that the liability for the amount was to be that of the insurer alone, it would not have been difficult to make that intention clear by use of appropriate language and suitable words to that effect, but in the absence of such language and words it is not permissible to read in the section something which is plainly not there. It may be that in case the amount for which the insurer also is liable is recovered from the driver or the owner of the motor vehicle, they would be entitled to be indemnified and reimbursed for that amount by the insurer, but it cannot be held, as already observed above, that the petitioner in whose favour the order for recovery of compensation is made, can proceed for the amount in question only against the Insurer and not against the driver or owner, in the course of whose employment the injuries are cuased by the use of the vehicle. I, therefore, have no hesitation in rejecting the contention which has been advanced on behalf of the appellant.

Cross-objections have been filed by Manohar Lal respondent for enhancement of compensation but they have not been pressed at the hearing. The result is that both the appeal and cross-objections are dismissed. In the circumstances of the case, I leave the parties to bear their own costs of the appeal and cross-objections.

*B.R.T.*

## CIVIL MISCELLANEOUS

*Before Inder Dev Dua and R. S. Narula, JJ.*

JALPU RAM AND OTHERS,—*Petitioners*

*versus*

THE DEPUTY COMMISSIONER, KULU AND OTHERS,—*Respondent*

**Civil Writ No. 536 of 1965.**

1965
May, 12th.

*Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—S. 5(2)(cc)—The only woman candidate contesting election but securing no vote—Whether entitled to be co-opted—Interpretation of Statutes—Intention of the Legislature—How to be determined.*

*Held*, that a woman candidate who contests the election cannot be described not to have contested merely because she fails to secure

any vote. It cannot be said that by failing to secure a single vote, she has demonstrated her total unacceptability to the voters because if she had cast her own vote in her own favour, even then she would have been equally unacceptable to the other voters but would have been clearly within the letter of the law because she would have obtained one vote at least. As she contested the election, she is entitled to be co-opted as a member under caluse (cc) of sub-section (2) of section 5 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961.

*Held,* that the eyes of the Courts are never limited to the mere letter of law and they can look behind the letter to determine its true purpose and effect. Reasoning and judgment, not mere bald literalness of statutory phrasing, must guide and control research for legislative design. It has often been said that the intention of the Legislature is the law, and though this expression has lost its novelty, cogency is with it yet. It may also be pointed out that no intention can be imputed to the Legislature in the enactment of a law other than such as is supported by the face of the law itself, of course looked at as a whole and from all angles of vision. The Court is not entitled to speculate as to the probable intent apart from the words in which the Legislature has expressed itself: the intent can certainly not be dreamed up. At the same time some degree of inference or implication may, from the very nature of things, be called in aid in discovering the "intention of the Legislature" which phrase, though common, is at times slippery, because, popularly understood, it may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant.

*Case referred by the Hon'ble Mr. Justice P. D. Sharma on* 19*th March,* 1965 *to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice R. S. Narula, finally disposed of the writ petition on* 12*th May,* 1965.

*Petition under Articles* 226 *and* 227 *of the Constitution of India praying that a writ of* certiorari, mandamus *or* quo warranto *or any other appropriate writ, order or direction be issued quashing the order of respondent No.* 2 *not treating petitioner No.* 2 *as a contesting candidate at the election of primary members of the Panchayat Samiti, Naggar, respondents No.* 1 *and* 2 *be directed to co-opt petitioner No.* 2, *as a women member of the Panchayat Samiti Naggar, in accordance with section* 5(2)(*cc*) *and section* 16 *of the Punjab Panchayat Samitis and Zila Parishads Act,* 1961 *and further praying that the co-option of Smt. Sevti Devi and Smt. Devki Devi, respondents Nos.* 3 *and* 4 *as women members of the Panchayat Samiti, Naggar,*

*be set aside and further directing respondent Nos. 1 and 2 to treat petitioners Nos. 2 and 3 to have been duly co-opted as members of the Panchayat Samiti, Naggar and to gazette their names accordingly.*

RAJINDER SACHAR AND RAJINDER KUMAR CHHIBBAR, ADVOCATES, for the Petitioners.

J. N. KAUSHAL, ADVOCATE-GENERAL, H. L. SARIN AND MISS ASHA KOHLI, ADVOCATE, for the Respondents.

DUA, J.—This writ petition under Articles 226 and 227 of the Constitution of India has been placed before us pursuant to the order of P. D. Sharma, J. dated 19th March, 1965, because the learned Judge was of the view that the point raised in this petition is likely to arise in a large number of cases. The question falling for determination relating as it does to the interpretation of section 5(2) (cc) of the Punjab Panchayat Samitis and Zila Parishads Act No. 3 of 1961 (hereinafter called the Act) is short and is also bare of authority. Before, however, dealing with the arguments addressed at the bar, it is desirable friefly to state the facts giving rise to the controversy. Shri Jalpu Ram, petitioner No. 1, and Shrimati Chuneshwari Gaur, a Lady Panch, Panchayat Hallan No. 1, Kothi Nagar, along with others contested election for the primary membership of the Panchayat Samiti Naggar, District Kulu. Petitioner No. 1 was declared elected as one of the sixteen successful primary members. Petitioner No. 2, however, failed to secure any vote. Shri E. Dass, Presiding Officer (D.F.O./Kulu), respondent No. 2, thereafter convened a meeting of the elected primary members of the Panchayat Samiti on 15th February, 1964, in accordance with the Punjab Panchayat Samiti (Co-option of Members) Rules, 1961, for co-opting two women members and four Scheduled Caste members. Shrimati Chuneshwari Gaur, petitioner No. 2, applied that as she had contested the election for the primary members of the Panchayat Samiti she was entitled as of right to be co-opted as a woman member under section 5(2) (cc) of the Act. Respondent No. 2 declined to do so and directed the elected primary members independently to co-opt two women members from amongst social workers. The names of Shrimati Chuneshwari Gaur, petitioner No. 2, Shrimati Dhalli, Lady Panch, Panchayat Karjan, Kothi

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Barshai, Petitioner No. 3, and Shrimati Sevti Devi, Panch, Panchayat Kharal, respondent No. 3 in this Court and Shrimati Devki Devi, Lady Panch, Panchayat Bainch, Kothi Raison, respondent No. 4 were put up for co-option. As all the four candidates secured equal number of votes, respondent No. 2 drew lots, as a result of which respondents Nos. 3 and 4 were declared duly co-opted. It is in these circumstances, as mentioned by the learned referring Judge, that this petition has been preferred and the short submission, which the learned counsel for the petitioner has urged before us, is that by virtue of section 5(2)(cc) of the Act a woman, who contests the election and fails, is entitled under the law to be co-opted irrespective of the fact that she secured no vote. Petitioner No. 2, Shrimati Chuneshwari Gaur, being the only woman contesting the election, was, on having lost the election, entitled as a matter of right to be co-opted.

On behalf of the respondents, the learned Advocate-General has, however, submitted that there is no such right in a woman, who, contests and does not secure any vote in the election and that in such a contingency it is open to the authorities to co-opt women members interested in social work among women and children, as contemplated by second proviso to section 5(2)(cc). It is common ground that there is no decision of this court on the point and the question falls for determination on the plain language of the statutory provision in the background of the purpose and object of the Act and the rules made thereunder.

It is desirable at this stage to reproduce the relevant provisions of the Act and the rules made thereunder. The Act was brought on the statute book in 1961 in order to provide for the constitution of Panchayat Samitis and Zila Parishads and for matters connected therewith or incidental thereto. Section 5 deals with the constitution of Panchayat Samitis and sub-section (1) deals with the Panchayat Samitis for tahsils. Sub-section (2) provides for a Panchayat Samiti to be constituted for a block. Clause (a) of this sub-section deals with the election of primary members, clause (b) provides for associate members, clause (c) for co-opted members and clause (d) for

*ex-officio* members. Clause (c), so far as relevant for our purpose, is in the following terms:—

"(c) Co-opted Members, to be co-opted in accordance with the provisions of section 16, comprising—

(i) two women interested in social work among women and children if no woman is elected under clause (a) :

Provided that if only one woman is so elected, then one more woman shall be co-opted;

* * * * * * * * * *."

Clause (cc), so far as relevant for our purpose, may now be read—

"(cc) after the first general election of primary members of Panchayat Samitis is held, Co-opted Members to be co-opted in the following manner, notwithstanding anything contained in clause (c) of section 16, comprising —

(i) two women securing the highest number of votes amongst the women candidates in the election under sub-clause (i) of clause (a), where no woman is elected under clause (a):

Provided that if only one woman is so elected, then one more woman securing such highest number of votes shall be co-opted:

Provided further that where no woman or only one woman contested the election, then two women or one woman, interested in social work among women and children, as the case may be, shall be co-opted in accordance with the provisions of section 16;

* * * * * * * * * *."

Section 16, which provides for co-option of members, merely lays down that the Deputy Commissioner concerned or any gazetted officer appointed by him in this behalf, not below the rank of an Extra Assistant Commissioner, shall, as soon as possible after notification of election of primary members, call a meeting of such members in the manner prescribed for the purpose of co-opting members required by clause (c) of sub-sections (1) and (2) of section 5. The

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said officer, according to this section, is to preside at such meeting. Clause (a) of sub-section (2) of section 5 provides for the election of primary members, sixteen of whom are to be elected from the block by the Panches and Sarpanches of Gram Panchayats in the block from amongst themselves; two members representing the Co-operative Societies within the jurisdiction of the Panchayat Samiti by the members of such Societies etc., and one member representing the Market Committees in the block by the members of such Committees etc. Since the learned Advocate-General has also sought some support for his contention from rule 4-A of the Punjab Panchayat Samitis (Co-option of Members) Rules, 1961, it is desirable to reproduce that rule as well—

> "4-A. Co-option of Members under clause (cc) of section 5(2). Notwithstanding anything contained in rule 4; no quorum shall be necessary for the purpose of co-opting members under clause (cc) of sub-section (2) of section 5 from amongst women or persons belonging to Scheduled Castes and Scheduled Tribes, securing the highest number of votes, and their names shall be determined and declared by the Presiding Officer in the presence of Members, if any, attending the meeting convened under rule 3:
>
> Provided that if on account of equality of votes secured by women candidates or those belonging to Scheduled Castes and Scheduled Tribes, as the case may be, it cannot be determined as to who amongst them is or are to be co-opted the matter shall be decided by the Presding Officer in the presence of Members, if any, by drawing lots and the candidate or candidates whose name or names is or are drawn first shall be declared to have been duly co-opted."

Rule 4, it is unnecessary to point out, provides for quorum for meetings for the co-option of persons, the details of which are not relevant for our purpose.

In the return filed on behalf of the State, respondent No. 1, reference has been made to the interpretation placed

by the Deputy Commissioner concerned on 6th February, 1965, on the sections and the rules in question, a copy of which has been attached as Annexure 'A'. Action, it is pleaded, was taken in accordance with this interpretation. The Deputy Commissioner, as is apparent from the Annexure, expressed the view that Shrimati Chuneshwari Gaur should be considered to have not contested the election at all, because section 5(2) (cc) read with the second proviso postulates that the woman candidate contesting the election must secure some votes at least and also because by participating in the election and failing to secure even a single vote, she has demonstrated her total unacceptability to the voters and has thereby discredited herself. The learned Advocate-General after attempting faintly to press this point of view virtually conceded that an actual contesting candidate could not be described not to have contested merely because she fails to secure any vote. In the absence of a clear and unambiguous deeming provision of law, I, for my part, do not see how such a fiction, so obviously contrary to the actual indisputable facts, can be justified. No principle nor any binding precedent has been brought to our notice to support the creation of such fiction. It is true that the eyes of the Courts are never limited to the mere letter of law and they may look behind the letter to determine its true purpose and effect, but in the instant case, nothing cogent and convincing has been urged to sustain such a fiction to have been intended by the legislature. In my opinion, the learned Deputy Commissioner was also not correct when he said that by failing to secure a single vote she has demonstrated her total unacceptability to the voters because if she had cast her own vote in her own favour, even then she would have been equally unacceptable to the other voters but would have been clearly within the letter of the law because she would have obtained one vote at least. The reasoning of the Deputy Commissioner, therefore, does not seem to be supportable on the statutory scheme as is discernible from the language.

Shri Kaushal has, however, strongly urged that according to the legislative scheme, it is only when a woman candidate secures some votes—even if it be only her own vote—that she can claim co-option as a matter of right and not if she secures no vote. This contention is sought to be supported by reference to section 5(2)(cc)(i) and the first

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proviso thereto, according to which women candidates, who have secured the highest number of votes are to be co-opted, in the event of no woman or only one woman getting elected under section 5(2)(a). We are pressed by the counsel to construe the second proviso, in the background of clause (i) and the first proviso, to hold it to mean, *inter alia*, that when only one woman contests the election. then unless she secures at least one vote, she cannot claim a right to be co-opted. Let us examine how for this submission is sustainable on the statutory language and scheme. Clause (i) and the first proviso speak of the co-option of women securing the highest number of votes but the second proviso does not advert to the question of the woman contestant securing any vote. It is true that when there is only one woman candidate contesting the election, then from the very nature of things, no question of securing the highest number of votes can possibly arise and the draftsman perhaps did not visualise or consider it likely that the candidate herself may for some reason cast her own vote for someone else and not for herself. I can also visualise a somewhat similar situation under the first proviso. To illustrate: when two women candidates contest the election and one of them is elected whereas the other woman does not secure any vote—not even her own vote—the question would obviously arise whether she can claim the right to be co-opted under the first proviso and, if not, under which provision of law, can co-option of one woman interested in social work among women and children be made. This question does not concern us on the present occasion, and, therefore, we need say nothing on it; it will have to be dealt with when raised. In the case in hand, however, the language of the second proviso does not in terms speak of the woman candidate securing any votes in order to enable her to be co-opted. And then, it is significant that under this proviso if only one woman has contested the election, then only one woman is required to be co-opted in accordance with section 16. To accede to the construction suggested by the learned Advocate-General would thus lead to the conclusion that in the present contingency only one woman can be co-opted who is interested in social work among women and children. The result would, therefore, be that instead of two, there would be only one woman member of the Panchayat Samiti. No plousible reason has been suggested as to why in a con-

tingency like the present representation of women on the Samiti would be reduced from two to one. The fact that Shrimati Chuneshwari Gaur chose to cast her vote in favour of some-one else rather than in her own favour would hardly be a sufficient ground for reducing the number of women representatives on the Samiti.

The learned Advocate-General has also put the case from another point of view. According to him, section 5(2)(c) which deals with co-opted members lays down that two women interested in social work among women and children should be co-opted if no woman is elected under clause (a) provided that if only one woman is so elected, then one more woman shall be co-opted. According to the learned counsel, this provision suggests that the real base for the provision of co-option to operate is the field of social work among women and children and, therefore, if a woman who contests the election and does not secure any vote, electing to cast even her own vote in favour of someone else, then the scheme of the statute would not be defeated if some woman interested in social work among women and children is co-opted. It is true that in the present case also, Shrimati Chuneshwari Gaur was given the right to seek co-option as a woman interested in social work along with other such women within the contemplation of the second, proviso, but it is not understood under which provision of law in the present contingency two women have been sought to be co-opted from amongst women interested in social work among women and children. The second proviso to clause (cc)(i) does not empower the co-option of two women in the present contingency and clause (cc), as it expressly provides, overrides clause (c) of section 5(2) as also section 16. I am, therefore, as at present advised, unable to accede to the contention raised on behalf of the respondents.

The learned Advocate-General has very vehemently contended that the construction that we are placing on the second proviso really means re-writing it or amending it so as to confer a right on a woman-contestant to be co-opted, even though she has secured no vote. This contention has been sought to be met on behalf of the petitioners by reference to a decision of the Supreme Court in *Tirath*

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*Singh* v. *Bachittar Singh* (1), where it is laid down that if the language of a statute, in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. Reference in this connection has also been made to *State* v. *Sat Ram Dass* (2), according to which, to avoid absurdity or incongruity, even grammatical and ordinary sense of the words can in certain circumstances be avoided.

I quite agree that reasoning and judgment, not mere bald literalness of statutory phrasing, must guide and control research for legislative design. It has often been said that the intention of the Legislature is the law, and though this expression has lost its novelty, cogency is with it yet. I may also point out that no intention can be imputed to the Legislature in the enactment of a law other than such as is supported by the face of the law itself, of course looked at as a whole and from all angles of vision. The Court is not entitled to speculate as to the probable intent apart from the words in which the Legislature has expressed itself: the intent can certainly not be dreamed up. At the same time, some degree of inference of implication may from the very nature of things, be called in aid in discovering the "intention of the Legislature" which phrase, though common, is at times slippery, because, popularly understood, it may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant. In the case in hand, however, in my opinion, to accede to the learned Advocate-General's contention would perhaps mean re-writing the second proviso in section 5(2)(cc)(i): and this re-writing would also bring about an inconsistency and a disharmony for which, from the nature and design of the statute as a whole, I find little support.

At this stage, in fairness, I may advert to Rule 4(a) on which also reliance has been placed on behalf of the

(1) A.I.R. 1955 S.C. 830.
(2) I.L.R. 1959 Punj. 1870=A.I.R. 1959 Punj. 497.

learned Advocate-General. According to this rule, no quorum shall be necessary for the purpose of co-opting members under section 5(2)(cc) from amongst women or persons belonging to Scheduled Castes and Scheduled Tribes, securing the highest number of votes, and their names shall be determined and declared by the Presiding Officer in the presence of members, if any, attending the meeting convened under rule 3. From this rule, it is sought to be inferred that where a woman candidate has secured no votes, then her co-option is not contemplated by the rules, I am unable to draw this inference from the language of this rule. As I have already observed, probably, the draftsman was unmindful of the contingency which has arisen in the present case, because he perhaps could not conceive of a woman candidate not even casting her own vote in her favour. This rule thus does not advance the case on behalf of the State. On this view, it is unnecessary to refer to section 115 of the Act which confers power on the Government to make rules for carrying out the provisions of the Act and which expressly provides in sub-section (4) that every rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session, for a total period of ten days, and if before the expiry of the session in which it is so laid, or the session immediately following both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be. This provision undoubtedly places the rules on almost as strong and solemn a footing as the provision contained in the enactment itself, but as just observed, this rule, even construed as an integral part of the Act, does not throw any helpful light in construing section 5(2)(cc)(i) second proviso differently.

The learned Advocate-General has as a last resort thrown an oblique suggestion that the primary anxiety of the Legislature apparently is to restrict the sphere of co-option of women Panches, outside the arena of social work, within the category of those women-contestants who have secured some votes. This seems to me to be merely another way of putting the same argument of implied intent which has been repelled on the statutory language. But

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probing the matter again, I am unable to discern any logical or plausible basis for the suggestion. On the other hand, one may well suggest that in view of the general, social and political backwardness of women in our rural areas, the principal sphere for co-opting women Panches is that of social workers, but preference is given to the more politically conscious women who are prepared to seek election. Of course, the democratic criterion for selecting out of such contestants is the number of votes secured by each one of them, but the very fact that women in the rural areas possess sufficient political conscience to come forward to contest an election is also of no mean importance in the present stage of our rural society; and this, according to the legislative design, may well seem to require to be taken into account. Without, however, pursuing this line of investigation, in my view, when the language of the second proviso talks only of women contesting the election, then there is no reason for adding to it the words "and securing one or more votes".

For the foregoing reasons, this petition succeeds and allowing the same, I set aside the impugned order and direct that Shrimati Chuneshwari Gaur be co-opted as a member of the Panchayat Samiti, Naggar, in accordance with section 5(2)(cc)(i) second proviso and set aside the co-option of respondents Nos. 3 and 4. It would of course be open to the authorities concerned to co-opt one more woman social worker amongst women and children in accordance with section 5(2)(cc) first proviso. In the peculiar circumstances of the case, there would be no order as to costs of these proceedings.

Narula, J.

R. S. NARULA, J.—I agree.

*B.R.T.*

CIVIL MISCELLANEOUS

*Before Inder Dev Dua and R. S. Narula, JJ.*

MANGA AND OTHERS,—*Petitioners*

*versus*

SOHLU AND OTHERS,—*Respondents*

**Civil Writ No. 2509 of 1964.**

1965

May, 13th.

*Punjab Gram Panchayat Act,* 1952 (*IV of* 1953)—*Ss.* 6(5), 13-*O and* 102—*Punjab Gram Panchayat Election Rules* (1960)—*Rule* 2(*d*) *and* 21—*One Panch not qualified to get elected as one of the Panches—Election petition challenging his election—Whether the entire election of all the Panches to be set aside—Election of Panches—Whether one election—Elections not to be lightly set aside—Duty of authorities trying election petition stressed.*