

Kesho Datt And Ors. vs Panchayati Adalat And Ors. on 18 August, 1953

Equivalent citations: AIR1954ALL84, AIR 1954 ALLAHABAD 84

JUDGMENT

Malik, C.J.

1. This application under Article 226 of the Constitution was referred to a large Bench as the learned Judges wanted an authoritative decision on the point, whether a Panchayati Adalat can under the U. P. Panchayat Raj Act (Act 26 of 1947) appoint a commissioner to make a local investigation and make a report?

2. The facts, so far as can be ascertained from the papers on the record, are that one Shiam Lal filed a complaint against four persons that they had committed an offence under Section 447, Penal Code, inasmuch as they had broken down a mendh which separated the field of the complainant from their field and had planted mustard seed crop on the land belonging to the complainant. The Panchayati Adalat Bench issued a commission to Sampat Singh the Sarpanch and one Roshan Singh, who though on the panel of panches was not a member of this Bench of the Panchayati Adalat, to make a report as regards the condition of the field after a local inspection. The two commissioners went to the spot and made a report to the effect that the mendh separating the two fields appeared to have been recently dug up and freshly planted with mustard seed, that the mustard plants on the portion where the 'mendh' had existed had not attained the height of the plants on the field of the complainant. The Panchayati Adalat took this report into consideration, along with the other evidence in the case, and recorded a finding that the accused were guilty under Section 447, Penal Code, and sentenced them to pay a fine.

3. A revision was filed against that order before the Sub-Divisional Magistrate, in which the decision of the Panchayati Adalat was attacked on several grounds, but no point was made of the fact that the Panchayati Adalat had issued a commission. The Sub-Divisional Magistrate went into the points raised before him and held that there was no miscarriage of justice and dismissed the revision.

4. Thereafter a writ petition was filed in this Court under Article 226 and in the affidavit in support of the application the point was raised:

"That the Panchayati Adalat (Opposite Party No. 1) issued a commission consisting of Sampat Singh Sarpanch and an outsider Roshan Singh who made a local inquiry and in convicting the applicants the Opposite party No. 1 (Adalat Panchayat) have relied upon the report of the commission. All the members of the Panchayati Adalat did not make the local inquiry."

Learned counsel for the applicants, on a question from the Court, made it clear that it is not his case that the Panchayati Adalat asked the commissioners Sampat Singh and Roshan Singh to decide the case or any part thereof on behalf of the Panchayati Adalat, but his argument was that Panchayati Adalat has no right to issue a commission for any purpose though a court of law may be entitled to issue a commission for local inspection or for ascertainment of facts and direct the commissioner to make a report.

5. The whole argument is based on the language of Section 83 Panchayat Raj Act and it is said that Section 83 clearly indicates that the Panchayati Adalat has no power to issue a commission for the purpose of ascertaining facts and that if any local inspection is necessary, all the members of the bench must make the local inspection themselves and not have the work done through a commissioner.

The relevant portion of Section 83, relied on by learned counsel for the applicants, is as follows:

"..... It shall be the duty of the Panchayati Adalat to ascertain the facts of every suit, case or proceeding before it by every lawful means in its power It may make local investigation in the village to which the dispute relates It shall follow the procedure prescribed by or under this Act."

Learned counsel's contention is that the words that the Panchayati Adalat has been enjoined to ascertain the facts of every suit, case or proceeding before it by every lawful means in its power, mean that the panchayati Adalat has itself to do all that may be necessary to ascertain the facts and the Adalat has not been given any power to have facts ascertained through any other agency. Reliance was also placed on the words:

"It may make local investigation in the village to which the dispute relates,"

and it was argued that the local investigation if any has. therefore, to be made by the Panchayati Adalat itself. And lastly, reliance was placed on the words, "It shall follow the procedure prescribed by or under this Act,"

and the argument is that it can only do what the Act has enjoined and nothing else.

6. In interpreting Section 83, however, we have to bear in mind that the Panchayat Raj Act, as its preamble shows, was enacted to establish and develop local self-government in the rural areas and to make better provision for village administration and development. The idea underlying the Act is that the village people should in all minor cases be able to settle their own disputes through a local tribunal which is expected to be in touch with local conditions and without any elaborate or complicated procedure. There is, therefore, a bar to a lawyer appearing before a Panchayati Adalat (Vide Section 80), and Section 83 provides that the Code of Civil Procedure, the Code of Criminal Procedure, the Indian Evidence Act and the Indian Limitation Act shall not apply to any suit, case or proceeding before a Panchayati Adalat except to the extent that it may have been made applicable by the Panchayati Raj Act. No elaborate procedure, like the procedure given in the Criminal Procedure

Code and the Civil Procedure Code, for trial of cases is laid down in the Panchayat Raj Act.

There are, however, certain sections which give certain directions as to how the work is to be done; for example, Section 75 provides that a suit, case or proceeding may be instituted before the Sar-panch of the Panchayati Adalat and in his absence before some other Panch appointed in that behalf; the Court-Fees Act is not applicable and the petitioner may orally or in writing set out what relief he requires and on what terms. Section 76 specifies that where an application is not in writing, the person receiving the particulars has to make a note in writing and then fix a date. Section 78 gives the Panchayati Adalat the power to dismiss a case in the absence of the plaintiff or the complainant or the petitioner, and also gives the power to proceed 'ex parte' against the other side.

Certain rules have been framed which also contain certain directions, for example Rule 95 provides in what order the evidence is to be recorded, etc. Rule 97 directs that the Panchayati Adalat is to make a summary inquiry and in cases involving intricate questions of title and in case of any doubt or difficulty it may refer the matter to the Sub-Divisional Officer. Rule 99 provides for examination of women on commission and requires that the Sarpanch or a Panch nominated by him shall record such evidence. Rule 127 makes the entry of the Adalat- or any member thereof, upon any land or building for ascertaining facts relevant to the proper disposal of the case after giving notice to the occupier of the land or the building between sunrise and sunset legal. These are, therefore, specific directions in certain specific matters.

But there are no elaborate directions, as are contained in the Civil Procedure Code or the Criminal Procedure Code, for the conduct of a case in a court of law. On the other hand, Section 83 makes it legal for the Panchayati Adalat to go to the village and make local investigation into the facts for ascertaining the truth, or falsity of a case which a court either under the Civil Procedure Code or the Criminal Procedure Code is not entitled to do, as it has to decide the case on the evidence on the record.

7. In the referring order of one of the learned Judges, reliance was placed on the word 'It' in Section 83 and the learned Judge seems to have thought that the word "It" refers only to the Panchayati Adalat and, therefore, the Panchayati Adalat was authorised to make local investigations in the village to which the dispute relates but had no power to delegate that function to a commissioner appointed by it. It was probably not brought to the notice of the learned Judge that the local investigation contemplated under this section is not the same thing as the issue of a commission for making a report as to some local condition. This provision in Section 83 gives the Panchayati Adalat the right to go to the spot, make local investigation as to the truth or falsity of a case and presumably decide the case on the result of such investigation and such other material that may be placed before it. We have already mentioned that in this case the learned counsel for the applicants has admitted that the Panchayati Adalat did not leave the decision of the case or any part thereof to the commissioners appointed by it. The Panchayati Adalat had merely appointed the commission for ascertaining certain facts which were considered relevant to the decision of the case pending before it and the report was merely a piece of evidence in the case.

8. We do not think, therefore, that the words "It may make local investigation in the village to which the dispute relates" in Section 83 help either party in the decision of the point before us. The provisions of Section 83 clearly indicate that the Legislature did not intend that the strict rules of procedure laid down for the guidance of courts should be followed by a Panchayati Adalat in the decision of the cases before it.

9. The other portion of the section, on which reliance is placed, viz., "by every lawful means in its power", to our minds, does not help the applicants. Learned counsel has urged that these words clearly indicate that the Panchayati Adalat can only act in accordance with the rules of procedure laid down in the Act itself. All that was probably intended to be conveyed was that a Panchayati Adalat can ascertain the facts of every suit, case or proceeding before it and in ascertaining the facts it is open to it to do whatever is legal or lawful, that is. it cannot take recourse to any unlawful means for the purpose of ascertaining the truth.

10. The only other portion relied on are the words:

"It shall follow the procedure prescribed by or under this Act."

There can be no doubt or difficulty that so far as the Act or the rules thereunder lay down any procedure, the Panchavati Adalat is bound by them and it has to follow that procedure. But we have already said that there being no detailed instructions issued to the Panchayati Adalat as to how the trial or the hearing of a case is to be conducted and the Civil Procedure Code, the Criminal Procedure Code, the Indian Evidence Act, the Limitation Act and the Court-fees Act having all been made inapplicable, it is open to the Panchayati Adalat to have recourse to any procedure that may be lawful, so long as it cannot be made out that by reason of the procedure followed by the Panchayati Adalat there has been a miscarriage of justice. If that result follows then the Sub-Divisional Magistrate or the Munsif or the Sub-Divisional Officer, as the case may be, has to quash the decree or order passed by the Panchayati Adalat and quash the jurisdiction. The case becomes thereafter cognisable in an ordinary court of law in accordance with the provisions of Sub-sections (2), , (3) and (4) of Section 85.

11. Only four cases have been cited before us, two of which are reported and the other two are unreported decisions. In the first case, -- 'Sant Prasad v. State', AIR 1952 All 785 (A), Bhargaya J. held that the Panchayati Adalat had no jurisdiction to have local investigation made by others.

According to the learned Judge, the local investigation in the case was not made by the Panchayati Adalat itself, but it was made by the Panchayati Adalat in collaboration with certain outsiders. From other parts of the judgment, it appears that these outsiders had practically been co-opted as members of the Panchayati Adalat and they had also signed the judgment. As we have already said, the local investigation mentioned in Section 83 in the village where the dispute arose for the purpose of ascertaining the truth or falsity of the case of one party or the other can be made by the Panchayati Adalat as provided for In the Act.

But there is nothing in Section 83 which requires that evidence of facts relevant to the inquiry should be ascertained by the Panchayati Adalat itself and that it cannot have facts ascertained, through commissioners appointed by it for the I purpose; such commissioners would, in a case before the civil or the criminal court, be liable to be cross-examined on the report made by them, the court will then be able to judge the evidentiary value of the report and either accept it or reject it. So far, as we can see, there is nothing in the Act which makes the procedure adopted by the Panchayati Adalat illegal and the appointment of a commissioner to make a local inspection does not appear to be against rules of natural justice.

It must in this connection be remembered that the Panchayat Raj Act was intended to administer rough and ready justice, if we may use that phrase, and unless it appears that there has been clear miscarriage of justice this Court should not interfere under Article 226 on a technical objection when the Act itself seems to rule out all technicalities.

12. The next case is also a reported decision,

-- 'Girja Prasad v. Zalim Singh', AIR 1953 All 340 (B) in which Agarwala J. distinguished the case of -- 'Sant Prasad v. State (A)' (ante) and pointed out that in that case the decision of the case itself had been left to the outsiders who were associated with the members of the Panchayati Adalat for the decision of the case. The learned Judge was of the opinion that there was nothing in the Panchayat Raj Act which disentitled a Panchayati Adalat from appointing commissioners to make a local inspection and report.

This decision was followed by another learned single Judge of this Court in -- 'Sm. Champa v. State', Criminal Misc. Writ Case No. 104 of 1953, D/- 6-8-1953 (All) (C). The learned Judge held that in the Code of Criminal Procedure a Magistrate is authorised to have an inquiry made by the police or by another Magistrate after a complaint has been filed and there was nothing in the Panchayat Raj Act which disentitled a Panchayati Adalat from issuing a commission and then taking the report of the commissioner into consideration along with other evidence on the record for the decision of the case. In -- 'Ram Lal v. Panchayati Adalat Karav', Criminal Misc. Case No. 907 of 1952, D/- 1-4-1953 (All) (D), however, the decision of Agarwala J. was not cited. The learned Judge followed the decision in -- 'Sant Prasad's case (A)' (supra).

13. After having considered the cases and the arguments advanced by learned counsel we are of the opinion that it is not illegal for a Pan- chayati Adalat to issue a commission for the purpose for which commissions are issued by civil or criminal courts and to take the report of the com-

missioner into consideration along with other matters before it for the decision of the case or the proceeding pending before it.

14. This application has, therefore, no force and is dismissed with costs.