

The Union of Orissa, Patna and Andhra High Courts, which were also cited before us. These decisions are clearly no authority for the proposition that under section 80, Code of Civil Procedure, two notices are necessary as contended on behalf of the appellant. They are concerned with sections 77 and 80 of the Railways Act and, therefore, nothing more need be said about them.

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For the reasons given above, in my opinion, the notice served on the General Manager of the Northern Railway in the present case fully complies with the provisions of section 80, Code of Civil Procedure and the appeal, therefore, must fail which is hereby dismissed with costs.

Dulat, J. S. S. DULAT, J.—I agree.

Mahajan, J. D. K. MAHAJAN, J.—I agree.

*B.R.T.*

#### CIVIL MISCELLANEOUS

*Before S. B. Capoor and Inder Dev Dua, JJ.*

MANSA RAM,—*Petitioner*

*versus*

THE DEPUTY COMMISSIONER, HISSAR AND OTHERS,—  
*Respondents.*

Civil Writ No. 1305 of 1961.

1961  
Dec. 29th

*Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Section 5(2)(a)(iii)—‘Market Committees in the block’—Meaning of—Residence within the block of some producer members of a market committee located outside the block—Whether makes it a Market Committee in the block—No Market Committee in the block—No member elected under section 5(2)(a)(iii)—Panchayat Samiti—Whether properly constituted without such a member.*

*Held, that the words “market committees in the block” as used in section 5(2)(a)(iii) of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, mean the “market*

committees situated within the block" in the sense that either the whole or part of the notified area lies within that block of the Panchayat Samiti to which election is to be made. A market committee cannot possibly be said to function outside its notified area merely because some of its members reside outside the notified area or some persons who reside outside the notified area bring their produce to that market. The area in which a market committee can be said to function cannot vary from time to time and according to circumstances or option of growers who choose to utilise it for the sale of their produce.

*Held*, that if no market committee is situated within a certain block nor does any producer member of any market committee reside within the block there cannot possibly be any representation from the category mentioned in sub-clause (iii) of clause (a) of sub-section (2) of section 5 of Punjab Act III of 1961. It was considered desirable to give representation to the market committees on the Panchayat Samitis but this right was to be confined to the market committees "in the block" and their representative had to be from amongst the producer members residing within the jurisdiction of the Panchayat Samiti. But it could possibly not be intended that the Panchayat Samitis could not function merely because there being no market committee in the block there could be no representation under sub-clause (iii) of clause (a) of sub-section 2 of section 5 of the Act. There is no provision in the Act laying down that Panchayat Samiti was not to function if in the nature of things no member of the categories referred to in sub-clauses (ii) and (iii) of clause (a) of sub-section (2) of section 5 could be elected, thereby blocking the constitution of the Zila Parishad, also, some members of which under section 86 of the Act had to be elected by indirect election from amongst the primary members of the Panchayat Samitis.

*Case referred by Hon'ble Mr. Justice Mehar Singh to a larger Bench,—vide order, dated the 31st October, 1961, for decision of the legal questions involved in the case and finally decided by a Division Bench consisting of Hon'ble Mr. Justice Capoor and Hon'ble Mr. Justice Dua, on 29th December, 1961.*

*Petition under Article 226 of the Constitution of India, praying that a writ in the nature of mandamus, or any other appropriate writ, order or direction be issued directing the respondent No. 1 to hold a meeting of the producer members of the Market Committee for electing a member to the Panchayat Samiti for Rania Shadow Block of the Sirsa Tehsil in the Hissar District, and further praying that he be restrained from holding a meeting called for the 25th of September, 1961.*

BHAGIRATH DASS AND B. K. JHINGAN, ADVOCATES, for the Petitioners.

B. R. TULI, H. S. WASU, AND B. S. WASU, ADVOCATES, for the Respondents.

#### ORDER

Capoor, J.

CAPOOR, J.—These three similar writ petitions Nos. 1305, 1306 and 1312 of 1961, under Article 226 of the Constitution of India involved some common questions and have been referred by Mehar Singh J. to a Division Bench.

These petitions arise from elections to the Panchayat Samitis under the provisions of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (Punjab Act No. 3 of 1961), hereinafter referred to as the Act. The object of the Act is to provide for the constitution of Panchayat Samitis and Zila Parishads, to which bodies it is intended to transfer the functions now being performed by the district boards in the Punjab. In order to appreciate the matters in issue it is necessary to reproduce some of the provisions of this Act. Under sub-section (1) of section 3, the Government may by notification direct, that with effect from such date as may be specified in the notification, there shall be constituted Panchayat Samitis either for every tehsil in a district or for every block in a district. By sub-section (2) of section 2, a 'block' means such area in a district as may be declared by the Government by notification to be a block. Under Section (4) a Panchayat Samiti shall have authority throughout the tehsil or block for which it is constituted but not over any part of such tehsil or block as

is for the time being included in a Municipality or a Cantonment or a Notified Area. Section 5 of the Act lays down the constitution of Panchayat Samitis, and in these petitions we are concerned with sub-section (2) of section 5 which prescribes the constitution of a Panchayat Samiti which is to be constituted for a block and this is to consist of three classes of members—primary members, associate members and co-opted members. Primary members as provided in clause (a) of sub-section (2) are to be elected in the manner prescribed by the persons as provided under:—

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- (i) sixteen members from the block, by the Panches and Sarpanches of Gram Panchayats in the block from amongst themselves;
- (ii) two members representing the co-operative societies within the jurisdiction of the Panchayat Samiti, by the members of such societies elected in the manner prescribed for the purposes of this section, from amongst the members of these societies;
- (iii) one member representing the market committees in the block, by the members of such committees from amongst the producer members residing within the jurisdiction of the Panchayat Samiti.

With associate members and *ex officio* members we are not concerned in these petitions.

Under clause (c) of sub-section (2) of section 5, the category of co-opted members is to consist of six members to be co-opted in accordance with the provisions of section 16. Section 16 is as follows:—

- 16. 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

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purpose of co-opting members required by clause (c) of sub-sections (1) and (2) of section 5. The aforesaid officer shall preside at such meeting."

Then follows section 17 which provides for the election of chairman, vice-chairman and it is in these terms:—

"17. The Deputy Commissioner concerned, or any gazetted officer appointed by him in this behalf, not below the rank of an Extra Assistant Commissioner, shall call the first meeting of the Panchayat Samiti in the manner prescribed, as soon as the election and co-option of all members of the Panchayat Samiti is notified, to elect the Chairman and Vice-Chairman from amongst the primary and co-opted members. The aforesaid officer shall preside at such meeting."

Civil Writ Petition No. 1305 of 1961 concerns the elections to the Panchayat Samiti for the Rania Shadow Block in Tehsil Sirsa of Hissar District, Civil Writ No. 1306 of 1961 relates to elections to the Panchayat Samiti for the Fatehabad Block in Tehsil Fatehabad of the same district. The position as regards these two writ petitions is similar. Out of the category of primary members, the election of 16 members to each of these two Panchayat Samitis by the Panches and Sarpanches of Gram Panchayats and of two members representing the co-operative societies within the jurisdiction of the Panchayat Samiti were held and notifications, dated 28th of August, 1961, as reproduced in paragraph 7 of each of these two petitions were made of 18 members in each case. So far as producer member of the market committee [the category stated in section 5(2) (a) (iii)] was concerned, no person was notified as a member of each of these Panchayat Samitis, the relevant remark being 'nil'. The contentions of the petitioners—Mansa Ram in Civil Writ No. 1305 of 1961 and Moti Ram in Civil Writ No. 1306 of 1961—are that since no producer member had been appointed, the Panchayat Samiti in each case was not properly constituted and further that the co-option of

the members as required by clause (c) of sub-section (2) of section 5, as well as the election of chairman and vice-chairman under section 17 could not validly be made. Despite this the Deputy Commissioner, Hissar, who is respondent No. 1 to both these petitions called meetings of the primary members of each of these two Panchayat Samitis for the election of co-opted members and those meetings were duly held on the 18th of September, 1961, for the Rania Shadow Block and the Fatehabad Block. Subsequently, respondent No. 1 convened meetings of the Panchayat Samitis of these two blocks for the 25th of September, 1961, for the purpose of electing chairman and vice-chairman of the Samiti and also for the election of two members each to represent these Panchayat Samitis in the Zila Parishad as required under sub-section (4) of section 86 of the Act. In the meetings held on 18th of September, 1961, each of the petitioners who had been elected as a primary member to the respective Block Samiti raised objections about the incompetency of the members present to proceed to elect the co-opted members but no heed was paid to his objections. These two Civil Writs Nos. 1305 and 1306 of 1961 were filed on 22nd of September, 1961, and the Bench admitting the petitions granted interim stay of the election of chairman, vice-chairman and representatives in the Zila Parishad of each of these Block Panchayat Samitis. Besides the Deputy Commissioner, Hissar, respondents to Civil Writ No. 1305 of 1961 were the six co-opted members. Originally only the Deputy Commissioner, Hissar, was cited the respondent in Civil Writ No. 1306 of 1961 but Raja Ram who was a duly elected member of the Panchayat Samiti of the Fatehabad Block applied for being made a party respondent and this application was allowed subject to just exceptions. The Deputy Commissioner, Hissar, in the two petitions, respondent No. 3 Mamma Ram in Civil Writ No. 1305 of 1961 and Raja Ram respondent in Civil Writ No. 1306 of 1961 have filed replies opposing the petitions. The replies by the Deputy Commissioner, Hissar, are identical. It was pointed out in these replies that since there was no market committee functioning in or situated in either Rania Shadow Block or Fatehabad Block, it was not necessary to have a representative from the

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market committee as a primary member. Then the petitioners to these petitions filed affidavits, dated 13th of October, 1961. Mansa Ram petitioner in Civil Writ No. 1305 of 1961, stated that four producer members of the Sirsa Market Committee, Mansa Ram, Devi Ram, Kesra Ram and Arjan Singh, were residing within the area of the Rania Shadow Block, while Moti Ram petitioner in Civil Writ No. 1306 of 1961 pointed out that Ganga Ram, a producer member of the Market Committee, Ding, was residing in a village situated within the Fatehabad Block, and the contention was that elections to the respective blocks under sub-clause (iii) of clause (a) of sub-section (2) of section 5 of the Act could and should have been held. There is no denial of the statements of fact made in these two affidavits.

The third petition. Civil Writ No. 1312 of 1961, relates to elections to the Panchayat Samiti of the Barwala Block in Hissar District. Hunna Mal petitioner was along with 15 others elected as a primary member of the Barwala Panchayat Samiti from the first category. i.e., from amongst Panches and Sarpanches of the Gram Panchayat in the block. Similarly, two other primary members were elected from amongst members of the co-operative societies. The notified area of the Uklana Market Committee consists of villages all included in the area of Barwala block and under rules 30 and 31 of the Rules made under the Act the members of the Uklana Market Committee elected Risal Singh, respondent No. 3 to this petition, as a producer member to represent them on the Barwala Panchayat Samiti. It appears, however, that four grower members of the Hissar Market Committee are residents of villages situated within the area of Barwala Block. The notified area of the Hissar Market Committee consists of the revenue estates of Hissar and Bir Hissar which are not situated within the Barwala Block, but the contention on behalf of the petitioner was that inasmuch as four grower members of the Hissar Market Committee are residents of villages within the area of Barwala Block it should be held that the Hissar Market Committee functions in the Barwala Block also and these four grower members were entitled to vote in the election

as well as stand in the election to membership of the Barwala Block Panchayat Samiti from amongst the members of the Market Committees under sub-clause (iii) of clause (a) of sub-section (2) of section 5 of the Act. Their exclusion from the exercise of statutory right, according to the petitioner, invalidated the election of Risal Singh who could not, therefore, take part in the meeting held under section 16 of the Act for the co-option of members. Respondents Nos. 4 to 9, who are purported to have been co-opted at the meeting of the 19 primary members of the Barwala Panchayat Samiti held on 18th of September, 1961, could not legally be co-opted and in consequence they could not take part in the election of the chairman, vice-chairman and the two members of the Zila Parishad, for which purpose a meeting of the Barwala Block Panchayat Samiti had been called on 29th of September, 1961. An *ad interim* stay order was passed by the Motion Bench in this case also. Respondent No. 2 to the petition is the Deputy Commissioner, Hissar, who has opposed the petition. Respondents Nos. 3 to 9 have also filed written statement opposing the petition, the main ground being that as the Market Committee, Hissar, was not functioning in the Barwala Block, its members were not entitled to have a representative on the Panchayat Samiti of the Barwala Block even though some producer members of the Market Committee were residing in villages situated in Barwala Block. The State of Punjab was cited as respondent No. 1 to this petition but it has not submitted any return.

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Two questions thus arise in these writ petitions:—

- (1) Whether the Panchayat Samiti constituted for a block can be said to be properly constituted if on account of no market committee being situated in that block, there can be no primary members of the category mentioned in sub-clause (iii) of clause (a) of sub-section (2) of section 5 of the Act?
- (2) Can a Market Committee which is located outside the area of a particular block be



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said to be 'in the block' for the purposes of the same sub-clause if one or more producer members of such committee reside within the block?

The first question does not, to my mind, present any real difficulty. If no market committee is situated within a certain block nor does any producer member of any market committee reside within the block there cannot possibly be any representation from the category mentioned in sub-clause (iii). The market committees to which there is reference in these petitions, were constituted under the Punjab Agricultural Produce Markets Act, 1939 (Punjab Act No. 5 of 1939). The object of this Act was to provide for the better regulation of the purchase and sale of agricultural produce and the establishment of markets for agricultural produce in Punjab. "Market" in clause (d) of section 2 was defined as meaning a building, block of buildings, enclosure or other area which may be so notified in accordance with the rules made under that Act. Under section 4, the Government had the power to notify any area as notified market area in respect of which the market committee established under section 7 was to have jurisdiction. Membership of the market committees was to consist of two categories:—

- (1) members from growers of the district, and
- (2) members from persons licensed as dealers, weighmen, measurers or surveyors handling agricultural produce of the kind notified under section 3 of the Act.

It was considered desirable to give representation to the market committees on the Panchayat Samitis but this right was to be confined to the market committees "in the block" and their representative had to be from amongst the producer members residing within the jurisdiction of the Panchayat Samiti. But it could possibly not be intended that the Panchayat Samitis could not function merely because there being no market committee in the block there could be no representation under sub-clause (iii) of clause (a) of sub-section 2 of section 5 of the Act

There is no provision in the Act laying down that Panchayat Samiti was not to function if in the nature of things no member of the categories referred to in sub-clauses (ii) and (iii) of clause (a) of sub-section (2) of section 5 could be elected, thereby blocking the constitution of the Zila Parishad, also, some members of which under section 86 of the Act had to be elected by indirect election from among primary members of the Panchayat Samitis. Mr. Bhagirath Dass, on behalf of the petitioners in Civil Writs Nos. 1305 and 1306 of 1961, in order to support his argument, relied upon section 13 which is as follows:—

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“13. If at an election to a Panchayat Samiti, the requisite number of primary members is not elected, a fresh election for the remaining number shall be held in the manner prescribed.”

This provision, however, does not help the petitioners because if the elective body referred to in sub-clause (iii) does not exist there can be no possibility of a fresh election so far as that category is concerned. No doubt, under clause (a) of sub-section (2) of section 5 there are to be 19 primary members of a Panchayat Samiti but it would not be correct to say that it cannot function if for some reason which nobody can help it has only 18 primary members. Some indication to this effect is given under sub-section (1) of section 30 of the Act which, *inter alia*, provides that no act done or proceedings taken by a Panchayat Samiti shall be questioned on account of any vacancy in membership or any defect in the election or qualification of the chairman, vice-chairman, presiding authority or member. Mr. Bhagirath Dass also referred to section 17 which provides that the first meeting of the Panchayat Samiti to elect chairman and vice-chairman from amongst the primary and co-opted members shall be held as soon as the election and co-option of all members of the Panchayat Samiti is notified. The emphasis was on the word “all” and here again the term “all members” must be referred to all members who could possibly in the nature of things be elected or

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co-opted. I am thus unable to find anything in the Act to justify blocking up all the processes laid down in the Act and in fact to render it inoperative, merely because there being no market committee in the block it was not possible to have a member representing market committees.

The answer to the second question depends on the interpretation to be placed on the term "in the block" as used in sub-clause (iii) of clause (a) of subsection (2) of section 5 of the Act. I have already referred to the definition of "notified market area" in clause (e) of section 2 of Punjab Act No. 5 of 1939. The market committee in this Act is constituted with reference to its notified area. Now, it is common ground that no part of the notified area of any market committee falls within the jurisdiction of the Panchayat Samitis of the Rania and the Fatehabad Blocks. Similarly, the notified area of the Hissar Market Committee, the exclusion of representation of which is challenged in Civil Writ No. 1312 of 1961, falls within the Barwala Block Panchayat Samiti. So, when sub-clause (iii) under consideration speaks of one member representing the market committees "in the block", the natural and grammatical interpretation would be that there was no market committee in the Rania and Fatehabad Blocks nor was the Hissar Market Committee in the Barwala Block. Mr. Anand Swaroop, learned counsel for the petitioner in Civil Writ No. 1312 of 1961, advanced one rather curious objection to this interpretation. He pointed out that Punjab Act No. 5 of 1939 has since been repealed by the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act No. 23 of 1961) which has replaced it and which was published in the *Punjab Government Gazette (Extraordinary)* of the 26th May, 1961. He contended, therefore, that the notified market areas under Punjab Act No. 5 of 1939 disappeared and accordingly it could not be said that the market committees constituted under the earlier Act had any notified area pertaining to them. He went on to argue that in the circumstances the words "in the block" in sub-clause (iii) under consideration were mere surplusage, and producer members of any market committee whatever who happened to reside within the

jurisdiction of the Panchayat Samiti were entitled to stand for election under sub-clause (iii) and the electoral bodies would be each of the market committees to which such producer members belong. This argument loses sight of various provisions of section 47 of Act No. 23 of 1961, whereby the former Act, i.e., Punjab Act No. 5 of 1939 was repealed. The last proviso to this section states that the market committees functioning immediately before the commencement of Punjab Act No. 23 of 1961 shall be deemed to be constituted for the first time under sub-section (4) of section 12 of that Act and their members including the chairman and vice-chairman shall hold office until new committees set up under the Act are notified or the expiry of six months from the commencement of that Act, whichever is earlier. Accordingly, the market committees functioning under the earlier Act were to function till the 25th of November, 1961 and it is understood that their life has been further extended by an ordinance for another period of six months. Moreover, the second proviso to section 47 laid down that anything done or any action taken under the Act so repealed shall be deemed to have been done or taken under the new Act and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under the new Act. This means that the notified market area pertaining to each market committee as notified under section 4 of the earlier Act, i.e., Punjab Act No. 5 of 1939, would still remain as the area of their jurisdiction, and in fact it would be absurd to argue that though the market committees constituted under the earlier Act continued to function under the last proviso to section 47 they, function in vacuum and without any area pertaining to them.

The next argument which was put forward by Mr. Anand Swaroop as well as Mr. Bhagirath Dass was that the words "market committees in the block" as given in sub-clause (iii) should be interpreted to mean "market committees functioning in the block" and further that a market committee must be deemed to function at any place where its producer members resided even though that place was outside the notified market area for the particular committee. Support for this argument was in the first place sought to

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be derived from the use of the phrase "market committee functioning in that block" in rule 30 and "market committees functioning within a block" in rule 31 of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961, as published in notification No. 788-LGR-61/27799, dated 6th July, 1961, of the Punjab Government, Development and Panchayats Department. Rule 30 relates to the preparation of electoral rolls and rule 31 to notice of meeting for election with reference to the representation of market committees on the Panchayat Samitis. The use of these phrases in the rules cannot, however, help in construing the statute. We cannot insert the word "functioning" between the words "market committees" and "in the block" in sub-clause (iii) merely because this word is used in the rules. Moreover, I do not see how a market committee can possibly be said to function outside its notified area merely because some persons who reside outside the notified area bring their produce to that market. It is possible that on account of honesty of dealing or favourable rates a grower may take his produce to a market situated at a greater distance than one situated near his own village or may choose to take his produce to different markets from time to time. The area in which a market committee can be said to function cannot vary from time to time and according to circumstances or option of the growers who choose to utilise it for the sale of their produce. Reference was made by the learned counsel for the petitioners to section 21 of Act No. 5 of 1939 which lays down the purposes for which the market committee funds may be expended, and it was pointed out that under clause (vii) of that section the market committee fund may be expended on the collection and dissemination of information regarding all matters relating to crop statistics and marketing and also propaganda in favour of agricultural improvement and thrift, and it was said that statistics may be collected and propaganda may be made by market committees in villages outside its notified area. Even so, it would hardly be correct to say that a market committee can function outside its notified area, because under section 9 it is the duty of the market committee to enforce the provisions of the Act, i.e., Act No. 5 of 1939, and the rules and by-laws made thereunder in the notified

market area, and it could not enforce those provisions outside the notified area.

Next, in Civil Writ No. 1312 of 1961, it was pointed out,—*vide* paragraph 9 that under rule 39 of the Punjab Panchayat Samiti (Primary Members) Election Rules, 1961, the Deputy Commissioner, Hissar, sought clarification from the Government about electing representatives of market committees to the Panchayat Samitis in the District of Hissar, and the Government of Punjab interpreted the rules as under, that “even the market committees whose notified market areas do not extend to the block areas or are confined to the municipal limits and such committees consist of producer members residing within the jurisdiction of the Panchayat Samitis (i.e., blocks) may send their representatives to the Panchayat Samitis as these market committees may also be said to function in the blocks in the sense that the produce of such block areas is mainly received in the notified market area of these market committees.” This Court, however, cannot be guided in the interpretation of a statute by the opinion of any officer of the Punjab Government. As pointed out above, the Punjab State has not chosen to state in Court what position it takes up as regards the interpretation of the relevant statutory provisions.

Lastly, Mr. Anand Swaroop pointed out that according to the proviso to section 4 of the Act, a Panchayat Samiti shall not have authority over any part of the tahsil or block as is for the time being included in a Municipality or a Cantonment or a Notified Area, and he further pointed out that the notified areas of most or many market committees constituted under Act No. 5 of 1939 comprise of Municipalities or Cantonments or Notified Areas, and thereby representation to most of such market committees would be denied on Panchayat Samitis, which would be against the objects of the Act. Section 4 is, however, not of any relevance for the purpose of interpreting the phrase “market committees in the block” as used in sub-clause (iii) of clause (a) of sub-section (2) of section 5 of the Act. It has been stated in the course of arguments that steps are now being taken to notify such areas for market committees as will be coincident with the area as would fall within the block area

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of a particular Panchayat Samiti, and hence the difficulty in interpretation which has been felt in these writ petitions will not occur in future. The golden rule of interpretation of a statute is that the words of a statute must *prima facie* be given their ordinary meaning (See Maxwell on the Interpretation of Statutes, 10th edition, page 7). After considering the arguments of the learned counsel for the parties, I am of the view that the words "market committees in the block" as used in sub-clause (iii) under consideration should be given the natural and grammatical meaning as "market committees situated within the block" in the sense that either the whole or part of the notified area lies within that block of the Panchayat Samiti to which election is to be made. It is not possible to treat the words "in the block" as surplusage, as Mr. Anand Swaroop urged. The natural and grammatical interpretation does not lead to any absurdity which would suggest that the legislature intended any different interpretation.

The result, therefore, is that the Market Committee, Sirsa, Market Committee, Ding, and the Market Committee, Hissar, were not entitled to have any representation, respectively, in the Rania Shadow Block, the Fatehabad Block and the Barwala Block and each of the three petitions are dismissed, but inasmuch as even the authorities were in doubt as to the interpretation of the relevant statutory provisions, I would leave the parties to bear their own costs in each of these petitions.

Dua, J.

INDER DEV DUA, J.—I agree.

**B.R.T.**