this section may be exercised by the Government from time to time so that a period of not less than five years shall intervene between any two consecutive elections or co-options."

(4) From the reading of this section it is evident that the Government has no power either to fix the date for the election of the Chairman or Vice-Chairman or to postpone it afterwards. It has only the power up to the co-option stage to issue the election programme etc. and the notification issued under this section does not show that any programme regarding the election of Chairman or Vice-Chairman was fixed. In this notification, the programme for the election of the primary members of the Samiti and the co-option of the members of the Samiti, the general election of the members of the Zila Parishads referred to in sub-sections (3) and (4) of section 86 (Co-option of Members of Zila Parishad) is mentioned. Section 17 of the Act which deals with the election of the Chairman and Vice-Chairman of the Samitis, is in the following terms :—

"The Deputy Commissioner concerned, or any gazetted officer appointed by him in this behalf, not below the rank of an Extra Assistant Commissioner shall call the first meeting of the Panchayat Samiti in the manner prescribed, as soon as the election and co-option of all members of the Panchayat Samiti is notified, to elect the Chairman and Vice-Chairman from amongst the Primary and Co-opted Members. The aforesaid officer shall preside at such meeting."

(5) A reading of this section shows that it is the Deputy Commissioner or any officer not below the rank of an Extra Assistant Commissioner authorised by the Deputy Commissioner, who can call the first meeting of the Panchayat Samiti in the manner prescribed, as soon as the election and co-option of all members of the Panchayat Samiti is notified, to elect the Chairman and Vice-Chairman from amongst the Primary and co-opted Members. Rule 3 of the Punjab Panchayat Samitis and Zila Parishads Chairman and Vice-Chairman (Election) Rules, 1961 (hereinafter called the 'Rules') is as under :—

"The election of the Chairman and Vice-Chairman of a Panchayat Samiti shall be held in the office of the Panchayat Samiti or such other place as may be specified in that behalf by the Presiding Officer, who shall convene and preside over the meeting called for that purpose."

Presiding Officer is also defined in rule 2(d) of the Rules which is as under :—

'Presiding Officer' means the Deputy Commissioner concerned, or such Gazetted Officer, not below the rank of Extra Assistant Commissioner, as may be appointed by the Deputy Commissioner for the purposes of the rules."

From these various provisions of the Act and the rules framed thereunder it is clear that it is the Deputy Commissioner or a person authorised by him not below the rank of an Extra Assistant Commissioner, who can call the first meeting of the Panchayat Samiti and preside over it for the purpose of electing the Chairman and the Vice-Chairman. In the present case the impugned order (Annexure P/2) was issued by the Deputy Secretary Development for Development Commissioner and Secretary to Government, Punjab, which is reproduced below :—

"From

The Development Commissioner,  
Secretary to Government, Punjab,  
Development and Panchayats Department.

To

All the Deputy Commissioners in the State.  
Memo. No. DP-E-I-75/16343-54.  
Dated the 21st March, 1975.

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Subject:—Third General Election to Panchayat Samitis and Zila Parishads in the State.

Reference this Department endorsement No. DP-E-I-75 on the subject noted above.

Government postpones elections of Panchayats Samitis and Zila Parishads in the State after the stage of Co-option of Members, belonging to Scheduled Caste and Women, of Panchayat Samitis till further orders.

(D. S. CHAUDHARY),

Deputy Secretary, Development  
for Development Commissioner and  
Secretary to Government, Punjab.”

(6) This order does not give any reason for the postponement of the elections to the Panchayat Samitis and Zila Parishads in the State. It only says that the Government has postponed the elections of Panchayat Samitis and Zila Parishads in the State after the stage of Co-option of Members, belonging to the Scheduled Castes and Women, of Panchayat Samitis, till further orders. The various provisions of the Act and the rules framed thereunder show that what to say of the Deputy Secretary Development even the Development Commissioner and Secretary to Government, Punjab, or the State Government has no power to postpone the election of the Chairman and Vice-Chairman of the Panchayat Samitis. The impugned order is neither issued on behalf of the Government nor is it in the form prescribed by the Rules of Business. It is not understood as to whether the decision was taken by the State Government or the Deputy Secretary himself. No reasons whatsoever have been given in the impugned order postponing the election. In the return filed on behalf of respondent No. 1 only one reason is given that an ordinance was issued to amend sections 5, 86 etc. of the Act. The object of the issuance of the ordinance was to give more representation to the members of the Scheduled Castes and Scheduled Tribes and Backward Classes. I have perused the Ordinance also. Even this ordinance does not give any power to the State Government or to a Deputy Secretary or Secretary to the Government to postpone the elections of the Chairman and the Vice-Chairman. Hence, this ordinance is of no avail to the respondent.

(7) The learned counsel for the respondents could not show me any law under which the State Government or the Deputy Secretary has got the authority to postpone the elections in the manner it has been done in the present case. Of course, he has argued that the powers are mentioned in section 113-A of the Act. But under this section, the State Government or the Deputy Secretary has not been given the power to postpone the election of Chairman or Vice-Chairman of the Samitis. If the intention of the Legislature was to give such powers to the Government, it could also have included the election of the Chairman and Vice-Chairman in this section, but it has not done so. Rather there is a specific provision in section 17 of the Act and the rules made thereunder which deal with the election of the Chairman and the Vice-Chairman.

(8) No other point is urged.

(9) For the foregoing reasons, this petition is allowed with costs and the impugned order (Annexure P/2) is quashed in so far as the postponement of Samiti elections after the Co-option is concerned and the Deputy Commissioner, Ferozepore (respondent 2) and the Assistant Commissioner exercising the powers of Presiding Officer (respondent 3) are directed to perform their duties in accordance with section 17 of the Act and the rules framed thereunder expeditiously without any further loss of time.

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N. K. S.

Before R. S. Narula, C.J. and M. R. Sharma, J.

SANT SINGH—*Petitioner*

*versus*

THE STATE OF PUNJAB ETC.,—*Respondents.*

Letters Patent Appeal No. 323 of 1973.

April 21, 1975.

*Punjab Civil Service (Executive Branch) Rules, 1930—Rules 6(a) and 7—Constitution of India (1950)—Articles 14 and 16—Rule 6 providing for consideration of Tehsildars along with Naib-Tehsildars for promotion to the service—Whether discriminatory—Recommendation of names of eligible persons for promotion to the service—Discretion for such recommendation vested in the Financial Commissioners—Whether arbitrary.*