

Ameer and ors. Vs. Sub-divisional Magistrate, Varanasi (S) and ors.

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Court : Allahabad

Decided On : Aug-13-1968

Reported in : AIR1970All115

Judge : Jagdish Sahai and ;Gangeshwar Prasad, JJ.

Acts : Uttar Pradesh Panchayat Raj Act, 1947 - Sections 2, 53, 75, 78, 79, 81, 83, 85, 86 and 89; Code of Criminal Procedure (CrPC) - Sections 107

Appeal No. : Civil Misc. Writ No. 7 of 1962

Appellant : Ameer and ors.

Respondent : Sub-divisional Magistrate, Varanasi (S) and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : G.N. Varma, Adv.

Disposition : Petition allowed

Judgement :

Gangeshwar Prasad, J.

1. This writ petition has come up before us upon a reference made by a learned single Judge of this Court.

2. Under Section 53 of the U. P. Panchayat Raj Act (hereinafter referred to as the Act), each of the petitioners was ordered by the Nyaya Panchayat of village Khewali, district Varanasi, to execute a personal bond in the sum of Rs. 50 with one surety of like amount for keeping the peace for a period of fifteen days. The order of the Nyaya Panchayat provided that in case of default in executing the required bond a penalty of Rs. 5 per day shall be imposed on each defaulting petitioner. Against that order the petitioners filed an application in revision under Section 89 of the Act before the Sub-Divisional Magistrate Varanasi (S) who dismissed it on the ground that no revision lay. The view that the Magistrate took was that an order under Section 53 is not an order in a 'criminal case' as defined in the Act and is, accordingly, not revisable under Section 89. In taking this view he followed the decision of Mehrotra, J. In *Girwar Singh v. Sub-Divisional Magistrate* Writ No. 753 of 1954 decided on March 11, 1955 (All). By means of this petition the petitioners pray for a writ in the nature of certiorari quashing the orders of the Nyaya Panchayat and the Sub-Divisional Magistrate. The learned single Judge before whom the writ petition originally came up for hearing found some difficulty in accepting the opinion expressed by Mehrotra, J. In the above decision, and that led to the reference.

3. The relevant portion of Section 89 of the Act runs as follows:

'Section 89 (1)-- A Sub-Divisional Magistrate, Munsif or Sub-Divisional Officer, according as it is a criminal, civil or revenue case, may either on his own motion or on the application of any party made within 60 days from the date of the order complained of or where personal service of summons had not been effected on the applicant from the date of the knowledge of the order call for the record of any case which has been decided by a Nyaya Panchayat and if it appears to him that injustice or material irregularity has occurred, he may make such order in the case as he thinks fit.

(2) (3) (4) Except as aforesaid, a decree or order passed by a Nyaya Panchayat in any civil, criminal or revenue case shall not be open to appeal or revision in any Court.'

4. The expressions 'criminal case', 'civil case' and 'revenue case' have all been defined in Section 2 of the Act. According to the definition, 'Criminal case' means a criminal proceeding in respect of an offence triable by a Nyaya Panchayat. Certainly, a proceeding under Section 53 cannot be said to be a proceeding in respect of an offence triable by a Nyaya Panchayat, and if the revisional power of Sub-Divisional Magistrate is regarded as confined to a criminal case as defined in the Act the conclusion that an order under Section 53 is not revisable is correct. The question, however, is whether the revisional power can properly be regarded as so confined.

5. Now, 'case' is an expression of very wide import. When used in relation to an authority performing judicial function or exercising judicial power, it includes every matter which furnishes occasion for the performance of that function and every subject in respect of which that power is exercised. There is nothing to indicate that the expression 'case' has been given a restricted meaning in the Act. No doubt, Sub-section (1) of Section 49 which provides for the formation of Benches speaks of 'cases and inquiries' coming up before the Nyaya Panchayat, and it may thus create the impression that the Act contemplates a distinction between 'cases' and 'inquiries'; but Sub-section (3) of that section would dispel the impression and show that no such distinction is really contemplated. Sub-section (3) lays down that no Panch, Sarpanch or Sahayak Sarpanch shall take part in the 'trial of or inquiry in any case' to which he or any near relation, employer, employee, debtor, creditor, or partner of his is a party or in which any of them is personally interested. Here a 'trial' has certainly been distinguished from an 'inquiry', but the word 'case' has been used as comprehending both. If a 'case' and an 'inquiry' were to be considered distinct things there can obviously be no 'inquiry in a case'. It cannot also be reasonably suggested that the prohibition contained in Sub-section (3) does not extend to an 'inquiry' or that any matter which may be dealt with by the Nyaya Panchayat is outside the scope of the prohibition. It will further be noticed that Sub-section (2) of Section 49 uses the expression 'cases' at one place and 'cases and enquiries' at another, although it seems evident that when using 'cases' it means both 'cases' and 'enquiries'. Section 49, therefore, does not indicate that the Act draws a distinction between 'a case' and 'an inquiry,' but only discloses that the word 'case' has been used in that wide sense in which it includes every

matter coming up before the Nyaya Panchayat under the provisions of the Act and when it mentions both 'cases' and 'enquiries' it does so merely out of abundant caution and not because 'enquiries' are not included in 'cases'. It would also be noted that a proceeding under Section 53 of the Act has not been described in the Act as an 'enquiry' or an 'inquiry' and there is no reason why such a proceeding should not be regarded as a 'case' an expression which, it would be noted, has not been defined in the Act as it now stands.

6. An examination of the provisions of the Act clearly shows that the matters which the Nyaya Panchayat has been empowered to deal with fall into three categories viz. 'Civil Case', 'Criminal Case', and 'Revenue Case'. Sections 75, 78, 79, 81, 83, 85 and 86, which regulate the procedure in relation to matters to be dealt with by a Nyaya Panchayat, speak of the abovementioned categories only and it is consequently, not possible to say of any case coming up before the Nyaya Panchayat that it falls outside the said categories. It is true that in some sections of the Act some other expressions have also been used but they seem to us to be either inapt or unnecessary. The heading prefixed to Section 73 is 'Res Judicata and Pending Suits' although the section itself speaks of civil and revenue cases and not suits. Sub-section (1) of Section 77-A provides that if any Panch is absent at any hearing, the remaining Panchas may try 'the case, suit or proceeding' although the words 'suit' and 'proceeding' have neither been defined in the Act nor used in it elsewhere in relation to matters to be dealt with by the Nyaya Panchayat. The word 'suits' has again been unnecessarily added to the word 'cases' in the heading of Section 78. These sections and Section 49 to which attention has already been drawn serve to demonstrate that the Act suffers from inaccurate and slovenly drafting and that, in finding out the meaning of even those expressions which have been defined in the Act, the Court has to take into account to a larger extent than would otherwise have been necessary, the context in which they occur.

7. Before we advert to Section 89 itself we have to see whether or not a proceeding under Section 53 is a 'criminal case' for the purposes of some other provisions. Sub-section (2) of Section 53 makes it obligatory for the Bench to hear the witnesses whom the person proceeded against may produce. Surely, the

person concerned should, therefore, have the right to get his witnesses summoned and the Nyaya Panchayat should have the power to secure their attendance before it. Section 86 is the only section empowering the Nyaya Panchayat to compel the attendance of witnesses and the production of documents, and the power conferred thereby is in relation to civil, criminal and revenue cases. If, then, a proceeding under Section 53 is not a criminal case within the meaning of the section, it is not possible for the person proceeded against to have witnesses summoned or for the Nyaya Panchayat to compel their attendance. And Section 87 which provides for imposition of fine upon a witness for his failure to appear before the Nyaya Panchayat would automatically be inapplicable if the power to summon is itself lacking. Section 83 makes it the duty of the Nyaya Panchayat, in relation to civil, criminal and revenue cases, to receive evidence and to ascertain the facts by every lawful means in its power. It is not possible to conceive that the legislature intended to exclude a proceeding under Section 53 from the ambit of Section 83 and to absolve the Nyaya Panchayat from the obligation of ascertaining the facts so far as that proceeding is concerned. Section 83 further provides that the Evidence Act would not apply to any civil, criminal or revenue case in a Nyaya Panchayat except as provided in the Act or as may be prescribed. Could it be the intention of the legislature that even though the Evidence Act would not apply to trials for offences it would nevertheless apply to a proceeding under Section 53? Under Section 85 a Sub-Divisional Magistrate may transfer a case to another Bench of the Nyaya Panchayat. Let us suppose that a proceeding under Section 53 is being taken against a person in contravention of Sub-section (3) of Section 49 or that for some other reason the ends of justice require the transfer of the said proceeding to some other Bench. The power conferred by Section 85 will however, not at all be exercisable and the person proceeded against will have no remedy under the provisions of the Act if a proceeding under Section 53 is not included in the expression 'criminal case'. Such a result could not have been intended by the legislature. The only reasonable conclusion to be drawn, therefore, is that in all the aforesaid provisions the expression 'criminal case' has to be construed not as circumscribed by the definition given to it in the Act but as also including a proceeding under Section 53.

8. If, as we have observed above, a proceeding under Section 53 has to be regarded as a 'criminal case' within the meaning of the provisions which regulate its procedure before the Nyaya Panchayat, it should, in our opinion, follow that the proceeding is a 'criminal case' for the purpose of Section 89 also. The expression 'criminal case' is a well known expression having a recognised and generally accepted connotation. A proceeding under Section 53 of the Act is analogous to a proceeding under Section 107, Criminal P. C., and having regard to the facts which necessitate it and the consequences which may ensue from it there can be no doubt that such a proceeding is a criminal case. In treating the proceeding as included in the expression 'criminal case' in Section 89 and the other provisions referred to above, we are only ascribing to it the meaning which it bears in common acceptation. If a proceeding under Section 53 of the Act were not to be regarded as a 'criminal case' for the purposes of the abovementioned sections the result would be that those provisions, which must necessarily have been intended to apply to all matters coming up before the Nyaya Panchayat would become inapplicable. In order, therefore, to effectuate the purpose of the Act and make it workable in respect of a matter dealt with by it, it is necessary that the expression 'criminal case' be understood as including a proceeding under Section 53 also.

9. Section 2 of the Act, like almost all interpretation clauses, subjects its definitions to the usual condition, 'unless there is anything repugnant in the subject or context.' Dealing with the effect of such a condition in the definition of the word 'insurer' in Section 2 of the Insurance Act 1938 the Supreme Court observed as follows in *Vanguard Fire and General Insurance Co. Ltd. v. Fraser and Ross* AIR 1960 SC 971:

'The main basis of this contention is the definition of the word 'insurer' in Section 2(9) of the Act. It is pointed out that that definition begins with the words 'insurer means' and is exhaustive. It may be accepted that generally the word 'insurer' has been defined for the purposes of the Act to mean a person or body corporate etc. which is actually carrying on the business of insurance, i.e., the business of effecting contracts of insurance of whatever kind they might be. But Section 2 begins with the words 'in this Act, unless there is anything repugnant in the subject or context' and then come the various definition clauses of which Clause (9) is

one. It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all the definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore, in finding out the meaning of the word 'insurer' in various sections of the Act, meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances. Therefore, though ordinarily the word 'insurer' as used in the Act would mean a person or body corporate actually carrying on the business of insurance it may be that in certain sections the word may have a somewhat different meaning.' Reference may also be made to Maxwell's Interpretation of Statutes (9th Edition) page 34 where it is stated:

'Even where an Act contains a definition section it does not necessarily apply in all the contexts in which a defined word may be found. If a defined expression is used in a context which the definition will not fit, the context must be allowed to prevail over the 'artificial conceptions' of the definition clause, and the word must be given its ordinary meaning'.

10. We have shown that if in the sections mentioned above and in Section 89 of the Act the expression 'criminal cases' were to be interpreted in terms of the definition given in Section 2 there would be an obvious repugnancy in the subject and the context. We may also observe that authority is not altogether wanting for the view that the definition provided by an enactment may itself, in certain

circumstances be held to be inaccurate and unreliable, and we may draw attention to the following passage in 'The Construction of Statutes' by Crawford (1940 Edition) page 363:

'Although the legislative definition may be of great assistance in clearly revealing the legislative meaning, it may also create considerable confusion, the definitive language may itself require construction. Its own language may be ambiguous. It may be clearly contradictory with the language of the statute proper. The statute may indicate that the legislative definition is inaccurate. It is, therefore, obvious that before legislative definition can be relied upon, its applicability as well as its reliability should be ascertained. And in this connection, one important situation should be mentioned. In the event that the definition found in the interpretation clause is at variance with the intention of the law-makers as expressed in the plain language of the statute, the intention must prevail over the legislative definition. In other words, the intent of the legislature must control the legislative definition. But the interpretation clause and the statute proper must all be construed together as a part of the same statute. Where this is done, if the definition laid down by the legislature does not conflict with the intent of the legislature, then the former may be given effect. If the two can be harmonized, there can be no objection to allowing the interpretation clause to control the language defined. To give the interpretation clause precedence where the two cannot be harmonized, would operate to make the ancillary portion of the statute superior to the primary portion. The statute's meaning would in all probability be distorted, and the legislative intent defeated.'

For our present purpose, however, it is sufficient to say that the expression 'criminal case' in Section 89 is not restricted in its meaning to the definition given in Section 2 of the Act; it includes a proceeding under Section 53 also. A Sub-Divisional Magistrate has, therefore, the power under Section 89 to revise an order passed in such a proceeding by the Nyaya Panchayat.

11. We think it necessary to mention that there is one proceeding under the Act which is certainly a case in the wide meaning of the term but is not subject to revision under Section 89. That is a proceeding under Section 63. Since it is not

an independent proceeding started before the Nyaya Panchayat the legislature thought it proper, may be, by way of abundant caution, to say in Sub-section (3) of Section 77-A that the provisions of Sub-sections (1) and (2) of that section shall *mutatis mutandis* apply to an inquiry made by a Nyaya Panchayat under Section 63. That inquiry, however, results only in a report to the Magistrate who directed the inquiry and does not lead to any order. The provisions of Section 89 are, consequently, inapplicable to it. We should not, therefore, be understood as holding by implication that a proceeding under Section 63 of the Act is also a proceeding subject to revision under Section 89.

12. The decision of Mehrotra J. in Writ No. 753 of 1954, D/-11-3-1955 (All) (Supra) proceeded upon the provisions of the Act as they stood at that time. It is not necessary for us to discuss the old provisions of the Act; but we may indicate that we do not find it possible to agree with the learned Judge in the opinion expressed by him. Before parting with the case we may point out the desirability of suitable amendments in the Act so that the anomalies shown above may be removed and the legislative intent may be expressed in clearer and more accurate language.

13. For the reasons discussed above the writ petition is allowed, the order of the Sub-Divisional Magistrate Varanasi (S) dated 23-9-1961 is quashed and he is directed to hear and decide the revision on merits.

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