

B.R.T.

FULL BENCH

Before Bhandari, C. J., Dulat and Capoor, JJ

NARAIN SINGH AND KARTAR SINGH,—*Petitioners.*
versus
THE STATE,—*Respondent.*

Criminal Revision No. 419 of 1956.

1958
—————
March 4th

Punjab Gram Panchayat Act (IV of 1953)—Sections 21 and 23—Proceedings under—Nature of—Whether judicial or executive—Constitution of India (1950)—Article 227—Petition under—Whether competent against the order of the

Panchayat made under sections 21 and 23—Interpretation of statutes—Section giving power finding place in a certain chapter of an Act—Whether of any consequence in determining the nature of the function.

Held, that the Gram Panchayat, while proceeding under sections 21 and 23 of the Act, acts judicially and, therefore, a petition challenging its orders under either of those sections would lie to the High Court under Article 227 of the Constitution of India. In such proceedings 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 under section 21 of the Act has all the attributes of a judicial tribunal. From the use of the word "penalty" rather than "fine" in section 23, it cannot be inferred that that section contemplates executive action and not a judicial function.

Held, that whether a particular section is included in a certain chapter or not cannot 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.

Case referred by Hon'ble Mr. Justice Passey on 29th March, 1957, for constitution of a larger Bench to decide the legal points involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Dulat and Hon'ble Mr. Justice Capoor on 22nd January, 1958, further referred the case to a Full Bench consisting of Hon'ble the Chief Justice, Mr. A. N. Bhandari, Hon'ble Mr. Justice S. S. Dulat and Hon'ble Mr. Justice S. B. Capoor. The Full Bench after deciding the legal points referred the case on 4th March, 1958, to a Single Bench for disposal on merits.

Petition under section 227 of the Constitution of India and Under Section 439 of Criminal Procedure Code for the revision of the Order of Ram Narain, Magistrate, 1st Class, Ludhiana, dated 23rd March, 1956, convicting the petitioners, Charge Under Section 97, Gram Panchayat Act.

H. S. GUJRAL, for Petitioners.

CHETAN DAS DEWAN, Assistant Advocate-General and DALJIT SINGH, for Respondents.

ORDER

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CAPOOR, J. The legal question raised in this case and referred to the Full Bench is whether the proceedings under sections 21 and 23 of the Punjab Gram Panchayat Act, 1952 (Punjab Act No. IV of 1953), hereinafter referred to as the Act, are of an administrative or of an executive nature, so that a petition under section 439 of the Code of Criminal Procedure or under Article 227 of the Constitution of India would not lie to this Court.

It has been conceded before us that section 439 of the Code of Criminal Procedure is not applicable to such proceedings and accordingly it remains only necessary to determine the applicability to them of Article 227 of the Constitution of India.

Section 21 of the Act confers on a Gram Panchayat as defined in the Act the power to require removal of an encroachment and nuisance and is in the following terms:—

“21. (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; cess-pool 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 or 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, night-soil, 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;

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- (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 Pohli or any other such harmful weed from such land;
- (f) the owner or occupier concerned to reclaim any 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-in-charge of a private 'khal' 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 re-
cover the costs of performing it from
such person.”

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Under section 23 of the Act any person who disobeys an order of the Gram Panchayat made under section 21 or 22 shall be liable to a penalty which may extend to Rs. 25; and if the breach is a continuing breach, with a 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 Rs 500.

These sections of the Act have come up for consideration before this Court in several petitions which have been mentioned in the referring orders. *Dalip Singh v. The State* (1), was a petition under sections 435 and 439 of the Code of Criminal Procedure directed against an order of a Gram Panchayat under section 23 of the Act and G. D. Khosla, J., observed that order of the Panchayat under section 23 was an executive order which could be reviewed by the Punjab Government under section 100 of the Act. The petitioner had not moved the Punjab Government to take action under section 100, and the learned Judge considered that until he did so, he would not be justified in interfering at that stage. He further held that that was not a judicial matter and a criminal revision did not, in his opinion, lie, although possibly a petition under Article 226 of the Constitution might be competent when the petitioner had exhausted all lawful remedies which were open to him under the Act. The same observations were repeated by the same learned Judge in *Bishan Singh v. The Gram Panchayat, Mauza Saharan Majra* (2), decided on the same day as *Dalip Singh v. The State*, *Sukhbir Singh v. The Gram Panchayat, Mauza Pakhowal* (3) was under section 439 of the Code of Criminal

(1) Cr. R. 367 of 1956.

(2) Cr. R. 533 of 1956.

(3) Cr. R. 823 of 1955.

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Procedure as well as under Article 227 of the Constitution of India and was decided by Bishan Narain, J. On a consideration of the general scheme of the Act and the nature of the rights conferred on the Gram Panchayats under the Act, he was of the view that the order under section 23 of the Act being administrative in nature the criminal Courts had no jurisdiction to interfere with it, and the observations made by G. D. Khosla, J. in *Dalip Singh v. The State* were endorsed. In *Molar v. The Gram Panchayat, Mauza Pasina Khurd* (1), which was also under section 439 of the Code of Criminal Procedure and Article 227 of the Constitution of India; the same learned Judge, following his view in *Sukhbir Singh v. The Gram Panchayat, Mauza Pakhowal*, dismissed the petition. In the next case, *Dulia v. The Gram Panchayat, Garhi Bazidpur* (2), which was under section 439 of the Code of Criminal Procedure, Gurnam Singh, J., followed the decision in *Dalip Singh v. The State*. It will be noticed that in none of these cases there was any discussion of the applicability of Article 227 of the Constitution of India to proceedings under sections 21 and 23 of the Act.

In the next case, *Nagindar Singh, etc. v. Ishar Singh, etc.* (3), which was under sections 435, 439 and 561 of the Code of Criminal Procedure and Article 227 of the Constitution of India, Mehar Singh, J., observed that the order under section 23 of the Act did not arise out of judicial proceedings and no revision was competent against such an order nor could it be considered under the supervisory jurisdiction under Article 227 of the Constitution, and he also referred to the decision in *Dalip Singh v. The State*. In the two remaining cases, *The Gram Panchayat, Mauza Patherri etc.*

(1) Cr. R. 947 of 1955.

(2) Cr. R. 495 of 1956.

(3) Cr. R. 615 of 1956.

v. *Phul Singh, etc.* (1) and *Harinder Singh v. Assis-* Narain Singh and
tant Collector, 1st Grade, Narain Garh (2) the same Kartar Singh
 learned Judge, after referring to some of the v.
 previous decisions, mentioned above, has come to The State
 the conclusion that the disobedience of an order Capoor, J.
 made by a Gram Panchayat under section 21 of the
 Act is not a criminal offence, and merely because
 to enforce compliance of an order under that sec-
 tion a penalty is provided for under section 23 of
 the Act, that does not make it an offence. It was
 urged before him that this Court could interfere
 under Articles 226 and 227 of the Constitution, and
 he held that since the petitions were not under
 Article 226 he did not go into that matter, while
 under Article 227 the power of superintendence
 was in judicial matters or at the most in regard to
 quasi-judicial matters but not in regard to execu-
 tive matters or executive orders and so that power
 could not assist the petitioners in those cases.

It is, therefore, necessary to consider as to
 what is the true nature of the functions being per-
 formed by a Gram Panchayat when acting under
 sections 21 and 23 of the Act. It has been contend-
 ed before us that these particular sections find
 their place in Chapter III which deals with the
 administrative functions of a Panchayat and it
 should, therefore, be inferred that these particular
 functions of the Panchayat are also administrative
 functions. Chapter III is headed "Gram Pancha-
 yats—Conduct of Business, Duties, Functions and
 Powers". Chapter IV is headed "Criminal Judicial
 Functions", and Chapter V "Civil and Revenue
 Judicial Functions" while Chapter VI contains
 "general provisions applicable to judicial proceed-
 ings". Under section 97 of the Act, which finds its
 place in Chapter IX "Control", the Deputy Com-
 missioner or the Sub-Divisional Officer, as the case

(1) Cr. Rev. 1087 of 1956.

(2) Cr. Rev. 1088 of 1956.

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may be, is given the power to suspend the execution of any resolution or order of a Gram Panchayat other than an order passed in judicial proceedings, and under section 100 in the same chapter the Government may call for and examine the record of proceedings of any Gram Panchayat for the purposes of satisfying itself as to the legality or propriety of any executive order passed therein and may confirm, modify or rescind the order. The argument, therefore, is that the Act makes a sharp distinction between executive and judicial orders, and since the functions of the Panchayat under sections 21 and 23 are not either criminal judicial functions under Chapter IV or civil and revenue judicial functions under Chapter V, it must be concluded that they are executive or administrative functions.

orders

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, Limited, Delhi v. the employees of the Bharat Bank, Ltd., Delhi* (1), *Province of Bombay v. Khushaldas S. Advani* (2), and *Maqbool Hussain v. State of Bombay* (3). These requisites were succinctly stated as follows by the Committee on Ministers' Powers Report appointed in England in 1932:—

“A true judicial decision presupposes an existing dispute between two or more

(1) A.I.R. 1950 S.C. 188.

(2) A.I.R. 1950 S.C. 222.

(3) A.I.R. 1953 S.C. 325.

parties and then involves four requirements—(1) The presentation (not necessarily 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 them is a question of law, the submission of legal argument by the parties, and (4) a decision which disposes of the whole matter 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.”

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Now, a Gram Panchayat acting under section 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

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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 under section 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. v. K J. Khambatta* (1), 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.

Under subsection (2) of section 21 of the Act, if the act in question 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. Section 23 of the Act provides another way of enforcing the order of the Gram Panchayat, which is that the person who disobeys that order is liable to a penalty. Neither this section nor any other section of the Act (apart from schedule 1-A thereof) lays down which tribunal or Court is to adjudge the penalty, and proceedings for this purpose would,

(1) A.I.R. 1955 Bom. 241.

but for the provision of schedule 1-A, lie in the Court of the competent Magistrate under the provisions of the Code of Criminal Procedure. Clause (o) of section 4 of this Code defines an "offence" as meaning "any act or omission made punishable by any law for the time being in force, and, according to clause (s) of section 3 of the Act, the expression "offence" is to have the same meaning as in clause (o) of section 4 of the Code of Criminal Procedure, 1898. Schedule 1-A to the Act specifies the offences cognizable by a Gram Panchayat and item (k) under this schedule is as follows:—

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"(k) Under this Act or under any rule or by-law made thereunder."

It is only in view of this that a Gram Panchayat would appear to have jurisdiction to impose a penalty under section 23 of the Act. Schedule 1-A contains under separate heads various enactments against each of which [except against item (k)] the section or sections, offences under which are cognizable by the Gram Panchayat, are mentioned. It has been contended on behalf of the respondent that since section 23 of that Act is not specified against item (k), it should be held that that section does not create any offence. Inasmuch as item (k) refers not only to the offences under the Act but to those under any rule or by-law made thereunder, obviously no sections could be specified against that item. The only penal sections under the Act are 23 and 109. The latter provides that any person tampering with the property of the Gram Panchayat shall be punishable with fine which may extend to Rs 25 and under subsection (2) of section 109 the fine is referred to as a penalty. It appears, therefore, that the words "fine" and "penalty" are used in the Act as interchangeable and with the same connotation and from the use of the word

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“penalty” rather than “fine” in section 23, it cannot be inferred that that section contemplates executive action and not a judicial function. In the same connection it was contended that merely referring to a certain act or omission as an offence does not actually make that an offence, and it was pointed out on the basis of *Queen-Empress v. Ram Pal* (1) and *Secretary of State v. Gobindram Jaichandrai* (2) that a passenger travelling in a train without having a proper pass or a proper ticket though liable to a penalty does not commit any offence. If these arguments were to be accepted, the logical conclusion would be that there would be no provision in the Act enabling the Gram Panchayat to adjudge the penalty under section 23 of the Act.

According to section 38 of the Act, which occurs in Chapter IV “Criminal Judicial Functions”, the criminal jurisdiction of a Gram Panchayat shall be confined to the trial of offences specified in schedule I-A. That schedule includes offences under the Act. viz., under sections 23 and 109, and in dealing with such offences the Gram Panchayat obviously discharges criminal judicial functions in accordance with the procedure laid down in Chapter IV and Chapter VI so far as it may be applicable. In determining the liability under section 23, the Gram Panchayat would have to act judicially and before coming to a finding consider any offences whether on fact or law which may be put forward by the persons concerned and to weigh the evidence led before it. All the observations made above with regard to the true nature of its functions under section 21 of the Act would apply equally to the discharge of its functions under section 23, and our conclusion is that the Gram Panchayat while proceeding under sections 21 and

(1) I.L.R. 20 All. 95.

(2) A.I.R. 1930 Sind. 162.

23 of the Act is acting judicially and that, therefore, a petition challenging its orders under either of those sections would lie to the High Court under Article 227 of the Constitution of India. The reference is answered accordingly, and the case should be returned to the Single Bench for disposal in accordance with law.

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BHANDARI, C. J.—I agree.

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DULAT, J.—I agree.

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