

Jiwa Ram vs Panchaiti Adalat And Ors. on 7 December, 1951

Equivalent citations: AIR1952ALL510, AIR 1952 ALLAHABAD 510

JUDGMENT

Agarwala, J.

1. This is an application under Articles 226 and 227 of the Constitution praying that the order of the Panchayati Adalat of Gursena, dated 27-5-1950, sentencing the applicant under Sections 323 and 356, Penal Code to a fine of Rs. 5 on each court be quashed.

2. The facts mentioned in the affidavit of the applicant have not been controverted by the other side. Chhatar Singh, opposite party 2, filed a complaint against the applicant and three others in the Panchayati Adalat, Gursena, under Sections 328 and 356, Penal Code. The Panchayati Adalat consisted of five members. These five members issued summons against the applicant. Later on, in pursuance of an order of the Sub-Divisional Magistrate in place of one of the panches belonging to village Gursena, another panch was substituted. The case was heard by five panches, but the judgment was delivered by three members only. One of the questions raised in the case is that the bench which decided the case consisting, as it did, only of three panches was not validly constituted and its order was without jurisdiction. Under Section 49, U.P. Panchayat Raj Act, a bench of five panches has to be constituted to hear a case under the Act. These five panches are to be selected by the Sarpanch out of a panel of panches elected under Section 43 by the Gaon Sabbas in a circle. When the case was taken cognizance of by five panches, as it should have been under Section 49 of the Act, the decision of the case by three panches only was prima facie contrary to the provisions of Section 49.

3. Our attention has been drawn to Rule 87A of the Rules framed under the Act. That rule provides that three panches of Panchayati Adalat shall constitute the quorum for any bench. If this rule is valid the decision of the Panchayati Adalat by three panches would appear to be quite in order. The question, however, is whether this rule is valid. The Rules are framed by the Provincial Government under the power conferred upon it by Section 110 of the Act. The Provincial Government is authorised to make rules "consistent with the Act" and 'to carry out the provisions of the Act.' Sub-section (2) of that section mentions particular matters for which the Rules can provide. Clause (ii) of that sub-section speaks of the "establishment of Gaon Sabha, Gaon Panchayat and Adalati Panchayats." This clause, however, does not deal with the quorum of a Panchayati Adalat. There is no other clause dealing with that matter. If the Act itself had not provided for the constitution of a bench to hear cases, the constitution of benches could be left to the rule making authority, and in that case a quorum of panches for hearing a case could be fixed under the rules. But when the Act itself provides for the constitution of a bench of a Panchayati Adalat for the trial of judicial matters, no rule can be framed which is contrary to the provisions of the Act. Under Section 49, Panchayat Raj Act, a bench must consist of five panches ; the rule fixing a quorum for the bench is inconsistent

with the main Act. We are unable to hold that the Act intended that the rule making authority should have the power of fixing a quorum for the Panchayat Bench.

A bench of a Panchayati Adalat is a Court constituted for the trial of judicial matters civil, criminal or revenue. It is not a non-judicial body for which a quorum may be fixed. It is one of the fundamental principles of the trial of cases in Courts of law that all the judges constituting a bench should hear a case and decide it. If the constitution of a bench is fixed by the Act at five panches, it necessarily follows that all the five panches should take part in the trial and decision of the case. The principles applicable to meetings of non-judicial bodies, like the Legislature executive and business companies or societies, do not apply to Courts. We do not, therefore, think that the Provincial Government had any authority under Section 110 to make a rule fixing a quorum for the benches of Panchayati Adalats constituted under Section 49 of the Act.

4. The result, therefore, is that in our opinion the bench which decided the case was not properly constituted and the order passed by it was without jurisdiction. We, therefore, order that a direction shall issue quashing the order of the Panchayati Adalat.