

(1964) 02 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Writ No. 21 of 1963

Lohare

APPELLANT

Vs

Civil Judge, Bharatpur and Others

RESPONDENT

Date of Decision : 04-02-1964

Acts Referred:

Rajasthan Panchayat Act, 1953 — Section 27(B)(D)

Citation : AIR 1964 Raj 196 : (1964) RLW 187

Hon'ble Judges : Jagat Narayan, J

Bench : Single Bench

Advocate : M.M. Tiwari, for the Appellant; J.S. Ratogi, for the Respondent

Final Decision : Allowed

Judgement

Jagat Narayan, J.—This is a petition under Article 226 of the Constitution by one Lohare against a decree passed against him by Maharavar Nyaya Panchayat.

2. The validity of the decision has been challenged on the ground that no bench for the trial of the suit was formed as provided u/s 27-B and that the decision was by only two Panchas whereas u/s 27-D the minimum number of Panchas who could form a bench is three.

3. The relevant provisions of the Rajasthan Panchayat Act, 1953 are these :-

"Section 27-D. Formation of benches of Nyaya Panchayat.- (1) Subject to the provisions contained in Section 27-F and to the rules made under Sub-section (2), the Chairman of a Nyaya Panchayat shall, for the hearing and disposal of suits and cases coming up before such Nyaya Panchayat under and in pursuance of the provisions of this Chapter, form benches, each bench to consist of any three members whether or not inclusive of the Chairman himself.

(2) The formation of benches under Sub-section (1), the hearing of part-heard cases, time and place at which the Nyaya Panchayat shall sit, the conduct of its business, the mode of the disposal of such business, the method of distribution,

transfer and retransfer of work among the benches, the procedure to be followed and such other matters as the State Government may consider necessary shall be governed and regulated by rules made in this behalf by the State Government.

"Section 27-F. Hearing by members of Nyaya Panchayat.- (1) No member of a Nyaya Panchayat shall hear or dispose of any suit or case arising in the Panchayat circle of the Panchayat which elected him.

(4) The trial of a suit or case by a bench of the Nyaya Panchayat shall not be invalid by reason merely that some of the members of that bench were not present at any hearing thereof."

(4) The following rules have been framed u/s 27-D (2) of the Act:-

"135. Benches of Nyaya Panchayats how to be formed,- (1) For each Panchayat circle constituting a Nyaya circle, the Chairman of the Nyaya Panchayat thereof shall form a Bench of the members of such Nyaya Panchayat as provided in Sub-section (1) of Section 27-D.

(2) The Chairman may direct that any Bench so formed for one Panchayat circle shall be deemed to have been so formed also for another Panchayat circle within the same Nyaya circle.

(3) The Chairman may also direct that any member of one Bench shall, as from a date to be specified in the direction, act as the member of any other Bench of the same Nyaya Panchayat.

4. The chairman may further direct that any Bench formed or deemed to have been formed for a Panchayat circle shall, as from a date to be specified in the direction cease to exercise jurisdiction in that Panchayat circle and be deemed to have been formed for any other Panchayat circle to be specified in the direction.

5. In forming a Bench under Sub-rule (1) or in making a direction under Sub-rule (2) or Sub-rule (3) or Sub-rule (4), special care shall be taken, as far as possible, to see that a member of the Nyaya Panchayat from amongst the electors of a particular Panchayat circle is not a member of the Bench for that Panchayat circle."

* * * * * "152. Judgment and decree.- (1) Upon the conclusion of the evidence and the hearing of arguments, if any In a suit or case, the Bench hearing the same shall proceed to pass judgment therein.

(2) Every such judgment shall be in writing and shall contain briefly the facts, the decision and the reasons therefore and shall be signed by all the members of the Bench.

(3) The judgment shall be pronounced in open by the members who have signed it or by any one of them or by the member or members succeeding them or any of them in office and shall be deemed to be the judgment of the Nyaya Panchayat.

(4)"

5. In the present case, two Panchas recorded the statements of the parties and their witnesses and gave the decision. There is no order in the record of the case showing that any bench was constituted for the trial of the suit.

6. In my opinion however the provision relating to the formation of benches is not mandatory. It is meant for the convenience of the Nyaya Panchayat so that it may constitute more than one bench for the more expeditious disposal of the cases. What is mandatory is that if a bench is formed to decide a case or a suit then it should not consist of less than three members. If no bench is formed then the case or the suit should be decided by all the Panchas constituting the Nyaya Panchayat except the Panch elected from the Panchayat circle in which the suit or the case arises as provided in Section 27-F(1).

7. On behalf of Govind Singh, respondent No. 3, it was contended that benches are usually formed for trial of the cases or suits arising from any particular Panchayat circle generally and are not formed in each case or suit. There is no material in the present case showing that any bench was constituted for trial of suits or cases arising in the Panchayat circle in which the defendant resides. The Sarpanch has filed a reply in which he has stated that no bench was formed by him for the trial of this suit. He did not state that benches were formed for the trial of cases or suits arising from different Panchayat circles. In any case the decision is, in my opinion, vitiated because it was given by only two panchas. Even assuming that a bench was formed for the trial of this suit, it could not have consisted of less than three Panchas and all the Panchas constituting the bench should have given the decision.

8. On behalf of Govind Singh, it was contended that In view of Section 27-F (4) it is not necessary for all the Panchas constituting the bench to give the decision. I am unable to accept this contention. When a bench is formed for the decision of a case or a suit, the decision should be by all the Panchas constituting the bench and not by only some of them. The purpose behind Section 27-F (4) is only this that if one or two members of the bench are unable to attend on a particular date of hearing and if any witness has come his statement may be recorded by the Panch or the Panchas present so that it may not be necessary to adjourn the hearing. But the decision of the case or the suit by less than the number of the Panchas constituting the bench which is seized of the case is not contemplated.

9. Another contention raised on behalf of Govind Singh was that if a Panch takes part in a decision who was not present when the evidence was recorded, the decision would be vitiated. Reliance was placed on Shri Bishveshwar Vs. Board of Revenue, Rajasthan and Another, That case is distinguishable inasmuch as there was no provision contained in the Board of Revenue Ordinance corresponding to Section 27-F (4). The Ordinance provided for the hearing of a case either by a member singly or by a bench of two or more members. A rule had been framed under the Ordinance enabling a member to take part in the decision without

being present at the hearing of the case throughout. That rule was held to be illegal as being inconsistent with the provisions of the Ordinance. In the present case it is the Act itself which contains a provision to the effect that the trial of a suit or a case by a bench of the Nyaya Panchayat shall not be invalid by reason merely that some of the members of that bench were not present at any hearing thereof. In view of this provision a Panch who was not present when the evidence was recorded can take part in the decision after applying his mind to the material on record. The Act contemplates a decision by all the members constituting the bench and not by some of them only.

10. As the decision in the present case was only by two Panchas, it is vitiated.

11. I accordingly allow the writ petition, set aside the decree of the Nyaya Panchayat and remand the case for fresh decision in accordance with law after constituting a bench. In the circumstances of the case, I direct that parties shall bear their own costs of this writ petition.