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**(1996) 11 P&H CK 0089**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 750 of 1993**

Nand Lal and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision :** 19-11-1996

**Acts Referred:**

Punjab Gram Panchayat Election Rules, 1960 — Rule 14A

**Citation :** (1997) 115 PLR 630 : (1997) 2 RCR(Civil) 160

**Hon'ble Judges :** V.K. Bali, J

**Bench :** Single Bench

**Advocate :** Nirmaljit Kaur, for the Appellant; A.G. Masih, AAG, for the Respondent

**Final Decision :** Dismissed

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## Judgement

V.K. Bali, J.—Nand Lal and three others through present writ petition filed by them under Article 226 of the Constitution of India, seeks issuance of a writ so as to declare the election of respondents 4 to 11 as Sarpanch/Panches of Gram Panchayat Simrianwala as illegal, unconstitutional and against the provisions of law. Before the case might proceed any further it requires to be mentioned that petition in so far as Atma Ram petitioner No. 2 is concerned, was dismissed vide order dated December 17, 1993.

2. Broad facts on which the relief asked for is sought to rest reveal that the petitioners are permanent residents and registered voters of village Simrianwala and village Bahmanianwala and village Simrianwala had a joint panchayat which had 11 Panches including 3 Panches belonging to scheduled castes. With a view to have a separate and distinct gram Panchayat for the village Simrianwala the residents of the said village approached the State Government to constitute a New Sabha Area of the village since it has a separate distinct abadi having a population of more than 200. This request of the respondents was acceded to and it was decided to have a separate gram panchayat for Simrianwala village. The Government issued notification dated December 31, 1992, constituting a

separate gram sabha area in village Simrianwala which was to have 5 Panches besides Sarpanch and two lady Panches to be elected by the voters of Villages Simrianwala. The petitioners were candidates for election of Sarpanch/Panches for village Simrianwala. The election was to be held on January 19, 1993. The date for filing the nomination was fixed as 17.1.1993 between 12 noon and 5.00 P.M. The scrutiny of nomination papers and disposal of objections was to be completed between 1.00 P.M. and 3.00 P.M. on January 17, 1993 whereas withdrawal of nomination papers was to be permitted between 3.00 P.M. and 4.00 P.M. on that day. After this, declaration of validly nominated candidates and assigning of symbols was to be made at 4.00 P.M. on January 17, 1993. The persons mentioned in paragraph 10 of the petition filed nomination papers for election of Sarpanch/Panches. It is the case of the petitioners that besides the persons named in paragraph 10 other persons belonging to Dhanis which were not included in the gram sabha area in the notification had also filed their nomination papers for the election of Sarpanch/Panches. At the time of scrutiny of nomination papers, the nomination papers of the persons belonging to Dhanis/Abadis not included in the constitution of sabha area of village Simrianwala were rejected whereas the nomination papers filed by all other contestants except those mentioned in para 10 were withdrawn. It is further the case of the petitioners that after rejection of nomination papers and withdrawal as mentioned above, the petitioners number commensurated with Sarpanch and Panches who were to be elected and therefore, there was no question of any voting. As such, the petitioners ought to have been declared elected. However this was not done and the election was postponed. It is so averred in the petition that after scrutiny was over the Returning Officer was to declare the persons as elected as Sarpanch and Panches, the Presiding Officer neither formally declared the aforesaid persons as unanimously elected as Sarpanch/Panches of gram Panchayat Simrianwala nor allotted symbols to the candidates. He was requested to formally declare the aforesaid persons as elected as Sarpanch/Panches. An application in that regard was also submitted to the Presiding Officer on January 17, 1993. However, no action was taken by the Presiding Officer. The application filed by elected candidates was kept by the Presiding Officer who on the following day recorded its receipt and cancelled the election under political pressure of sitting member of Parliament Mohan Singh Dhallianwala from Ferozepur Lok Sabha constituency. S.D.O. (Civil) Fazilka sent wireless message on January 17, 1993, to Deputy Commissioner, Ferozepur. According to S.D.O. (Civil) no Abadi area has been mentioned with regard to the panchayat of village Simrianwala in the notification, as such, voters within the periphery of Simrianwala village, could contest and cast their votes. The petitioners it appears from the pleadings thereafter sought relief from various authorities including some politicians but when nothing was done in the matter, they approached this Court through present civil writ petition. The writ came up for hearing on January 15, 1993. Notice of motion was issued but the election that was to take place after some clarification was made, was subject to the decision of the writ petition. It appears that thereafter election was held wherein petitioner did not participate at all.

Those who were elected have been arrayed as party respondents and the petition has been amended accordingly.

3. On the pleadings that have been referred to above Miss Nirmaljit Kaur learned Counsel appearing for the petitioner vehemently contends that the election ought to have taken place in view of the notification Annexure P-2 wherein it was clearly mentioned that election would be of village Simrianwala. The authorities were proceeding in right direction in rejecting the nominations of all those who had filed nomination papers from Dhanis but the S.D.O. postponed the election of which he had no power to do so either under the Punjab Gram Panchayat Act or the election rules. It is also the contention of the learned counsel that once the process of election had commenced and nomination papers had been filed, the power, if any, with regard to postponement could not be exercised at that stage.

4. The cause of the petitioner has been opposed by two sets of identical written statements one filed by the official respondents and the other by elected candidates. There is no need to mention in detail the averments made in the written statement filed on behalf of the elected candidates. In the written statement filed on behalf of respondents 1 and 2, it has been pleaded that the petitioners have attempted to mislead this Court by suppressing the material facts which go to the root of the case. It is pleaded that the petitioners had the knowledge that election to Gram Panchayat Bahamaniwala and Simrianwala was postponed vide order dated January 17, 1993 and as such there was no question of accepting nomination papers by the presiding officer. Even otherwise, on the postponement of the election on the first date, the process of election from filing of nomination papers to the polling of votes and declaration of result had to be undertaken de novo. Since, in the present case, there was no filing of nomination papers for gram panchayat Bahamaniwala or Simrianwala the petitioners have deliberately withheld this material fact from the Court. Copy of the order dated January 17, 1993 postponing the election has been annexed as Annexure R-1. It has further been pleaded that there is on panchayat of village Bahamniwala having population of 9000 out of which gram panchayat consisting of population titled Simrianwala was carved out. None mentioning of Dhanis/Abadis could be of no consequence for the simple reason that the Dhanis/Abadis do not find mention in the revenue record of village Bahamaniwala. The Dhanis are in the nature of Deras. The Dhani Simrianwala has total number of 111 votes and there was no sense of carving out a Gram Panchayat of the Dhani having ill votes out of the village having approximately 2300 votes. The distance between Simrianwala and Bahamaniwala is about 5 kms. and the Dhanis/Abadis/Deras surround Simrianwala. The newly carved out gram Panchayat Simrianwala was required to elect 5 Panches besides one Sarpanch and if the Government intended to have a separate Panchayat comprising 111 votes the number of Panches and Sarpanch could not be more than four. It is further the case so pleaded in the written statement that there were some representations filed by the inhabitants of Simrianwala and Abadis around it seeking clarification

regarding the boundary areas of the newly carved out gram panchayat. On the basis of the report from Tehsildar (Election) Ferozepur, S.D.O. (C) Fazilka exercising the powers of the Deputy Commissioner, Ferozepur gave clarification that Gram Panchayat Simrianwala will be including the votes of Dhanis/Abadies/Deras surrounding Simrianwala because the proposal of carving out the new gram panchayat out of village Bahmaniwala had included the Abadies and Dhanis surrounding Simrianwala which would have a population of 2000. Gram Panchayat Simrianwala had total number of 776 voted when election was held on 14.3.1993, 767 voters cast their votes and the persons mentioned in paragraph 7 of the written statement were elected as Sarpanch and Panches. It has further been pleaded that as election of gram panchayat Simrianwala was postponed by the S.D.O. exercising the powers of Deputy Commissioner, Ferozepur u/s 48 of the Punjab Gram Panchayat Election Rules, 1960 before 12.00 P.M. (afternoon) on January 17, 1993 which was the time fixed for filing of the nomination papers the same would be within the purview of the rules permitting postponement of an election.

5. After hearing the learned counsel for the parties and after going through the records of the case, this court is of the firm view that there is no substance in this petition as none of the points raised by the learned counsel have any merit and, therefore, this petition must fail.

6. Before, however, reasons dismissing this petition are given, it would be useful to extract order dated January 17, 1993 which as per averments made was passed before 12 noon. The relevant portion of the same reads thus :-

"An application dated 10.1.1993 was received from Atma Ram etc. of village Bahmniwala to the effect that vide gazette notification No. DP-I-J-92/1344, dated 31.12.1992, there was bifurcation of Gram Panchayat Bhamaniwala and new Gram panchayat Simrianwala, was also established, it was mentioned in the application that there was certain voters who are included in the voter list of Simrianwala while they actually belongs to village Bahmaniwala. Similar applications dated 8.1.1993 was received from Hakam Chand etc. on 9.1.1993 and 11.1.1993 similar applications were submitted by Jagtar Singh and Nand Lal etc. The Naib Tehsildar, Jallalabad, was directed to make his report on these allegations. The Naib Tehsildar, Jallalabad, submitted his report separately on each application but it is strange that each report is self contradictory and no reliance can be made on these reports.

2. Xxx xxx xxx xxx xxx 3. When a large number of voters belonging to village Bhamniwala are included in the Gram Panchayat of Simrianwala, there is every likelihood that law and order problems may be created by the mob who want the free and fair election in accordance with the terms of notification referred to above. Sh. Mohan Singh Phallianwalla, M.P. and Sh. Hans Raj Josan, M.L.A., Jallalabad, have met me and they have further pointed out to me that the election if held will widen the gulf between Rai Sikh and Kamboj community and if this aspect is allowed to run that will not be in the national interest.

4. Keeping all these things in view I am of the confirmed opinion that a lot of confusion has arisen as to the validity of the electoral roll relating to this Gram Panchayat. The report of the Naib Tehsildar, Jallalabad does not in any manner solve the problem rather the confusion is intensified.

5. In view of the facts and circumstances, mentioned above I, B.L. Sikka, P.C.S. Sub Divisional Officer (C), Fazilka, vested with the powers of Deputy Commissioner, Ferozepur, u/s 4-S of the Punjab Gram Panchayat election Rules, 1960, hereby consider it just reasonable to postpone the elections of Gram Panchayat Bhamniwala and Simrewala, till further orders and accordingly the election is postponed sine die."

7. Rule 3 of the Punjab Gram Panchayat Election Rules, 1960, deals with amending, varying or modifying the election programme. The same reads thus :-

"(3) The Government or the Deputy Commissioner, may by an order in writing, amend, vary or modify the election programme at any time."

8. Rule 48 of the same rules deals with the appointment of officers to perform the function of the Deputy Commissioner. The same reads thus :-

"The Deputy Commissioner may by order in writing about any Assistant Commissioner or Extra Assistant Commissioner or (District Development and Panchayat Officer or the Block Development and Panchayat Officer) concerned to perform his functions under these rules."

9. Rule 14-A which has bearing upon the controversy involved in this writ petition reads thus :-

"14-A Adjournment of poll in Emergencies - (1) The Returning Officer, 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) booth capturing at the polling station or at a place fixed for polling; or v) any other sufficient reason to be recorded in writing.

2) Whenever the polling in a sabha area 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: For the purpose of this rule, the expression "booth capturing shall have the meaning as is assigned to it in the Explanation to Section 135-A of the Representation of People Act 1951."

10. The established facts on the record reveal that there was only one Gram panchayat known as Bahmaniwala comprising of two villages Bahmaniwala and

Simrianwala. Some representations were made by the inhabitants of Simrianwala and abadies around it to carve out a new gram panchayat and accordingly notification Annexure P-2 was issued for election to village Simrianwala to elect Sarpanch and Panches. The election programme was also issued. It is the case of the petitioners themselves that the residents of Dhanis/Abadis who had filed nomination papers for Simrianwala were rejected. It is the positive case of the respondents that some voters of Dhanis/Abadis were not included in any village i.e. neither in village Bahmaniwala or Simrianwala. There was thus a confusion and the residents of Dhanis/Abadis could not be deprived of their right to either contest election or cast their votes. Before the nomination papers could be filed, the decision was taken to clarify and to state that these Dhanis are part and parcel of village Simrianwala so that the inhabitants of that village could also contest election. It is also in that context and also in the context that the petition came to be filed before the election was held that intimation was given to the concerned authority that the order Annexure P-1 was passed. This court is of the clear view that the S.D.O. (Civil) was exercising the powers of Deputy Commissioner and as such the power could be delegated as is clear from rule 40 reproduced above. The only question that, thus, remains to be examined is whether the Presiding Officer S.D.O. (Civil) in the present case has the jurisdiction to pass the order Annexure R-1. Rule 14-A of the Rules quoted above besides other reasons on which the election can be postponed mentions a general clause which is, "any other sufficient reason to be recorded in writing." A bare look of Annexure R-1 would make it clear that the same not only records the reasons but the reasons are such which justifiably required postponement of the election in this case.

11. No other point has been raised.

12. This writ petition is dismissed. The parties to bear their own costs.