

ment from passing a fresh order stating the grounds of its opinion for the forfeiture of the book or other document concerned. This aspect stands covered by the decision of the Supreme Court in the *State of Uttar Pradesh v. Lalai Singh Yadav* (10).

(33) Under the scheme of the Code of Criminal Procedure, applications under section 96 of the Code are required to be heard without any avoidable delay. It would, therefore, be desirable that the Registry obtains suitable directions of the Hon'ble Chief Justice to ensure that such applications are fixed for hearing without any undue delay.

(34) For the foregoing reasons, C.W.P. No. 15625 of 1991 and Crl. Misc. No. 10674-M of 1991 are dismissed. Crl. Misc. Nos. 3250-M of 1985, 6401-M and 8116-M of 1987, 1886-M of 1988 and 11413-M of 1991 are allowed with Rs. 1,500 as costs in each and the orders of forfeiture impugned therein are set aside.

J.S.T.

Before : S. D. Agarwala, C.J. & H. S. Bedi, J.

GURDEV KAUR AND ANOTHER,—*Petitioners.*

versus

DEPUTY COMMISSIONER, PATIALA AND OTHERS,

—*Respondents.*

Civil Writ Petition No. 2941 of 1993.

6th May, 1993.

Punjab Gram Panchayat Act, 1952—Constitution of India, 1950—Art. 15(3) & (4)—Election to Gram Panchayat—S. 6 (4) providing for two women Panches—Manner of co-option and of deemed election of women Panches stated—S. 6 (4)—Interpretation of.

Held, that the same interpretation should be given to sub-section (4) of Section 6 of the Act as sub-section (4-B) of S. 6 as the intention behind the promulgation of sub-section (4) as well as sub-section (4-B) is the same. In our opinion the words 'and the number of unsuccessful contesting women candidates is two or more' are relateable to a case where there are two or more unsuccessful women candidates meaning thereby that out of them women having the highest number of valid votes should be deemed to have been elected but by the use of these words it cannot be said that the intention of the Legislature was different than what it was while enacting sub-section (4-B) of the

(10) A.I.R. 1977 S.C. 202 (Para 17).

Act. In fact Section (4-B) was added by the legislature subsequently which not only clarified what was intended to mean in sub-section (4) of the Act but also gave effect to the interpretation put by this Court in cases (supra). If sub-section (4) of the Act is read as a whole the intention of the Legislature becomes clear that it was intended that if there are two unsuccessful women candidates both will be deemed to have been elected as has been laid down in the case of Scheduled Caste candidates under sub-section (4-B) of the Act.

(Para 14)

Held further, that (1) in case one woman Panch has been elected and there is one unsuccessful contesting woman candidate then the said unsuccessful woman candidate shall be deemed to have been elected as a Panch; (2) if there is no woman candidate who has been elected and the number of unsuccessful women candidates are two then both the unsuccessful women candidates shall be deemed to have been elected; (3) if there are more than two unsuccessful candidates then the two women candidates who have the highest number of valid votes shall be deemed to have been elected as Panches; (4) if only one woman candidate contests the election and she is unsuccessful then the said woman candidate would be deemed to have been elected and one more would be co-opted under the proviso; and (5) if no woman candidate contests the election then both the women candidates have to be co-opted under the proviso.

(Para 18)

Writ Petition under Articles 226/227 of the Constitution of India praying :

- (a) *that an appropriate writ, order or direction be issued to the respondents No. 1, 2 & 4 directing them to declare the petitioners to be deemed to have been elected as women Panches, for Gram Panchayat Bakhshi Wala.*
- (b) *that any other appropriate writ, order or direction which this Hon'ble Court may think proper under the circumstances of the case be also issued;*
- (c) *that the service of advance notices on the respondents and filing of certified copy of Annexure P-1 be also dispensed with.*
- (d) *that the cost of the writ petition be also allowed.*

It is further prayed that during the pendency of the writ petition co-option may kindly be stayed.

B. S. Khoji, Advocate, for the petitioners.

G. K. Chatrath, Advocate General, Punjab with Vikrant Sharma, Advocate and Miss Anu Chatrath, Advocate for the respondents.

JUDGMENT

S. D. Agarwala, Chief Justice.

This is a group of petitions challenging the result of the elections held for the Panchayats' in the State of Punjab in regard to the women Panches as also the co-option of certain women Panches under the Punjab Gram Panchayat Act, 1952 (hereinafter referred to as the 'Act').

(2) Writ petition No. 2941 of 1993 *Gurdev Kaur and another v. Deputy Commissioner, Patiala and Others* shall be treated as a leading petition and the facts in regard to this petition are narrated below:—

(3) On 31st December, 1992, the State of Punjab issued a notification establishing a Gram Sabha for the area of village Bakhshi Wala, Block Rajpura, District Patiala. The Deputy Commissioner, Patiala issued election programme for election in respect of the Bakhshi Wala Gram Panchayat. Under the said election programme, 17th January, 1993, was the date of the filing of nomination papers and the polling was to take place on 18th January, 1993. According to the notification dated 31st of December, 1992, one Sarpanch and five Panches were to be elected. The petitioners Gurdev Kaur and Hardevi filed nomination papers. The result was declared on 18th of January, 1993 but both Gurdev Kaur and Hardevi were declared to have been defeated. On 15th February, 1993, a meeting of the Panches was summoned for co-opting lady panches. The petitioners consequently filed the present writ petition in this court for a relief that they be declared to have been deemed to be elected as women Panches of Gram Panchayat Bakhshi Wala and a further direction was sought that no woman Panch should be co-opted in respect of the said Gram Panchayat. The position, therefore, was that two women candidates contested for the office of Panches—Both of them were unsuccessful and now they sought a relief from this Court for being declared as deemed Panches of the Gram Panchayat, Bakhshi Wala.

(4) The facts in regard to the other connected petitions are also similar. Hence, it is not necessary to deal with the facts of each of the petitions separately.

(5) The question which has come up for consideration is as to when two women candidates contest in the Gram Panchayat election whether both of them have to be deemed to have been elected even

though neither of them had succeeded in the election as a Panch in the normal course. In some of the cases one woman Panch has been elected in the normal course and the question is as to whether the second woman candidate who could not succeed, in the election should be deemed to have been elected or whether the second woman candidate has to be co-opted by the Gram Panchayat in the prescribed manner from amongst members of the Gram Sabha qualified to be elected as a Panch. The question also is as to when more than two candidates contest the election and all of them have failed to be elected, which of them would be deemed to have been elected.

(6) We have heard learned counsel for the petitioners and learned Advocate General for the State of Punjab. In order to determine the question which arises in this group of petitions, it is necessary to state a few provisions of the Act which are relevant for the purposes of the decision of these cases.

(7) Section 4 of the Act empowers the Government to declare by Notification any village or group of contiguous villages as a Sabha area. Under Sub-section (1) of Section 5 of the Act, the Government is empowered by Notification to establish a Gram Sabha by name in every Sabha area. Sub-section (2) of Section 5 provides that 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. Section 6 of the Act provides for the Constitution of Gram Panchayat and disqualifications to be member thereof. This Section enjoins upon every Sabha to elect from amongst its members a Gram Panchayat bearing the name of its Sabha consisting of a Sarpanch and such number of Panches, not being less than four and more than ten, as the Government may determine taking into account the population of the Sabha area. In accordance to the proviso to sub-section (1), the number of Panches to be determined by the Government has to be exclusive of the number of women Panches deemed to have been elected under sub-section (4) or co-opted under that sub-section. Sub-section (4) of Section 6 provides that in every Gram Panchayat there shall be at least two women Panches. It also provides for the manner of the co-option of women Panches in case no woman is deemed to have been elected. Sub-section (4) of Section 6 is quoted below:—

“(4) In every Gram Panchayat there shall be at least two women Panches and if only one woman or no woman is

elected as a Panch and the number of unsuccessful contesting women candidates is two or more, then one woman or two women, as the case may be securing the highest number of valid votes from amongst unsuccessful women candidates shall be deemed to have been elected as Panches :

Provided that if only one woman or no woman is deemed to have been elected then one woman or two women, as the case may be, shall be co-opted by the Gram Panchayat in the prescribed manner from amongst members of the Gram Sabha qualified to be elected as Panch."

From the reading of sub-section (4) of Section 6, it is clear that there shall be at least two women Panches and if only one woman or no woman is elected as a Panch then the woman from amongst the unsuccessful women candidates have to be deemed to have been elected as Panch. The proviso of this sub-section lays down the manner and in what circumstance the co-option can be made of women Panches.

(8) This sub-section (4) of Section 6 came up for consideration before three learned Single Judges of this Court. The first time it came for consideration in the case *Shrimati Nachhatar Kaur v. State of Punjab* (1), before Hon'ble Mr. Justice A. S. Bains (as he then was). In that case there was only one woman candidate who contested the election of the Gram Panchayat. She was unsuccessful. The question arose as to whether she should be deemed to be elected under the provisions of Section 6 of Clauses 4 of the Act. It was held in that case that since no other woman contested the election except the petitioner in that case, hence, she should be deemed to be elected under sub-section (4).

(9) The next time this sub-section came up for consideration in the case of *Shrimati Gurmail Kaur v. Director of Panchayats and Community Development, Punjab and others* (2), before Hon'ble Mr. Justice B. S. Dhillon (as he then was). In this case two women candidates contested the elections of the Gram Panchayat but they could not succeed. The question was whether they should be deemed to be held to have been elected under the provisions of sub-section (4) of Section 6 of the Act. His Lordship Mr. Justice Dhillon opined as follows:—

"According to the scheme of the Act, two women Panches have to be brought on the Panchayat. If one woman or no woman

(1) 1979 P.L.J. 243.

(2) 1979 P.L.J. 572.

is elected as Panch, in that case one woman or two women, as the case may be, who contested the election and secured highest number of votes, but were unsuccessful, shall be deemed to have been elected as Panches. But there may be a case where no woman has contested the election and thus there is no occasion for the deeming provision to have come into operation, in that case it has been provided under the proviso to sub-section (4) that the Panchayat is to co-opt a woman Panch from amongst the members of the Gram Sabha, who is qualified for being elected as Panch."

This Court consequently held that in a case where two women candidates contested the election and both could not succeed, both will be deemed to have been elected as women panches.

(10) This Section 6 (4) of the Act came up for interpretation the third time in the case of *Smt. Surinder Kaur v. The Director, Panchayats, Punjab and others* (3), before Hon'ble Mr. Justice I. S. Tiwana (as he then was). In this case also only two women candidates contested for the office of the Panch and both were unsuccessful. Relying upon the decision in the case of *Shrimati Gurmait Kaur* (supra), it was held that both the women candidates should have been deemed to be elected as there were only two women contestants and both were unsuccessful and it was further held that there was no scope for co-option at all in such a case.

(11) The consistent view constantly since 1979 has been that in case there is one woman candidate who has contested for the office of the Panch and she has been unsuccessful then she should be deemed to have been elected as a Panch and the other woman Panch has to be co-opted. In case two women candidates contested the election, and both are unsuccessful then both of them have to be deemed to be elected as Panches.

(12) We agree with the view taken by the learned Single Judges of this court in the cases referred to above.

(13) Sub-clause (3) of Article 15 of the Constitution of India empowers the State Government to make any special provision for women and children. Similarly Sub-Clause (4) of Article 15 provides that nothing shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled tribes. With an intent to uplift the status of women as well as

Scheduled Castes and in order to make them participate in the democratic process. The state of Punjab made provisions for having two women Panches in a Gram Panchayat and similarly two Scheduled Castes candidates as Panches in the Gram Panchayats in certain circumstances. Sub-section (4) of Section 6 of the Act provides for two women Panches. This provision has already been quoted above which is the subject of interpretation. Sub-section (4-B) of the Act provides for the appointment of Panches belonging to the Scheduled Castes. Sub-section (4-B) is quoted below:—

“(4-B) If the required number of successful candidates does not include one or two Panches as the case may be, belonging to Scheduled castes, then one candidate or two candidates, as the case may be, belonging to Scheduled Castes, securing the highest number of valid votes from amongst the Scheduled Castes candidates shall be deemed to have elected as the last or the last two Panches :

Provided that if the requisite number of Panches belonging to Scheduled Castes as determined under sub-section (4-A) is not elected in the manner given above, the Gram Panchayat shall co-opt the requisite number in the prescribed manner from amongst members of the Gram Sabha belonging to Scheduled Castes qualified to be elected as Panch.”

Sub-section (4-B) quoted above in clear terms provides that if the required number of successful candidates does not include one or two Panches as the case may be, belonging to Scheduled Castes, then one candidate or two candidates, as the case may be, belonging to Scheduled Castes, securing the highest number of valid votes from amongst the Scheduled Caste candidates shall be deemed to have elected. In effect the provision is that in case two or more candidates belonging to Scheduled Caste contest the election and none of them is successful then the two having the highest number of votes will be deemed to have been elected. This provision is patently clear.

(14) In our opinion, therefore, the same interpretation should be given to sub-section (4) of section 6 of the Act as the intention behind the promulgation of sub-section (4) as well as sub-section (4-B) is the same. Learned counsel appearing for the respondents have vehemently urged that the words ‘and the number of unsuccessful contesting women candidates is two or more’ used in sub-section (4) is indicative of the fact that if there is only one unsuccessful woman candidate

cannot be construed in the manner which has been urged on behalf of the respondents. These words are relateable to a case where there are two or more unsuccessful women candidates meaning thereby that out of them women having the highest number of valid votes should be deemed to have been elected, but by the use of these words it cannot be said that the intention of the Legislature was different than what it was while enacting sub-section (4-B) of the Act. In fact Section (4-B) was added by the legislature subsequently which not only clarified what was intended to mean in sub-section (4) of the Act but also gave effect to the interpretation put by this Court in cases (supra). If sub-section (4) of the Act is read as a whole the intention of the legislature becomes clear that it was intended that if there are two unsuccessful women candidates both will be deemed to have been elected as has been laid down in the case of Scheduled Caste candidates under sub-section (4-B) of the Act.

(15) In *Kehar Singh and others v. The State (Delhi Admn.)* (4), it has been held by the Hon'ble Supreme Court as follows:—

“During the last several years, the ‘golden rule’ has been given a go-bye. We now look for the ‘intention’ of the legislature or the ‘purpose’ of the statute. If the words are precise and cover the situation in hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they own their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequence.”

(16) If the interpretation which we have given to sub-section (4) is not given it will be in violence of the purpose of the Act to bring

women and Scheduled Caste candidates as a part of the democratic process and to encourage them to stand for the elections for public good.

(17) In the Principles of Statutory Interpretation by G. P. Singh, fifth edition, page 20, it is stated as follows:—

“When the question arises as to the meaning of a certain provisions in a statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in *pari materia*, the general scope of the statute and the mischief that it was intended to remedy.”

Keeping the above principle in mind also and examining sub-section (4) alongwith sub-section (4-B) of the Act, the interpretation put by us would be in consonance with the intention of the legislature as both the provisions are *pari materia*. In view of the above, we do not accept the arguments raised on behalf of the respondents.

(18) We consequently hold that (1) in case one woman Panch has been elected and there is one unsuccessful contesting woman candidate then the said unsuccessful woman candidate shall be deemed to have been elected as a Panch; (2) if there is no woman candidate who has been elected and the number of unsuccessful women candidates are two then both the unsuccessful women candidates shall be deemed to have been elected; (3) if there are more than two unsuccessful candidates then the two women candidates who have the highest number of valid votes shall be deemed to have been elected as Panches; (4) if only one woman candidate contests the election and she is unsuccessful then the said woman candidate would be deemed to have been elected and one more would be co-opted under the proviso; and (5) if no woman candidate contests the election then both the women candidates have to be co-opted under the proviso.

(19) In the result, writ petition No. 2941 of 1993 is allowed and both the petitioners are declared as deemed to have been elected as Women Panches for Gram Panchayat Bakhshi Wala and the respondents are restrained from interfering with the petitioners functioning as such in the Gram Panchayat in question. In those petitions where women Panches have been co-opted contrary to the decision taken by us, the said co-option is quashed and the co-opted women Panches are restrained from functioning as such in the Gram Panchayat in question. No costs.

R.N.R.