

Harihar Tewari And Ors. vs State And Ors. on 11 December, 1951

Equivalent citations: AIR1952ALL489, AIR 1952 ALLAHABAD 489

JUDGMENT

Sapru, J.

1. This is an application under Articles 226 and 227 of the Constitution of India.
2. The applicants, who have been convicted by a Panchayati Adalat under Sections 426, 447 and 277, Penal Code, pray that this Court may be pleased to quash the proceedings of the Panchayati Adalat and the sentence passed by it on them.
3. The main grievance of the applicants is that the trial took place before a bench of which only the President Shri Sarju Prasad Misra was a member of the Gaon Sabha in the jurisdiction of which both the complainant and the accused resided. His contention is that, according to Section 49 (2), U. P. Panchayati Raj Act, two of the members should have been from the area where the complainant and the accused resided. The allegation that the bench was improperly constituted is denied by the complainants on whose behalf a counter-affidavit has been filed in this case. The objection to the illegal constitution of the bench was neither taken at any stage before the Panchayati Adalat nor before the Sub-Divisional Magistrate. In these circumstances, we are bound to place reliance upon what the complainants have stated, namely, that the bench was properly constituted. Had there been any defect in the constitution of the bench, it is only natural to think that the applicants would have raised an objection, at some stage or the other before the Panchayati Adalat or the Sub-Divisional Magistrate. I must not be understood to agree with the proposition that it is open to the applicants to waive any irregularity or illegality in the constitution of the bench. It is unnecessary for me to decide this point as on the facts established in this case it does not arise.
4. A second ground which has, however, not been pressed before us that the applicants were not afforded any opportunity to produce certain pieces of evidence. The complainant Virpratap states that, to the best of his knowledge, they never expressed any desire of filing the papers referred to in para. 10 of the affidavit. There is nothing to support the contention of the applicants that they wanted to produce evidence which was unjustly refused by the Panchayati Adalat.
5. For these reasons we hold that there is no force in this application. It is accordingly dismissed.

Agarwala, J.

6. I wish to add a few remarks about the objection that the bench was not properly constituted because the bench did not include one panch from the area in which the complainant resided. It does not appear that any objection to this effect was taken before the bench of the Panchayati Adalat which tried the case. If the applicants had any grievance on this score, they could have moved the Sub-Divisional Magistrate under Section 85, U. P. Panchayat Raj Act for cancellation of the jurisdiction of the Panchayati Adalat even during the pendency of the case. They did not do so. After the decision of the case also they do not appear to have taken any objection to this effect before the Sub-Divisional Magistrate. In the circumstances it may be assumed that either the allegation of the applicants that the bench did not include one panch from the area in which the complainant resided is untrue (as my learned brother has done in his judgment) or that the applicants waived the irregularity or illegality in the constitution of the bench. In the affidavit of the opposite party, the applicant's allegation has not been specifically denied.

7. Section 49 no doubt is worded in mandatory language. It provides that every bench of the Panchayati Adalat shall include one panch who resides in the area of the Gaon Sabha in which the defendant or the accused resides and one panch from the area of the Gaon Sabha in which the plaintiff or the complainant resides. Admittedly, out of the panches who tried the case one panch was a resident of the place where both the applicants and the complainant resided. Therefore so far as the provision relating to one panch residing in the area in which the accused applicants resided is concerned, it was satisfied. The only provision which was not satisfied was which provided that there should be one panch from the area of the Gaon Sabha in which the complainant opposite party resided. The constitution of Panchayati Adalats and the trial of cases by it is in pursuance of the policy of the State to make village Communities autonomous and self-sufficient and to make the trial of petty cases a domestic concern of the village community. The provision for including in the bench of a panchayati adalat persons who reside in the area in which the complainant and the accused reside is intended for the benefit of the complainant and the accused, as the case may be. Panches of their locality are expected to have intimate knowledge about the persons of that locality and it is expected that they will be able to help in the decision of the issues involved in a case with the local knowledge possessed by them. The provision under consideration however does not refer to the capacity of a panch for being a member of a bench and therefore has no effect upon his jurisdiction over the person of the accused or the subject-matter of the case, and, therefore, cannot render the trial a nullity.

8. It is said that consent cannot confer jurisdiction. But this principle has exceptions. It is well known that the exercise of jurisdiction can be waived though the existence of jurisdiction cannot be waived; *Ledgard v. Buli*, 9 ALL. 191, (P. C.) In my opinion, the provision like the one under consideration which is intended solely for the benefit of one of the parties is not a provision which affects the existence of jurisdiction; it merely affects its exercise and can be waived. It was held by us in another case that a contravention of the provision of Section 49 is a defect of jurisdiction, but, in that case, we did not consider the effect of waiver which arises in the present case. In my judgment where the accused waives an objection of this kind and submits to the jurisdiction of the bench as constituted he cannot be allowed to raise the point for the first time before the High Court in an application under Article 226 of the Constitution.

9. I concur in the order proposed.