

Ranjit Singh v. Director of Panchayats Punjab etc. (Pandit J.)

earlier order permitting the despatch of a sample from the bulk produced before him to the Public Analyst of Calcutta. The two inconsistent orders passed by the Magistrate do not reflect well on him as well as the prosecution. The report, as already stated, was before him and it cannot be believed that the prosecution did not point out the same to him or he was in any way unaware of it. The request of the accused was completely different. He did not want the entire bulk to be examined, but only a sample taken out of the same and that too by the Public Analyst of Calcutta. The Magistrate, after hearing the arguments, allowed this prayer presumably because he wanted to have the opinion of another Expert with regard to the nature of the article recovered from the accused. The prosecution must have been aware of the judgment of this Court in *Karnail Singh's case* (1) (supra), but the same was not produced at that time. Reliance on this judgment was also misconceived. Shamsheer Bahadur, J., has only observed that it was not necessary to get the whole of the bulk examined when a sample taken from the same had already been examined by the Chemical Examiner. The accused, as already observed, only wanted another sample to be tested chemically by the Public Analyst of Calcutta. In such a situation, the judgment in *Karnail Singh's case* (1), could not be pressed into service.

(4) For the foregoing reasons, the revision petition is allowed and the trial Magistrate is directed to adhere to his first order of 30th December, 1968. The report of the Public Analyst from Calcutta must be obtained without any further delay. The accused is ordered to appear before the trial Magistrate on 8th of October, 1970, and the office must also send back the records of the case without any loss of time.

B. S. G.

REVISIONAL CIVIL

Before P. C. Pandit, J.

RANJIT SINGH,—Petitioner

versus

DIRECTOR OF PANCHAYATS, PUNJAB, ETC.,—Respondents.

Civil Revision No. 1089 of 1968.

September 24, 1970.

Punjab Gram Panchayat Act (IV of 1953)—Sections 21, 23 and 97—Power to act under section 97—Whether extends to orders passed in judicial proceedings—Proceedings under sections 21 and 23—Whether judicial—Director of

Panchayats—Whether can exercise the power suo motu and without notice to the affected party—Gram Panchayat imposing fine and directing removal of encroachment—Compliance of the provisions of sections 21 and 23—Whether essential.

Held, that a perusal of sub-section (1) of section 97 of the Gram Panchayat Act, 1952, shows that the Deputy Commissioner or the Sub-Divisional Officer is entitled to suspend the execution of any resolution or order of the Gram Panchayat, but only if it is not passed in judicial proceedings. Under sub-section (2), if the Deputy Commissioner or the Sub-Divisional Officer decides to take action under sub-section (1), he shall immediately send a copy of his order along with his reasons for making it, together with such explanation as the Gram Panchayat might like to offer, to the Director, who would thereupon confirm, modify or rescind the said order. Hence action under section 97 of the Act can be taken by the Officers concerned only if the resolution or the order of the Gram Panchayat is not passed in judicial proceedings. The proceedings of the Gram Panchayat under sections 21 and 23 of the Act, are judicial. (Para 4).

Held, that the Director of Panchayats while acting under section 97 of the Act cannot take action *suo motu*, nor can he pass any order detrimental to a person without hearing him. (Para 6).

Held, that the Gram Panchayat cannot impose fine and direct the removal of encroachment without complying with the provisions of sections 21 and 23 of the Act. Under section 21, it has first to make a conditional order requiring the person to remove any encroachment on a public street within a fixed time. If he objects to do so, he has to appear before the Panchayat at a time and place to be fixed by that order and have it set aside or modified. It is only if he does not perform such an act or appear to show cause that the conditional order will be made absolute. If, however, he appears and shows cause against the order, the Gram Panchayat will then take evidence and if it is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in that case. If, on the other hand it is not so satisfied, the order shall be made final. The Gram Panchayat, therefore, has to comply with the provisions of sections 21 and 23 of the Act before imposing fine for encroachment and directing its removal. (Para 7).

Petition under Article 227 of the Constitution of India praying that the impugned Resolution of the Gram Panchayat dated 5th May, 1966 and the order of the Director Panchayats, dated 17th April, 1968, be set aside being without jurisdiction and illegal, and further praying that the records be summoned from the Gram Panchayat.

S. L. AHLUWALIA FOR H. R. AGGARWAL, ADVOCATE, for the petitioner.

G. S. CHAWLA, ADVOCATE, for respondent No. 1.

B. S. MALIK, ADVOCATE, for respondent Nos. 2 to 6.

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JUDGMENT

P. C. PANDIT, J.—(1) This is a petition under Article 227 of the Constitution filed by Ranjit Singh, challenging the legality of an order, dated 17th April, 1968, passed by the Director of Panchayats, Punjab, respondent No. 1. The said order reads :

“The Sub-Divisional Officer (Civil), Faridkot,—*vide* his order, dated the 30th September, 1966, conveyed to all concerned,—*vide* endorsement No. 3549-P, dated the 14th October, 1966, suspended under section 97(1) of the Punjab Gram Panchayat Act, 1952, the execution of resolution, dated the 5th May, 1966, of Gram Panchayat Sandhanwala, tehsil Faridkot, district Bhatinda, by which the Gram Panchayat Sandhanwala had imposed a fine of Rs. 20 on Shri Ranjit Singh, under section 23 of the Punjab Gram Panchayat Act, 1952.

After examining the record of the court file of Sub-Divisional Officer (Civil), Faridkot, and also the file of the Gram Panchayat Sandhanwala, I am satisfied that Sub-Divisional Officer (Civil) Faridkot had no jurisdiction to interfere with the proceedings of the Gram Panchayat under sections 21 and 23 of the Act *ibid* which have been declared as judicial proceedings by the ruling of Full Bench of Punjab High Court in Revision No. 419 of 1956.

Therefore, I, S. S. Parmar, Director of Panchayats, Punjab, in exercise of the powers conferred under section 97(2) of the Act *ibid*, hereby rescind the order, dated the 30th September, 1966, of Sub-Divisional Officer (Civil), Faridkot.”

(2) It appears that on the complaint of Ajmer Singh, Gonda Singh, Balbir Singh and Sohan Singh, respondent Nos. 3 to 6, the Gram Panchayat, Sandhanwala, district Bhatinda, respondent No. 2, by its resolution, dated 5th May, 1966, fined the petitioner Rs. 20 and directed him to demolish the verandah, which, according to respondent No. 2, he had constructed on a public path. This action was taken by the said Panchayat under section 23 read with section 21 of the Gram Panchayat Act, 1952, hereinafter called the Act. Against that order the petitioner filed a revision petition before the Sub-Divisional Officer (Civil) for the suspension of the said resolution of the Panchayat.

After hearing the parties, the Sub-Divisional Officer (Civil) suspended the resolution passed by the Panchayat and directed it to decide the matter afresh after giving an opportunity to the petitioner of being heard and producing his evidence. The said officer observed that the Gram Panchayat issued a notice to the petitioner on 5th June, 1965, directing him to file his objections on 20th June, 1965. The record of the Panchayat did not show that any meeting of the Gram Panchayat had been held on the said date, with the result that the petitioner could not represent his case before it. Thereafter, the Director of Panchayats, Punjab, respondent No. 2, *suo motu* and without giving any notice to the petitioner passed the impugned order and thereby set aside the order of the Sub-Divisional Officer under section 97(2) of the Act. He thus upheld the conviction of the petitioner and maintained the resolution of the Gram Panchayat. It is this order, which is being challenged in this petition by Ranjit Singh.

(3) After hearing the counsel for the parties, I am of the view that this petition must succeed. The impugned order has been passed by the respondent No. 1 under section 97(2) of the Act. Section 97 says:—

“97. Power to suspend the action of Gram Panchayat.

- (1) The Deputy Commissioner or the Sub-Divisional Officer, as the case may be, may by written order suspend the execution of any resolution or order of the Gram Panchayat other than an order passed in judicial proceedings or prohibit the doing of any act which is about to be done or is being done under cover of this Act.
- (2) The Deputy Commissioner or the Sub-Divisional Officer, as the case may be, shall forthwith send to the Director a copy of the order with a statement of his reason for making it, and with such explanation as the Gram Panchayat may offer, and the Director may thereupon confirm, modify or rescind the order.”

(4) A perusal of sub-section (1) of this section will show that the Deputy Commissioner or the Sub-Divisional Officer is entitled to suspend the execution of any resolution or order of the Gram Panchayat, but only if it is not passed in judicial proceedings. Under sub-section (2), it has been stated that if the Deputy Commissioner or the Sub-Divisional Officer decides to take action under sub-section (1), he shall

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immediately send a copy of his order along with his reasons for making it together with such explanation as the Gram Panchayat might like to offer, to the Director, who would thereupon confirm, modify or rescind the said order. It will thus be seen that action under section 97 can be taken by the Officers concerned only if the resolution or the order of the Gram Panchayat is not passed in judicial proceedings. In the instant case, action was taken by the Gram Panchayat, admittedly, under sections 21 and 23 of the Act. It has been held by a Full Bench of this Court in *Narain Singh Hira Singh and another v. The State* (1), that the Gram Panchayat, while proceeding under sections 21 and 23 of the Act, was acting judicially. To the same effect is the Bench decision of this Court in *The Gram Panchayat, Ponahana v. The Judicial Magistrate, Palwal and others* (2).

(5) It has, therefore, to be held that when the Gram Panchayat, in the present case, passed the resolution, it had done so in judicial proceedings. That being so, both the Sub-Divisional Officer and the Director of Panchayats had no jurisdiction to pass their respective orders.

(6) This apart, the order of the Director suffers from two other infirmities as well. In the first place, he could not under section 97(2) of the Act take action *suo motu* as he had done in the present case. Secondly, he passed the impugned order to the detriment of the petitioner without hearing him, which he ought not to have done. Similarly, there are two defects in the order of the Sub-Divisional Officer also. Under section 97(1) of the Act, he could only suspend the execution of any resolution or order of the Gram Panchayat. In the instant case, not only did he suspend the resolution, but he directed the Panchayat to decide the matter afresh after giving an opportunity to the petitioner of being heard and producing his evidence. This he could not do under section 97(1) of the Act. In the second place, under section 97(2) of the Act, he should have sent a copy of his order with his reasons together with the explanation of the Gram Panchayat to the Director, which he failed to do.

(7) As regards the resolution passed by the Gram Panchayat, I find that the said Panchayat had omitted to comply with the provisions of sections 21 and 23 of the Act. Under section 21, it has first

(1) A.I.R. 1965 Pb. 372.

(2) A.I.R. 1965 Pb. 337.

to make a conditional order requiring the petitioner to remove any encroachment on a public street within a fixed time. If the petitioner objects to do so, he has to appear before the Panchayat at a time and place to be fixed by that order and have it set aside or modified. It is only if the petitioner does not perform such an act or appear to show cause that the conditional order will be made absolute. If, however, he appears and shows cause against the order, then the Gram Panchayat will take evidence and if it is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in that case. If, on the other hand, it is not so satisfied, the order shall be made final. The Gram Panchayat, therefore, had to take evidence produced by the objector before it could make its conditional order absolute. Action under section 23 of the Act will be taken only if a person disobeys an order of the Gram Panchayat made under section 21. In the instant case, these provisions were not followed by the Gram Panchayat before it passed the resolution against the petitioner.

(8) In view of what I have said above, I accept this petition, quash the order, dated 17th April, 1968, and 30th September, 1966, made by the Director of Panchayats and the Sub-Divisional Officer (Civil) respectively and also the resolution, dated 5th May, 1966, passed by the Gram Panchayat. The Panchayat can, if it is so advised, proceed afresh against the petitioner, in accordance with the provisions of sections 21 and 23 of the Act. In the circumstances of this case, I will make no order as to costs.

N. K. S.

REVISIONAL CIVIL

Before Harbans Singh, Chief Justice.

SHRI TEJA SINGH, ETC.—*Petitioners*

versus

GURDIAL SINGH, ETC.—*Respondents.*

Civil Revision No. 403 of 1969

September 25, 1970.

Code of Civil Procedure (V of 1908)—Order 23 rule 1—Application for withdrawal of suit—Such suit—Whether automatically stands withdrawn—Order by the Court allowing the withdrawal—Whether necessary—Plaintiff applying for withdrawal—Whether can withdraw the application before the Court passes any order thereon.