STATE OF PUNJAB

v.

SAT PAL DANG & ORS.

July 30, 1968

[M. HIDAYATULLAH, C.J., J. C. SHAH, V. RAMASWAMI, G. K. MITTER AND A. N. GROVER, JJ.]

Constitution of India, 1950, *Arts.* 174, 189, 199, 208, 209, 212 *and* 213—*Rules of Procedure and Conduct of Business in the Punjab Legislative Assembly, rr.* 7, 105 *and* 112—*Prorogation of Assembly by Governor, how to be notified—When commences—Governor's power of promulgation of Ordinance—Scope of—If extends to making law under Art.* 209—*Punjab Legislative (Regulation of Procedure in Relation to Financial Business) Ordinance,* (1 *of* 1968), *s.* 3—*Conflict with Art.* 189(4) *and r.* 105 *of Rules of Procedure—If section unconstitutional—Speaker's ruling how far final and beyond challenge in courts of law—Deputy Speaker, if can certify Money Bills in place of Speaker.*

On the 7th of March, 1968, the proceedings in the Punjab Legislative Assembly led to rowdy scenes and the Speaker, acting under r. 105 of the Rules of Procedure and Conduct of Business in the Punjab Legislative Assembly made under Art. 208 of the Constitution, adjourned the Assembly for two months. This led to an impasse. The Assembly was in session but it was put in a state of inaction by the adjournment. The Budget Session of the Assembly had to reach a conclusion before 31st March, as, after that date, no money could be drawn from the Consolidated Fund and no expenditure in the State could be incurred. The Governor, therefore, on 11th March prorogued the Assembly under Art. 174(2)(a). The order of the Governor was caused to be printed in the State Gazette the same day by the Chief Secretary under the Business Rules, and copies of the Gazette were despatched to the Secretary of the Assembly, the Speaker and other members on the following day. On 13th March, the Governor promulgated the Punjab Legislature (Regulation of Procedure in Relation to Financial Business) Ordinance, 1968. Section 3 of the Ordinance provides that the sitting of either House of Legislature was not to be adjourned without the consent of the House until completion of financial Business. On 14th March, the Governor summoned the Legislative Assembly under Art. 174, fixing 18th March for its sitting, and, under Art. 175(2), directed the Assembly to consider the Estimates of Expenditure, the Demands for Supplementary Grants and two Appropriation Bills. On 18th March, after considering certain other matters, the Speaker ruled that the House was prorogued not on the 11th March but on the 18th, and that in accordance with his earlier ruling dated 7th March, the House stood adjourned for two months. After some commotion the Deputy Speaker occupied the Chair and the Assembly kept sitting. The proceedings were conducted without demur even from the opposition. The Bills were passed. The Bills were then transmitted to the Legislative Council certified by the Deputy Speaker that they were Money Bills. The Speaker wrote to the Chairman of the Legislative Council pointing out that there was no certificate by him as required by Art. 199(4) and that he had adjourned the Assembly when the Bills were adopted. The Legislative Council, however, considered and passed the two Bills and the Governor assented to them.

On the questions whether: (1) the prorogation took effect on 18th March and therefore the summoning of the Legislature before prorogation was invalid; (2) the Ordinance could not be passed by the Governor, because, the prorogation was a fraud on the Constitution and since the

A prorogation was invalid the House continued to be in session; (3) The Governor's power to promulgate an Ordinance is confined to Lists II and III of the Seventh Schedule to the Constitution; (4) Section 3 of the Ordinance was unconstitutional as there was a conflict with, (a) r. 105 of the Rules of Procedure made under Art. 208 which gives power to the Speaker to adjourn the Assembly or suspend sitting in case of grave disorder, and (b) Art. 189(4) which gives power to the Speaker to adjourn the Assembly or suspend the meeting for want of quorum; (5) the ruling of the Speaker given on 18th March was not open to challenge in courts; (6) the further proceedings in the Assembly were illegal and (7) the two Appropriation Acts were *ultra vires* because, the Deputy Speaker and not the Speaker, certified them as Money Bills to the Legislative Council and the Governor.

HELD : (1) Under r. 7 of the Rules of Procedure framed under Art. 208, *when a session of the Assembly is prorogued* the Secretary of the Assembly shall notify the order in the Gazette and inform the members. The words indicate that there is already a prorogation and the rest of the rule is intended for communication of the fact to the public and conveying the order to the members. It cannot be said from this that only the Secretary of the Assembly could so notify and that the Governor could not notify his order of prorogation. [489 E-F; 490 B]

Article 174(2), which enables the Governor to prorogue the Legislature does not indicate the manner in which he is to make known his orders. The means open to him are 'public notification' that is, notification in the Official Gazette and 'proclamation'. If he notifies in the Gazette through his Chief Secretary acting under the Business Rules, it becomes a public act of which the Court should take judicial notice. Therefore, in the present case the prorogation took place on the 11th March, 1968, the date of publication in the Gazette, and the Legislature was resummoned only thereafter. The resummoning of the Legislature by the Governor was also a step in the right direction as it set up once again the democratic machinery which had been disturbed by the Speaker. [490 A-E]

(2) Under Art. 174(2) there are no restrictions on the power of the Governor to prorogue. The power being untrammelled and an emergency having arisen, there was no abuse of power by him nor can his motives be described as *mala fide*. In fact it was the only reasonable method of getting rid of the adjournment and solving the political crisis. The House, in fact, transacted other business showing that the prorogation and resummoning were considered valid. After the prorogation there was no further curb on the legislative power of the Governor to promulgate the Ordinance. [448 D, F-G; 490 E-F]

Kalyanam v. *Veerabhadrayya*, A.I.R. 1950 Mad. 243, referred to.

(3) The Governor's power under Art. 213 of the Constitution, of legislation by Ordinance is as wide as the power of the Legislature of the State and therefore, includes the power to pass a law under Art. 209 in relation to financial business. [490 G-H]

(4) (a) The inconsistency between the section and r. 105 has to be resolved in favour of the section because the latter part of Art. 209 itself provides that in cases of repugnancy between the rules of procedure framed under Art. 208 and a law made under Art. 209, the latter shall prevail; (b) As regards the conflict with Art. 189(4) the rule of statutory interpretation—namely, that, even if the language of a statute is *prima facie* wide it should be understood, if possible, as not attempting something beyond the competence of the legislative body—applies, because,

whether a provision should be struck down or read down depends upon how far it is intended to go. In the present case, the Ordinance could never provide for want of quorum which is dealt with in the Article and is therefore a constitutional requirement. The Article continues to operate in situations contemplated by it and s. 3 of the Ordinance can only deal with other situations. Therefore, the section could be read down so as to harmonise with the Article. [492 B-C; F-H; 493 A] A

Diamond Sugar Mills v. *U.P.* [1961] 3 S.C.R. 242; *Romesh Thappar* v. *State of Madras.* [1950] S.C.R. 594 and *Kameshwar Prasad* v. *State of Bihar,* [1962] Supp. 3 S.C.R. 369, referred to. B

(5) Whether the Speaker adjourned the Assembly afresh or declared that the former adjournment continued to operate made no difference, because :

(a) the former adjournment had come to an end by a valid prorogation and [493 F-G] C

(b) on the 18th March the Speaker was faced with a valid Ordinance, which was binding on the Assembly, including the Speaker, by virtue of Art. 209. Therefore, the Speaker was powerless and the fresh adjournment by him of the session without taking the mandate of the Assembly by majority as required by s. 3 of the Ordinance was null and void. [493 D-E]

It could not be urged that whatever the merits of the Speaker's ruling may be, it should be treated as final and beyond challenge in courts. A decision of the Speaker on a point of order is final under r. 112 of the Rules of Procedure, only if it is raised in relation to the interpretation and enforcement of the rules and the interpretation of the Articles of the Constitution regulating the business of the House and if the question to be decided was within the Speaker's cognizance. In the present case, the Speaker did not attempt to interpret Arts. 208, 209 and 213, and instead of a resolution (which was the proper method of questioning the Ordinance) being passed under Art. 213(2)(a) disapproving the Ordinance the Speaker asserted himself against a law which was binding on him. [494 A-B, G-H] D E

(6) The continuance of the proceedings under the Deputy Speaker was valid, complying as it did, with the law promulgated by the Governor, and therefore, the financial business transacted before the Assembly had legal foundation. [495 C-D] F

(7) A provision of law is usually regarded as merely directory, even though a public duty is imposed by it and the manner of performance is also indicated in imperative language, when general injustice or inconvenience results to others if strict compliance is deemed mandatory, and they have no control over those exercising the duty. Judged by this test, Art. 199(4) requiring the Speaker's certificate cannot be viewed as mandatory but only as directory in view of the inconvenience to the State and to the public at large that may be caused by holding the provision imperative and not directory. If the Constitution saw the necessity of providing a Deputy Speaker to act as the Speaker during the latter's absence or to perform the office of the Speaker when the office is vacant, it stands to reason that the Constitution could never have reposed a power of mere certification absolutely in the Speaker and Speaker alone. Further, Art. 212(1) provides that the validity of any proceeding in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. [496 D-G; 497 B-C, D-E] G H

State of Bombay v. *R. M. D. Chamarbaugwala,* [1957] S.C.R. 874, *State of U.P.* v. *Manbodhan Lal Srivastava,* [1958] S.C.R. 533, State of

A *U.P.* v. *Babu Ram Upadhya* [1961] 2 S.C.R. 679, *M/s. Mangalore Ganesh Bidi Works* v. *State of Mysore*, [1963] Supp. 1 S.C.R. 275, *Patna Zilla Brick Owners Association* v. *State of Bihar*, A.I.R. 1963 Pat. 16 and *May's Parliamentary* Practice p. 842, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1427 and 1428 of 1968.

B Appeals from the judgment and order dated May 10, 1968 of the Punjab and Haryana High Court in Civil Writs Nos. 1226-1227 of 1968.

C. K. Daphtary, Attorney-General, Niren De, Solicitor-General, G. R. Majithia, Dy. Advocate-General for the State of Punjab, R. N. Sachthey and *S. P. Nayar*, for the appellant (in C both the appeals).

R. K. Garg, S. C. Agarwal, Anil Kumar Gupta, N. M. Ghatate, K. M. K. Nair, Chand Kishore, S. P. Singh, Baldev Singh Khoji and *B. P. Singh*, for respondent No. 1 (in C.A. No. 1427 of 1968).

D *S. K. Dholakia* and *K. L. Hathi*, for respondents Nos. 2-4 (in C.A. No. 1427 of 1968) and respondents Nos. 2, 12 to 14 and 16 (in C.A. No. 1428 of 1968).

J. N. Kaushal, and *Urmila Kapur*, for respondent No. 6 (in C.A. No. 1427 of 1968) and respondent No. 8 (in C. A. No. 1428 of 1968).

E *M. C. Chagla, B. S. Dhillon* and *Hardev Singh*, for respondents Nos. 1 to 6 (in C.A. No. 1428 of 1968).

Rajender Sachar and *J. C. Talwar*, for respondent No. 7 (in C. A. No. 1428 of 1968).

The Judgment of the Court was delivered by

F **Hidayatullah, C.J.** These appeals arise from two petitions under Art. 226 of the Constitution questioning the validity of Punjab Ordinance I of 1968 promulgated by the Governor of Punjab on March 13, 1968 and Punjab Appropriation Acts Nos. 9 and 10 of 1968. A Full Bench of the High Court of Punjab & Haryana consisting of Mehr Singh C.J. and Capoor, Harbans G Singh, Mahajan and Bedi, JJ. held unanimously that the two Acts were unconstitutional and, by majority, that the Ordinance was also unconstitutional. The High Court certified the cases under Arts. 132 and 133(1)(c) of the Constitution and the State of Punjab appeals. The relevant facts were these :

H At the Fourth General Elections Congress won 43 seats in the Legislative Assembly which has a membership of 104. The other parties (none of which had a majority in the House) combined and formed the United Front Party. A Ministry was formed

under Sardar Gurnam Singh. Some of the respondents here were Minister and members supporting the Ministry. Lt. Col. Joginder Singh Mann and Dr. Baldeo Singh were elected Speaker and Deputy Speaker respectively.

On November 22, 1967, 18 members of United Front Party including Sardar Lachman Singh Gill defected and formed a new party—Punjab Janta Party. With the support of the Congress a new Ministry was formed under Sardar Lachman Singh Gill on November 25, 1967. The Legislative Assembly was then summoned to meet on February 22, 1968. As the budget was to be considered, the Financial Statement was discussed on 4, 5 and 6 March. On the last day, following some disturbance in the House and consequent disciplinary action, a Resolution was moved expressing non-confidence in the Speaker. The House granted leave and then adjourned itself to the following day.

When the Session commenced Sardar Gurnam Singh raised a point of order under rule 112(1) of the Rules of Procedure made under Art. 208 of the Constitution that there was a contravention of Art. 179(c) in moving the Resolution. It is not necessary to go into the merits of the point of order. Suffice it to say that the Speaker declared the motion of non-confidence to be unconstitutional and deemed not to have been moved. Another Resolution was then moved which led to rowdy scenes. The

(1) "112. Points of order and decisions thereon.

(1) A point of order relate to the interpretation or enforcement of these rules or such Articles of the Constitution as regulate the business of the House and shall raise a question which is within the cognizance of the Speaker.

(2) A point of order may be raised in relation to the business before the House at the moment :

Provided that the Speaker may permit a member to raise a point of order during the interval between the termination of one item of business and the commencement of another if it relates to maintenance of order in or arrangement of business before the House.

(3) Subject to conditions referred to in sub-rules (1) and (2) a member may formulate a point of order and the Speaker shall decide whether the point raised is a point of order and, if so, give his decision thereon, which shall be final.

(4) No debate shall be allowed on a point of order, but the Speaker may, if he thinks fit, hear members before giving his decision.

(5) A point of order is not a point of privilege.

(6) A member shall not raise a point of order :—

(a) to ask for information, or
(b) to explain his position, or
(c) when a question on any motion is being put to the House, or
(d) which may be hypothetical, or
(e) that division bells did not ring or were not heard.

(7) A member may raise a point of order during a division only on a matter arising out of the division and shall do so sitting."

A Speaker purporting to act under Rule 105(1) adjourned the Assembly for two months.

A political crisis then arose. The budget had to be adopted before March 31, 1968 but the House stood adjourned to May 6, 1968. No expenditure in the State could, therefore, be made B from April 1, 1968. The Governor then acted under his constitutional powers. On March 11, 1968 the Governor prorogued the Assembly under Art. 174(2)(a)(2). The order of the Governor was caused to be printed in the State Gazette the same day by the Chief Secretary and copies of the Gazette were despatched to the Secretary of the Assembly, the Speaker and other members C on the following day. On March 13, 1968 the Governor promulgated Ordinance No. I of 1968 (The Punjab Legislature Regulation of Procedure in Relation to Financial Business Ordinance, 1968). On March 14, 1968 the Governor summoned the Legislative Assembly under Art. 174(2) fixing March 18, 1968 for its sitting and under Art. 175(2)(3) directed the Assembly to consi- D der :

(i) Supplementary Estimates, 1967-68 (Second Instalment).

(ii) The Punjab Appropriation Bill, 1968, relating to the Supplementary Estimates, 1967-68 (Second Instalment).

E (iii) Demands for Grants as included in the Budget Estimates for the year 1968-69.

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(1) "105. Power of Speaker to adjourn the Assembly or suspend sitting.

In the case of grave disorder in the Assembly, the Speaker may, if he thinks it necessary to do so adjourn the Assembly or suspend any F sitting for a time to be named by him."

(2) "Art. 174. Sessions of the Legislature, prorogation and discussion.

(1) The Governor shall from time to time summon the House or Houses of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for their first sitting in the next session.

G (2) The Governor may from time to time—

(a) prorogue the Houses or either House;

(b) . . . . ."

(3) "Art. 175. Right of Governor to address and send messages to the House or Houses.

(1) . . . . .

(2) The Governor may send message to the House or Houses of H the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration."

(iv) The Punjab Appropriation Bill (No. 2) 1968, relating to the Budget Estimates for the year 1968-69." A

When the Legislative Assembly met it began by considering certain other matters such as privilege motions, arrangement for Watch and Ward Staff. The Speaker then read the Message of the Governor referred to above. Sardar Gurnam Singh rose to move a point of order but the Speaker asked him to wait and the House attended to some other matters. It granted leave of absence to one member who was ill and the Speaker named the Panel of Chairmen. The Ordinance was then placed on the Table of the House. The text of the Ordinance is given in an appendix to this judgment. It consisted of four sections. Section 3 provided that the sitting of either House of Legislature was not to be adjourned without the consent of that House until completion of financial business, and section 4 provided that the annual financial statement laid before the House under Art. 202 or the statement showing the estimated amount of any supplementary or additional expenditure had been laid under Art. 205 was not to lapse by reason of the prorogation of the House and that it would not be necessary to relay such statements before the House. B C D

Sardar Gurnam Singh again rose to urge his point of order. He was reminded that a Resolution to the same effect was to be brought before the Assembly, but he continued with his point. He stated that the Ordinance was issued when the Assembly was in Session and the House was summoned by the Governor before it was prorogued. He elaborated his point of order on the same lines as was done in the arguments before us and we shall come to these in due course. A debate, punctuated with uproar in the House, followed. It appears that the Speaker at first was of the opinion that he had no power to adjourn the House in view of section 3 of the Ordinance but Sardar Gurnam Singh maintained that he had such power under Rule 105. The Speaker observed: "Yes, I can adjourn the (House) but what about the Ordinance?" Sardar Gurnam Singh opined that there was no Ordinance. The Speaker then ruled that the House was prorogued not on 11th March but on the 18th and gave the ruling in the following words: E F G

"The order by the Governor dated 14-3-1968 summoning the House is also illegal and void and he had no power to re-summon the House once adjourned under Rule 105 of the Vidhan Sabha Rules referred to above. Therefore in accordance with my earlier ruling dated 7-3-68 the House stands adjourned for two months from that date. H

A (The Sabha then adjourned)

5.05 p.m."

The meeting had lasted 3 hours.

What followed may be extracted from the proceedings.

B "(At 5.05 P.M. the Speaker declared that the House stand adjourned for two months and left the Chair. The Members continued to sit in the House. There was uproar and furore in the House. One of the Hon. Members occupied the Speaker's Chair and some members rushed to the Speaker's dais and stood there. The Hon. Deputy Speaker came and occupied seat No. 15 in the C House to conduct the proceedings. As the seats of the Secretary/other officers of the Punjab Vidhan Sabha Secretariat and Reporters were also occupied by the Members of the Opposition, they all occupied seats adjoining seat No. 15).

D (Noise and uproar in the House-voices of 'shame' 'shame' from the Members of the Opposition).

Mr. Deputy Speaker :

As the Speaker had adjourned the House. (sic) When he had no authority to do so (Interruptions and Uproar) under the Ordinance promulgated by the Government, E any such adjournment ordered by the Speaker, is, therefore, null and void (Uproar and renewed noise in the House). The House will now resume consideration of business before it and I now call upon the Chief Minister to move the motion.

(Uproar and furore in the House)

F (At this stage, the Speaker's dais was clear and the Hon. Deputy Speaker occupied the Speaker's Chair at the Dais).

The Chief Minister then moved that the consideration of the Financial Business be completed within half an hour. There was uproar in the House. The motion was carried. Next the G Estimates of Expenditure, the Demands for Supplementary grants, the two Appropriation Bills and the other demands were passed. A Resolution that the Speaker be removed from office was moved and forwarded to the Leader of the House after granting leave and the Assembly was adjourned to meet at 2 p.m. on April 5, 1968. The time taken is not stated but there is reason to think that the H limit of 1/2 hour was not exceeded.

The Bills were then transmitted to the Legislative Council certified by the Deputy Speaker that they were Money Bills. An

objection was raised that the certificate under Art. 199(4)(1) must be signed by the Speaker of the Legislative Assembly. This was overruled by the Chairman and the Bills were passed. They were then placed before the Governor with another certificate of the Deputy Speaker. The Governor signified his assent. A

Two writ petitions were then filed in the High Court. Civil Writ Petition (1226/68 was filed by Shri Satya Pal Dang, M.L.A. against the State of Punjab, the Chief Minister, the Finance Minister, the Secretary to the Governor, the Secretary Legislative Assembly and the Deputy Speaker. The second petition (1227/68) was filed by 6 members and was directed against those named in the other petition and also joined the Speaker, the Chairman and Deputy Chairman of the Legislative Council, the Controller of Printing and Stationery and one Sardar Kirpal Singh, M.L.A. The arguments in the High Court ranged over a wide field. They were summarized into eight points by Justice S. B. Capoor which, it is common case, represent the essence of the matter. Stated briefly, the arguments were that the prorogation took effect on the 18th March. As a consequence the summoning of the Legislature before prorogation was invalid. These points go together Since both the prorogation and resummoning of the Legislature were invalid the House continued to be in session although adjourned. Since the Legislature was in "Session", the Ordinance could not be passed and it was a fraud upon the Constitution. Section 3 of the Ordinance was specially attacked as unconstitutional. The ruling of the Speaker given on March 18. 1968 was not open to challenge in courts and the further proceedings in the Assembly were illegal. Even if everything was regular it was in issue whether the Speaker alone was entitled to endorse a Money Bill and certify it to the Legislative Council and the Governor and since the certificates were by the Deputy Speaker, the two Acts were said to be *ultra vires.* B C D E F

In the High Courts the Full Bench unanimously held against the petitioners on the question of the prorogation and resummoning of the Legislature which were held to be regular and legal. The Full Bench also held unanimously that the ruling given by the Speaker on the 18th March made the later proceedings illegal. There was a difference on the point that the certification by the Deputy Speaker in place of the Speaker was valid. The majority holding that it was not. Similarly a majority of Judges held that G

(1) "199. Definition of "Money Bills"

(1) . . . . H

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under Article 198, and when it is presented to the Governor for assent under Article 200, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill."

A section 3 of the Ordinance was unconstitutional and invalid and the Full Bench unanimously held the Appropriation Acts to be unconstitutional.

In dealing with these appeals we shall follow the sequence of events and examine the legality and constitutionality of each happening. That would show that the matter lies in a narrower compass than what has been made to appear. We begin with the prorogation.

The question here is did the Governor possess the power to prorogue the Legislature and was his action bad merely because he was making way for the resummoning of the Legislature after passing an Ordinance under Art. 213(1) exercising the power

(1) "213. Power of Governor to promulgate Ordinances during recess of Legislature.

(1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require :

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if :—

(a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature ; or

(b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President ; or

(c) an Act of the Legislature of the State containing the same provisions would under the Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

(2) An Ordinance promulgated under this Article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance :—

(a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council ; and

(b) may be withdrawn at any time by the Governor.

Explanation—where the Houses of the Legislature of a State having a Legislative Council are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void :

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament of an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him."

under Art.109(1) ? The power under Art. 213 is available to the Governor when the Assembly is not in session. The position after the 7th March adjournment of the Assembly was this : The Assembly was in session but it was put in a state of inaction for 2 months by the adjournment which the Governor had no power to rescind and the Speaker would apparently not be prepared to recall. Time was running out and the Budget Session of the Assembly had to reach a conclusion before March 31. After that date no money could be drawn from the Consolidated Fund [Art. 266(3)]. The Governor thus had to act and act quickly to put back the Legislative machinery of the State into life. Only two courses were open. One was for the Ministers to ask the Speaker under Rule 16 to recall the Assembly which was, perhaps, attempting the impossible. The other was to prorogue the Assembly to get rid of the adjournment and then to resummon the Assembly. The second was not only a reasonable solution but the one most properly adapted to achieve a constitutional result and it was followed. The action of the Governor may now be considered.

Article 174(2) which enables the Governor to prorogue the Legislature does not indicate any restrictions on this power. Whether a Governor will be justified to do this when the Legislature is in session and in the midst of its legislative work, is a question that does not fall for consideration here. When that happens the motives of the Governor may conceivably be questioned on the ground of an alleged want of good faith and abuse of constitutional powers. We do not go as far as the learned Judges in *In Re Kalyanam* v. *Veerabhadrayya* (A.I.R. 1950 Mad. 243). But that is not the case here. The *bona fides* of the Speaker's ruling adjourning the Assembly for so long as 2 months when the Financial Statement and the budget were on the agenda and time was running out are more in question than the conduct of the Governor. No *mala fides* were attributed to the Governor except to say that he acted in excess of his powers or in colourable exercise of them. The power being untrammelled by the Constitution and an emergency having arisen, the action was perfectly understandable. We shall presently show that the Governor acted not only properly but in the only constitutional way open to him. There was thus no abuse of power by him, nor can his motives be des-

(1) "209. Regulation by law of procedure in the Legislature of the State in relation to financial business.

The Legislature of a State may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, the House or Houses of the Legislature of the State in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State and if and so far as any provision of any law so made is inconsistent with any rule made by the House or either House of the Legislature of the State under clause (1) of article 208 or with any rule or standing order having effect in relation to the Legislature of the State under clause (2) of that article, such provision shall prevail."

A cribed as *mala fide* as has been said by one of the learned Judges in the judgment under appeal. It is a matter of regret that such a conclusion was reached without any plea or material.

Much energy was, therefore, spent in this Court and in the High Court in an attempt to establish that the prorogation came into B effect either on the 18th or the 16th March at the earliest. This was not accepted by the High Court and in our opinion rightly. The argument is based upon rule 7(1) of the Rules of Procedure and Conduct of Business in the Punjab Legislative Assembly and the fact that the notification of the Secretary of the Assembly must be deemed to have reached members on the 16th March or there- C after. This requires examination

Article 174(2) which enables the Governor to prorogue the Legislature does not indicate the manner in which the Governor is to make known his orders. He could follow the well-established practice that such orders are ordinarily made known by a public notification which means no more than that they are notified in D the official Gazette of the State. There was such a notification on the 11th March and prorogation must be held to have taken effect from the date of publication. It was not necessary that the order must reach each and every member individually, before it would become effective. Rule 7, which is framed under Article 208 of the Constitution regulates the procedure of the Legislature but is E not intended to add a clause to Art. 174(2) so as to make it incumbent on the Governor to wait till the Secretary takes his time and issue the notification (if at all) and informs members. The words of the seventh rule 'when a session of the Assembly is prorogued' indicate that there is a prorogation and the rest of it is intended for communication of the fact to the public and F conveying the order to the members. The communications is by notification in the Gazette. The action of the Secretary in sending copies of the Gazette to the members is merely ministerial. Rule 7 cannot be read as a condition precedent for the efficacy of the Governor's order provided it was duly notified. It is significant that while Mr. Chagla based his entire case on Rule 7, Mr. Garg did not rely on it but questioned the very power to prorogue in G the circumstances of the case. We can understand Mr. Garg's argument although we do not accept it, but we find it difficult to appreciate the stand taken by Mr. Chagla.

We are, therefore, clearly of the opinion (which the High Court also unanimously entertained) that the prorogation became

H

(1) "7. When a session of the assembly is prorogued the Secretary shall issue a notification in respect thereof in the Gazette and inform the Members. On prorogation all pending notices subject to the provisions of the Constitution and these Rules shall lapse."

effective on the 11th when the Governor issued a public notification. The means open to the Governor under the Constitution are 'public notification' and 'proclamation'. Article 174 does not state what procedure is to be followed and rule 7 says that the Secretary to the Assembly shall notify the order. If the Governor followed the same procedure no exception can be taken. The argument that only the Secretary to the Assembly can notify the order is to further refine a point already very fine, and ignores the Business Rules. Under the business Rules, the Chief Secretary deals with all questions relating to the Assembly and the Council and the Governor in notifying it in the Gazette through the Chief Secretary was acting under the Business Rules. As a matter of fact copies of the notification were despatched on the 12th and presumably reached the Secretary of the Assembly and also the Speaker the same day. We are bound to take judicial notice of the prorogation and presume the regularity of these actions which must be interpreted as far as possible so that the thing done may be valid rather than invalid. This is not the extreme case, propounded by Mr. Chagla, of a Governor passing an order and keeping it locked in his drawer. It is significant that even in England where prorogation used to be through a writ or writ patent or a commission under the Great Seal of the United Kingdom read in the House now a proclamation by the Queen suffices under the Prorogation Act of 1867. Therefore, the Governor's act became a public act after the notification. This was on the 11th March 1968. We are also satisfied that there was no other motive than to set right the constitutional machinery by the invocation of the powers conferred expressly on the Governor.

After the prorogation there was no further curb on the legislative power of the Governor. The power of legislation by Ordinance is as wide as the power of Legislature of the State. Article 213(2) provides that an ordinance promulgated under that Article has the same force and effect as an Act of the Legislature of the State assented to by the Governor except that it must be laid before the Legislative Assembly of the State and the Legislative Council (where there is one) and expired after the expiration of 6 weeks or earlier if it is withdrawn by the Governor or disapproved by the Legislature of the State. Counsel argued that the power of the Governor is only to pass a law under the second and third of the Legislative Lists and not under Art. 209. We see no force in this submission which is not supported by any provision of the Constitution or authority of this Court. In fact, the powers of the legislature are expressly indicated in Art. 209 and the Governor must therefore possess an equal power unless there be an expression of intention to the contrary in the Constitution. There is no such expression of intention and none can be implied from Arts. 245 and 246 in the face of the special provisions of

A Art. 213(2). The Ordinance was therefore, validly enacted under the power derived from Arts. 209 and 213.

Article 209 is intended to speed financial business in the legislatures so that attempts to filibuster, adjourn or otherwise delay such business may be avoided. If ever there was an occasion for B the regulation of procedure in the legislature of the State in relation to the financial business by a law under Art. 209, it was this. The Legislature could not be allowed to hibernate for 2 months while the financial business languished and the constitutional machinery and democracy itself were wrecked. To suggest that the President's rule should have been imposed instead, it is to suggest C a line of action which a party not in majority would have obviously preferred but it would have cut at the root of parliamentary government to which our country is fortunately committed. If by adopting the present course parliamentary government could be restored there was neither an error of judgment nor a *mala fide* exercise of power. There was nothing colourable about it. It D was intended to achieve a definite purpose by using the constitutional power of the Governor. We are therefore quite clear that the action of prorogation cannot be questioned on any of the grounds suggested by the respondents.

The resummoning of the Legislature immediately afterwards was also a step in the right direction. It set up once again the E democratic machinery in the State which had been rudely disturbed by the action of the Speaker. Knowing that it would ordinarily take much time to finish the Financial Business, that time was short and attempt would be made to delay matters, the Ordinance created a law which Art. 209 enables to be enacted for the speedy F disposal of financial business. The matters were, therefore, left in the hands of the Legislature with the only restriction that the Legislature would not adjourn except when a House by a majority desired it. This respected the democratic right of the Legislature but put down the vagaries of action calculated to delay the busi- G ness. The measure was eminently healthy and as it was also legal the Assembly was bound by the law thus enacted.

Therefore, the next attempt was to challenge s. 3 of the Ordinance (see appendix). The learned Chief Justice upheld the validity of the section but he was overruled by his four colleagues. H We are in entire agreement with the view expressed by the Chief Justice. What is the complaint here? It is argued that s. 3 of the Ordinance conflicts with the Rules of Procedure particularly

Rule 105 and Art. 189(4)(1). Article 189(4) is a provision of the Constitution and can never be abrogated by an Ordinance or even a law passed by the Legislature and so there is no repugnancy Article 189(4) continued to operate in situations contemplated by it. Rule 105 confer two powers, when, on grave disorder arising in the Assembly, the work cannot be carried on. One is a power to suspend for a time the sitting of the House and the other is to adjourn the House. What the Ordinance did was to put out of action the power to adjourn the session of the Legislature. The inconsistency between Rule 105 in so far as it concerned such adjournment was to be resolved in favour of the Ordinance because the latter part of Art. 209 itself provides that in cases of repugnancy between the rules of procedure framed under Art. 208 and the law made under Art. 209, the latter provision shall prevail. Article 209 gave full authority to s. 3 of the Ordinance and it was not *ultra vires*

It is argued that we cannot read down the provisions of section 3 of the Ordinance to make room for the application of Art. 189(4) and Rule 105 in regard to quorum and suspension of business respectively. Reference is made to the case of *Diamond Sugar Mills Ltd.* v. *U.P.*(1) where the expression 'local area' was not read down to make it accord with the Constitution. That case was concerned with excess of legislative power under an entry. The general words were read as they were and pointed to an excessive power being conferred. In *Romesh Thappar* v. *The State of Madras*(2) the law offended Fundamental Rights and there was no escape from the operation of Art. 13 of the Constitution when there was no room for severability. In *Seth Bikhraj Jaipuria* v. *Union of India*(3) the capacity to contract was involved and that case hardly applies. In *Kameshwar Prasad and Others* v. *The State of Bihar and Another*(4) there was difficulty in the way of reading Rule 4-A of the Bihar Government Servants' Conduct Rules 1956 because of its general words and hence the whole rule was struck down. We can read down section 3 of the Ordinance because the Ordinance could never provide for want of quorum which is a constitutional requirement. Rule 105 gets out of the way by the operation of Art. 209. It depends always on how far the provision of a law is intended to go. There is a canon of construction that the language of a statute, even if it is *prima facie* wide, is to be understood as not attempting something

(1) "189. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.

(4) If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum."

(1) [1961] 3 S.C.R. 242. (2) [1950] S.C.R. 594.
(3) [1962] 2 S.C.R. 880. (4) [1962] Supp. 3 S.C.R. 369

A beyond the competence of the legislative body. In such a case the overriding law must have its play. Article 189(4) was outside the law-making power of the Governor and his Ordinance must be read to harmonize with it. Similarly, the power of adjournment was curtailed but not the power to suspend business. Even an adjournment was possible provided the House agreed. We see
B no force in the argument that s. 3 is *ultra vires*.

The adjournment of the Assembly on 18th March by the Speaker is next presented as a valid and binding ruling. A word may be said here about what the Speaker decided. The Speaker in his ruling of the 18th based himself on the fact that in his opinion the order proroguing the Assembly on the 11th March was
C illegal and void. Therefore the Governor had no power to resummon on the 14th the Assembly which stood adjourned for 2 months under Rule 105. It appears from the proceedings that the Speaker was of the opinion that the Legislature was prorogued on the 18th and not the 11th. We have shown above that the Legislature was prorogued not on the 18th but on the 11th
D and the resummoning of the Legislature on the 14th after the Ordinance was promulgated on the 13th was perfectly valid. His ruling, therefore, was based on wrong assumption. But can his ruling be called in question? Our answer is in the affirmative. On the 18th the Speaker was faced by the Ordinance. That Ordinance, as we have shown above, was a valid law binding on the
E Assembly (including the Speaker) by virtue of Art. 209. The Speaker was, therefore, powerless and his adjournment of the session without taking the mandate of the Assembly by majority as required by s. 3 of the Ordinance was null and void and of no effect. The proceedings clearly show that the Speaker himself was reluctant to adjourn the House till he was prompted by Sardar
F Gurnam Singh. He doubted his own powers. The Speaker did not attempt to order a fresh adjournment but only ruled that his earlier adjournment stood. Whether the Speaker adjourned the Assembly afresh or declared that the former adjournment continued to operate makes no difference. The former adjournment had come to an end by a valid prorogation and the fresh adjourn-
G ment was null and void. The House transacted other business showing that the prorogation was considered valid. If this was so the session had to continue unless adjourned by the House by majority.

Reference was made to Rule 112 which says that a point of order once raised must be decided by the Speaker and his decision
H thereon is final. It is thus urged that whatever the merits of the Speaker's ruling it must be treated as final. This is a claim which is unfounded. Points of order can only be raised in relation to the interpretation and enforcement of the rules and the interpre-

tation of the Articles of the Constitution regulating the business of the House and the question which is to be decided by the Speaker must be within his cognizance (Rule 112(1). The finality of the ruling applies subject to this condition (Rule 112(3). Now the exact point of order concerned the validity of the Ordinance. The Speaker did not attempt to interpret Arts. 208, 209 and 213. He did not confine his ruling to matters within his cognizance. He asserted himself against a law which was binding on him. If the Ordinance was to be questioned this was not the method. A resolution had to be passed under Art. 213(2)(a) disapproving it. In fact he was told that a resolution was to be made. Perhaps the Speaker was not sure that a such resolution would be passed. Democratic process and parliamentary practice demanded that the Speaker should have waited for a resolution to be moved for the consideration of the Assembly. If he was at all sure that the majority was in favour of disapproving the Ordinance he would undoubtedly have waited. Not being sure, he proceeded to nullify the Ordinance by a ruling which he was not competent to give. Therefore, his ruling was only not final, but utterly null and void and of no effect.

It is significant that the Deputy Speaker on occupying the Chair declared on the validity of the Ordinance in words which may be quoted again :

"Mr. Deputy Speaker :

> As the Speaker had adjourned the House, when he had no authority to do so (Interruptions and Uproar) under the Ordinance promulgated by the Government, (sic) any such adjournment ordered by the Speaker, is, therefore, null and void (Uproar and renewed noise in the House). The House will now resume consideration of business before it and I now call upon the Chief Minister to move the motion.
>
> (Uproar and furore in the House)
>
> (At this stage, the Speaker's dais was clear and the Hon. Deputy Speaker occupied the Speaker's Chair at the dais).

This ruling had more content under Rule 112 than the ruling previously given. It was also eminently correct. There was no reason why it should not prevail when the other ruling was null and void. The Assembly kept sitting since (as is quite apparent) the members too thought that the ruling of the Speaker was to be ignored. All the proceedings were conducted without demur even from the opposition. One is tempted to think that the Speaker was not sure of his own position in a House in which he had probably lost a sustaining majority. But even if the most liberal view of the action of the Speaker is taken, one is forced

A to the conclusion that he acted contrary to law and the injunction of the Constitution that the law made under Art. 209 is to prevail over the rules of procedure. We regret to record this conclusion which we would have willingly avoided but for some arguments advanced on the lines indicated although somewhat hesitatingly by the counsel representing the Speaker. Before tall B claims are made which cannot stand against law and the Constitution, those that make them should reasonably be sure that they are right.

The necessary result of our findings is that the continuance of the proceedings under the Deputy Speaker was valid com- C plying, as it did with the law promulgated by the Governor. Each item on the agenda was properly passed and there was no objection either during the proceedings in the House or in the argument before us regarding the regularity of the action. We, therefore, hold that the financial business transacted before the Assembly had legal foundation.

D

This brings us to the last point which is that the certificate of the Deputy Speaker under Art. 199 was of no effect. That certificate was issued under the fourth clause of that article. The argument is that the provisions of this clause are mandatory and only the Speaker of the Legislative Assembly should sign the E Money Bill. To this there are many replies. The Speaker was not present when the Bills were passed. Under Art. 180(2)(1) the Deputy Speaker acts as the Speaker when the Speaker is absent. Thus the Deputy Speaker was validly acting as the Speaker of the Assembly which continued to be in session. No doubt Art. 199 mentions only the Speaker of the Legislative Assembly but the F question remains still whether the Deputy Speaker could not certify the Money Bills effectively. Counsel for the answering respondents drew attention to the difference in the language of the two clauses. In the first clause the Deputy Speaker or such member of the Assembly as the Governor may appoint for the purpose, performs the duties of the office of the Speaker, when the office is vacant, while in the second the Deputy Speaker merely acts as G Speaker during the absence of the Speaker from a sitting of the

(1) "180. Power of the Deputy Speaker or other person to perform the duties of the office of or to act as, Speaker.

(1) . . . . . .

H (2) During the absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker."

Assembly. They suggest that in the latter case the Deputy Speaker's powers come to an end as soon as the sitting is over and the mandatory language of Article 199(4) compelled that the certificate of the Speaker ought to have been obtained. A

The short question here is whether the provisions of Art. 199 (4) must be read as imperative or merely directory. The distinction between a mandatory provision of law and that which is merely directory is this that in a mandatory provision there is an implied prohibition to do the act in any other manner while in a directory provision substantial compliance is considered sufficient. B

There are several tests to determine when the provision may be treated as mandatory and when not and they have been called from books and set down by Subbarao, J. (as he then was) in *The State of Uttar Pradesh and others* v. *Babu Ram Upadhya*(1) and earlier by Venkatarama Iyer, J. in *State of Bombay* v. *R. M. D. Chamarbaugwala*(2). For our purpose it is necessary to emphasise only one distinction. In those cases where strict compliance is indicated to be a condition precedent to the validity of the act itself, the neglect to perform it as indicated is fatal. But in cases where although a public duty is imposed and the manner of performance is also indicated in imperative language, the provision is usually regarded as merely directory when general injustice or inconvenience results to others and they have no control over those exercising the duty. C D E

Judged from this test the provisions of Art. 199(4) cannot be viewed as mandatory but only as directory. If the Constitution saw the necessity of providing a Deputy Speaker to act as the Speaker during the latter's absence or to perform the office of the Speaker when the office of the Speaker is vacant, it stands to reason that the Constitution could never have reposed a power of mere certification absolutely in the Speaker and the Speaker alone. The happenings in the Assembly lend support to this inference. It is reasonable to think that the Speaker in his then mood might have declined to certify and a second impasse would have ensued. A similar situation may arise not because of intransigence but because of illness or absence. The inconvenience to the State and the public at large is avoided by holding the provision to be directory and not imperative. F G

It might be mentioned that this Court has on occasions read apparently imperative provisions as directory, only. In the case of *State of U.P.* v. *Manbodhan Lal Srivastava*(3) the provisions of H

(1) [1961] 2 S.C.R. 679, 710. (2) [1957] S.C.R. 874, 950.
(3) [1958] S.C.R. 533.

A Arts. 311(2) and 320(1)(c) were read as directory notwithstanding the mandatory language. Further it is interesting to note that the Parliament Act of 1911 in England has an identical provision enjoining certification by the Speaker. However May in his 'Parliamentary Practice' gives numerous instances of Money Bills (from 1914 onwards) certified by the Deputy Speaker (see p. B 842).

Further again, there is Article 212 clause (1) which provides that the validity of any proceeding in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. This clause was invoked in respect of a C Money Bill in *Patna Zilla Brick Owners Association and others* v. *State of Bihar and others*(1) following a case of this Court in *M/s. Mangalore Ganesh Bedi Works v. The State of Mysore & Another*(2). We are entitled to rely upon this provision. Our conclusion gets strength from another fact. There is no suggestion even that the Appropriation Bills were not Money Bills or included any matter other than that provided in Article 199 or D were not passed by the Assembly. It is also significant that the Speaker wrote to the Chairman of the Legislative Council that there was no certificate by him and that he had adjourned the Assembly when the Bills were adopted but the Legislative Council in spite of objection considered and passed the two Bills and the Governor assented to them. We are of opinion that the two E Bills were duly certified.

This concludes the whole case and the events on which it is based. Mr. Garg contended for a larger issue. He said that the Legislature should not be at the mercy of the Governor and the absolute field of action open to the Legislature and the Speaker F would be unreasonably cut down and thus lead to assumption of absolute powers by Governors. We do not entertain any such apprehensions. The situation created in the State of Punjab was unique and was reminiscent of happenings in the age of the Stuarts. The action of the Governor appears to be drastic. It was, however, constitutional and resulted from a desire to set right a desperate situation. As Bacon once said, no remedies cause so G much pain as those which are efficacious.

For the reasons given above we allow the appeals, set aside the judgment of the High Court and order the dismissal of the two petitions with costs.

H V.P.S. *Appeals allowed.*

(1) A.I.R. 1963 Pat. 16.
(2) [1963] Supp. 1 S.C.R. 275.

APPENDIX

"PUNJAB ORDINANCE NO. 1 OF 1968

. . . . . .

. . . . . .

2. Definitions. In this Ordinance :—

(a) "article" means an article of the Constitution of India;

(2) "Financial business" means any business relating to any of the financial matter referred to in articles 202 to 206 (both inclusive) including Bills for appropriation of moneys out of the Consolidated Fund of State.

3. Sitting of either House of Legislature not to be adjourned without consent of that House until completion of financial business.

Notwithstanding anything contained in any rules made, or rules or standing order having effect, under Article 208, when any financial business is pending or is to be transacted in a House of the Legislature of the State of Punjab during any session thereof, then :—

(a) Until the completion of such business during that session a sitting of that House shall not be adjourned unless a motion of that effect is passed by a majority of the members of that House present and voting;

(b) Any adjournment of that House in contravention of the provisions of clause (a) shall be null and void and be of no effect;

(c) The Leader of the House, may, for the timely completion of the Financial business, move a motion specifying the time within which the consideration of such business shall be completed and if the motion is adopted (whether with or without modification) by a majority of the Members of the House present and voting, consideration of the business shall be completed within the time specified in the motion as so adopted and for that purpose, the Rules of Procedure and Conduct of Business (including the standing orders, if any) relating to that House shall have effect subject to the modifications thereof, if any, specified in the motion, and any such motion may be moved without giving any prior notice thereof and shall, unless the majority of the members of the House present and voting determine otherwise, be taken into consideration and voted upon on the same day on which it is moved.

4. Financial statements not to lapse.

For the removal of the doubts it is hereby declared that if an annual financial statement has been laid before a House under Article 202 or a statement showing the estimated amount of any supplementary or additional expenditure has been laid under article 205 such statement shall not be necessary to relay such statement before the House.

D. C. PAVATE
Governor of Punjab.

Chandigarh, the 13th March, 1968

JASMER SINGH
Secretary to Government,
Punjab Legislative Department."