(8) For the reasons stated, the petition of the complainant is allowed and it is held that the provisions of section 132 of the Code of Criminal Procedure are not attracted to the present case. The reference made by the Additional Sessions Judge is answered in the negative. The Additional Sessions Judge, Rupnagar, is directed to proceed with the case in accordance with law.

N. K. S.

Before S. S. Sandhawalia C.J. and I. S. Tiwana, J.

ROSHAN LAL SINGLA,—*Petitioner.*

versus

DEPUTY COMMISSIONER, DISTRICT BHATINDA and others,—*Respondents.*

Civil Writ Petition No. 2417 *of* 1979

August 9, 1979.

Punjab Municipal Act (III of 1911)—*Sections* 12-*A*, 12-*B*, 12-*C*, 12-*D and* 12-*E*—*Punjab Municipal Election Rules*, 1952—*Rule* 5—*First meeting called under rule* 5 *for co-option of members—Meeting postponed without co-option and fixation of the next date—Adjourned meeting—Whether retains the character of the first meeting for the purpose of co-option.*

Held, that every meeting is entitled to adjourn itself unless if is prohibited by an express enactment. There is no express enactment either in the Punjob Municipal Act, 1911 or in the Punjab Municipal Election Rules, 1952 which bars any postponement or adjournment of a meeting called under rule 5. Once it is so, then it would be equally plain that an adjourned or postponed meeting is in effect nothing but a continuation of the original one. Therefore, if the first meeting is adjourned or postponed validly it is obvious that the subsequential meeting would partake the character of the original one. An adjourned meeting cannot possibly be equated or styled as a different—an independent or a second meeting. If it were to be so held the very purpose or meaning of an adjournment or postponement would be rendered nugatory and the distinction between the adjourned or postponed and an independent second meeting would virtually be effaced. A meeting, when

adjourned may itself fix a date or in the alternative direct that the adjourned date would be fixed by a subsequent notice to all the members. One is unable to see how the prescription of a notice could possibly change the character of the adjourned meeting. A mere requirement of notice, would not in any way alter the intrinsic character of the adjourned meeting. It must, therefore, be held that a postponed or adjourned meeting under rule 5 would retain its character as a first meeting for the election and co-option of Municipal Commissioners.

(Paras 6, 10 and 12).

Suraj Parkash vs. *The State of Punjab and others* 1973 P.L.R. 318 OVERRULED.

Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased—

(i) (a) *to issue an appropriate writ, order or direction restraining Respondent No. 1 and 2 from convening and holding any meeting of the Committee for the purpose of making co-option under Section 12-A, 12-B and 12-C of the Act;*

(b) *to quash annexure P-2.*

(ii) *to grant any other appropriate relief which this Hon'ble Court may deem fit and proper in the circumstances of the case;*

(iii) *exempt the petitioner from filing certified copies of Annexures P-1 and P-2;*

(iv) *dispense with the service of notice on the respondents;*

(v) *to award costs of the petition to the petitioner.*

And further praying that Respondent Nos. 1 and 2 may kindly be restrained from convening any meeting of the Committee for the purpose of making co-option under section 12-A 12-B and 12-C of the Act, till the disposal of this writ petition by this Hon'ble Court.

J. R. Mittal, Advocate, *for the Petitioner.*

N. S. Bhatia, A.A.G. Punjab, *for Respondents Nos. 1 to 3.*

Kuldip Singh, Advocate with Pawan Bansal, Advocate, *for Respondents Nos. 6 to 8, 11 and 13 to 16.*

Roshan Lal Singla *v.* Deputy Commissioner, District Bhatinda and others (S. S. Sandhawalia, C.J.)

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether despite the adjournment of a meeting called under Rule 5 of the Punjab Municipal Election Rules, the adjourned meeting would still retain its character of a first meeting for the election and co-option of Municipal Commissioners, under sections 12-A, 12-B, 12-C and 12-D of the Punjab Municipal Act, 1911, is the sole significant question arising in this writ petition admitted to a hearing by the Division Bench.

2. The facts are not in dispute and otherwise fall within a narrow compass. Roshan Lal Singla petitioner and respondents Nos. 4 to 15 were elected as members of the Municipal Committee, Budhlada in the general elections held on 10th June, 1979. Sub-Divisional Officer (Civil), Mansa-respondent No. 2—was appointed the Convener under Rule 5 of the Punjab Municipal Election Rules (hereinafter called the Rules) for the purpose of calling a meeting for the twin purpose of administering the oath to the newly elected members and also for making the statutory co-option under sections 12-A, 12-B and 12-C of the Punjab Municipal Act (hereinafter called the Act). After the issuance of the notice for the meeting, it was convened on the 13th of July, 1979 in the office of the Committee under the Chairmanship of the Convener and after the administration of oath to the newly elected Municipal Commissioners, proposals were invited for the co-option of a member. The names of respondents Nos. 16 and 17 were proposed and for the purposes of election, the ballot-papers were distributed to the members. However, before the election could be finalised, a quarrel took place between some of the members, who indulged in blatant rowdyism, in which ballot-papers were snatched from some of the members and burnt. It is the petitioner's stand that the situation became tense and completely uncontrollable in which the Convener felt helpless to conduct the co-option proceedings and had no other alternative except to adjourn the meeting. It is the petitioner's case that this adjournment in effect amounted to a failure by the Committee to co-opt members which would bring into play section 12-E of the Act entailing the forfeiture of the right of co-option by the elected members and vest it in the State Government which may then nominate eligible persons to the Municipal Committee. It is, however, averred that respondents Nos. 1 and 2 instead of reporting the

matter to the State Government issued a notice for the adjourned meeting of the Committee for the purpose of making the co-option, for the 19th July, 1979. It is the claim of the petitioner that the Committee having failed to make the co-option on the 13th July, 1979, no subsequent adjourned meeting can be held for the purpose. The petitioner's stand is that the co-option of the members in the meeting held on 19th July, 1979 and the proceedings thereof are wholly devoid of jurisdiction and should be quashed.

3. As already noticed, the broad factual position is not in dispute. The relevant extract of the proceedings of the meeting held on 13th July, 1979 (annexure R/2) graphically describes the rowdyism and the ensuing situation as follows:—

> "When the counting was being done, Sudarshan Kumar Jain and Kartar Singh, members forcibly snatched the ballot-papers and tore off the same. Thereafter, they unbolted the door and ran away. Before that also some *goondas* came in their room from outside and tried to pull the members from one side to another and also they tried to throw chairs on the members. The Police with great efforts controlled the situation and the proceedings for co-option were commenced. Now when the first Balmiki member was to be co-opted, the ballot-papers at the time of the counting have been snatched from the table and as such it is proved that *goonda girdi* was being done. I under these circumstances, keeping in view of the law and order situation postponed the meeting and before calling the second meeting 48 hours' notice would be given under the rules. Members were informed that information was sent to the Police for registering the case."

It is manifest from the above resume that the basic question herein is whether the postponed or adjourned meeting held on 19th July, 1979 is a continuation of the first meeting, envisaged by Rule 5.

4. The controversy inevitably must revolve around the relevant statutory provisions and it, therefore, becomes necessary to first read Sections 12-A, 12-B, 12-C, 12-D and 12-E of the Act, as also Rule 5.

> "12-A. *Co-option from amongst Balmikis, Churas and Bhangis.*—If no person belonging to the Scheduled caste

of Balmiki, Chura or Bhangi has been elected to a Committee, the elected members of the Committee shall co-opt in accordance with the provisions of Section 12-D, one person belonging to the aforesaid caste, who is otherwise qualified to be elected, to be a member of such Committee."

"12-B. *Co-option from amongst women.*—If no woman has been elected to a Committee, the elected members of the Committee shall co-opt in accordance with the provisions of Section 12-D, two women, who are otherwise qualified to be elected as members of such Committee, and if one woman has been elected, the elected members shall co-opt one such woman."

"12-C. *Co-option from amongst backward Classes other than scheduled castes.*—(1) If no person from amongst any of the backward classes comprising the castes, races or tribes or part of, or groups within castes or tribes, specified in Schedule II appended to the Act has been elected to a Committee, the elected members of the Committee shall co-opt in accordance with the provisions of Section 12-D one person belonging to any of the aforesaid classes, who is otherwise qualified to be elected, to be a member of such committee.

Proviso— .. .. ..".

"12-D. *Manner of co-option.*—Co-option under sections 12-A, 12-B and 12-C in the case of a newly constituted Committee shall be made in a meeting of the elected members held for the purpose of administering oath of allegiance to them and in case of any other Committee within a period of thirty days from the date of commencement of the Punjab Municipal (Amendment) Act, 1972 :

Provided that whenever a vacancy occurs by death, resignation, removal or otherwise of a co-opted, the co-option shall be made within a period of thirty days from the occurrence of the vacancy.

"12-E. *Nomination in the event of failure to co-opt.*—In the event of failure to co-opt a member under section 12-A, 12-B or 12-C, as the case may be, in accordance with the provisions of section 12-D the elected members of the Committee shall cease to have the right of co-option of such members and thereupon the State Government may nominate a person, who is eligible to be co-opted under section 12-A, 12-B or 12-C as the case may be, to be a member of such Committee."

Rule 5..—*Co-option of members and election of President and Vice-President.*—(1) The Deputy Commissioner or any Gazetted Officer appointed by him in this behalf (hereinafter in these rules referred to as the convener) shall, within a period of fourteen days of the publication of the notification of appointment and election of members of a newly constituted committee, fix at forty-eight hours notice a date for the first meeting of the elected and appointed members of such committee stating in the notice that at such meeting the oath of allegiance will be administered to the members present and that the co-option of members, under sections 12-A, 12-B and 12-C, if any, shall take place after the oath is administered."

5. Now on the facts of the present case it appears to be beyond dispute that on the 13th of July, 1979, the convener of the meeting in view of the blatant rowdyism had adjourned or postponed the meeting and indeed had little choice but to do so. The vernacular word used in the proceeding in Punjabi is '*multvi*' which the learned counsel for the parties are agreed is synonymous with an adjournment or postponement of the meeting.

6. On principle it appears to be plain that every meeting is entitled to adjourn itself unless it is prohibited by an express enactment. This is not in doubt that there is no express enactment either in the Act or in the rules which bars any postponement or adjournment of a meeting called under rule 5. Once it is so, then it would be equally plain that an adjourned or postponed meeting is in effect nothing but a continuation of the original one. Therefore, if the first meeting is adjourned or postponed validly it is obvious that the consequential meeting would partake the character of the

original one. An adjourned meeting cannot possibly be equated or styled as a different—an independent or a second-meeting. If it were to be so held the very purpose or meaning of an adjournment or postponement would be rendered nugatory. If such a contention were to be accepted the distinction between an adjourned or postponed and an independent second or third meeting would virtually be effaced. Though the matter appears to us as plain, on principle, authority is not lacking for so significantly salient a proposition. In *Watrap S. Subramania Aiar* v. *The United India Life Insurance Co. Ltd., Madras* (1) after an exhaustive discussion it has been held as follows:—

> "In other cases it has been held that an adjourned meeting is merely the same meeting but a continuation of it. The first is the well-known case of *Scadding* v. *Lorant* (2). In that case it was held that where notice of the purpose of a vestry meeting has been duly given, and that meeting has begun but not completed a certain business, and the meeting is regularly adjourned, such business may lawfully be completed at the adjourned meeting though the notice for summoning such adjourned meeting does not state the purpose for which it is summoned. In this case the House of Lords called for the opinion of the Judges upon this question and the opinion was unanimous, namely, that it was sufficient to give notice on the Church door of the purpose to which the first meeting was to assemble and that notice extended to all adjourned meetings, such adjourned meetings being for the purpose of completing unfinished business of the previous meetings and all being in continuation of the first meeting. During the course of the argument the Lord Chancellor asked the following question:
>
> 'Does not the same authority continue from day to day after the business is declared not to be concluded as from hour to hour in the same day ? Suppose we were to adjourn now for a quarter of an hour, would it not be the same meeting when the House resumed its sitting?

(1) (1928) 55 Madras Law Journal 385.
(2) (1851) 3 H.D.C. 418.

This case was followed in the case of *Kerr* v. *Wilkie* (3) in which it was held that where notice of a meeting had been properly given there was no necessity for notice of its *bona fide* adjournment. At page 1021 Lord Campbell, L.C., stated:

"But it seems to me quite clear, that this meeting having the power of adjournment, and having exercised that power *bona fide* when the adjournment took place, it was part of that meeting just as much as if it had been a meeting held on the same day. Supposing there had been a debate, as was suggested during the argument, and that during that debate the clock had struck 12 at night, could there not have been an adjournment till the following day at 9 o'clock, and would not the meeting which was then resumed have been part of the meeting which had taken place the day before ? I cannot doubt it for a moment; and whether the adjournment be only for three hours or for three days, if the proceeding be *bona fide*, can make no difference'.

On page 1023 Lord Chelmsford made observations which are useful upon the points raised in this case both as regards the regularity of an adjourned meeting and the power of a meeting to adjourn itself. He said as follows:

'I should have thought, that when a meeting is to be held, and business to be transacted, and where it is possible that at the original meeting the whole of the business may not be got through, there must be power to adjourn that meeting, and that the adjourned meeting must be considered as part of the original meeting'.".

It is evident from the report that the aforesaid statement of the law is based on a catena of English precedents. Before us not a single judgment contrary to this view was cited or even hinted at on behalf of the petitioner. Indeed the proposition appears to be so manifest on principle and precedent that in the ultimate analysis Mr J. R. Mittal learned counsel for the petitioner very fairly conceded that

(3) (1860) 6 Jur. N.S. 383.

an adjourned or postponed meetings partakes the character of the original one and must in law be deemed to be a continuation of the same. However, I may pointedly notice that I am not basing myself merely on the concession of the learned counsel for the petitioner. It must, therefore, be held that if the first meeting in rule 5 was adjourned or postponed the subsequent meeting in essence must be deemed a continuation of the first meeting.

7. Mr J. R. Mittal learned counsel for the petitioner lastly fell back upon and placed reliance on an isolated observation in *Suraj Parkash* v. *The State of Punjab and others* (4) and indeed it was this which had necessitated the admission of the writ petition to a hearing by the Division Bench. Therein it was said as follows:—

> "12. Regarding respondent No. 6, it may be mentioned that the members present in the meeting held on July 24, 1972, themselves did not proceed with the co-option because some of the members indulged in acts which bordered on rowdyism. For this reason, the meeting had to be adjourned. These were the circumstances under which it could probably be said that the Committee failed to make a co-option of the member of the backward classes and it was open to the Government to exercise its powers under section 12-E of the Ordinance, but since the petitioner had been wrongfully disallowed to participate in the meeting and the party to which the petitioner belonged did hold a majority, I see no justification in upholding the nomination of respondent No. 6 made by the State Government."

Now a close analysis of the whole judgment would indicate that the questions which fell for determination therein were entirely different and the learned Single Judge was apparently not laying down any rule of law in the passing and a halting observation quoted above. Learned counsel for the respondents is on firm ground in contending that on the clear facts of the case the observation was wholly *obiter dicta* as this question was not at all before the Bench. This apart, I am unable to construe the observation above as a

(4) 1973 P.L.R. 318.

considered statement of law and in fact the unequivocal language used therein would automatically negative any such inference. It is otherwise plain that the matter was neither canvassed before the learned Single Judge nor has any principle or precedent been cited for the cryptic expression on which much emphasis was sought to be placed on behalf of the petitioner. Nevertheless if the observation were to be construed as holding that even an adjourned meeting in face of rowdyism, would not be a first meeting and, therefore, necessarily entail the forfeiture of the right of the elected members to co-opt, then I must respectfully record my dissent from such proposition. With great respect I take the view that on close analysis of the statutory provisions this observation is unsustainable and, therefore, would overrule the judgment on this limited aspect.

8. Canons of interpretation apart, even otherwise I take the view that the construction canvassed on behalf of the petitioner in this context would inevitably work great public mischief. Indeed it would be placing a premium on rowdyism if it is held that a meeting disturbed by vandalism would necessarily result in the forfeiture of the valuable right of co-option vested specifically by the statute in the elected representatives of the municipal committee. Mr Kuldip Singh for the respondents appears to be on plausible ground in contending that in fact the Court should opt for the construction that even where there is no express order of adjournment or postponement, a meeting brought to an end by rowdyism or vandalism must essentially be considered as an adjourned meeting unless there are strong reasons to hold to the contrary. Though this convinces us on principle a reference may again be made to *Watrap S. Subramania Aiyar's case* (supra) wherein it was observed as follows:—

> "* *. To say otherwise would be to prevent in a certain number of cases the proper business of a meeting being completed. It would also enable evilly-disposed persons to obstruct and prolong the meeting to such an hour as to make it impossible to continuing it further. In such a case as this there must be power to adjourn the meeting so that the discussion of the business before the meeting can be continued and completed. Quite apart from the example I have given, a meeting might quite easily, be necessarily and honetsly prolonged to an hour when an adjournment would be inevitable."

Again in *Deodut Sharma* v. *Zahoor Ahmed Zaid and others*, (5) the Division Bench enunciated the following as one of the principles emerging from the case law:—

> "An exception to the aforesaid rule which has been almost universally accepted is that where disorder breaks out at a meeting, the chairman has an inherent right, even if it has not been granted by statute or the rules, to adjourn the meeting, without consulting the majority."

9. Adverting now to the ancillary argument on the facts of the case itself, Mr Mittal attempted to raise a futile argument that because the convener in the proceeding had said that notice of the adjourned meeting should be given, therefore, such a meeting must be deemed as a second meeting. A pedantic construction was sought to be placed on the proceedings because the convener had used the words—'I, under these circumstances, keeping in view the law and order situation postponed the meeting and before calling the second meeting 48 hours' notice would be given under the rules'.

10. I am unable to subscribe to so narrow and constricted a view. A meeting, when adjourned, may itself fix a date or in the alternative direct that the adjourned date would be fixed by a subsequent notice to all the members. One is unable to see how the prescription of a notice could possibly change the character of the adjourned meeting. Indeed the facts in the present case may well indicate that in a case of rowdyism of this nature it may not even immediately be possible to arrive at an agreed date or to visualise the time and place at which the adjourned meeting could be held undisturbed. In such a situation perhaps there would be no alternative but to declare that the adjourned meeting will be held after fresh notice to its members. A mere requirement of notice, in my view, would not in any way alter the intrinsic character of the adjourned meeting as has been held above.

11. Nor do I find any substance or significance in the use of the words 'second meeting' in the proceedings recorded by the convener on the 13th of July, 1979. These proceedings cannot be treated and construed as a statute if it is evident as it is from its plain terms

(5) A.I.R. 1960 Rajasthan 25.

that the meeting had been postponed due to virtual rioting. Merely because after postponing the meeting the convener used the terminology of referring to the adjourned meeting as a second meeting is no reason for holding that it would not be the continuation of the first one. It was plausibly argued by Mr Kuldip Singh learned counsel for the respondents that truly construed these words can possibly be deemed as the adjourned and, therefore, second part of the original meeting.

12. To conclude I would return an answer in the affirmative to the legal question posed at the very outset of the judgment, namely, that a postponed or adjourned meeting under rule 5 would retain its character as a first meeting for the election and co-option of Municipal Commissioners.

13. As a necessary consequence of the above and as held on facts earlier the contention raised on behalf of the petitioner must fail and the writ petition is hereby dismissed. Parties are, however, left to bear their own costs.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain and K. S. Tiwana, JJ.

MANORAMA SOOD,—*Appellant.*

versus

STATE OF PUNJAB ETC.,—*Respondents.*

Letters Patent Appeal No. 24 of 1974

December 4, 1978.

Punjab Re-organisation Act (XXXI of 1966)—Section 82—Person appointed to a post before reorganisation but not actually joining—Such person—Whether can be deemed to be serving in connection with the affairs of the then State of Punjab.

Held, that a person who was appointed to a post before the re-organisation of the State of Punjab on 1st November. 1966 but had not actually joined could not be deemed to be serving in connection