

(2006) 04 GAU CK 0066
In the Gauhati High Court

North Eastern Electric Power Corporation Ltd.

APPELLANT

Vs

S. Marbaniang

RESPONDENT

Date of Decision : 26-04-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2, 31, 34
Civil Procedure Code, 1908 (CPC) — Section 2
General Clauses Act, 1897 — Section 3
Motor Vehicles Act, 1988 — Section 165

Citation : (2007) 2 GLR 311 : (2006) 2 GLT 828

Hon'ble Judges : B. Sudershan Reddy, C.J.; B.P. Katakey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.P. Katakey, J.—The North Eastern Electric Power Corporation Ltd. ("NEEPCO"), the appellant herein, being aggrieved by an interim award of Rs. 296,458778 Lakh passed by the Arbitral Tribunal u/s 31(6) of the Arbitration and Conciliation Act, 1996 ("the Act") filed an application u/s 34 of the Act on 4.4.2004, which was registered as Arbitration Case No. 1(T) of 2004, in the Court of learned Deputy Commissioner, East Khasi Hills District, Shillong, challenging the said interim award, who in turn on 11.4.2004 endorsed the same to the Court of learned Additional Deputy Commissioner, for disposal. The respondent herein, namely, S. Marbaniang, at the first instance filed an application on 14.6.2006, being No. 319/04 before the learned Addl. Deputy Commissioner, challenging the jurisdiction of that court on the ground that since the Arbitrators were appointed by the High Court, such court only has the jurisdiction to entertain the application u/s 34 of the Act, which application, however, was rejected. The respondent/contractor, thereafter, on 12.9.2004, filed another application in the court of the learned Additional Deputy Commissioner, challenging the jurisdiction of the court to entertain the application u/s 34 of the Act, which was registered as Misc. Petition No. 554/2004 contending that the said court is not the principal civil court of original jurisdiction, as contemplated u/s 2(1)(e) of the Act. The

learned court upon hearing the parties as well as consideration of the petition and the objections filed, by order dated 27.5.2005 rejected the said application filed by the respondent/contractor by holding that it has the jurisdiction to entertain the petition u/s 34 of the Act. Being aggrieved the respondent/contractor filed writ petition being WP(C) No. 198(SH) 2005 before the Shillong Bench of this court, which was allowed by the learned Single Judge, vide judgment and order dated 7.11.2005, by holding that the court of the Deputy Commissioner, under the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937 ("1937 Rules") being a Court of Appeal, in view of Rules 33 and 36A of the said Rules, is not the principal civil court of original jurisdiction in a District within the meaning of Section 2(1)(e) of the Act and under the 1937 Rules the Assistant to the Deputy Commissioner is the Principal Civil Court of original jurisdiction in a district. Therefore, the learned Single Judge has set aside the proceeding in Arbitration Case No. 1(T) 2004 pending in the court of the learned Additional Deputy Commissioner, including the order dated 27.5.2005 passed therein, being not maintainable as without jurisdiction. Hence, the present appeal by NEEPCO.

2. We have heard Mr. V.K. Jindal, the learned senior counsel for the appellant, Mr. A. Sarma, the learned Advocate General, Meghalaya whose assistance was sought by the court vide order dated 23.2.2006 and Mr. N. Dutta, the learned senior counsel for the respondent/ contractor.

3. Mr. Jindal, the learned Counsel for the appellant has submitted that the learned Single Judge erred in law in holding that the Deputy Commissioner is not the principal civil court of original jurisdiction in view of the provisions contained in Rules 33. and 36A of the 1937 Rules, in as much as, it is evident from the Chapter IV of the 1937 Rules more particularly Rule 25 of the said Rules that the Administration of Civil Justice in the Khasi & Jaintia Hills is entrusted to the Deputy Commissioner, his assistant, Sardars and Dolois and other village authorities. It has further been submitted by the learned Counsel for the petitioner that Rule 31 of the said Rules conferred original jurisdiction on the Deputy Commissioner and his assistant to try the suits which are not triable by the village authority and, therefore, the Deputy Commissioner or Additional Deputy Commissioner is the Principal Civil Court of the original jurisdiction within the meaning of Section 2(1)(e) of the Act. The learned senior counsel has further submitted that as because Rule 33 and Rule 36A of the Rules provides for filing the appeal before the Deputy Commissioner or an Assistant to the Deputy Commissioner against the decision of the Sardar or Doloi or other duly recognized village authority and to the Deputy Commissioner against the decision of the Assistant to the Deputy Commissioner, respectively, it cannot be said that the Deputy Commissioner had no original jurisdiction to try a suit and as such, is not a Principal Civil Court of Original Jurisdiction. Challenging the finding recorded by the learned Single Judge, the learned senior counsel has further contended that, the learned Single Judge has held the Assistant to the Deputy Commissioner as the Principal Civil Court of original jurisdiction basically

on the ground that the appeal under Rules 33 and 36A of the Rules lies to the court to the Deputy Commissioner and as such it is an appellate court and not the principal civil court of original jurisdiction. According to the learned Counsel if the said analogy is accepted, Rule 33 also provides for appeal to the Assistant to the Deputy Commissioner from the decision of the Sardar or Doloi or other duly recognized authority and, therefore, the Assistant to the Deputy Commissioner also cannot be the principal civil court of original jurisdiction. Referring to Rule 31 as well as 36A of the Rules the learned senior counsel has submitted that it is evident from the said Rules that the Deputy Commissioner is exercising the original Civil Jurisdiction under 1937 Rules. It has further been contended that as the "court" u/s 2(1)(e) of the Act means the principal civil court of original jurisdiction in a district, which does not include any civil court of a grade inferior of such principal civil court or any court of small causes, the Deputy Commissioner is the principal civil court of original jurisdiction within the meaning of the Act and the Assistant to the Deputy Commissioner though also exercises the original Civil Jurisdiction cannot be the "court" within the meaning of Section 2(1)(e) of the Act, as any civil court of a grade inferior to the principal civil court is excluded from the definition of the "court". Relying on the provisions of Rule 1A of the 1937 Rules, the learned Counsel further submits that the additional Deputy Commissioner having been appointed by the Governor for trying the civil and criminal cases and to exercise the power of the Deputy Commissioner, the said court has the power and jurisdiction to entertain the application u/s 34 of the Act being the principal civil court of original jurisdiction. The learned senior counsel further submits that there is no dispute about the fact that the cause of action arose within the jurisdiction of the Deputy Commissioner/ Addl. Deputy Commissioner of East Khasi Hills District and also about the applicability of the 1937 Rules in the instant case, which has also been held by the learned Single Judge in the impugned judgment. It has further been submitted that the word "district" occurring in Section 2(1)(e) of the Act has not been defined in the said Act and, therefore, the meaning of the "district" u/s 2(4) of the Civil Procedure Code, has to be given for the purpose of the Act, which means the local limits of the jurisdiction of a principal civil court. The learned senior counsel, therefore, submits that the judgment passed by the learned Single Judge requires to be interfered with. The learned Counsel in support of his contention has placed reliance on 1984(2) GLR 126 *Aphu Chankasang alias Aphu v. Kumbha Angami, Village Kohima* (1987) 1 GLR 156 *Shri Medenkaba and Ors. v. R Tekatemjen Ao and Anr.* (1991) 2 GLR 416 *Sadhan Chandra Das v. Smti Edilik Sangma and Ors.* and 1997 2 GLT 127 *Monoj Kr. Mitra v. Smti. Susmita Mitra alias Smti Mamon Dev.*

4. The learned Advocate General, Meghalaya has also contended that as there is no dispute regarding the applicability of the 1937 Rules in the instant case, the Deputy Commissioner, which includes the Additional Deputy Commissioner, is the principal civil court of original jurisdiction within the meaning of Section 2(1)(e) of the Act. The learned Advocate General has also, in support of his contention,

referred to the provisions of Rules 25, 31, 33 and 36A of the 1937 Rules. It has further been submitted that the word "district" having not been defined in the Act, the meaning given in Section 2(4) of the CPC has to be accepted, meaning thereby that any local limit of the jurisdiction of a principal civil court of original jurisdiction is a "district" irrespective of the fact that a political district may include one or more such "districts" within the meaning of Civil Procedure Code.

5. Mr. N. Dutta, learned senior counsel appearing on behalf of the respondent/contractor though has not disputed the fact of applicability of the 1937 Rules to the proceeding as well as the fact that the cause of action arose within the local limits of the learned Deputy Commissioner/ Addl. Deputy Commissioner of the East Khasi Hills district, has however submitted that the definition of the "court" as given in Section 2(1)(e) of the Act means the principal civil court of original jurisdiction of "a district" and in view of the fact that in East Khasi Hills District there being other two sets of courts being the District Judge who administers the Civil Justice, in the areas not covered by 1937 Rules as well as Khasi States and also another set of courts constituted under the provision of Khasi Siemships (Administration of Justice) Order, 1950 to administer Civil Justice in the areas known as Khasi State, there cannot be three sets of principal civil courts of original jurisdiction within the meaning of Section 2(1)(e) of the Act to entertain the application u/s 34 of the Act and therefore according to the learned senior counsel none of the courts in the district of East Khasi Hills can entertain an application under the provision of the Act, there not being a single District Court in the said district. The learned senior counsel has further submitted that in any case, under 1937 Rules also, the Assistant to the Deputy Commissioner being the original civil court having unlimited pecuniary jurisdiction and the court of the Deputy Commissioner being the court of appeal under Rules 33 and 36A of said Rules, it is the Assistant to the Deputy Commissioner which is the principal civil court of original jurisdiction and, therefore, is a "court" within the meaning of Section 2(1)(e) of the Act and the said court alone can entertain an application u/s 34 of the Act. The learned senior counsel in support of his contention has placed reliance in U. Owing Singh and Ors. v. Ka Nosibon Jyrwa and Anr. reported in AIR 1956 GAU 129 Mrs. Sukriti Bala Dutta v. Hemanta Kumar Nag Choudhury ; AIR 1957 Gau 153 . The District Council, United Khasi-Jaintia Hills, Shillong and Another Vs. Ka Drepsila Lyngdoh of Syllai-u-Lor, Myllem, Myllem Seimship United Khasi-Jaintia Hills and Others,

6. As discussed above, the learned Single Judge has set aside the order dated 27.5.2005 passed by the Addl. Deputy Commissioner rejecting the application filed by the respondent-Contractor wherein the question of the jurisdiction of the said court was raised, and also set aside the proceeding in Arbitration Proceeding No. 1(T) 2004 by holding that the Deputy Commissioner/Addl. Deputy Commissioner is not the Principal Civil Court of the Original Jurisdiction within the meaning of Section 2(1)(e) of the Act and therefore cannot entertain an application u/s 34 of the Act, as the said court is the appellate court in terms of the Rules 33 and 36A of the 1937 Rules. It has further been held that Assistant

to the Deputy Commissioner being the original civil court having unlimited pecuniary jurisdiction is the principal civil court of original jurisdiction within the meaning of Section 2(1)(e) of the Act. However, the learned Single Judge has held that the Deputy Commissioner includes the Additional Deputy Commissioner who can exercise the civil as well as the criminal jurisdiction under 1937 Rules. The learned Single Judge has also recorded the finding that the cause of action arose within the jurisdiction of the Deputy Commissioner/ Addl. Deputy Commissioner of East Khasi Hills District and the 1937 Rules applies to the present proceeding and the parties are governed by the said Rules.

7. There is no dispute, in the present case, regarding the applicability of the 1937 Rules and the fact that the cause of action arose within the jurisdiction of the learned Deputy Commissioner/Addl. Deputy Commissioner, East Khasi Hills District. In view of the said undisputed position, we shall proceed to decide the question as to whether the Deputy Commissioner/Addl Deputy Commissioner is the principal civil court of original jurisdiction within the meaning of Section 2(1) (e) of the Act, so as to entertain an application u/s 34 of the said Act. Rules 25 of Chapter IV of 1937 Rules provides that the administration of Civil Justice in Khasi and Jaintia Hills is entrusted to the Deputy Commissioner, his Assistant, Sardar and Dolois and other Village Authorities. Rule 31 of the said Rules provides that the Deputy Commissioner and his Assistant shall not originally hear the suits triable by Sardar and Doloi or other duly recognized village authorities, but they shall have discretion to do so when they think fit. It has further been provided that the suits, which cannot be tried by the village authority, must be tried by the Deputy Commissioner or his Assistant. It is not in dispute in the present case that the parties being the non-tribal, the dispute between them are not triable by the village authority. Rule 33 of the 1937 Rules provides that an appeal lies from an order of Sardar or Doloi or other duly recognized village authority to the Deputy Commissioner or the Assistant to the Deputy Commissioner. Under Rule 36A of the Rules, the High Court or the Deputy Commissioner has the revisional as well as appellate power. The said rule provides that the Deputy Commissioner shall be a court of appeal from the decision of an Assistant to the Deputy Commissioner and the High Court shall be a court of appeal from an original decision of the Deputy Commissioner, if the value is of Rs. 500 or the above, or if the suit involves a question of tribal right or customs, or of right to or possession of immovable property.

8. From the reading of the said provisions of the 1937 Rules, it is therefore evident that the Deputy Commissioner/Addl. Deputy Commissioner can administer civil justice in Khasi and Jaintia Hills and exercise the original as well as the appellate jurisdiction, thus is possessed of original civil jurisdiction also. Rule 33 of the Rules makes both the Deputy Commissioner and his Assistant the appellate authority against the decision of the Sardar or Doloi or other duly recognized village authority. Similarly Rule 36A of the said Rules provides for filing an appeal against the decision of the Assistant to the Deputy Commissioner and also provides for appeal against the original decision of the Deputy

Commissioner. Therefore it cannot be said that the Deputy Commissioner/Addl. Deputy Commissioner has no original jurisdiction to try a suit. The reasoning of the learned Single Judge that as the Deputy Commissioner is the appellate authority under Rules 33 and 36A of the said Rules, the same cannot be the principal civil court of original jurisdiction and Assistant to the Deputy Commissioner is the principal civil court of original jurisdiction, is not tenable in law in view of the fact that Rule 33 also provides for an appeal to the Assistant to the Deputy Commissioner and also in view of the fact that Rule 31 of the 1937 Rules invested the Deputy Commissioner/Addl. Deputy Commissioner with the original civil jurisdiction and the said court being the principal civil court is the principal civil court of original jurisdiction within the meaning of Section 2(1)(e) of the Act. The said view of us is also supported by the meaning of the "District Judge" given in Section 3(17) of the General Clauses Act, 1897, which means the Judge of a Principal civil court of Original Jurisdiction. In the State of Meghalaya the Civil as well as Criminal Justice is also administered by Deputy Commissioner/Addl. Deputy Commissioner and, therefore, they are discharging their duties and functions of the "District Judge". Section 3(21) of the Meghalaya Interpretation and General Clauses Act, 1972 also defines "District Court" as the principal civil court of original jurisdiction and the "District Judge" as the Judge of District Court which includes an Additional District Judge.

9. Section 2(1)(e) of the Act defines "court" as under:

"Court" means the principal civil court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary Civil Jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal civil court, or any Court of Small Causes.

A bare reading of Section 2(1)(e) of the Act reveals that all the civil courts of original jurisdiction in a "District" is not the "court" within the meaning of the said Act and only the principal civil court in a district is the "court" for that purpose. Under 1937 Rules there are two sets of civil courts exercising the original civil jurisdiction, one by the Deputy Commissioner/Addl. Deputy Commissioner and other by the Assistant to the Deputy Commissioner both of whom have unlimited pecuniary jurisdiction. The definition of the "court" under the old Act, namely, the Arbitration Act, 1940 was a civil court having jurisdiction to decide the question forming the subject-matter of the reference if the same had been the subject-matter of a suit, but in 1996 Act, the "court" is defined as the principal civil court of original jurisdiction in a "district", which includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the suit, but does not include any civil court or grade inferior to such principal civil court. Therefore, though the Assistants to the Deputy Commissioner are exercising original jurisdiction, the said court cannot be termed as principal civil court of original jurisdiction, within the meaning of

Section 2(1)(e) of the Act, as it is inferior to the court of Deputy Commissioner/ Addl. Deputy Commissioner, which is also exercising the original jurisdiction of civil court in a "District". Hence, it is the Deputy Commissioner/Additional Deputy Commissioner, which is the "court" within the meaning of Section 2(1)(e) of the Act, as it has been invested with the original civil jurisdiction and, therefore, can entertain an application u/s 34 of the said Act.

10. The term "district" has not been defined in the Act. Section 2(4) of the Civil Procedure Code, spirit of which is to be followed in a proceeding under 1937 Rules in terms of the provision contained in Rules 1937, defines a "district" which means, the local limits of the jurisdiction of a principal civil court of original jurisdiction (called "District Court"). From the definition of the "district" given in the CPC, it is therefore evident that "district" does not mean the political district but there may be "district" for the purpose of Civil Procedure Code, within such political district and principal civil court of original jurisdiction of each such district be the "Court", within their respective jurisdictions, for the purpose of Section 2(1)(e) of the Act. However, in this present appeal, we are not concern with the question as to whether any court under the Khasi Siemships (Administration of Justice) Order, 1950, is the "court" within the meaning of Section 2(1)(e) of the Act, as that question need not be decided in the present case, in view of the admitted position of applicability of 1937 Rules.

11. In *Aphu Chankasang alias Aphu* (supra) a Division Bench of this court has held that the Deputy Commissioner includes the Additional Deputy Commissioner and the Deputy Commissioner can either decide a suit filed before it or transfer the same to the Additional Deputy Commissioner or Assistant to the Deputy Commissioner for giving decision and similarly if a case is filed before Addl. Deputy Commissioner, he may either decide it himself or may transfer the case to the Assistant. The same view has also been taken by another Division Bench of this court in *Shri Medenkaba* (supra).

12. A Single Judge of this court in *Sadhan Chandra Das* (supra) while interpreting the meaning of the "District Judge" contemplated in Section 110(3) of Motor Vehicle Act, 1939 and Section 165(3) Motor Vehicles Act, 1988 in so far as it relates to the Rules of Administration of Justice and Police in Garo Hills District has held that the Deputy Commissioner being the Presiding Officer of the Principal Civil Court of the District, is the District Judge within the meaning of Motor Vehicles Act and hence, the Deputy Commissioner can be appointed as the Member of the Motor Accident Claims Tribunal.

13. In *Mrs. Sukriti Bala Dutta* (supra) another Division Bench of this court while dealing with the power of transfer of a decree passed by the Assistant to the Deputy Commissioner to the ex-officio Subordinate Judge, who also happens to be the Deputy Commissioner, for execution vis-a-vis the provision of Rules 25 and 36 of 1937 Rules has held that a Deputy Commissioner who under the Rules was entrusted with the administration of the Civil Jurisdiction in the area can take up the execution case for execution of a decree passed by the Assistant to

the Deputy Commissioner, in his capacity as the Ex-officio Subordinate Judge and can pass any order as he thought fit to meet the ends of justice. It has further been held that the administration of Civil Jurisdiction in Khasi and Jaintia Hills is entrusted to the Deputy Commissioner, his Assistant, Sardar and Doloi and other Village Authorities.

14. In *U. Owing Sing* (supra) a Special Bench of this court has held that the Siem of Myliem and his Durbar has no jurisdiction to entertain and decide civil litigation between the tribals living in a territory which forms part of the United Khasi and Jaintia Hills District but in an area comprised within the Municipality of Shillong. The learned senior counsel for the respondent/contractor relying on the decision of the Apex Court in the District Council, United Khasi and Jaintia Hills, Shillong (supra) has contended that as the Siem of Myliem ceded the villages for a specified purpose of municipal administration only and those villages were never included within the territorial jurisdiction of Shillong Municipality, the said decision of this court requires reconsideration.

In the present case, we are not concerned with that dispute as it is an admitted position that the parties are non-tribal, cause of action arose within the local limits of the Deputy Commissioner/Addl. Deputy Commissioner and the parties are governed by the 1937 Rules. Therefore, there is no need to decide the point raised by the learned Counsel for respondent-Contractor in so far as it relates to the present writ appeal is concerned.

15. In view of the aforesaid discussions, we are of the view that the judgment passed by the learned Single Judge requires to be interfered with, which we accordingly do. The Judgment and order passed by the learned Single Judge is therefore set aside. Consequently the writ petition filed by the respondent-Contractor is also dismissed. The appeal filed by the appellant is allowed. No cost.