

(2004) 12 GAU CK 0056
In the Gauhati High Court
Case No : Regular First Appeal No. 2 of 2002

Chief Engineer, Project Pushpak

APPELLANT

Vs

Lalremruata

RESPONDENT

Date of Decision : 09-12-2004

Acts Referred:

Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 — Rule 23, 24, 59

Citation : (2005) 3 GLR 105 : (2005) 2 GLT 229

Hon'ble Judges : B. Lamare, J; A.B. Pal, J

Bench : Division Bench

Advocate : G.P. Bhowmick, for the Appellant; N. Sailo, for the Respondent

Judgement

1. Heard Mr. G.P. Bhowmick, learned ACGSC for the appellant and also heard Mr. N. Sailo, learned counsel for the respondent.
2. In this appeal, the judgment and decree dated 10.10.2000 passed by the learned Assistant to the Deputy Commissioner, Aizawl District in Money Suit No. 17 of 1996 has been assailed.
3. Mr. N. Sailo, learned counsel for the respondent raised the question of maintainability of this appeal and submitted that under the relevant rules, the appeal does not lie to this High Court but to the Deputy Commissioner against the judgment and decree passed by the Assistant to the Deputy Commissioner.
4. In order to appreciate the submission made by Mr. N. Sailo, learned counsel for the respondent, we may referred to the relevant rules for filing the appeal against the decision of the Assistant to the Deputy Commissioner, Aizawl District, Aizawl. According to Rule 18 of the Rules. For Regulation of the procedure of Officers Appointed to Administer Justice in Lushai Hills issued vide Notification No. 2530(a)A.P., dated 25.3.1937, the appeal against the decision of the Assistant to the Deputy Commissioner lies to Deputy Commissioner. Rule 18 of this 1937 Rules reads as follows :

"18. The High Court, or Deputy Commissioner may, on application or otherwise, call for the proceedings of any case decided by any officer subordinate to him and pass such orders as he may deem fit.

An appeal shall lie to the Deputy Commissioner against any decision of any of his Assistants, and to the High Court against a decision of the Deputy Commissioner, original or appellate, if the value of the suit be rupees five hundred or over, or, if the suit involves a question of tribal rights or customs, or of right to, or possession of, immovable property :

Provided that the petition of appeal, accompanied by a copy of the order appealed against and by a clear statement of the grounds of appeal, be filed within thirty days from the date of decision, excluding the time required for obtaining a copy of the decision. An appeal which lies to the High Court may be presented to the Deputy Commissioner, who shall, if it be in order and presented in due time, endorse upon it the date of receipt and transmit it with the records of the case to the High Court.

The decree of the appellate Court shall be transferred to the Court passing the original order for execution as a decree of its own."

5. A perusal of the provision makes it clear that the appeal against the decision of the Assistant to the Deputy Commissioner lies to the Deputy Commissioner of the District. However, the 1937 Rules were repealed by the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 (for short the 1953 Rules). Rule 59 of the 1953 Rules reads as follows :-

"(59) Repeat and Saving, - (1) The provisions of the Rules for the Regulation of the Procedure of Officers Appointed to Administer Justice in the Lushai Hills, published under the Government of Assam Notification No. 2530(a) A.P., dated 25th March, 1937, as subsequently amended and adopted, in so far as they relate to the matters dealt with in these Rules, are hereby repealed with effect from appointed day.

(2) Notwithstanding such repeal every suit, appeal, application for revision, proceedings and other business relating to both civil and criminal justice pending on the appointed day with the village judicial functionaries or before the Court of the Deputy Commissioner, Lushai Hills or his Assistants shall be transferred for disposal to the Court which would have been competent to entertain and dispose of such suits, appeal, application for revision, proceeding or business had these Rules been brought into force on the date of institution or commencement of the same and the latter Court shall deal with and dispose of the same in accordance with law."

6. The 1953 Rules were made under Para 4 of the Sixth Schedule of the Constitution of India, after the District Council was constituted. The District Council Courts were thus empowered to exercise judicial powers as defined in Para 4 of the sixth Schedule in respect of those cases where both the parties are

tribal. However Rule 23 of the 1953 Rules also provide certain classes of cases which could not be tried by the District Council Courts. However, those cases which are not triable by the Subordinate District Council Court or Additional Subordinate District Court shall continue to be tried by the existing courts, which means by the Deputy Commissioner and his Assistants as provided under Rule 24 of the 1953 Rules. Rule 24 of the Lushai Hills District (Administration of Justice) Rules, 1953 reads as follows :

"24. (1) Suits and cases referred to in Rule 23 shall continue to be tried and dealt with by the existing Courts until such time as the Governor deems fit to invest the Subordinate District Council Court or an Additional Subordinate District Council Court with such powers by notification in the Gazette.

(2) For the purposes of this rule the "existing Courts" mean the Courts of the Deputy Commissioner and his Assistants."

7. From the above provisions of Rule 24, it is clear that even after the constitution of the District Council Courts under the 1953 Rules the courts of Deputy Commissioner and his Assistant still continued to exercise power under the 1937 except those cases triable by District Council Courts. In other words, even if after the 1953 Rules are enacted, the Deputy Commissioner and his Assistant still have jurisdiction to try the cases which are not triable by the District Council Court as per 1953 Rules. In the 1953 rules, the Court constituted were the Village Court, Subordinate District Council Court and District Council Court. The power of these Courts are subject to the provision made in the 1953 Rules, the power of the Courts of the Deputy Commissioner and his Assistant continues to be in existence by virtue of Rule 24 of the 1953 Rules.

8. Admittedly this appeal is filed against the judgment and decree passed by the Assistant to the Deputy Commissioner, Aizawl District, Aizawl in Money Suit No. 17/96. In view of the provision of Rule 24 of the 1953 Rules read with Rule 18 of the 1937 Rule, and also Rule 59 of 1937 Rules an appeal against the said judgment and decree passed by the Assistant to Deputy Commissioner shall lie to the Deputy Commissioner and not to the High Court Rule 59 of 1953 Rules has repealed the 1937 Rules only in respect of matters which are contained in the 1953 Rules, otherwise the 1937 Rules are still in existence in respect of those cases which are not covered by the 1953 Rules.

9. For the aforesaid reasons and considering the fact that the appellant has approached this Court, we are of the opinion that the appeal may be disposed of by the Deputy Commissioner. We, therefore, sent back this appeal to the Deputy Commissioner for deciding the same in accordance with law and the rules.

10. The Registry is directed to transmit the appeal petition to the learned Deputy Commissioner, Aizawl District, Aizawl within 10 days and the photo certified copy be kept In the Registry of this Court.

The appeal is, accordingly transferred.