

Badri Prasad And Ors. vs Shri Nath And Ors. on 14 August, 1952

Equivalent citations: AIR1953ALL323, AIR 1953 ALLAHABAD 323

JUDGMENT

Malik, C.J.

1. The Panchayati Adalat disposed of this case by an order passed before June 1950. There was a revision filed in the Court of the Sub-Divisional Magistrate, Phulpur, who on 3-6-1952, came to the conclusion that as only four Panches had decided the case and appended their signatures on the order, in place of five, the judgment of the Panchayati Adalat was invalid in view of Section 49, Panchayat Raj Act. Learned counsel has drawn our attention to Section 77A of the Amending Act which lays down that it was not necessary for all the five Panches appointed to a Bench constituted under Section 49 of the Act to be present at all the sittings nor was it necessary for all the five Panches to sign the judgment before it was delivered by the Panchayati Adalat. This amending section has been given retrospective effect, but it cannot reopen orders or decisions which had already been made. The Sub-Divisional Magistrate had disposed of the case on 3-6-1952, before the amendment and his order was perfectly in accordance with the law then in force.

2. Learned counsel has drawn our attention to Rule 62A of the rules framed under the Panchayat Raj Act and has urged that that rule was not brought to the notice of the Bench deciding the case of *Jiwa Ram v. Panchaiti Adalat*, 1952 ALL, L. J. 98 and that even before the amendment it was not necessary for all the five Panches to attend all the sittings or to sign the judgment. Section 49 fixes the quorum required for a Panchaiti Adalat and the State Government cannot amend the section by making a rule which was not in accordance with the provisions of the Act. Before the amendment of the Panchayat Raj Act, the decision had to be by a Bench of five Panches. In *Jiwa Ram's* case it was held that when the Act had fixed the quorum at five, all the five Panches forming the Bench must take part in the trial and the decision of the case. The judgment of the Sub-Divisional Magistrate, having been delivered before the amendment, was perfectly correct. The subsequent amendment of the Act cannot affect that decision.

3. This application has no force and is dismissed.