

(2001) 10 GAU CK 0022

In the Gauhati High Court

Case No : Regular Second Appeal No. 1 of 2000

Lalhmelthai

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 11-10-2001

Acts Referred:

Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 — Rule 5
Regulation of the Procedure of Officers Appointed to Administer Justice in the Lushai Hills Rules, 1937 — Rule 15, 8

Citation : (2001) 3 GLT 352

Hon'ble Judges : B.B. Deb, J

Bench : Single Bench

Advocate : G. Raju, for the Appellant; Addl. AG, for the Respondent

Final Decision : Allowed

Judgement

B.B. Deb, J.—This Second Appeal under rule 18 of the "Rules for the regulation of the Procedure of officers appointed to administer justice in the Lushai Hills, 1937" (popularly known as "Justice Rules, 1937") is directed against the appellate order dated 4.1.2000 passed by the learned Additional District Magistrate (J)/Addl. Deputy Commissioner (J), Aizawl in Civil Appeal No. 2 of 1994 arising out of the judgment dated 2.5.1994 passed by the learned Extra Assistant Commissioner/Magistrate 1st Class, Aizawl in Title Suit No. 12 of 1988.

2. The appellant's case to be precise is as follows :

"The appellant as plaintiff instituted a suit in the court of Deputy Commissioner, Aizawl District being Title Suit No. 12 of 1988 for declaration of her legal right, title and interest over the suit land and the suit was endorsed to the court of learned Extra Assistant Commissioner (shortly EAC) for trial/disposal under Rule 15 of the Justice Rules, 1937. On conclusion of trial, the appellant's suit was disposed of by the learned EAC, Aizawl vide judgment dated 2.5.1994. Against the said judgment, the plaintiff-appellant preferred appeal before the learned ADM(J)/ADC(J) in Civil Appeal No. 2 of 1994, but unfortunately the aforesaid

learned appellate court vide judgment dated 4.1.2000 dismissed the appeal holding inter alia, that the learned EAC/Magistrate 1st Class having no jurisdiction entertained and tried the suit and on that ground, the appeal was disposed of."

3. In this Second Appeal, only question arises for decision as to whether the EAC has the jurisdiction to try the civil suit and against the judgment passed by the learned EAC whether first appeal would lie.

4. Mr. G. Raju, learned counsel appearing on behalf of the plaintiff-appellant referred Rules 15 to 21 available in the rules formulated by the Governor of Assam vide Notification No. 2530(a) AP dated 25th March 1937 under the caption "RULES FOR THE REGULATION OF THE PROCEDURE OF OFFICERS APPOINTED TO ADMINISTER JUSTICE IN THE LUSHAI HILLS".

5. In Chapter IV under the caption "Criminal Justice" and in Chapter V under the caption "Civil Justice" of the Justice Rules, 1937, the hierarchy of the officers appointed to administer justice in the Lushai Hills are specified. The relevant Rules are re-produced below:

"IV. Criminal Justice

8. Criminal Justice shall be ordinarily administered by the Deputy Commissioner and his Assistants.

9. The Deputy Commissioner shall be competent to pass sentence of death, transportation or imprisonment upto the maximum amount provided for the offence, of whipping, and of fine up to any amount; provided that all sentences of death transportation or imprisonment of seven years and upwards shall be subject to the confirmation by the Assam High Court.

The Assam High Court hereinafter referred to as the High Court or Deputy Commissioner may call for the proceedings of any officer subordinate to him and may reduce, enhance or cancel any sentence passed or remand the case for retrial but no offence shall be punished by a sentence exceeding that awardable under the Indian Penal Code.

Assistants to the Deputy Commissioner shall exercise such powers as they may be invested with by the Governor of Assam not exceeding those of a Magistrate of the first class as defined in the Criminal Procedure Code.

10. An appeal shall lie to the Deputy Commissioner against any order passed by any of his Assistants.

An appeal shall lie to the High Court for any sentence passed by the Deputy Commissioner.

In respect of magisterial decisions of the Commandant of the Assam Rifles, the Superintendent shall exercise the appellate revisional powers conferred upon the Court of Sessions or the District Magistrate by the Code of Criminal Procedure in

the case of decisions of the class of Magistrates with the powers of which the Commandant of Assam Rifles has been invested."

"V. Civil Justice

15. The administration of civil justice in the Lushai Hills is entrusted to the Deputy Commissioner and his Assistant, who shall take special cognizance of well established Lushai customs.

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.

19. The High Court and the Courts or the Deputy Commissioner and his Assistants shall be guided by the spirit of the Code of Civil Procedure, so far as it is applicable to the circumstances of the Lushai Hills and consistent with these Rules."

6. It is correct that when the provision of Sixth Schedule of the Constitution of India was extended to the Lushai Hills District, another Notification under the caption "THE LUSHAI HILLS AUTONOMOUS DISTRICT (ADMINISTRATION OF JUSTICE) RULES, 1953" (popularly known as "Justice Rules, 1953") was issued by the Governor of Assam vide Notification No. DLC 14/53 dated 7th April, 1953 by which the provisions of the Justice Rules, 1937 published vide Notification dated 25th March 1937 stood repealed in so far they related to the matters dealt with the present Rules of 1953. Under the aforesaid Justice Rules of 1953, three classes of courts have been established, namely Village Court, Subordinate District Council Court and District Council Court for administering justice in Lushai Hills. Rule 5 of the Justice Rules of 1953 stipulates that any dispute between the parties all of whom belonging to Scheduled Tribe Community, the aforementioned courts have the jurisdiction to resolve the dispute. For better appreciation rule 5 of the Justice Rules, 1953 is reproduced below :

"5. There shall be three classes of Courts, as specified below, in the areas within the Lushai Hills Autonomous District, to be constituted by the District council for the trial of suits and cases between the parties all of whom belonging to a Scheduled Tribe or Tribes within such areas, other than suits and cases to which the provisions of sub-para (1) of para 5 of the Sixth Schedule to the Constitution apply -

(i) Village Courts ;

(ii) Subordinate District Council Court ;

(iii) District Council Court."

7. From the aforequoted provision it reveals that the provision of Justice Rules, 1937 prevails in the field of administration of justice while either of the parties to

the lis belongs to non-Tribe community. In the present case, the plaintiff-appellant filed the Title suit against the Sate of Mizoram and Govt. officials besides two private respondents and as such it is a suit between the parties all of whom do not belong to Scheduled Tribes and as such in my considered opinion, the provision of Justice Rules, 1937 is applicable in the present case.

8. The learned ADM(J)/ADC(J) in the impugned judgment held that pursuant to Justice Rules, 1937 the suit filed by the plaintiff-appellant had to be tried by the Assistant to the Deputy Commissioner as in the Justice Rules, 1937, there is no mention of Extra Assistant Commissioner being the Assistant to the Deputy Commissioner. The reason for which the first appeal was dismissed is available in para 5 of the impugned judgment passed by the learned appellate court which runs as follows :

"5. And the civil case suit is to be tried by the Id. ADC, but not by the Id. Magistrate 1st Class. If we go through the provisions of the Justice Rules, 1937, we will not see any word "EAC". I wonder why the Id. counsels for appellants have not challenged the jurisdiction and submitted that the EAC or the Magistrate 1st Class has not any jurisdiction to try the suit", but they have not done so."

9. From the aforesaid, it appears that the learned first appellate court acknowledged the applicability of Justice Rules, 1937 and as such according to Rule 15 of the Justice Rules, 1937, any civil suit is to be tried and decided by the Deputy Commissioner and his Assistants and in case an Assistant to the Deputy Commissioner decides a civil case, an appeal would lie to the Deputy Commissioner against the decision of his Assistant.

10. The service hierarchy of the members of the Mizoram Civil Services is available under Schedule 1 of "Mizoram Civil Service Rules, 1977". Under Scheduled (1) the authorised permanent strength of the service and particulars of posts included in it are described as under:

1. Director, Settlement and Land Records.
2. Director, Community Development.
3. Deputy Secretary.
4. Additional Deputy Commissioner.
5. Under Secretary.
6. Sub-Divisional Officer.
7. Extra Assistant Commissioner.

8. *****

11. From the aforesaid administrative hierarchy it appears that the Under Secretary is subordinate to Deputy Secretary while Sub-Divisional Officer and

Extra Assistant Commissioner are subordinates to Addl. Deputy Commissioner. Extra Assistant Commissioner obviously has no independent identity as judicial officer, but has been performing the duties as assigned to him by his superior Add. Deputy Commissioner and as such in my considered opinion, the Extra Assistant Commissioner is an "Assistant" within the meaning of Rule 8 of the Justice Rules 1937 so far criminal justice is concerned and also is an "Assistant" to the Deputy Commissioner within the meaning of Rule 15 of the Justice Rules, 1937 so far civil justice is concerned.

12. In that view of the matter, in my considered opinion, the learned first appellate court viz. ADM(J)/ADC(J) misconstrued the provision of Rule 15 of the Justice Rules, 1937 in passing the impugned judgment. The learned Extra Assistant Commissioner (1st Class Magistrate) having lawful jurisdiction within the meaning of Rule 15 of the Justice Rules, 1937 passed the judgment dated 2.5.1994 in Title suit No. 12 of 1988 and as such the plaintiff-appellant rightly preferred the appeal before the learned ADM(J)/ADC(J) and thus the learned first appellate court has to decide the appeal on merit.

13. In the result, the Second Appeal is allowed. The First Appeal bearing No. Civil Appeal 2 of 1994 arising out of the judgment dated 2.5.1994 passed by the learned Extra Assistant Commissioner in Title Suit No. 12 of 1988 is remitted back to the learned ADM(J)/ADC(J), Aizawl for disposal in accordance with the law. No order as to costs.

Send down the L.C. records.