

(7) It was urged on behalf of the petitioners that the State Government could not decline to make a reference on the ground of delay and that it was a matter for the adjudicating authority to consider while granting the relief, if any. In view of the aforesaid discussion there is no merit in this contention. It is true, as already observed above that if stale claim is referred for adjudication, the adjudicating authority will not grant any relief prior to the date of demand but it does not follow that the State Government is bound to refer a belated claim.

No other point was raised.

(8) In the result, there is no merit in the writ petition which stands dismissed with no order as to costs.

J.S.T.

Before Hon'ble S. D. Agarwala & N. K. Sodhi, JJ.

BALBIR SINGH AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Letters Patent Appeal 692 of 1993.

October 21, 1993.

Punjab Gram Panchayat Act, 1952—Punjab Gram Panchayat Election Rules, 1960—Rule 14-A—Order adjourning election—Passing of such order—Can such order be passed after the polling.

Held, that a situation can arise where the authority competent to adjourn the poll may have to hold an enquiry, however, summary it be, to satisfy itself that incidents as envisaged in the Rule have really taken place so as to justify an adjournment of the poll and to avoid arbitrary exercise of its power. All this is bound to take some time and in the meantime the poll may be over. The words 'at any time' as used in the Rule are comprehensive enough to cover such a situation so as to enable the competent authority to adjourn the poll even after the same is over. It cannot, therefore, be said that the power to adjourn the poll must necessarily be exercised only during the course of poll and not thereafter.

(Para 3)

H. S. Mattewal, Sr. Advocate with Gurminder Singh Advocate,
for the Petitioner.

G. K. Chatrath, Advocate General Punjab with Anu Chātrath,
Advocate, G. S. Gandhi, Advocate for respondent No. 4, *for the Respondent.*

ORDER

N. K. Sodhi, J.

(1) The only point canvassed before us in this appeal under Clause X of the Letters Patent is whether the Deputy Commissioner was competent to adjourn the poll under Rule 14A of the Punjab Gram Panchayat Election Rules, 1960 (as amended upto date and hereinafter called 'the Rules') after the same was cover.

(2) Elections to the Gram Panchayat, Kukarpind at Jalandhar east block, Tehsil Jalandhar were held on January 18, 1993. As per the election programme framed by the Deputy Commissioner nomination papers were required to be filed on January 17, 1993 and the polling, if any, was to be held on the following day. The result of the election was also to be declared immediately after the counting of votes was over on January 18, 1993. Appellant No. 1 filed his nomination papers and contested for the office of Sarpanch whereas the other two appellants contested for the office of a panch. The case of the appellants who were the writ petitioners before the learned single judge is that polling was held in the village from 8.00 A.M. to 4.00 P.M. on the date fixed. It is not disputed that voting did not proceed smoothly as it was marred by disputes and unruly behaviour of the rival contesting candidates and that this process of mutual recrimination and intermittent disputes resulted in a major dispute at about 10.00 A.M. When a person was caught trying to vote by impersonating for another. This incident is stated to have resulted in almost a pandemonium and the situation became so tense that the Presiding Officer decided to close down the polling booth for about half an hour at 10.00 A.M. The Block Development and Panchayat Officer Jalandhar east block was sent to the spot who immediately reported the matter to the Sub-Divisional Officer (Civil), Jalandhar who also visited the Polling Station subsequently. Both these officers submitted their reports to the Deputy Commissioner. The Station House Officer, Police Station Sadar Jalandhar also intervened and sent more police force with a view to control the situation. Even though the Sub Divisional Officer (Civil) resumed the voting but polling, as found by the Deputy Commissioner on the basis of the reports received by him, did not continue in an atmosphere of normalcy. A large number of voters are alleged to have gone back during the period the polling booth was closed by the Presiding Officer and some of the contesting candidates were unhappy with the conduct of polling and demanded an adjournment. They met the Deputy

Commissioner at Jalandhar and voiced their grievance, Shri Kasturi Lal-respondent No. 4 who was one of the contesting candidates for the office of Sarpanch made allegations that the Presiding Officer was siding with appellant No. 1 who was his close friend and with whom he stayed the previous night. It was also alleged that the ballot boxes had been tampered with during the period when the polling booth was closed. The complaints to this effect were made to the Deputy Commissioner in writing. Apprehending that the situation might not take an ugly turn, the Deputy Commissioner along with the Senior Superintendent of Police also visited the polling booth at about 3.00 P.M. and after making enquiries on the spot he verbally directed the Presiding Officer not to declare the result of the election. When the polling was over at 4.00 P.M. the Presiding Officer proceeded to count the votes and according to the appellants they polled the maximum number of votes and were entitled to be declared elected in terms of Section 6 of the Punjab Gram Panchayat Act, 1952 (for short, 'the Act') to the respective offices for which they contested elections. The Presiding Officer, however, did not declare the result.

In view of the complaints received and the reports submitted by the Block Development and Panchayat Officer and the Sub Divisional Officer (Civil), the Deputy Commissioner referred the matter to the State Government for advice. Since the advice given by the State Government was not very specific the Deputy Commissioner proceeded to act on his own and adjourned the poll as per his order dated January 24, 1993 the relevant part of which reads as under :—

“As there is no doubt about the fact that the polling booth had been closed down for sometime and many voters had left the village scurrying for intervention by the higher authorities including that of the Deputy Commissioner. I feel that it will not be fair to treat the election held as valid or in accordance with the rules and instructions and perhaps, more importantly, in consonance with the spirit of fairness and openness which is expected to prevail at the Polling Booth. Keeping in view the above position, I declare that the election to Village Panchayat of Kukarpind, Tehsil Jalandhar need to be adjourned and further order that the election to village Panchayat Kukarpind be held on 10th of February, 1993 after observing necessary formalities/procedure on 9th of February, 1993.”

As the result of the election was not declared, the appellants filed a petition under Article 226 of the Constitution for a mandamus directing the Presiding Officer to declare the result on the basis of the votes counted by him on January 18, 1993. Their petition was dismissed by the learned Single Judge holding that the Deputy Commissioner had the power to adjourn the poll under Rule 14 A of the Rules and that he validly exercised that power. It is this order of the learned Judge which has been impugned before us in the present appeal.

(3) As already observed, the only ground on which the order passed by the Deputy Commissioner adjourning the poll has been challenged before us is that the poll could be adjourned under Rule 14 A only during the course of the poll and that the power to adjourn the poll could not be exercised after the same was over particularly when the polled votes had been even counted. The contention on behalf of the appellants is that the Deputy Commissioner could not pass the order adjourning the poll on January 24, 1993 after 7 days of the poll. We have given our thoughtful consideration to the contention of the learned counsel but have not been able to persuade ourselves to accept the same. Rule 14 A of the Rules under which the Deputy Commissioner is said to have exercised his power reads as under :—

14A. *Adjournment of poll in Emergencies.*—(1) The Returning Officer, the Presiding Officer the Deputy Commissioner or the Government may adjourn the poll in a sabha area at any time in case the poll is interrupted or obstructed by :—

- (i) any riot or violence ; or
- (ii) a direct or indirect threat to the election process or conduct of poll ; or
- (iii) an action of snatching or destroying the ballot papers ;
or
- (iv) any type of natural calamity ; or
- (v) booth capturing at the polling station or at a place fixed for polling ; or
- (vi) any other sufficient reason to be recorded in writing.

(2) Whenever the polling in a sabha is adjourned in terms of the provisions of sub-rule (1) the Returning Officer shall,

as soon as practicable, report the matter to Deputy Commissioner who shall appoint a day for a fresh poll in such sabha area and shall fix the time at which such poll shall be held.

Explanation :— xx xx xx

A plain reading of this Rule makes it clear that the power to adjourn a poll in a sabha area is given to the Returning Officer, the Presiding Officer, the Deputy Commissioner or the Government and this power can be exercised 'at any time' in case the poll is interrupted or obstructed for any of the contingencies envisaged in clauses (i) to (vi). The act or eventuality on the happening of which any of the authorities will adjourn the poll must, of course, take place during the course of the poll but the order adjourning the poll can be passed *at any time* no matter that even the poll is over. A situation can arise where the authority competent to adjourn the poll may have to hold an enquiry, however, summary it be, to satisfy itself that incidents as envisaged in the Rule have really taken place so as to justify an adjournment of the poll and to avoid arbitrary exercise of its power. All this is bound to take some time and in the meantime the poll may be over. The words 'at any time' as used in the Rule are comprehensive enough to cover such a situation so as to enable the competent authority to adjourn the poll even after the same is over. It cannot, therefore, be said that the power to adjourn the poll must necessarily be exercised only during the course of poll and not thereafter. The contention of the learned counsel has, thus, no substance and must be rejected. It may be mentioned that there is no manner of doubt that the action of the Deputy Commissioner in adjourning the poll squarely falls within the ambit of Rules and for this reason it was not even argued before us that the order passed by the Deputy Commissioner was not covered by the Rule.

(4) The circumstances mentioned by the Deputy Commissioner and the reasons given by him for adjourning the poll are questions of fact based as they are on the allegations and counter allegations made by the rival candidates and the enquiry held by him and other officers. These facts leading to the impugned order of the Deputy Commissioner could not be controverted before us. Keeping in view these facts, particularly the facts that lot of tension was generated during the course of polling which had to be discontinued for some time, we are of the opinion that the learned single Judge was right in not interfering with the order of the Deputy Commissioner and,

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indeed, it is not the case in which the Court should in the exercise of its extra ordinary jurisdiction under Article 226 of the Constitution quash the impugned order of the Deputy Commissioner.

In the result, the appeal is dismissed leaving the parties to bear their own costs.

S.C.K.

Before Hon'ble G. R. Majithia & S. K. Jain, JJ.

INDIAN OIL CORPORATION LTD.,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1413 of 1990.

January 3, 1994.

Punjab General Sales Tax Act 1948—S. 39—Constitution of India, 1950—Art. 226—Writ Petition challenging order of assessment—Statutory remedy of appeal not availed—Exercise of writ jurisdiction.

Held, that the petitioner corporation has got an equally efficacious remedy by way of appeal/revision under the Act. The power to exercise an extraordinary writ jurisdiction under article 226 of the Constitution declined.

(Para 5)

R. C. Chawla Senior Advocate and R. C. Dogra, Sr. Advocate with Renu Sehgal and Sushil Dogra, Advocate, for the Petitioners.

Anand Swaroop, Senior Advocate, for the Respondent.

JUDGMENT

G. R. Majithia, J.

(1) Indian Oil Corporation Ltd. has challenged the validity of the order dated December 21, 1989, passed by the Assessing Authority, Jalandhar-I, for the Assessment Year 1986-87.

(2) Challenge has been made to the finding of the Assessing Authority that the petitioner-Corporation is engaged in the sale of L.P.G. in cylinders and sale and purchase of L.P.G. and its enjoyment is not possible without cylinders and regulators. Therefore,