

(1953) 09 MP CK 0007

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 28 of 1951

Babu

APPELLANT

Vs

Parsram

RESPONDENT

Date of Decision : 08-09-1953

Acts Referred:

Constitution of India, 1950 — Article 372, 395
Madhya Pradesh Panchayat Act, 1962 — Section 1(3), 51
Penal Code, 1860 (IPC) — Section 323, 504, 506
Provinces and States (Absorption of Enclaves) Order, 1950 — Order 8

Citation : AIR 1954 MP 78

Hon'ble Judges : S.S. Shinde, C.J.; V.R. Nevaskar, J

Bench : Division Bench

Advocate : Karanjikar and Avadhoot, for the Appellant; Kiran (sic), General, for the Respondent

Final Decision : Dismissed

Judgement

Sinde, C.J.—This revision raises a very important point of (sic). The circumstances which have given rise to fe revision are as follows:

The village Bediya had a Nyaya Panchayat was part of the State of Madhya Pradesh. By an (sic) called The Provinces and States (Absorpon of Enclaves) Order, 1950 His Excellency the Trior (sic) General transferred the village to Madhya Bharat. This order which is published (sic) the Madhya Bharat Gazette dated 26-1-1950 (sic) that the order is to come into force on 20-1-(sic)

On 24-1-1950 Parsram filed a complaint against (sic) and Sobharam under Sections 504 and 506, I.P.C. (sic) complaint u/s 323, I.P.C. against Babu before (sic) the Naya Panchayat, Bediya. On 15-6-(sic) Babu and Sobharam were convicted and sen-(sic) u/s 504, 506 and 323 as follows:

Babu: Fine Rs. 10/- u/s 504 I.P.C.

Fine Rs. 20/- u/s 506 I.P.C. and

Fine Rs. 15/- u/s 323 I.P.C.

Bobharam: Fine Rs. 10/- u/s 504 I.P.C.

and fine Rs. 20/- u/s 506, I.P.C.

against this order the accused filed an appeal (sic) the Additional Sessions Judge, Nimar appeal (sic) was dismissed. Consequently the (sic) have filed this revision.

The revision was put up for hearing before (sic) learner Chief Justice on 18-7-1951. He refer (sic) this revision to a Division Bench as it raises (sic) of law which is not free from doubt. (sic) this revision has been put up before Division Bench.

The question that we have to consider in (sic) is whether the order passed by the Nyaya Panchayat on 15-6-1950, is ultra vires or intra Panchayat before proceeding to consider this question, necessary to reproduce some of the relevant of the order. Clause 1(2) of the Order Panchayat follows:

(sic) shall come into force on the twentieth day (sic) January 1950.

(sic) (a) states that "appointed day" means (sic) of commencement of this Order.

(sic) 8 of the Order is as follows:

(sic) laws in force in an enclave immediately (sic) the appointed day shall, as from that case to be in force in that absorbing unit shall, as from that day, extend to, and be in force in, that enclave.

The learned Counsel for, the applicants referring to Clause 8, contends that as from 20-1-1950 all laws in force in Bediya ceased to be in force and all laws in force in Madhya Bharat extended to, and came in force in, Bediya, Nyaya Panchayat had no jurisdiction to decide the case. He contends that Panchayat Act No. 58 of 1949 does not give power to the Nyaya Panchayat to function and hence Panchayat decision is without jurisdiction.

The learned Advocate General counters this, argument on two grounds. His first argument is that by virtue of Article 372 read with explanation. 1, Madhya Pradesh Panchayat Act still continues, in force in village Bediya. His second argument is that on the principles of international law, in the event of State succession, the civil law of the former territorial sovereign continues in operation until new laws have been enacted. Consequently Madhya Pradesh Panchayat Act still continues in force. In our opinion, both these arguments have a good deal of force.

4. It is true that Clause 8 of the Order enjoins that all laws in force in an enclave immediately before the appointed day shall, as from that day cease to be in force in that enclave and all laws in force in the absorbing unit shall, as from that day, extend to and be in force in that enclave. Appointed day being 20-1-1950 all laws in Madhya. Pradesh cease to be in force on 20-1-1950 and all laws in Madhya Bharat came into force on that day. Although Panchayat Vidhan Samvat

2006 came into force on 13-8-1949, it had not been given effect to in 1950. Section 51 of the Act states that Government will establish Nyaya Panchayats for a group of several villages. This was not done until 9-2-1952 for Bediya.

Provision was made for an interim arrangement by adding a proviso to Sub-section 3 of Section 1 of the Panchayat Vidhan. This proviso runs as follows:

fdUrq izfrcU/k ;g gS fd bu fo/kku ds varxZr iapk;rksa dk pquko gksus dh rkfj[k rd foyhu gq;s jkT;ksa dh iapk;r~ iwoZor~ vius vius fo/kkuksa ds vUrxZr dk;Z djrk jksxh vkSj pquko gksus ds i"pkr ,slh iapk;rksa ds fcpkjk/khu izdj.k vksj mudh IEif?k rFkk nkf;Ro dh O;oLFkk xozjesUV }kjk fu;ksfr jhfr ds vuqlkj dh tk;xh A

By this proviso the Act allowed Panchayat Boards of the integrating States to continue until election for new Panchayats was held. From these facts it is clear that both on 24-1-1950 when, the complaint was filed and on 15-6-1950 when the Panchayat convicted the accused, there was no Nyaya Panchayat for Bediya under the Madhya Bharat Panchayat Vidhan of Samvat 2006. As already stated elections had not taken place in 1950. Nor was any provision made similar to the proviso to Sub-section 3 of Section 1 for the enclaves. On the material dates, therefore, Madhya Bharat Panchayat Vidhan of Samvat 2006 had not provided for a Nyaya Panchayat for the village Bediya which was transferred from Madhya Pradesh to Madhya Bharat on 20-1-1950.

That being the position we have to consider what law, if any, was to be followed on the material dates in the village Bediya. Article 372 Clause(1) is as follows:

Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

Briefly stated the Article states that all the law in force in the territory of India immediately before the commencement of the Constitution was to continue in force until altered or repealed or amended by a competent legislature.

The expression "law in force" has been expounded by explanation 1 to the said Article. That explanation runs as follows:

The expression "law in force" in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

In the present case, Central Provinces and Berar Panchayats Act, 1946 ceased to be in force in Bediya on 20-1-1950 by the order of the Governor-General. But it was not repealed. Before the commencement of the Constitution the Central Provinces and Berar Panchayats Act was in" force although it was not in

operation in Bediya because it was not repealed. The expression "cease to be in force" is not analogous to repeal. All that the expression means is that its operation was suspended. As Madhya Bharat Panchayat Vidhan had made no provision for the formation of a Panchayat for Bediya in 1950, there was no Madhya Bharat Act in force in Bediya before the commencement of the Constitution.

The operation of the Central Provinces and Berar Panchayats Act was suspended on 20-1- 1950. By virtue of Article 372, therefore, the Central Provinces and Berar Panchayats Act continues to be in force in Bediya after the commencement of the Constitution as it was the law in force as expounded by explanation 1 to the said Article, In this view of the matter the jurisdiction exercised by the Nyaya Panchayat of Bediya cannot "be said to be ultra vires.

5. The general principles of international law which govern the State succession are stated by Schwarzenberger in his book on International Law. At p. 83, Vol. I of the 2nd Edn., the learned author states as follows:

In the event, of State succession the civil law of the former territorial sovereign continues in operation until new laws have been enacted. In the absence of such legislation, it is not to be presumed that the new sovereign has intended automatically to apply its whole system of private law as distinct from public law to the newly acquired territory. In the case of German settlers in Poland (1923) the Permanent Court of International Justice observed:

Private rights acquired under existing law do not cease on a change of sovereignty. No one denies that the German Civil Law, both substantive and adjective, has continued without interruption to operate in the territory in question. It can hardly be maintained that, although the law survives, private rights acquired under it have perished. Such a contention is based on no principle and would be contrary to an almost universal opinion and practice.

On the same subject Halsbury in his Laws of England states as follows:

In conquered or ceded countries which, at (sic) time of their acquisition, had already law (sic) their own, the Crown has power to alter (sic) change those laws, but until this is act (sic) done the ancient laws of the country "re" (sic) in force (Vide Halsbury's Laws of Eng (sic) Vol. 11, 1933 Edn., Page 239 para 456).

This principle has been laid down by Lordships of the Privy Council in - "Edgarmut (sic) v. Strickland AIR 1939 PC 39 (A). Lordships in this case observed as follows:

Where however the territory was acquired cession or conquest, more particularly (sic) there was an existing system of law, always been considered that there was an (sic) lute power in the Crown, so far as was (sic) tent with the terms of cession (if it, (sic) case of that kind) to alter the existing (sic) of law, though until such interference t" remained as they were before the territor (sic) acquired by the Crown.

Similar observations have been made (sic) - "Freeman v. Fairlies 1 Moo Ind App 305(sic). These observations read as follows:

I apprehend the true general distinction to (sic) in effect, between countries in which there (sic) not, and countries in which there are, at (sic) time of their acquisition, any existing civil (sic) stitutions and laws, it being, in the first (sic) those cases, matter of necessity that the (sic) settlers should use their native laws, as has (sic) no others to resort to; whereas, in the (sic) case, there is an established lex loci, which might be highly inconvenient all at ounces (sic) abrogate; and therefore, it remains till charge (sic) by the deliberate wisdom of the new legist (sic) power.

In "Campbell v. Hall 20 State Tr 239 at (sic)(c) it is stated as follows:

If a king come to a kingdom by conquest may, at his pleasure, alter and change laws of that kingdom; but, until he doth (sic) an alteration, the ancient laws of that" dom remain.

In "Forbes v. Cochrane (1824) 2 B (sic)

(D) Holroyd J. held that in a conquered come the old law prevails until altered by the (sic) Council.

Our High Court has also taken the same (sic) in - "Anand Balkrishna Behare v. Police (sic) kar 1949 MLR 160 (E).

It follows, therefore, from these decisions (sic) in a ceded territory, the old law continues (sic) the new sovereign enacts new laws. As air (sic) stated the Government had not establish Panchayat for village Bediya in 1950. There (sic) no provision similar to the proviso to Sub-section 3 of Section 1 for the newly transferred territory position, therefore, is that the new sovereign not established any Nyaya Panchayat for (sic) in 1950. Until the constitution of the new Panchayat, that is, 9-2-1952, the old Panchayat a right to function in accordance with the principles of the international law. On this (sic) also the jurisdiction exercised by the New Panchayat at Bediya cannot be said to be vires.

6. For the reasons given above, the reverse (sic) has no force and is accordingly dismissed.

Newaskar, J.

7.I agree.