

I may at this stage advert to another aspect. During the course of arguments, we put to the petitioner's learned counsel as to why he should not be directed to seek relief by way of appeal or revision under the statute. At the time of admission, a suggestion was thrown that there was no right of appeal against the impugned order of assessment, but during arguments, it became clear that the impugned order would be open to challenge on appeal, review, revision and references, etc. The petitioner's learned counsel, however, stated that the period for going up in appeal had by now expired and the relief under the statute may, therefore, not be efficacious. He also laid stress on the submission that the question raised by him relates to the *vires* of a statutory rule and, therefore, the proceedings by way of writ are more appropriate than the remedies provided by the statute. I should like at this stage to point out that merely because an aggrieved party has by his own conduct lost his remedy under the statute on account of time lapse, is by itself and without more no ground for invoking this Court's jurisdiction under Article 226 of the Constitution. In the present case, we have gone into the merits of the objection to the *vires* of the impugned rule as a special case, but I express no opinion on the question whether or not the assessee could have come to this Court by means of a reference and raised the question of the invalidity of the impugned assessment on the ground that the impugned rule is inconsistent with the Central Act and the rules made by the Central Government thereunder.

For the foregoing reasons, this petition fails and is hereby dismissed but without costs.

PREM CHAND PANDIT, J.—I agree.

R. S.

CIVIL MISCELLANEOUS

*Before R. S. Narula, J.*

M/S RADHA KISHAN-HOSHIAR SINGH,— *Petitioners*

*versus*

SARUP LAL AND ANOTHER,— *Respondents*

Civil Miscellaneous No. 1287 of 1963

*Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 52—Claim for wages—Whether triable by Panchayat—Payment of Wages Act (IV of 1936)—S. 22(d)—Whether bars the jurisdiction of the Panchayat—Order of Panchayat based on material collected ex parte—Whether vitiated.*

M/s Ballimal  
Nawalkishore  
*v.*  
The Assessing  
Authority under  
the Punjab  
General Sales-tax  
Act and the  
Central Sales-  
tax Act and the  
State of Punjab

\_\_\_\_\_

Dua, J.

Pandit, J.

1965

October 20th.

*Held, that* the provisions of section 52 of the Punjab Gram Panchayat Act, 1952, have to be given effect notwithstanding any other law for the time being in force including the provisions of section 22(d) of the Payment of Wages Act, 1936. The bar created by section 22(d) of the Payment of Wages Act does not take away the jurisdiction of the Panchayat to adjudicate upon the claim for wages.

*Held, that* the Central as well as the State Legislature have the power to legislate on the subject relating to the payment of wages. Provisions as to jurisdiction to try any claim by a certain Tribunal are not in the nature of law which occupies a legislative field so as to leave no room for the same field to be entered upon by the other concurrent legislative authority.

*Held, that* the Panchayat is a tribunal of fact. Its judgment is obviously vitiated as it is based on information gathered by it privately behind the back of the parties.

*Petition under Article 227 of the Constitution of India, praying that exercising the power of superintendence, the orders of the courts below be quashed and further praying that the operation of the decree be stayed pending disposal of the petition.*

H. B. SINGH, ADVOCATE, for the Petitioner.

NEMO, for the Respondents.

#### ORDER.

Narula, J.

NARULA, J.—On March 13, 1961, Sarup Lal, respondent No. 1, filed a suit for the recovery of Rs. 99 on account of alleged wages due to him for serving Messrs Radhakrishan-Hoshiar Singh (hereinafter referred to as the defendant) in their sugar factory. By written statement, dated May 9, 1961, the defendant denied the claim of Sarup Lal (hereinafter referred to as the plaintiff) on the ground that he had never served in the factory of the defendant and also on the ground that the Gram Panchayat, Bhuran, district Sangrur, had no jurisdiction to try the suit as their factory was situated in Kalwa Nagar, a place beyond the jurisdiction of the said Panchayat. Thereafter, the defendant absented itself and the Panchayat directed *ex parte* proceedings against it. In the meantime, the defendant made an application to the Subordinate Judge having jurisdiction to transfer the case from the aforesaid Panchayat. During the pendency of the transfer application, proceedings before the Panchayat were stayed. The proceedings before the Subordinate Judge terminated with an order directing the Panchayat to decide the question

of jurisdiction in accordance with law. Thereafter, by order, dated June 26, 1962, of which copy is annexure A to this application, the Panchayat decreed the claim of the plaintiff against the defendant for payment of Rs. 99 with costs. The defendant's petition for revision of the Panchayat's order under section 65 of the Punjab Gram Panchayat Act having been dismissed by the Court of Shri Gurpartap Singh Chahal, Subordinate Judge, First Class, Jind, by order, dated 28th February, 1963 (copy annexure B to this application), the petitioner has come up to this Court under Article 227 of the Constitution.

M/s Radha  
Krishan  
Hoshiar Singh  
v.  
Sarup Lal  
and another  
Narula, J.

Notices of this case were issued to the plaintiff on the 19th of May, 1963, 21st June, 1963 and 13th December, 1963, but he could not be served. Thereupon, the defendant made an application under Order 5, rule 20 of the Code (C.M. 2832 of 1964), which was granted by Jindra Lal, J., and it was ordered that substituted service may be effected on the plaintiff and on the *pro forma* respondent by publication in the Hindi Milap. The plaintiff is reported to have been served by publication in pursuance of the above-said order of Jindra Lal, J. No one has, however, appeared to contest this petition.

Shri Harbhagwan Singh, the learned counsel for the defendant, has raised two points before me in support of the application. It is firstly contended by him that the jurisdiction of the Panchayat, which was a Court for all practical purposes, was expressly barred by section 22(d) of the Payment of Wages Act of 1936. The relevant part of the above-said section of the 1936 Act reads as follows:—

“No Court shall entertain any suit for the recovery of wages.....in so far as the sum so claimed could have been recovered by an application under section 15 (of the Payment of Wages Act).”

Section 52 of the Gram Panchayat Act, under which the Panchayat had jurisdiction to entertain and adjudicate upon the claim of the plaintiff, reads as follows:—

“Notwithstanding any other law for the time being in force and subject to the provisions of this

M/s Radha  
Krishan  
Hoshiar Singh  
v.  
Sarup Lal  
and another  
\_\_\_\_\_  
Narula, J.

Act, the jurisdiction to try any of the suits mentioned hereunder shall vest in a Gram Panchayat.

- (a) \_\_\_\_\_  
(b) suit for money \_\_\_\_\_  
(c) \_\_\_\_\_  
(d) \_\_\_\_\_

It is, therefore, obvious that the provisions of section 52 of the Punjab Act have to be given effect notwithstanding any other law for the time being in force including the provisions of section 22(d) of the Payment of Wages Act.

Mr. Harbhagwan Singh has then argued that in spite of the opening words of section 52 of the Punjab Act, effect has to be given to the provisions of section 22(d) of the Payment of Wages Act as the latter Act has been passed by the Central Legislature and cannot, therefore, be overridden by any State legislation. He, however, admits that the legislation relating to the Payment of Wages Act is covered by the Concurrent List (List III) of the Seventh Schedule to the Constitution. That being so, the Central as well as the State Legislatures have the power to legislate on the subject relating to the payment of wages. Provisions as to jurisdiction to try any claim by a certain Tribunal are not in the nature of law which occupies a legislative field so as to leave no room for the same field to be entered upon by the other concurrent legislative authority. As at present advised, I would, therefore, hold that the bar created by section 22(d) of the Payment of Wages Act does not take away the jurisdiction vested in a Gram Panchayat under section 52 of the above-named Punjab Act.

The second contention raised by the learned counsel<sup>s</sup> is to the effect that the fundamental right guaranteed to the petitioner as a citizen of this country by Article 14 of the Constitution has been violated in this case inasmuch as the Panchayat, which is a Tribunal within the jurisdiction of this Court, has violated the rule of law by deciding this judicial matter on the basis of private information gathered behind the back of the parties, thus violating one

of the most cardinal principles of natural justice. On facts there is no dispute about this matter. In the judgment of the Panchayat (Annexure A to this application) it has been stated as follows:—

“Besides the witnesses produced by the plaintiff, the Panchayat has also made enquiries from the respectables of the neighbourhood, who do not want to give evidence against the defendants openly.”

In *Dhirajlal Girdharilal v. Commissioner of Income-tax* (1), it was held that when a Court of facts acts on material partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the Court was affected by the irrelevant material used by it in arriving at its finding, and that such a finding is vitiated because of the use of inadmissible material. The Panchayat was a Tribunal of fact. Its judgment is obviously vitiated as it is based on information gathered by it privately behind the back of the parties particularly when the persons who are alleged to have given that information to the members of the Panchayat had also made it known to the Panchayat that they were not willing to appear as witnesses in the presence of the defendant.

The above point does not appear to have been dealt with by the learned Subordinate Judge, who decided the petition for revision under section 65 of the Punjab Act. No copy of the revision petition has been produced before me, and it is, therefore, not possible to know whether this question had at all been raised there or not. But this point has been specifically taken up in this application under Article 227 of the Constitution, and it is mainly on this ground that the application appears to have been admitted by this Court. It has been authoritatively settled that nobody can waive his fundamental rights. In *Basheshar Nath v. Commissioner of Income-tax* (2), it was held that a person or a citizen of this country cannot give up or waive a breach of the fundamental right under Article 14 of the Constitution as the right in question indirectly conferred on a citizen by the Constitutional mandate directed to the State. The right of the plaintiff infringed in this case is enforceable under Part III of the

M/s Radha  
Krishan  
Hoshiar Singh  
v.  
Sarup Lal  
and another  
Narula, J.

(1) A.I.R. 1955 S.C. 271.

(2) A.I.R. 1959 S.C. 149.

M/s Radha  
Krishan  
Hoshiar Singh  
v.  
Sarup Lal  
and another  
—  
Narula, J.

Constitution, and, therefore, even if this point was not taken up before the learned Subordinate Judge and may, therefore, be argued to have been waived, the waiver would not disentitle the plaintiff to raise the question before this Court for the first time. If the order of the Panchayat is vitiated on the above account, the order of the Subordinate Judge must fall with it.

Mr. Harbhagwan Singh, the learned counsel for the petitioner, has tried to raise several other points in support of this application, but I have not heard him on those points because of the view I am taking of the second contention raised by him.

I, therefore, allow this petition and set aside and quash the order of the Panchayat of village Bhuran, dated 26th June, 1962, and of the Court of S. Gurpartap Singh Chahal, Subordinate Judge, First Class, Jind, dated 28th February, 1963, referred to above, and direct the Panchayat to re-decide the case in the light of the above observations. Nothing stated in this order would be interpreted to decide any other question which may be raised by any of the parties before the Panchayat. As no one has appeared to oppose this petition, there will be no order as to costs.

R. S.

CIVIL MISCELLANEOUS

*Before R. S. Narula, J.*

PIYARE LAL AND OTHERS,—*Petitioners*  
*versus*

THE STATE OF PUNAB AND OTHERS,—*Respondents*

Civil Writ No. 2552 of 1965

1965

October, 26th.

*Northern India Canal and Drainage Act (VIII of 1873)—S. 30 A*  
*(1) (d)—Any other matter—Whether covers closure or the opening or the shifting of the outlet.*

*Held*, that clause (d) of sub-section (1) of section 30-A of the Northern India Canal and Drainage Act, 1873, is wide enough to cover "any other matter" not specified in clauses (a), (b) and (c) of that sub-section, which might be considered to be necessary for the proper maintenance and distribution of supply of water. The closure or the opening or the shifting of an existing outlet would certainly be such a matter in appropriate cases. The Divisional Canal Officer, therefore, has the authority and jurisdiction under