

Gurbhajan Singh and others v. State of Punjab and another  
(S. S. Sandhawalia, C.J.)

placed before a learned Single Judge for a decision on merits, in accordance with the law laid down.

S. C. Mittal, J.—I agree.

S. S. Kang, J.—I too agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain and S. C. Mital, JJ.

GURBJAJAN SINGH AND OTHERS,—Petitioners.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 4414 of 1983.

November 25, 1983.

*Punjab Gram Pranchayats Act (IV of 1953)—Section 5(2)—Constitution of India 1950—Articles 40, 246 and Seventh Schedule List II Entry 5—Representation of the People Act (XLIII of 1950)—Section 21—Elections to the Gram Panchayat—Electoral rolls of the State Legislative Assembly adopted under section 5(2) to determine membership of the Sabha—State Legislature—Whether could validly adopt such electoral rolls for elections to the Gram Panchayat—Section 5(2)—Whether suffers from the vice of abdication of the functions of the State Legislature—Right of franchise—Whether an inherent or a fundamental right of a citizen—Elections held on the basis of unrevised electoral rolls—Whether valid.*

*Held*, that the right to franchise is not inherent or fundamental and any law supposedly running contrary thereto cannot be treated as void. There is no inherent or inalienable right beyond or above the statute conferring the rights of franchise. No legal grievance can arise if the statute conferring the right of franchise is validly varied or amended. An electoral statute cannot be struck down or voided on the ground of being contrary to any supposed fundamental right of franchise.

(Para 15).

*Held*, that the proviso to section 21(2) of the Representation of the People Act, 1950 in terms lays down that if the electoral roll is not revised as prescribed, the validity or the continued operation of the said electoral roll shall not thereby be affected. Once that provision holds, an election held on the basis of unrevised rolls cannot be said to be illegal or void.

(Para 15).

*Held*, that section 5(2) of the Punjab Gram Panchayats Act, 1952 is not invalid on the ground of abdication of its legislative function or successive delegation by State Legislature, for merely adopting as provided in that section, the Assembly electoral roll for Panchayat elections in the State. If the Punjab Legislature makes a conscious decision that it does not wish to and cannot maintain electoral rolls of its own and would adopt the Parliamentary or State Assembly electoral rolls framed under the Representation of the People Act, 1950 as and when amended and either expressly or by necessary implication makes this intent patent, then it cannot be struck down as abdication of legislative functions. The adoption of another statute with any future modification which may be made therein would not *ipso facto* amount to abdication of legislative functions. If there is conscious decision to adopt the provisions of a similar statute with its subsequent modification as well, then it would not amount to abdication of legislative functions. Thus, the State Legislature can validly adopt the electoral rolls for the time being in force maintained under the Representation of the People Act, 1950 for the purposes of its election for Panchayats. Consequently, the provisions of section 5(2) of the Act do not amount to any abdication of its legislative functions by the Legislature.

(Paras 19, 20 and 24).

*Writ Petition under Articles 226 and 227 praying that :—*

- (a) *that an appropriate writ, order or direction which this Hon'ble Court may deem just and proper in the circumstances of the case be issued for declaring Section 5(2) of the Punjab Gram Panchayat Act as illegal and unconstitutional.*
- (b) *Any other relief to which the petitioners are found entitled to in the facts and circumstances of the case may kindly be granted to the petitioners.*
- (c) *Issuance of advance notice to the respondents may kindly be dispensed with. And*
- (d) *the writ petition may kindly be allowed with costs.*
- (e) *It is further prayed that respondent No. 1 be directed to provide machinery for revision of electoral rolls of the Gram Panchayats and for actual revision of the electoral rolls of the Gram Panchayat before holding the elections of the said Panchayat.*

*It is further prayed that during the pendency of the petition election to the Panchayat be stayed.*

B. S. Khoji, Advocate (M. S. Khaira, Hardish Bindra, Advocates with him), for the Petitioner.

B. S. Sidhu A.G. with H. S. Riar, DAG and H. S. Bedi, DAG, for the Respondents.

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### JUDGMENT

*S. S. Sandhawalia, C.J.*

1. Can a State Legislature validly adopt the electoral rolls for the time being in force maintained under the Representation of the People Act, 1950 for the purposes of elections to its Panchayats? Do the provisions of Section 5(2) of the Punjab Gram Panchayat Act, 1952 suffer from the vice of abdication of its functions by the Legislature and are consequently void? This is the twin question before this Full Bench underlying the challenge to the validity of the recently held elections to the Gram Panchayats within the State of Punjab.

2. The five petitioners are the residents of village Chat, Tehsil Rajpura, District Patiala, who have attained the age of 21 years, on or about the 1st of January, 1983 and on that basis, entitled to be registered as voters for the purposes of Panchayat elections. On the 10th September, 1983 the Punjab Government issued a public notification calling for election to the Panchayats, to be held from September 21, 1983 to September 30, 1983. It is pointed out that by virtue of Section 5(2) of the Punjab Gram Panchayats Act, 1952 (hereinafter called 'the Act') and the rules framed thereunder every person who is entered as a voter on the electoral roll of the Punjab Legislative Assembly for the time being in force would be entitled to cast his vote in the said election. The aforesaid electoral roll is governed entirely by a central statute, namely; The Representation of the People Act, 1950, and in particular Section 21 thereof. There is no provision for the revision of this electoral roll at the instance of the State Government and such power is exercisable only by the Election Commission, which is appointed by the Central Government under a Central statute. Since no recent revision of the electoral roll within the State of Punjab has yet been made, the writ petitioners who have attained the age of 21 years have not as yet been entered in the final roll and are consequently deprived of their right of franchise and of the right to vote in the Panchayat elections.

3. It is then their case that under Article 246 of the Constitution of India read with entry No. 5 of the State List, it is in the

exclusive power of the State Legislature to make laws for the constitution of the Gram Panchayats and inevitably for conducting elections thereto and the maintenance of the electoral rolls therefor. It is pointed out further that Article 40 of the Constitution in the Directive Principles obligates the State to take steps to organise village Panchayats and to confer such powers and authority, as may be necessary, on them to function as units of self-Government. It is averred that the States of Madhya Pradesh, Rajasthan, Madras, Jammu & Kashmir and Bihar have enacted State legislation which vests the control and maintenance of the electoral roll for the Panchayats in State agencies. However, by virtue of Section 5(2) of the Act the Legislature of Punjab has wholly abdicated its legislative functions to enact laws for the framing of the electoral roll for the Panchayats and instead has vested the same entirely in the Election Commission and the Union of India, who maintain the electoral rolls for the Parliament and the State Legislatures.

4. Factually it is pointed out that out of the 121 constituencies of the Punjab Legislative Assembly, the Election Commission had recently ordered the revision of the electoral rolls for 64 constituencies. Drafts rolls had been prepared for them and after hearing objections, the final publication of the revised electoral rolls was fixed for 5th October, 1983. In the remaining constituencies such publication was likely to take place sometime in January, 1984. It is the case that so far as village Chat, to which the petitioners belong, is concerned, the same is included in one of such constituencies where revision has already been ordered and in the draft electoral roll the name of the petitioners are included and would have been finally published on the 5th of October, 1983 and they would thus be entitled to vote if elections were to be held after that date. However, the respondent State of Punjab in unseemly haste had ordered the elections before the revised rolls are published which would render the writ petitioners and the persons similarly situated to be ineligible for exercising their right of franchise. It is pointed out that even by virtue of the contemplated revision on the 5th October, 1983 about ten per cent more votes than the previous electoral roll, which was revised way back in 1980 would be added thereto. This would make a substantial change in the quantity and the quality of the electorate, apart from disenfranchising persons, who are now entitled to participate in the elections by reason of their having attained the age of 21 years and thus eligible for being registered as voters.

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5. On the aforesaid premises a frontal challenge to the validity of Section 5(2) of the Act is raised and pressed primarily on the ground of the abdication of its legislative functions by the Legislature of the State of Punjab to enact laws for the electoral process for its Panchayats in general and for the maintenance and revision of electoral rolls therefor in particular.

6. In the return filed on behalf of the State of Punjab, the factual position is not seriously controverted. It is, however, averred that instructions have been issued by the Chief Electoral Officer, Punjab, that all applications received under sections 22 and 23 of the Representation of the People Act, 1950, upto September 9, 1983, should be disposed of by September, 17, 1983, and as a result thereof supplements to the electoral rolls be prepared by September 19, 1983, in order to ensure that the persons who have applied for enrolment as voters upto 9th September, 1983, may be able to cast their votes in the forthcoming elections. The legal stand taken on behalf of the writ petitioners is, however, hotly controverted and it is averred that section 5(2) of the Act is wholly constitutional and valid and there is not the least abdication of the legislative functions involved in adopting the electoral roll for the Parliament and State Legislature elections for the purposes of Panchayat elections as well.

7. This writ petition had come up for motion hearing on the 14th September, 1983 and on that date and later the interim relief for staying the elections all over the State, scheduled from September 21 to September 30, 1983, was hotly pressed but was eventually declined, yet in view of the public importance and urgency of the matter, the petition was admitted to Full Bench and listed for final hearing forthwith.

8. As is manifest hereinafter the primary argument pressed on behalf of the writ petitioners is that the Punjab Legislature abdicated its essential legislative function of providing for the elections to the Gram Panchayats by an unqualified adoption of the Punjab Legislature Assembly electoral roll *for the time being in force* and thus accepting it not only as it existed in 1952 but with all future amendments of which it could not possibly be aware at all. To appreciate this basic contention and its ancillary ramifications it becomes not only apt but indeed necessary to view the matter in the context of its legislative history.

9. At the very outset, our attention was drawn to Section 5 of the Punjab Gram Panchayat Bill, 1952 (Punjab Bill No. 21 of 1952). As envisaged therein, the said provision had three sub-sections whereby it was *inter alia* provided that every Gram Sabha shall consist of adults qualified to be voters *as prescribed* and further the section itself provided for disqualifications with regard to being or remaining as a member of the Gram Sabha. Sub-section (3) in terms laid down that on the establishment of a Gram Sabha, the *prescribed authority shall cause to be prepared a register in the prescribed manner* of all adults entitled to be members of the Gram Sabha. These provisions obviously envisaged the maintenance of the electoral roll by the prescribed authority according to the rules framed under the Act which would have been primarily under the control of either the State Legislature or the Executive. However, during the course of the Assembly debates the aforesaid provision for an electoral roll, as prescribed by the rules, was deleted and substituted by the original sub-section (3) to Section 5 which in terms adopted the electoral roll of the State Legislative Assembly for the time being in force pertaining to the Sabha area. Section 5 later underwent a substantial change by Punjab Act No. 17 of 1975 but the provision regarding the electoral roll was retained as sub-section (2) of the said Section.

10. It is against the aforesaid background that Mr. Khoji, the learned counsel for the petitioners had submitted that the reason for substituting the provision of Section 5 of the original Gram Panchayat Bill, 1952 as that way back in 1950 the Representation of the People Act itself provided for an annual revision of the electoral roll for Parliament and the State Legislatures. Therefore any duplication of the process of maintaining a fresh electoral roll for the purposes of Panchayat election was deemed wasteful and consequently the electoral rolls for the Punjab Legislative Assembly were unreservedly adopted for this purpose.

11. Reference must now be made to Article 326 which is the constitutional Magna Carta for elections to Parliament and the Legislative Assemblies of the States on the basis of adult suffrage. Apart from providing some imperative qualifications itself the Article authorises the framing of other laws by appropriate Legislatures with regard to the entitlement of citizens to be registered as voters in these elections. It is under this constitutional umbrella

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that the Representation of the People Act, 1950 was enacted. Therein as originally promulgated section 21 prescribed the qualifying date as the 1st of March, 1950 and in case of every electoral roll subsequently prepared the said date would be the first day of March of the year in which it was prepared. Section 23 then mandated an annual revision of the electoral roll in the manner prescribed by reference to the qualifying date. Section 26 provided for the electoral rolls for the Assembly elections. Learned counsel for the petitioners on the basis of these provisions highlighted the fact that the Representation of People Act, as originally enacted, did not envisage any state electoral roll and indeed provided for an oven-fresh one by prescribing both the qualifying date as 1st of March of the particular year and the annual revision of the rolls.

12. However, it would appear that the original provisions of the 1950 Act were radically amended in 1956 and thereafter with the result that its provision underwent a complete metamorphosis. Counsel, therefore, seems to be right in his submission that virtually all that now remains after these changes is in fact the name of the Act and its preamble as originally enacted. The rest of the provisions having been virtually substituted and the entire scheme of the statute has been changed and overhauled beyond recognition. Particular emphasis was laid on the fact that the twin concept of a fixed qualifying date for each year and the mandate of an annual revision of the electoral roll has now been altogether abandoned. To indicate this, reference was made to Section 14 which has introduced the new definition of the qualifying date and Section 21 which has completely substituted the earlier provisions with regard to the preparation and revision of electoral rolls. These provisions introduced an altogether new concept of relating the qualifying date to the holding of the Parliamentary or Assembly elections and thus the qualifying date becomes the first of January of the year in which the Assembly or Parliamentary elections may come to be called. Thus it introduces an altogether fortuitous element in determining as to what would be the qualifying date.

13. Against the background of the aforesaid legislative changes and the consequent legal position, Mr. Khoji, the learned counsel for the petitioners submitted that when the Punjab Legislature in 1952 originally enacted Section 5 of the Act it had in terms adopted

and accepted an Assembly electoral roll fixed to the pole star of a qualifying date of the 1st of March of the year and an annual revision of the said electoral roll which necessarily made it virtually up to date. However, the drastic changes in 1950 Act, according to counsel, had broken down the nexus for having adopted the Assembly or Parliamentary electoral rolls as foundational to Panchayat elections because up to date electoral rolls are no longer available when Panchayat Elections come to be called. In the present case it was vehemently argued (apparently under misapprehension) that when Panchayat elections were directed to be held in September, 1983, the electoral rolls existed on the basis of a qualifying date which was that of the 1st of January, 1980 in which year the Assembly elections in Punjab had been called. It was further argued that Sections 22 and 23 which provide for the correction of entries in the electoral rolls and inclusion of names therein would in no way remedy the situation because they again have reference only to the qualifying date, which would still continue to remain as the 1st January, 1980. The practical result of this anomolous situation, according to counsel, was that persons who had attained the age of 21 years and thus become entitled to be registered in the electoral roll betwixt the period of 1st January, 1980 and September, 1983 would be deprived of their valuable right of franchise. Quantitatively it was pointed out that within three years nearly 10 per cent of the existing electoral strength would be added thereto by the fact of citizens attaining the basic requirement of the age of 21 years apart from other considerations like the migration of population, etc. In sum the argument is that stale electoral rolls result in a deprival of what was virtually termed as a fundamental right of franchise to the citizen. Reliance was placed on *The Chief Commissioner of Ajmer and another v. Radhey Shyam Dani* (1).

14. Before noticing and advertng to the main argument of the abdication of legislative functions, it seems apt to first dispose of the aforesaid twin ancillary contentions with regard to an overly stale electoral roll and a deprival of the right of franchise. Learned counsel for the petitioners has waxed eloquent on the wholly tenuous basis that the electoral rolls herein were stale and outmoded because of the qualifying date being the 1st of January, 1980.

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(1) AIR 1957 S. C. 304.



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I am second to none in holding to the importance of the maintenance of proper electoral rolls which in a way are the essence of electoral process. However, the learned counsel for the petitioners herein is factually in error in canvassing his case that the electoral rolls have been prepared with the qualifying date as the 1st of January, 1980. The stand was hotly controverted on behalf of the respondent-State and undisputed documentary evidence was produced from the record to show that the Election Commission had ordered the summary revision of the electoral rolls including the State of Punjab with the 1st of January, 1982 as the qualifying date. It was the case that in fact the State Government had made a request to this effect to the Election Commission and the same had been accepted and complied with. Consequently with the directions aforesaid the draft electoral rolls had been duly published and claims and objections with regard thereto had been invited and after disposal thereof the final and supplementary rolls had been printed and published with the result that the electoral roll was up to date with the qualifying date of the 1st of January, 1982. Consequently the mainstay of the learned counsel for the petitioners' stance here is that the electoral rolls were as stale as the 1st of January, 1980 is untenable and crumbles to the ground.

15. Equally I am unable to accept the sentimental but untenable stand that the right to franchise was inherent or fundamental and any law supposedly running contrary thereto was void. The learned Advocate General had firmly taken his stand on the *terra firma* that electoral rights are in essence statutory alone. There is no inherent or inalienable right beyond or above the statute conferring the rights of franchise. Once that is so, no legal grievance can arise if the statute conferring the right of franchise is validly varied or amended. An electoral statute cannot be struck down or voided on the ground of being contrary to any supposed fundamental right of franchise. Reliance on behalf of the respondents has been rightly placed on the proviso to Section 21(2) of the 1950 Act which in terms lays down that if the electoral roll is not revised as prescribed the validity or the continued operation of the said electoral roll shall not thereby be affected. Once that provision holds and the same has not been challenged before us, an election held on the basis of unrevised rolls cannot be said to be illegal or void. On this premise or by way of analogy it was argued that

though as a matter of propriety electoral rolls should be up to date yet for one reason or another this cannot be done and the statute in term provides for the holding of elections on the existing rolls no quarrel can be raised with the power of the legislature to prescribe so and the same cannot be struck down on any presumed unconstitutionality or the violation of a twinkling right above the statute to claim election only on oven-fresh rolls. That an election once held is not to be upset for being held on unrevised rolls is obvious from the observation in *Om Parkash v. State of Haryana*, (2) and *Pritam Singh v. State of Punjab*, (3) and *Dilip Kumar Singh and another v. State of Bihar and others*, (4). This limb of the learned counsel's contention, therefore, also must be rejected.

16. Coming now to the basic contention of the abdication of its legislative functions by the Punjab legislature it was directly rested on the language of Section 5(2) which may, therefore, be noticed *in extenso*:—

“S. 5. *Establishment of a Gram Sabha*: (1) Government may by notification, establish a Gram Sabha by name in every Sabha area.

(2) Every person who is entered as a voter *on the electoral roll of the Punjab Legislative Assembly for the time being in force*, pertaining to the area of any Sabha shall be member of that Sabha.”

Relying pointedly on sub-section (2), it is submitted that the electoral roll herein has obvious reference to that maintained under the Representation of the People Act 1950 with the result that the Punjab legislature adopted *in futuro* provisions of which it was not aware and in fact could not be aware in view of the power of Parliament to amend the aforesaid Act from time to time which in fact has been exercised repeatedly to virtually metamorphose the provisions relating to the preparation and maintenance of the Assembly electoral roll. According to counsel the true legal effect of the provisions, therefore, is that the electoral roll for the Panchayat

(2) 1972 P. L. J. 469.

(3) 1973 P. L. J. 606.

(4) AIR 1971 Patna 6.

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is not conditioned to the requirements for elections thereto as the same has been and is liable to be amended from time to time by Parliament over which State Legislature has no control whatsoever. It was pointed out that arguments sake if Parliament tomorrow were to raise or reduce the age for voting, or to put in property qualification for the same, or to exclude women from the adult suffrage or make any other changes affecting both the quality and the quantity of the electorate the same would come to be blindly adopted for the purposes of Panchayat election irrespective of the needs and the quality of the electorate therefor. In sum, the argument is that from the moment Section 5(2) was enacted in its present terms it amounted to abdication of its legislative function by the Punjab legislature and the subsequent changes in the 1950 Act are sharply illustrative of the adoption of a law, the contents of which, the Punjab Assembly was not and by its very nature could not possibly be aware of.

17. Reference was then made to Section 4, 5 and 6 of the Madhya Pradesh Panchayats Act, 1962 and Section 10 of the Rajasthan Panchayat Act, 1953 and similar provisions in the Madras and the Bihar Panchayat Raj Acts which retained the control of the State legislatures over the maintenance of electoral rolls. Similarly reliance was placed to Municipal Election Rules, 1952 framed under the Punjab Municipal Act which also provided for the maintenance of an electoral roll with regard to each municipal area, according to prescribed rules. Precedential reliance was placed primarily on *B. Shama Rao v. Union Territory of Pondicherry*, (5) and by way of analogy on *N. Verraju v. Distt. Munsif* (6) and *Parmeshwar Mahaseth and others v. State of Bihar and others*, (7).

18. I am inclined to the view that the argument of abdication of legislature functions herein is broadly covered against the writ petitioners by an unbroken line of precedent in this Court which now stands sanctified by the final Court itself. It is, therefore, unnecessary to digress on first principles as if the matter was *res integra*. As is manifest, the heart of the argument on behalf of the

(5) AIR 1967 S. C. 1480.

(6) AIR 1957 A. P. 393.

(7) AIR 1958 Patna 149.

petitioners is that a legislature cannot unreservedly adopt the provisions of another statute enacted by a different legislature for the time being in force, which may be subject to continuous amendments.

19. Now the identical argument aforesaid was raised on behalf of the petitioners in *M/s Auto Pins (India) Regd, Faridabad v. The State of Haryana and others*, (8) whilst assailing section 9(3) of the Central Sales Tax Act whereby Parliament adopted the legislations of the various States for the collection of sales tax even with prospective modifications thereof. Rejecting the contention after an exhaustive discussion on principle and precedent, the Bench had concluded as follows:—

“\* \* \* We are hence of the view that the Parliament was entitled to enact sub-section (3) of Section 9 of the Central Act. That being so, the language of this sub-section is a clear pointer to the fact that the Parliament was adopting the State legislation with any future modification which may be made therein by the appropriate States.”

The aforesaid ratio was forcefully assailed before another Division Bench in *Rattan Lal and Company v. State of Punjab* (9) but was re-affirmed in an exhaustive judgment. Both the aforesaid judgments were again sought to be strenuously assailed before the Full Bench in *Tek Chand Daulat Rai v. The Excise and Taxation Officer, Ferozepur, and others*, (10) but were expressly approved in the following terms:—

“\* \* \* I fully agree with the view taken by P. C. Pandit and Sandhawalia JJ. in that judgment in holding that the adoption of the rates in force under the State Act in pursuance of the provisions of Section 8(2) of the Central Act does not amount to abdication of legislative power on the part of Parliament.”

It is thus manifest that within this Court the consistent view is that the adoption of another statute with any future modification

(8) AIR 1970 P & H 333.

(9) CW 759/69 decided on 1st December, 1970 (29 S.T.C. 607—appendix)

(10) 29 Sales Tax Cases 585.

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which may be made therein would not *ipso facto* amount to abdication of legislative functions.

20. Apart from the above the recent decision of their Lordships in *Shiv Dutt Rai Fateh Chand and others v. Union of India and other* (11) would lend a stamp of approval to the aforesaid view and has added a further dimension to the concept of abdication of legislative functions. It is apt to recall that in this case by inserting sub-section (2—A) to Section 9 of the Central Sales Tax Act, Parliament had virtually adopted the State legislations of nearly 20 States with regard to the provisions relating to offences and penalties, as amended from time to time. The challenge to aforesaid sub-section (2—A) on the ground of abdication of legislative functions by the Parliament was repelled by their Lordships after full consideration on principle and precedent on the point. The rule enunciated in this case appears to be that for determining the question of abdication, one has to see a variety of considerations including the statute to be adopted, the policy behind the same etc. The criteria enunciated in this case, which would validate such adoption, was spelt out as:—

- (i) Whether the objects of the two statutes are similar;
- (ii) Whether the adoption or an incorporation is made for the purposes of advancing the objects and purposes of the Act adopting the other;
- (iii) that the adopting legislature had knowledge of the statute which it was adopting; and
- (iv) some control over the new provisions is retained by the parent legislature to the extent of the power of repeal or amendment of the law.

It appears to me that in the present case the aforesaid criteria are amply satisfied. An analysis of *Shiv Dutt Rai Fateh Chand's case* (supra) and the ones relied upon therein would indicate that as the law now stands, if there is a conscious decision to adopt the provisions of a similar statute with its subsequent modifications as

well then it would not amount the abdication of legislative functions. Thus if Parliament expressly incorporated innumerable State legislations within their jurisdiction, as amended from time to time, it was held to be a valid exercise of legislative power. On a parity of reasoning, if the Punjab Legislature makes a conscious decision that it does not wish to and cannot maintain electoral rolls of its own and would adopt the Parliamentary or State Assembly electoral rolls framed under Representation of the People Act, 1950 as and when amended and either expressly or by necessary implication makes this intent patent then it cannot be struck down as abdication of legislative functions.

21. Though the larger and the broader challenge on the point of abdication raised on behalf of the petitioners does not hold water, yet one must notice the stand of the respondent-State that in fact there had been no complete surrender or abdication of legislative functions here. It was rightly pointed out on behalf of the respondent State that it is not as if the whole electoral process of the Panchayats, is surrendered or delivered over for Central legislation but only a minuscule part thereof with regard to the maintenance of electoral rolls in order to avoid a pointless duplication has been adopted. Reference was made to the provisions of the Punjab Gram Panchayat Act making detailed and specific legislation for the creation of such bodies. Under the said Act, the Punjab Gram Panchayat Election Rules, 1960 have then been exhaustively framed. These define an elector and negatively prescribe for the qualifications and the age requirement etc. therefor. Again for all practical purposes not only had the State legislature retained its control over the creation and the electoral process of the Panchayats but ultimately has also the power to repeal or amend the State law. It was submitted that for obvious convenience, pointless duplication and the incurring of heavy financial burden and even for the better maintenance of the electoral rolls the State legislature in its wisdom chose to adopt the Punjab Assembly rolls for the purposes of Panchayat elections. With apparent plausibility, it was argued that an electoral roll which is good and sound basis for election to such august bodies as the Parliament of the Union itself and the various State legislatures can equally be the foundational basis for Panchayat elections. Arguing in the reverse, it was pointed out that it was hardly possible for the State to maintain with elaboration and impeccable

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impartiality an electoral roll at par with the Parliamentary and Assembly electoral rolls maintained under an independent and statutory Election Commission. Learned counsel for the respondents firmly took the stand that an electoral roll maintained under another statute may be adopted or incorporated and this in fact has been done by various legislatures. It was pointed out that no judgment could be cited on behalf of the petitioners which in terms either barred the adoption of an electoral roll or has held such an adoption to be an abdication of legislative function. Therefore on the somewhat narrower ground the mere adoption of an electoral roll with subsequent modifications cannot be easily dubbed as a surrender or abdication of legislative functions with regard to the larger prescription of the electoral process.

22. Again in this context one cannot but instructively refer to the observations of the Division Bench in *Sumangli Devi v. State of Bihar*, (12). That was a converse case where the State of Bihar had by Ordinance abandoned the list of electors under the State statutory rules and adopted the electoral rolls for the Assembly election maintained under the Representation of the People Act, 1950. This was not only upheld but commended as proper and desirable too:—

“The amendment, to my mind, has been brought about in order to avoid the unnecessary expenses, complications and imperfections by providing in Section 4 of the Act itself that all persons enrolled as electors in so much of the electoral roll or rolls of an Assembly Constituency of the State of Bihar, for the time being in force, as relates to the local areas comprised within the limits of the Gram Panchayat, shall be its members; that is to say, persons entitled to be registered in the electoral roll of the connected Assembly Constituency under Section 19 of the Representation of the People Act, 1950 (Central Act 43 of 1950) and so entered in the electoral roll under the provisions of the said Act and the rules framed thereunder, shall be the members of the Gram Panchayat concerned. By amending Rules 5 and 13 and by omitting

Rules 6 to 12 preparation of different registers of members and voters has been completely done away with. It would be noticed with reference to the provisions of Sections 14 to 20 of the Act 43 of 1950, that the qualification for being a voter in the Assembly Constituency is, more or less, the same as was provided in Section 4 of the Act, as it stood prior to the amendment. That being so, the more perfect, precise and thorough machinery provided in Sections 21 to 25 of Act 43 of 1950 and Rules 3 to 28 in Part II of the Registration of Electors Rules, 1960, for preparation and revision of electoral rolls, correction of entries in them and inclusion of names therein is better suited for determining the membership of the Gram Panchayat."

23. I would wish to concur with the aforesaid observations. Therefore in view of the detailed discussion earlier, it emerges that both on principle and precedent and equally on the larger concept of abdication and the specific legislation in Section 5(2) of the Act the mere adoption of the Assembly electoral rolls for the time being in force cannot be labelled as a surrender of legislative power nor would it suffer from the vice of any excessive delegation.

24. To finally conclude it has to be held in answer to the twin question posed at the outset that a State legislature can validly adopt the electoral rolls for the time being in force maintained under the Representation of the People Act, 1950 for the purposes of elections to its Panchayats. Consequently the provisions of Section 5(2) of the Punjab Gram Panchayat Act, 1952 do not amount to any abdication of its legislative functions by the legislature.

25. All that now remains is to examine the innuendos raised in the writ petition which were sought to be given the guise of legal mala fides in fixing the date of election on the 22nd of September, 1983 onwards. It was urged before us that in the State of Punjab, the electoral rolls in 64 Assembly constituencies had already been ordered to be revised and draft rolls therefor were scheduled to be published on 5th October, 1983. On the other hand in the remaining 53 constituencies the old electoral rolls were continuing and were apparently scheduled to be revised in January, 1984. In the two Assembly constituencies in Nangal and



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Faridkot wherein elections had been held in 1982 the rolls had already been revised on the qualifying date of 1st of January, 1980. On this premise it was argued that the post-haste fixation of the dates of election from 22nd September, 1983 onwards was designedly done to pre-empt the elections from being held on the revised and fresh electoral rolls which were likely to be published in the very near future.

26. The aforesaid stand has been conclusively repelled on behalf of the respondent-State both by averments in the written statement and in the course of argument. It has been rightly pointed out that the prescribed 5 years statutory period for holding Panchayat elections had lapsed and thus the State was duty bound to hold them in accordance with the time laid out by statutory mandate. Any further delay would only be a neglect of statutory duty to hold Panchayat elections after five years and it was pointed out that the revision of rolls is a massive process which might take considerable time and the exigencies whereof cannot always be forecast with accuracy. It was further pointed out that it would have led to anomalous results if the Panchayat elections were to be held in 64 Assembly constituencies on the revised rolls after 5th of October, and on the existing unrevised electoral rolls in the remaining 57 Assembly constituencies. Therefore the postponement of the Panchayat elections would have involved an indefinite postponement in the hope of revision of the electoral roll in all the Assembly constituencies within the State which could not be precisely forecast. For these reasons it was canvassed on behalf of the respondent-State that the election programme had indeed been fairly fixed. This stand of the respondent-State appears to be patently plausible and it would appear that far from there being any actual or legal *mala fides* in holding the Panchayat elections before the 5th of October, 1983, this apparently has been done for wholly *bona fide* reasons in order to provide a uniform electoral roll for the elections to the Panchayat and for holding them within the prescribed period of five years. The allegation of *mala fides* and bad faith in this context, therefore, must fail and is hereby rejected.

27. Consequently in view of the findings on the preliminary legal issues in paragraphs 22 and 23 above, the writ petition is

without merit and is hereby dismissed. There will, however, be no order as to costs.

Prem Chand Jain J.—I agree

S. C. Mittal J.—I agree

N. K. S.

FULL BENCH

Before S. S. Sandhwalia, C.J., P. C. Jain and S. P. Goyal, JJ.

HARNAM SINGH,—Petitioner.

*versus*

SURJIT SINGH,—Respondent.

Civil Revision No. 1852 of 1977

November 25, 1983.

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2) (i) and (3) (a) (i)—Code of Civil Procedure (V of 1908)—Section 11 Explanation IV—Ejectment of a tenant sought on the ground of non-payment of rent—Subsequent application for ejectment on the ground of personal necessity of the landlord—Non-payment of rent and requirement for personal use and occupation—Whether constitute distinct and separate causes of action—Cause of action—Meaning of—Subsequent application—Whether barred by the rule of constructive res-judicata.*

*Held*, that a cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support the right to a judgment in his favour. In other words it is a bundle of facts which taken with the law applicable to them give the plaintiff a right to relief against the tenant. Negatively, it does not comprise the evidence necessary to prove the bundle of facts and equally has no relation whatsoever to the defence, which may be set up by the defendant nor does it depend on the character of the relief prayed for by the plaintiff. A broad perspective of the provisions of section 13 of the East Punjab Urban Rent Restriction Act, 1949 would indicate that sub-sections (2) and (3) thereof spell out with great exhaustiveness and meticulous detail the causes of action which would enable a landlord to evict his tenant or