
(1982) 06 SHI CK 0002

High Court of Himachal Pradesh

Case No: Civil Miscellaneous Petition (Main) No. 50 of 1981

Shri Ganga Ram

APPELLANT

Vs

Gram Panchayat and
Others

RESPONDENT

Date of Decision: June 11, 1982

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 133
- Himachal Pradesh Panchayati Raj Act, 1968 - Section 19, 19(1), 19(3), 194, 20
- Penal Code, 1860 (IPC) - Section 180, 228
- Punjab Gram Panchayat Act, 1952 - Section 21

Citation: (1982) ShimLC 339

Hon'ble Judges: Vyas Dev Misra, C.J

Bench: Single Bench

Advocate: Bhawani Singh, for the Appellant; K.S. Patyal, for the Respondent

Judgement

Vyas Dev Misra, C.J.

"Whether a Gram Panchayat acting u/s 19 of the Himachal Pradesh Panchayati Raj Act, 1968, enforms a judicial function"? is the question which has been raised by the Petitioners in C.M.P. (Main) 50 of 1981 and C.M.P. (Main) 63 of 1981.

2. It is not necessary to mention the facts in detail at this stage. Suffice it to say that in the former case a Gram Panchayat came to the conclusion that the Petitioner has encroached upon a public street and, therefore, directed him to remove the encroachment. It appears from the record that the evidence was not properly recorded. The contention of the Respondent is that it is not necessary for a Gram Panchayat to record the evidence formally since the Panchayat perfortims adinistrative functions and not judicial functions while acting u/s 19 (sic) the latter case the Gram Panchayat has been insulted by the Petitioner. The contention of that Petitioner is that since the Gram

Panchayat was not performing any judicial functions he cannot be proceeded against u/s 228 read with Section 180 IPC.

3. Section 19 of the Himachal Pradesh Panchayati Raj Act (referred to as the Act) falls in Chapter IV of the Act. This Chapter has the heading:

Gram Panchayats- Conduct of Business, Duties, Functions and powers.

The marginal heading of Section 19 is:

Power to require removal of encroachments and nuisance.

This Section reads:

19. (1) A Gram Panchayat, on receiving a report or other information and on taking such evidence, if any, as it thinks fit, may make a conditional order requiring within a time to be fixed in the order:

(a) the owner or the occupier of any building or land:

(i) to remove any encroachment on a public street, place or drain;

(ii) to close, remove, alter, repair, cleanse, disinfect or put in good order any latrine, urinal, water closet, drain, cesspool or other receptacle for filth, sullage-water, rubbish or refuse or to remove or alter any door or trap or construct any drain for any such latrine, urinal or water closet which opens on to a street, drain or to shut off such latrine, urinal, water closet by a sufficient roof and wall or fence from the view of persons passing by or dwelling in the neighbourhood;

(iii) to cleanse, repair, cover, fill up, drain off, deepen or to remove water from a private well, tank, reservoir, pool, pit, ditch, depression or excavation therein which may appear to the Gram Panchayat to be injurious to health or offensive to the neighbourhood;

(iv) to remove any dirt, dung, nightsoil, manure or any noxious or offensive matter therefrom and to cleanse the land or building;

(b) the owner of any wall or building which is deemed by the Gram Panchayat to be in any way dangerous, to remove or repair such wall or building;

(c) the owner or occupier of any building or property to keep his building or property in a sanitary state;

(d) the owner of any dog or other animal suffering or reasonably suspected to be suffering from rabies or which is dangerous, to destroy or confine or cause to be confined such dog or animal;

(e) the owner or occupier of any agricultural land to destroy harmful weeds from such land;

(f) the owner or occupier concerned to reclaim an unhealthy place;

(g) the owner or occupier of any building or land to maintain in proper repair the level and surface of any road or street passing in front of the building or through his land;

(h) the owner or person incharge of a private water channel to keep it in a state of reasonable repair;

or, if he objects so to do, to appear before it, at a time and place to be fixed by the order, and to move to have the order set aside or modified in the manner hereinafter provided. If he does not perform such act or appear and show cause, the order shall be made absolute. If he appears and shows cause against the order, the Gram Panchayat shall take evidence and if it is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case. If it is not so satisfied, the order shall be made absolute.

(2) If such act is not performed within the time fixed, the Gram Panchayat may cause it to be performed and may recover the costs of performing it from such person in the prescribed manner.

(3) Any person aggrieved by an order under Sub-section (1) may file an appeal within thirty days of the passing of such order before the Deputy Commissioner who after holding such enquiry as he may deem fit, may set aside, modify or confirm the said order and his decision thereon shall be final.

4. It is apparent that the Gram Panchayat (referred to as the Panchayat) can act on receiving a report or other information. This report or information has to be with reference to the matters referred to in Causes (a) to (h) of Sub-section (1). The Panchayat then may make a conditional order. The order is to require the owner or the occupier to do a particular act mentioned in the order within a given time. The order should also state that if there is any objection for carrying out the order then the party should appear before the Panchayat for which a time and a place has to be fixed. The appearance of the party is ordered to enable it to move the Panchayat to set-aside or modify the order. In case the party fails to perform the act or appear before the Panchayat to have the conditional order set-aside, the conditional order shall be made absolute. On the other hand if the party appears and shows cause then it is the duty of the Gram Panchayat to take evidence. After taking evidence the Panchayat may make the order absolute if it is not satisfied that the order is unreasonable and not proper. After the order has been made absolute and the party does not carry out the directions of the Panchayat within the time fixed by the Panchayat then the Panchayat may do the act at its own cost and recover the cost from such party. The aggrieved person has a right to file an appeal within thirty days before the Deputy Commissioner whose decision becomes final.

5. It is Section 22 which provides for the penalty for disobedience of order made by the Panchayat u/s 19. The penalty consists of fine which may extend to twenty-five rupees. This Section reads thus:

22. Any person who disobeys an order of the Gram Panchayat made under Sections 19 and 20 shall be liable to penalty which shall be imposed by the Gram Panchayat and may extend to twenty-five rupees, and if the breach is a continuing breach, with further penalty which may extend to one rupee for every day after the first during which the breach continues:

Provided that the recurring penalty shall not exceed the sum of five hundred rupees. The penalty, if not paid, shall be recovered as arrears of land revenue.

6. It is contended that Chapter XV lays down the judicial functions of Gram Panchayat and since Section 19 is not a part of this Chapter, therefore, the functions performed u/s 19 are not judicial functions. It is pointed out that Section 194 falling under this Chapter provides for excluding the Panch from taking part in any case, suit or proceedings in which he may be interested in terms of the section. It is also pointed out that this Chapter contains detailed functions in respect of suits which may be filed and offences of which cognizance may be taken by the Panchayat. Detailed provisions have also been made in respect of procedure before the Panchayat.

7. Section 19 does show that there is a list between two parties. The first party is one which reports the matter to the Panchayat. The second party is that who is proceeded against and directed to perform an act. Before finally deciding whether the second party is liable to carry out the directions which may be given under this section, the party is given an opportunity of being heard. This opportunity consists of party's right and the Panchayat's duty to record evidence which may be produced by the party. Only after recording the evidence the Panchayat can give a final decision. Obviously it has all the trappings of a judicial tribunal. These are the very things which a judicial tribunal is required to do before giving a final judgment in the matter.

8. My attention has been drawn to judgments of the Punjab and Haryana High Court. In Punjab there is Gram Panchayat Act, 1952. Some of the provisions are pari materia with the Himachal Pradesh Act with which I am concerned. Section 21 of the Punjab Act is practically word for word as Section 19 of the Act. The only difference is that in Section 21 of the Punjab Act Sub-section (3) of the H.P. Act is missing. The question whether the functions performed by a Gram Panchayat u/s 21 are judicial or executive has been the subject matter of decision in various cases. I need not refer to all the cases since a Full Bench of the Punjab High Court in [Narain Singh Hira Singh and Another Vs. The State](#), reviewed all the earlier decisions of that Court. It applied the test laid down by the Supreme Court in various cases. After applying these tests it came to the conclusion that a Gram Panchayat while acting u/s 21 of the Panchayat Act performs judicial functions. The reasoning may now be reproduced with advantage. The Full Bench observed:

Whether a particular section is included in a certain chapter or not cannot, however, be of any real consequence in determining whether the power conferred by that section on the authority or tribunal is merely administrative or partakes of the nature of judicial functions. It is further necessary to consider as to what is the true nature of the functions performed or power exercised.

The tests to determine whether a particular tribunal is a judicial tribunal or not have been approved by their Lordships of the Supreme Court in a number of cases, such as [The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees" Union, Delhi](#), , [Province of Bombay Vs. Kusaldas S. Advani and Others](#), and [Magbool Hussain Vs. The State of Bombay](#), These requisites were succinctly stated as follows by the Committee on Ministers' Powers Report appointed in England in 1932:

a true judicial decision pre-supposes an existing dispute between two or more parties and then involves four requisites: (1) The presentation (not necessary orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between there is a question of law, the submission of legal argument by the parties, and (4) a decision which disposes of the whole matter and by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law.

Now, a Gram Panchayat acting u/s 21 in the first instance makes a conditional order on the basis of information or report received by it or on taking such evidence, if any, as it thinks fit, and the person against whom the conditional order is made has, if he objects to the order, the right to appear before it and to show cause with a view to have the order set aside or modified. When he does so appear, the Gram Panchayat is required to take evidence and, it can make the conditional order absolute only if it is satisfied that that order was reasonable or proper.

Thus, there is a dispute affecting legal rights before the Gram Panchayat, the parties interested in which are on one side the person against whom the conditional order has been made and on the other the person who may have given the report or information to the Panchayat. The Panchayat is required to decide the questions involved in the dispute after taking evidence and on the basis of the evidence led before it.

Its decision cannot be arbitrary or unfettered; and the conditional order made by it is to be made absolute only if it is reasonable and proper, otherwise it must be set aside. That decision so far as the Panchayat is concerned disposes of the whole matter finally. The Gram Panchayat acting u/s 21 of the Act would, therefore, appear to have all the attributes of a judicial tribunal. The crucial test, as stated in [Pandyan Insurance Co. Ltd. Vs. K.J. Khambatta and Others](#), is whether the statute which sets up the tribunal imposes

upon it the duty to act judicially and if such a duty is cast upon the tribunal then the High Court is empowered to exercise its jurisdiction over that tribunal under Article 227.

Having regard to the express provisions of Section 21 of the Act, there appears to be no scope for the contention that the Gram Panchayat while exercising its functions under this section is acting otherwise than judicially. This section is analogous in its terms to Section 133 of the Code of Criminal Procedure, and it could not for a moment be contended that an order under that section is a purely executive order or that the tribunal making that order is not subject to the Superintendence of the High Court under Article 227 of the Constitution of India.

9. This decision has since been followed in various cases by Division Benches as well as Single Benches of that Court. Some of these are [The Gram Panchayat, Ponahana Vs. The Judicial Magistrate, Palwal and Others,](#)

10. I am in respectful agreement with these decisions holding that the Gram Panchayat performs a judicial function and does not act administratively.

C.M.P. (M) No. 50 of 1981.

11. It is contended by Shri Bhawani Singh that the Petitioner was given no chance to produce evidence. The record of the case has since disappeared. The record received from the Deputy Commissioner shows that the Panchayat record was supposed to have been received in that office but became untraceable. It is very unfortunate indeed that the matter was hanging fire with the Deputy Commissioner from June, 1975, till 3rd July, 1981, when the appeal was decided. Six years cannot be said to be a reasonable time which the Deputy Commissioner should have taken to decide the appeal. It should be remembered that in order to settle the disputes between the villagers the matter should be decided expeditiously so that they can live in peace.

12. In the instant case the orders of the Panchayat as well as the Deputy Commissioner show that the Petitioner had not been given opportunity to produce evidence to show that he had not encroached upon the public path. Apparently it was the sub-committee of the Panchayat visiting the spot which decided that the Petitioner had encroached upon the public path. The Deputy Commissioner satisfied himself by getting a report from the Patwari.

13. It is true that the Panchayat has the right to inspect the spot. While inspecting the spot the Panchayat should ordinarily prepare an inspection report. Thereafter an opportunity must be given to the parties to produce evidence, if they so desire. What actually happened in this case is not known since the records are not traceable.

14. Mr. Bhawani Singh makes an offer that let a Tehsildar inspect the spot and after carrying out actual measurement of the land allotted to the Petitioner as Nautor decide whether the Petitioner has encroached upon the public path or not. He further agrees that

the inspection and the report of the Tehsildar would finally decide the matter since he is not interested now in producing any further evidence. This offer is accepted by Mr. Patyal, learned Counsel for the opposite party.

15. In view of the settlement arrived at between the parties I remand the case to the Panchayat with the direction that a Tehsildar should be asked to carry out the actual demarcation which will include demarcating the land allotted to the Petitioner as Nautor. His demarcation shall be final and the parties as well as the Panchayat shall be bound to act on the same. The petition accordingly stands disposed of. No order as to costs. The parties are directed to appear before the Pradhan on 4th July, 1982, when he would proceed as directed in this judgment.

16. Needless to say that the penalty and fine already imposed by the Panchayat is set aside.