

Kameshwara Singh vs Bharat Koeri And Anr. on 29 October, 1952

Equivalent citations: AIR1953ALL180, AIR 1953 ALLAHABAD 180

ORDER

Desai, J.

1. This is an application under Article 227 of the Constitution for the setting aside of an order passed by the Sub-Divisional Officer of Banaras in revision against an order of a Panchayati Adalat in a case for correction of papers. The applicant started proceedings under the Land Revenue Act for correction of village records in a Tahsildar's Court. The matter being a contested one went before the Sub-Divisional Officer who examined some witnesses and then transferred the case to the Panchayati Adalat of Nagwa. The case was heard by five Panchas (including the Sarpanch) in the Panchayati Adalat. The Panchayati Adalat fixed 25th February 1951, for judgment. On that date all the five Panchas were present and the Sarpanch invited opinions of the four Panchas. Two of them, namely Sarwashri Baijnath Prasad and Nageshwar Ram did not give their opinions while the other two (Sarvashri Alopi Nath and Sri Nath Singh) gave their opinion in favour of the applicant. The Sarpanch agreed with the opinion of the latter two Panchas and wrote out the judgment which was signed by Sarvasri Alopi Nath and Sri Nath Singh. The other two Panchas, who belong to village Bhagwanpur where the opposite party resides, did not sign the judgment, but on 4th March 1951, they wrote a dissenting judgment and handed it over to the Sarpanch who kept it on the record. The opposite party applied in revision against the majority judgment of the Panchayati Adalat and the Sub-Divisional Officer allowed the revision and set aside the judgment of the Panchayati Adalat as null and void. It is contended by the applicant that the order of the Sub-Divisional Officer was null and void.

2. Under Section 85 of the Panchayat Raj Act, if there has been a miscarriage of justice in any proceeding under the Land Revenue Act the Sub-Divisional Officer may, for reasons to be recorded in writing, quash the order passed by the Panchayati Adalat. It is further laid down in the section that, except as aforesaid, an order passed by a Panchayati Adalat shall be final and not be open to appeal or revision in any court. This is the only provision under which a Sub-Divisional Officer can quash an order of a Panchayati Adalat in a proceeding under the Land Revenue Act. The proceeding started by the applicant for the correction of village records was a proceeding under the Land Revenue Act. Therefore, the Sub-Divisional Officer could quash the order passed by the Panchayati Adalat only on the ground that there had been a miscarriage of justice. He had no jurisdiction to quash it on any other ground; for instance, he had no jurisdiction to quash it on the ground of any illegality or irregularity not causing a miscarriage of justice. The Sub-Divisional Officer quashed the

order not on the ground of any miscarriage of justice but simply on the ground that all the five Panchas had not discussed the merits of the case with one another and that two of them had not given their opinions. The Sub-Divisional Officer did not at all consider whether there resulted any miscarriage of justice.

Though he quashed the order on the ground that all the Panchas had not discussed the matter with one another and that two of them had not given their opinions, he did not discuss whether, or hold that, it amounted to a miscarriage of justice. Apparently whether the case resulted in a miscarriage of justice or not did not enter into the mind of the Sub-Divisional Officer at all and he quashed the order simply on the ground of a supposed irregularity for illegality. Clearly he acted without jurisdiction in quashing the order. The Panchas were not required by any law to hold a discussion among themselves about the judgment to be passed. The case was heard by all and at the end the Sarpanch had to take the opinions of the other four Panchas and that was done. If two of the Panchas did not give their opinions, it did not matter, because the passing of the judgment could not be stayed on that ground. It is to be noted, that those Panchas did not say that they wanted further time to consider over the matter; they simply refused to give their opinions. By refusing to give their opinions they could not prevent the judgment being passed in the case and the remaining Panchas had every right to pass a judgment as they did. The Sub-Divisional Officer thought, without any justification, that all the five Panchas should have discussed the case and then the judgment should have been written out. The other two Panchas were not bound to write out a dissenting judgment. It was at their option to write it out. They could write it out immediately after the majority judgment was written. If they could write it out, say two minutes later, they could also write it out a week later. In any case, the delay with which they wrote it out would have no effect on the validity of the majority judgment. It was not at all essential that the two judgments were written on the same day.

3. I find that there was no miscarriage of justice and that the Sub-Divisional Officer has not found out that there was any miscarriage of justice. His order of 19th April 1952, was illegal.

4. In reply to this application it was urged on behalf of the opposite party that even if the order of the Sub-Divisional Officer was illegal this Court should not, in exercise of its powers of superintendence, set it aside because, (1) the order of the Panchayati Adalat itself was without jurisdiction, and no injustice was caused to the applicant by its being set aside even on an erroneous ground, (2) alternative adequate remedies were open to the applicant and (3) no question of jurisdiction is involved in the order of the Sub-Divisional Officer.

5. Under Section 49 of the Panchayat Raj Act the Sarpanch has to form a Bench of five Panchas for the trial of every proceeding and every Bench has to include one Panch who resides in the area of the Gaon Sabha in which the plaintiff resides and three Panchas who reside in the area of the Gaon Sabha in which neither party resides. The applicant is a resident of Darbhanga in Bihar State. The Panchayat Raj Act cannot and does not apply in Bihar State. Therefore, it was not possible for the Sarpanch to form a Bench as laid down under Section 49. To meet such contingencies there is a provision in Section 49 empowering the State Government to prescribe the constitution of Special Benches for determining disputes arising between parties of different circles. Rule 84 deals with constitution of special Benches. According to it when a proceeding is between parties, any one of

which is a resident of a place not governed by the Act, the Sub-Divisional Officer should constitute a special Bench. So the proceeding started by the applicant ought to have been heard by a Special Bench constituted by the Sub-Divisional Officer under Rule 84 read with Section 49(4). But this was not done. No special Bench was constituted and the proceeding was disposed of by an ordinary Bench constituted by the Sarpanch purporting to act under Section 49. The five Panchas who disposed of the proceeding had no jurisdiction to dispose it of. They had no more power than any other five men in the country to dispose of the case and pass the order. Nobody but a Special Bench constituted by the Sub-Divisional Officer had jurisdiction to dispose it of. I, therefore, agree with Mr. Dwivedi that the order of the Panchayati Adalat itself was without jurisdiction and of no effect.

6. The opposite party pleaded before the Sub-Divisional Officer, during the hearing of the revision application, that the order of the Panchayati Adalat was null and void on account of the above defect of jurisdiction but curiously enough the Sub-Divisional Officer paid no attention to that plea. As regards the Panchayati Adalat itself neither the applicant nor the opposite party questioned its jurisdiction to dispose of the proceedings. Mr. A.P. Pandey urged that when the opposite party failed to plead before the Panchayati Adalat that it had no jurisdiction to dispose of the proceedings he should not be heard now. I consider that the opposite party is not debarred from raising the plea here. The Panchayati Adalat which disposed of the proceedings had absolutely no jurisdiction and no jurisdiction could be conferred upon it by consent of the parties. It is not that it had jurisdiction but it committed an illegality in the exercise of its jurisdiction. The fact is that the five Panchas had no jurisdiction to take cognizance of the proceedings at all. The cognizance of the proceedings could be taken only by a special Bench constituted by the Sub-Divisional Officer. The initial lack of jurisdiction could not be made good by either party's failure to challenge its jurisdiction in time.

7. I find that the order of the Panchayati Adalat was null and void for want of jurisdiction. Consequently it deserved to be quashed by the Sub-Divisional Officer. When it was quashed by the Sub-Divisional Officer, though on another and erroneous ground, it would not be proper for this Court, specially when acting in the exercise of its power of superintendence, to restore it. Just as a respondent in an appeal can support the order under appeal on other grounds so also can the opposite party support the order of the Sub-Divisional Officer on other grounds.

8. I also agree with Mr. Dwivedi that other adequate remedies are open to the applicant. He can file a regular suit for declaration. The same dispute is proceeding before a Magistrate under Section 145, Cr. P. C. and the applicant can have his remedy from the Magistrate's Court. Moreover, as the order of the Panchayati Adalat has been quashed, it is open to the applicant to file a regular proceeding under the Land Revenue Act in the Court of the Sub-Divisional Officer. When these remedies are open I do not think I should act under Article 227 of the Constitution.

9. In the result, I dismiss the application.

In view of the facts stated above I make no order about costs.