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The trial Court will allow the appellant three months' time to make the payment before it puts into operation its order under appeal with the modification made by me.

For the reasons given above, I modify the order of the trial Court fixing the maintenance of Rs. 80 and substitute therefor Rs. 50 per mensem; otherwise the order granting maintenance and litigation expenses will stand.

There will be no order as to costs.

B. R. T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

DASAUNDI AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

1960

May. 9th

Civil Writ No. 646 of 1959

Gram Panchayat Act (IV of 1953)—Section 109—Proceedings under—Whether criminal or administrative—Complainant Panchayat—Whether can try the offender—Power to award compensation—Whether vests in the Panchayat.

Held, that the proceedings under section 109 of the Gram Panchayat Act, 1953, are criminal proceedings and not administrative or civil proceedings and have to be taken in conformity with Chapter IV of the Act, which deals with the "Criminal Judical Functions" of the Panchayat. It is of fundamental importance that in criminal matters the rules of procedure should be strictly complied with because they affect the liberty of the subject, and in any case no proceedings can be taken in the absence of the accused.

Held, that where the Panchayat is the complainant, it should not try the offender on the principle that the complainant cannot be the Judge in its own cause. Where the Panchayat itself is the complainant, the matter can be tried by another Panchayat and there is provision in the Act for transfer of cases from one Panchayat to another.

Held, that there is no power either under the criminal powers or under the civil powers conferred on the Panchayat to determine whether any damage to property has been caused and if it has been caused, the extent of that damage. Section 109 of the Act merely makes a provision that if any property of the Panchayat is damaged, the Panchayat is entitled to damages from a person, who is liable to the penalty under section 109(1). It does not authorise the Panchayat to recover those damages. No jurisdiction on the Panchayat either under its criminal powers or under civil powers is conferred in this behalf. It is fundamental that the jurisdiction of the special tribunals is restricted to matters, which strictly fall within their charter and they cannot travel outside the same. Right under section 109 of the Act is given to the Panchayat to recover damages and it can only recover them under the ordinary law of the land like any other litigant. It cannot itself determine and recover the same.

Petition under Articles 226/227 of the Constitution of India praying that a writ of Certiorari be issued quashing the orders of the Gram Panchayat, dated 19th June, 1957, and of Magistrate, 1st Class, dated 26th September, 1957.

PREM CHAND JAIN, ADVOCATE, for the Petitioner.

S. M. SIKRI, ADVOCATE-GENERAL, AND P. S. DAULATA, ADVOCATE, for the Respondent.

ORDER

Mahajan, J.—This is a petition directed against the order passed by the Panchayat under section 109 of the Punjab Gram Panchayat Act (IV of 1953) imposing a fine of Rs. 25 per head on the petitioners and demanding Rs. 400 as compensation from each of them. A revision Mahajan, J.

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against this order under section 97 of the Act was rejected and a representation to the State Government ended only in the reduction of Rs. 400 per *capita* compensation to Rs. 400 compensation in all to be paid by all the petitioners.

After hearing the learned counsel for the parties, I am satisfied that the order of the Gram Panchayat is wholly illegal and without jurisdiction and therefore cannot be sustained. I will now briefly record my reasons for the same.

It cannot be doubted that proceedings under section 109 of the Act are criminal proceedings and not administrative or civil proceedings. See in this connection, the decision of this Court in *Narain Singh and another* v. *The State* (1), and also section 38 and item 'k' of Schedule I of the Act. Therefore, these proceedings have to be taken in conformity with Chapter IV of the Act, which deals with the "Criminal Judicial Functions" of the Panchayat. In the present case, the Panchayat itself was the complainant for it issued the notice in consequence of which the present proceedings have arisen to the petitioners under section 21 of the Act. The petitioners failed to appear in response to this notice and without following the procedure laid down in Chapter IV of the Act and without having them for trial in person before the Panchayat, an *ex parte* order, which is the impugned order, was passed by the Panchayat on the 19th of June, 1957. It is of fundamental importance that in criminal matters, the rules of procedure should be strictly complied with because they affect the liberty of the subject; and in any case no proceedings can be taken in the absence of the accused. *Ex parte* proceedings could not be taken as the matter before the

(1) 1959 P.L.R. 93.

Panchayat was a criminal matter and not a civil matter. The Panchayat treated this matter as a purely administrative matter and that is how the Panchayat did not proceed according to law. Thus there has been no proper trial of the matter and the sentences imposed on the petitioners cannot be sustained.

It is next contended by the learned counsel for the petitioners that the panchayat could not be the Judge in its own cause and therefore also these proceedings are vitiated. In support of his contention, he relies on the decisions of the Supreme Court in *Gullapali Negeswararao and others* v. *State of Andhra Pradesh and others* (1), and *Mineral Development Limited v. The State of Bihar and another* (2). This contention is met by the learned Advocate-General on the ground that under the Act, the Panchayat can be the Judge in its own cause and thus there is nothing wrong in the Panchayat deciding the matter in which the Panchayat itself was the complainant. I do not agree with this contention. This contention is based on certain decision of the English Courts, of which one may be cited as an illustration, namely, *ReX* v. *Bath Compensation Authority* (3). This decision was reversed by the House of Lords. (See *Frome United Breweries Co. Ltd.* v. *Bath Justices* (4). It was observed by Viscount Cave L. C. at page 592 of the report as under:—

> "No doubt the statute contemplates the possibility of the licensing justices appearing before the compensation authority and taking part in the argument; for it is provided by section 19,

(1) A.I.R. 1959 S.C. 1376
(2) 1960 S.C.A. 297
(3) (1925) 1. K.B. 685
(4) 1926 A.C. 586

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sub-section (2), that the compensation authority shall give any person appearing to them to be interested in the question of the renewal of a license, 'including the licensing justices', an opportunity of being heard. But the statute nowhere says that justices who elect to appear as opponents of the renewal and take active steps (such as instructing a solicitor) to make their opposition effective, may nevertheless act as judges in the dispute; and in the absence of a clear provision to that effect I think that the ordinary rule, that no one can be both party and judge in the same cause, holds good."

While dealing with a similar argument in *Nageswararao's case* Subba Rao, J., observed as under:—

> "These decisions show that in England a statutory invasion of the common law objection on the ground of bias is tolerated by decisions, but the invasion is confined strictly to the limits of the statutory exception. It is not out of place here to notice that in England the Parliament is supreme and therefore a statutory law, however repugnant to the principles of natural justice, is valid; whereas in India the law made by Parliament or a State Legislature should stand the test of fundamental rights declared in Part III of the Constitution."

In the present case, the relevant provisions of the Act did not warrant any dereliction of the

principles of natural justice. See in this connection the scheme of Chapter IV and particularly sections 40, 41, 44, 46 and 51 of the Act. These sections deal with jurisdiction, transfer, action on complaint, proceedings on failure of the accused to appear and the supervision of Criminal proceediings by District Magistrate. It may be mentioned that where the Panchayat itself is the complainant, the matter can be tried by another Panchayat and there is provision in the Act for transfer of cases from one Panchayat to another. Thus the contention of the learned Advocate-General cannot be accepted. As the Panchayat itself was the complainant and the Judge, the principles of natural justice are violated in this case and the decision of the Panchayat and the resulting convictions of the petitioners thereon cannot be upheld.

So far the order for payment of Rs. 400 per head on the basis of section 109 (2) of the Act is concerned, the order is wholly without jurisdiction. In the first instance there is no power either under the criminal powers or under the civil powers conferred on the Panchayat whereunder power is given to the Panchayat to determine whether any damage to property has been caused. and if it has been caused, the extent of that damage. Section 109 of the Act merely makes a provision that if any property of the Panchayat is damaged, the Panchayat is entitled to damages from a person, who is liable to the penalty under section 109 (1). It does not authorise the Panchayat to recover those damages. No jurisdiction on the Panchayat either under its criminal powers or under civil powers is conferred in this behalf. It is fundamental that the jurisdiction of the special tribunals is restricted to matters, which strictly fall within their charter

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and they cannot travel outside the same. Right under section 109 of the Act is given to the Panchayat to recover damages and it can only recover them under the ordinary law of the land like any other litigant. It cannot itself determine and recover the same. In this view of the matter, the order demanding Rs. 400 per head by the Panchayat is wholly unjustified.

For the reasons given above, I allow this petition and quash the order of the Gram Panchayat dated the 19th of June, 1957. It will be open to the Panchayat, if so advised, to proceed according to law. The petitioners will have their costs in this Court, which are assessed at Rs. 50.

B. R. T.

APPELLATE CIVIL

Before Bishan Narain and Inder Dev Dua, JJ.

THE STATE OF PUNJAB,—*Appellant*

versus

SURRENDER NATH GOEL,—*Respondent.*

1960

May. 20th

First Appeal from Order No. 129 of 1959.

Arbitration Act (X of 1940)—Section 29 and para 8 of First Schedule—Power of arbitrator to award future interest from the date of award and costs of arbitration—Code of Civil Procedure (V of 1908)—Section 34—Provisions of—Whether apply to arbitrators.

Held, that the provision of law contained in section 29 of the Arbitrator Act cannot be reconciled with the existence of any implied power in an arbitrator to award future interest, such as is specifically conferred on the Courts by virtue of section 34, Code of Civil Procedure. By making specific provision in the Arbitration Act, itself on the question of awarding future interest, the legislature intended this provision to be exhaustive and exclusive. After the enforcement of this Act, an award is enforceable