

(2005) 11 GAU CK 0025

In the Gauhati High Court

Case No : Writ Petition (C) No. 198 (SH) of 2005

S. Marbaniang

APPELLANT

Vs

North Eastern Electric Power Corporation Ltd. and Others

RESPONDENT

Date of Decision : 07-11-2005

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1), 31, 34
Assam Municipal Act, 1923 — Section 217, 218, 51, 55, 58
Khasi and Jaintia Hills Rules, 1937 — Rule 1A, 25, 31, 33, 36A
Motor Vehicles Act, 1988 — Section 165(3)
Scheduled Districts Act, 1874 — Section 6

Citation : (2006) 2 GLT 287

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : S.S. Dey, for the Appellant; V.K. Jindal and L. Lyngdoh, for the Respondent

Judgement

B. Lamare, J.—Heard Mr. S.S. Dey, learned Counsel for the Petitioner. Also heard Mr. V.K. Jindal, learned Sr. Counsel assisted by Mr. L. Lyngdoh, learned Counsel for the Respondent No. 1.

2. The case in short compass is that the Respondent No. 1, the North Eastern Electric Power Corporation Ltd., for short corporation a Government of India undertaking floated a tender on 4.3.94 for construction of civil works of Dikrong Power House under Ranganadi Hydro Electric Project in Arunachal Pradesh. In response to the said notice inviting tender, the father of the Petitioner Late S. Marbaniang had submitted his tender to the Corporation. His tender was duly accepted and the contract agreement was executed between the parties on 5.5.1995 at the Office of the Corporation called "Brookland Compound" situated in Lower New Colony, Shillong in the District of East Khasi Hills, Meghalaya. In course of execution of the contract, some disputes arose between the parties and according to the terms of the contract agreement, the dispute is to be referred for arbitration. Accordingly, late S. Marbaniang, the father of the Petitioner

appointed the proforma Respondent No. 3 as the Arbitration on his part. The corporation, however, failed and neglected to appoint its Arbitrator. The Contractor, therefore, preferred an Arbitration Petition before the Hon"ble Chief Justice of the Gauhati High Court praying for appointment of Arbitrator for constituting the Arbitration Forum. The said petition was registered as Arbitration petition No. 1/2002. After hearing the parties, the Hon"ble Chief Justice by order dated 19.2.2002 was pleased to appoint the proforma Respondent No. 4 as the other Arbitrator for the Corporation and further directed that both the Arbitrators are to appoint a third Arbitrator as Presiding Arbitrator. The proforma Respondents Nos. 3 and 4 appointed the proforma Respondent No. 2 as the Presiding Arbitrator.

3. On the constitution of the Arbitration Forum, the Arbitrators held their sittings and after hearing the parties, the Arbitrators have awarded an interim arbitral award of a sum of Rs. 296,458778 Lakhs on 13.1.04 in favour of the contractor as per provisions of Section 31 of the Arbitration and Conciliation Act, 1996, for short the Act.

4. The Respondent No. 1 being aggrieved by the said interim arbitral award preferred an application u/s 34 of the Act before the Deputy Commissioner, East Khasi Hills District, Shillong and the said application was registered as Arbitration Case No. 1(T) 2004. The learned Deputy Commissioner instead of trying the Arbitration Case by himself has endorsed the same to the Court of shri W. Lyngdoh, the learned Addl. Deputy Commissioner for trial. The Petitioner appeared before the learned Court and filed an application which was registered as Misc. Petition No. 554/2004 challenging inter alia the maintainability of the Arbitration Case before the Addl. Deputy Commissioner, Shillong on the ground that the learned Addl. Deputy Commissioner, Shillong has no jurisdiction to try the petition filed by the Corporation u/s 34 of the Act. It was further contended by the Petitioner in the said petition that the Court of the Deputy Commissioner or the Addl. Deputy Commissioner do not come within the purview of the definition of the Court contemplated under the provision of Section 2(1)(e) of the Act.

5. The Respondents filed their show cause reply against the said Misc. Petition No. 554/2004 filed by the Petitioner and on hearing the parties the learned Addl. Deputy Commissioner, Shillong by the impugned order dated 27.5.2005 rejected the petition No. 554/2004 filed by the Petitioner and held he had jurisdiction to try the Arbitration case pending before him. The Petitioner, aggrieved by the said order dated 27.5.2005 approached this Court by way of this petition.

6. From the above contentions of the parties and in view of the impugned order dated 27.5.2005 passed by the learned Addl. Deputy Commissioner, Shillong, the question to be decided is whether the Addl. Deputy Commissioner is the Principal civil court of original Jurisdiction as contemplated under the Act. Before deciding this question, it is relevant to examine the location where the transactions took place between the Petitioner and the corporation. In this case the notice inviting

tenders and other correspondence were issued by the Corporation from its Registered office located at Brookland compound. Lower New Colony, Laitmukrah, Shillong in the district of East Khasi Hills, Meghalaya. This locality falls within the administered area of the Shillong Municipality and this point has been dealt with by the Apex Court in the case of 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, In the said judgment, the Notification dated 16th January, 1934 whereby certain villages were ceded to the British Government by the Siem of Myllem for the purpose of municipal administration was referred to and quoted in the judgment. The said Notification as quoted by the Apex Court in the judgment reads as follows:

No. 44-I, dated New Delhi, the 16th January 1934. Whereas the Siem of Myllem in the Khasi and Jaintia Hills has ceded to the British Government the jurisdiction necessary for the municipal administration in accordance with the Assam Municipal Act, 1923, of the villages of Mawkhar, Laitmukhrah, Mission Compound and Jaiaw South-East Mawkhar and Garighana, Mawprem and Jhalupara, Laban, Lumparing cum Madan Laban, Malki and Haneng Umkhra, situate within the boundaries described in the Schedule annexed hereto, subject to the maintenance of all other his rights and powers as Siem of Myllem therein and with the reservation that the rivers Umshipi and Umkhara so far as they are within the aforesaid villages,? 11 remain the property of the Myllem State:

In exercise of this jurisdiction and of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902 and of all other powers enabling him in that behalf and in suppression of the Notification of the Government of India in the Foreign Department No. 3163-B., dated the 17th September 1913 and of all notifications amending the same the Governor General in Council is pleased to direct as follows:

1. All the provisions of the Assam Municipal Act, 1923, (Assam Act I of 1923), as hereinbefore or hereinafter amended and as in force for the time being in the Municipality of Shillong and all notifications, orders, schemes, rules, forms or byelaws made or hereafter to be made for the said Municipality shall subject to the exceptions hereinafter specified and unless otherwise declared by the Government of Assam, be in force in the said village in so far as the same may be applicable thereto.

Provided that Chapter II and Sections 9, 51, 58, 59(b), 59(g), 65, 78, 217 and 218 of the said Act shall not apply to the said villages and that Clause (b) of Sub-section (i) of Section 55 of the said Act shall not apply to the Umshirpi and Umkhra rivers so far as they are within the said villages.

2. For the purposes of the application of the said provisions, Notifications, orders, schemes, rules forms and bye-laws.

(a) References to the Local Government shall be read as reference to the Government of Assam.

(b) The said villages shall be deemed to be a municipality designated the Shillong (Administered Area) Municipality and every officer or authority, for the time being appointed or constituted in accordance with the Assam Municipal Act, 1923 as amended, to exercise powers or discharge duties within the Municipality of Shillong, shall exercise the like powers or discharge the like duties in accordance with the said Act within the Shillong (Administered Area) Municipality and shall be deemed to have been duly appointed or constituted in accordance with the said Act.

(c) All sums received by the Municipal Board of the Municipality of Shillong and all fines paid or levied in the said villages shall be credited to the municipal fund of the Municipality of Shillong.

7. In paragraph 7 of the said judgment, the Apex Court held as follows:

7. We do not think that the material on which the High Court relied justifies the finding that village Mawkhar which includes Bara Bazar was part of the Shillong Municipality. The notification dated the 16th January, 1934 makes it clear beyond doubt that the Siem of Myllem ceded the villages for the specified purpose of municipal administration only. It seems to us also clear that though the provisions of the Assam Municipal Act, 1923 were made applicable to the ceded villages, the villages were never included within the territorial jurisdiction of the Shillong Municipality. The notification itself directed that these villages were to be deemed as a distinct Municipality designated the Shillong (Administered Areas) Municipality which shows that they were not intended to be merged in the Municipality of Shillong though the officers and authorities exercising powers or discharging duties within the Municipality of Shillong were to exercise similar powers and discharge like duties in the ceded areas according to a direction contained in the notification. Chapter II of the Assam Municipal Act, 1923 which, as it stood at the date of the notification, empowered the provincial Government to include within a municipality any local area in the vicinity of the same, was not made applicable to these villages. There is also no evidence that these territories were subsequently merged in the Municipality of Shillong. After the commencement of the Constitution of India, as paragraph 19 of the Sixth Schedule provides, the administration of the territories comprised in the United Khasi-Jaintia Hills District vested in the Governor until the District Council was constituted in June 1952.

From the above decision of the Apex Court, it is clear that the Head Office of the Corporation is located in the Shillong Administered Area of Shillong Municipality.

8. According to the decision of this Court in the case of *Mrs. Sukriti Bala Dutta, Appellant v. Hemanta Kumar Nag Choudhury and Anr. Respondents*, reported in AIR 1957 Assam 153 (V. 44, C. 40, Oct.), it was held that the Rules which are applicable to the Administered Area of the Khasi States falling within the Municipality of Shillong is the Rules for Administration of Justice and Police in the Khasi and Jaintia Hills, 1937. This fact is also not disputed by the Corporation

when filing the application u/s 34 of the Act before the Deputy Commissioner, Shillong, wherein it is clearly stated that the Rules applicable are the Administration of Justice and Police in Khasi and Jaintia Hills, 1937.

9. Since the 1937 Rules are applicable in the instant case, it is to be seen whether the Deputy Commissioner or the Addl. Deputy Commissioner is the Court as contemplated u/s 2(1)(e) of the 1996 Act. The definition of the Court is defined in Clause (e) of Sub-section 1 of Section 2 of the 1996 Act is as follows:

(e) "Court" means the principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration 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.

10. Section 34 of the Act provides that an application for setting aside of the award may be filed to a Court. Now the question to be decided is which is the Principal Civil Court of original jurisdiction in a District as contemplated under the 1937 Rules. Rule 25 of 1937 Rules provides that the administration of Civil justice in Khasi and Jaintia Hills is entrusted to the Deputy Commissioner, his Assistants. Sardars and dolois and other chief village authorities. Rule 31 of 1937 Rules provides that the Deputy, Commissioner and his Assistants shall not ordinarily hear suits triable by sardars and dolois or other duly recognized village authorities, but they have a discretion to do so when they think right that some cases must be tried by the Deputy Commissioner or his Assistants. Rule 36A of the Rules provides for appeals and revisions to the High Court and the Deputy Commissioner. Rule 36A reads as follows:

36A. Appeal and Revision: 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.

The Deputy Commissioner shall be a court of appeal from a decision of an Assistant. The High Court shall be a court of appeal from an original decision of the Deputy Commissioner if the value of the suit be rupees five hundred or over, or if the suit involve a question of tribal right 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 any by a clear statement of the grounds of appeal be filed within 30th 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 or der for execution as decree of its own.

11. A reading of the above Rules, it is clear that the appeal against a decision of Assistant to the Deputy Commissioner lies to the Deputy Commissioner and an appeal from the decision of the Deputy Commissioner lies to the High Court. This Rule, therefore, contemplates that the Deputy Commissioner is the Appellate Court from the decision of Assistant to Deputy Commissioner. The Rule 36A does not contemplate that the Deputy Commissioner is the Principal Civil Court of original jurisdiction as it is a court of appeal from the decision of the Assistant to the Deputy Commissioner. Rule 33 of the 1937 Rules also provides that an appeal shall lie from the decision of Sardars or dolois or village authority to the Deputy Commissioner, Sub-Divisional Officer Jowai or Assistant to the Deputy Commissioner. This Rule 33 also contemplates that the Deputy Commissioner is a court of appeal and not the Principal Civil Court of original jurisdiction.

12. Now coming to Clause (e) of Sub-section (1) of Section 2 of the 1996 Act, it is seen that Court means the Principal Court of original jurisdiction in a District and includes the High Court in exercise of its ordinary original civil jurisdiction having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit. Taking into consideration the provisions of Rule 25 of 1937 Rules which entrusted the Administration of civil Justice in the Khasi and Jaintia Hills to the Deputy Commissioner his Assistants. Sardars and dolois and other village authorities and in view of the provisions of Rule 33 and Rule 36A of 1937 Rules, the Deputy Commissioner being a Court of Appeal is not the Principal Civil Court of original jurisdiction in a District. Clause (e) of Sub-section (1) of Section 2 of the 1996 Act, however, provides that a Court does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes. Therefore, as per provisions of Rule 25 of 1937 Rules, the Sardars, dolois and village authorities who are inferior to the Court of Assistant to Deputy Commissioner cannot be termed as a Court under the provisions of 1996 Act.

13. As per provisions of 1937 Rules for Administration of Justice in the district, the pecuniary jurisdiction of the Assistant to Deputy Commissioner is unlimited as there is no such provisions in the Rules to restrict the pecuniary jurisdiction of the Court of Assistant to Deputy Commissioner. All suits arising from the Administered Area of the Municipality are, therefore, triable by the Assistant to Deputy Commissioner and an appeal against the decision of the Assistant to Deputy Commissioner shall lie to the Deputy Commissioner. Therefore, a conjoint reading of the 1937 Rules with the provision of Clause (e) Sub-section (1) of Section 2 of the 1996 Act, it is clear that the principal civil Court of original jurisdiction in a district where the dispute arose is the Court of Assistant to Deputy Commissioner.

14. Mr. V.K. Jindal, the learned Senior Counsel relying in the case of Sadhan Chandra Das v. Smti. Edlik Sangma and Ors., reported in (1991)2 GLR 416 submitted that the principal Civil Court in a district is the Court of Deputy Commissioner as the Deputy Commissioner is performing the duty of District

Judge in the district. Learned Senior counsel also contended that in the said case the appointment of the Deputy Commissioner as Member of the Motor Accident Claims Tribunal in East Garo Hills as per provisions of Sub-section (3) of Section 165 of the Motor Vehicles Act, 1988 was held to be in order and valid. With respect it may be stated that in the said case, this Court has interpreted the Court of a District Judge as per the provisions of the Rules for Administration of Justice and Police in the Garo Hills District of Garo Hills which Rules were framed by the Governor u/s 6 of the Scheduled Districts Act 1874. This Court also held in that case that a Deputy Commissioner is the principal Civil Court which can exercise the power of District Judge in a District. It was not held by this Court that the Deputy Commissioner is the Principal Civil Court of original jurisdiction in a District.

In the instant case, we are concerned with the principal Civil Court of Original Jurisdiction in a District which could have decided a subject-matter of a suit lying within its territorial jurisdiction. In the case at hand, it is already held that the Court of Deputy Commissioner and his Assistants has territorial jurisdiction over a Corporate Office of the Corporation where the transaction took place. This Court also had held that the Court of Deputy Commissioner is the Appellate Court and not the principal Civil Court of original jurisdiction. It was also held that the principal civil court of original jurisdiction in a district is the Court of the Assistant to Deputy Commissioner, Shillong within whose territorial jurisdiction the transaction between the parties took place. Therefore, the cause of action arose within the territorial jurisdiction of the Assistant to Deputy Commissioner. Since there is no provisions under the 1937 Rules regarding the pecuniary jurisdiction of the Assistant to Deputy Commissioner in the Rules, the Court of Assistant to Deputy Commissioner has the pecuniary jurisdiction over the dispute between the parties herein. Therefore had the dispute between the parties is the subject matter of a suit, the only Court competent to entertain the suit is the Court of the Asstt. to Deputy Commissioner, Shillong. However, as the dispute between the parties is governed by the 1996 Act, the Petitioner u/s 34 of the 1996 Act has to be filed before the Court as defined in Section 2(1)(e) of the 1996 Act. The Court of the Assistant to Deputy Commissioner, Shillong is therefore, the principal Civil Court of original jurisdiction in a district having jurisdiction to entertain an application u/s 34 of 1996 Act.

15. The next question to be seen is whether the Addl. Deputy Commissioner has the power to try the arbitration case No. 1 (T) 2004. Rule 1A of the 1937 Rules empowers the Governor to appoint the Additional Deputy Commissioner either generally, or for the trial of a particular case or particular cases, Civil and Criminal and may direct that such Additional Deputy Commissioner shall, for the general or special purpose aforesaid, exercise all or any of the powers of the Deputy Commissioner. By this provision of Rule 1A of 1937 Rules, the Additional Deputy Commissioner also exercises all or any of the powers of the Deputy Commissioner. The Additional Deputy Commissioner is not empowered to exercise the power of Assistant to Deputy Commissioner. The Additional Deputy

Commissioner, therefore, in exercise of his powers of the Deputy Commissioner becomes the Appellate Court as provided under Rule 36A of 1937 Rules. The Additional Deputy Commissioner also exercises the power of the Deputy Commissioner as Appellate Court under Rule 33 of 1937 Rules. The Additional Deputy Commissioner is also authorised to exercise the power of revision as a Deputy Commissioner under Rule 36A of 1937 Rules.

16. Rules for Administration of Justice and Police in Nagaland, 1937 also makes the same provisions of exercise of the power by Deputy Commissioner and the Additional Deputy Commissioner and this was decided by this Court in the case of Neiselle Angami v. V. Miachieo, reported in (1987) 2 GLR 32, whereby this Court has held that it is clear that the Deputy Commissioner and the Additional Deputy Commissioner have the concurrent power in all matters.

17. From the above facts also it is seen that the Additional Deputy Commissioner is the Appellate as well as Revisional Court as contemplated under 1937 Rules.

18. In view of the observations and discussions made above, this Court is of the opinion that the impugned order dated 27.5.2005 passed by the Additional Deputy Commissioner, Shillong in Arbitration Case No. 1(T) 2004 holding that the Additional Deputy Commissioner has jurisdiction to try the Arbitration Case is not tenable in the eye of law and the same is liable to be set aside and quashed. Accordingly, the impugned order dated 27.5.2005 is hereby set aside and quashed.

19. Consequently the Arbitration Proceeding pending before the Additional Deputy Commissioner, Shillong being not maintainable as without jurisdiction to entertain the same, is also set aside and quashed.

20. This writ petition is allowed and disposed of.

21. I pass no order as to the costs.