
(1983) 05 GAU CK 0018
In the Gauhati High Court
Case No : Civil Rule No. 173 of 1978

Union Territory of Mizoram and Anr.

APPELLANT

Vs

C.Lalthanpara & Ors.

RESPONDENT

Date of Decision : 19-05-1983

Acts Referred:

Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 — Rule 23(1) (b), 23(1)(b)

Citation : (1983) 2 GLR 269

Hon'ble Judges : K.Lahiri, J and S.M.Ali, J

Bench : Division Bench

Advocate : K.K.Bezbaruah, Advocates appearing for Parties

Judgement

Lahiri. J.

1. Whether the Subordinate District Council Court or the Additional District Council Court constituted under Lusai Hills Autonomous District (Administration of Justice) Rules, 1953, for short "the Rules", can try any suit or action against the Union Territory of Mizoram in view of the in habitions in Rule 23(1) (b) of "the Rules". In other words, the questions are whether the Subordinate District Council Court was legally competent to try the suit in which the Government had substantial interest in the suit property, and, whether the Court could pass any decree or order which were in reality decree and order passed against the Union Territory of Mizoram, without adding it a partydefendant when admittedly the Government had bonafide claim of right, title and interest in the suit property to contest the action. We are also to confider whether the Court has any jurisdiction to pass any follow up order or direction against the Union Territory of Mizoram to abide by or to comply with the terms of the judgment and decree passed in Misc. Case No. 6 of 1977.

2. C. Lanthanapra, Respondent No. 1, as plaintiff filed an action against the Kawnpui Village Council and the Secretary, Department of Industries, Government of Mizoram and claimed that he was the owner of the suit land

falling with the jurisdiction of the Village Council. The plaintiff claimed ownership of the suit land and asserted that the Village Council, in his absence and behind his back, illegally allotted "House site Permit" to the Government of Mizoram for constructing a Weaving Service Centre. He averred that on obtaining the Permit the Government constructed a building thereupon. The petitioner was away from Mizoram, returned back to find that the Officers of the Government had constructed the building on his land and were in possession of the same. Thereupon, he served notice under section 80 of the Civil Procedure Code on the Union Territory of Mizoram and the Secretary to the Government of Mizoram, Department of Industries as well as on the President, Village Council, Kawnpui. However, the plaintiff did not make the Union Territory of Mizoram a partydefendant, but made the Secretary as one of the codefendants. The omission is obviously significant. Was it an attempt by the plaintiff to overcome the bar contained in 23(1) (b) of "the Rules" ? The suit was instituted in the Subordinate District Council Court of Aizawl. The parties to the suit raised objections that the Subordinate District Council Court had no jurisdiction to try any action in respect of the property belonging to the State and/or the Government. However, learned Presiding Officer omitted to consider the objection and delivered the Judgment and decree on 23.9.77 in Misc. Case No. 6 of 1977. Learned Subordinate District Council Court issued parowanas compelling the Secretary, Industries Department, Government of Mizoram and the Under Secretary to the Government of Mizoram, Industries Department, to comply it to demolish the building in compliance of the terms of the judgment and order of the court, otherwise the building would be demolished and materials would be sold to cover the cost of the demolition. An appeal was preferred by the Secretary to the Government of Mizoram but it was dismissed, as barred by limitation.

3. The Union Territory of Mizoram and others have preferred this application under Article 226 read with Article 227 of the Constitution for issue of an appropriate writ to quash the proceedings as the learned Subordinate District Council Court has had no jurisdiction to try any suit against the Union Territory of Mizoram and/or in respect of any property belonging to the Government of Mizoram. At the hearing Mr. Bezbaruah, Standing Counsel for Mizoram has submitted that the application may be treated as one under clauses 2 and 6 of the Gauhati High Court (Jurisdiction over District Council Courts) Order, 1954. Under clause 3, this Court can entertain an application against any final order or decision of the District Council Courts in any Civil suit where the valuation of the suit is more than Rs. 1,000/. Under clause 6, this Court can, on application or otherwise, call for the proceedings of any civil or criminal case decided by or pending in any court in the autonomous district constituted under the provisions of subparas (1) and (2) of paragraph 4 of the Sixth Schedule to the Constitution, which are known as the District Council Courts.

4. Mr. Bezbaruah learned Standing Counsel for Mizoram has urged two points. First, learned counsel submits that the suit is had for nonjoinder of necessary

parties, namely, the Union Territory of Mizoram and/or the Administrator of Mizoram, where in respect of the subject matter of the suit the Union Territory of Mizoram had substantial right and interest in the suit property. Secondly, learned counsel submits that the Subordinate District Council Court had no jurisdiction to try any action in respect of the property belonging to the Government of Mizoram, in view, of the bar imposed by Rule 23(1) (b) of "the Rules", Accordingly, learned counsel submits that the proceedings should be quashed or set aside, declared ultravires and void.

5. Without least hesitation we conclude that the judgment and order are bad and unexecutable inasmuch as the impugned judgment and decree were positively made against the Union Territory of Mizoram without making it a party to the suit. Admittedly, in respect of the suit property, the Union Territory of Mizoram had substantial right to contest the suit as it had constructed the building ordered to be demolished. In absence of the Union Territory as codefendant the impugned judgment and decree must be declared to be invalid. However, the answer is of little importance if we hold that the Subordinate District Council Court had no jurisdiction to try any action against the property of the Government of Mizoram. Therefore, let us proceed to dispose of the substantial question.

6. To appreciate the contention of the petitioners we are to recall that while Mizoram was a district in the erstwhile State of Assam, administration of justice was governed by a set of Rules styled as the Rules for the Administration of Justice, 1937, for short "the said Rules". The provisions thereof, subject to some modifications from time to time, are still in force in Mizoram. Under the provisions of "the said Rules", suits and cases of the nature were exclusively triable by the Deputy Commissioner or the Additional Deputy Commissioner. Other authorities constituted under "the said Rules" were incompetent to adjudicate suits of the present nature. Under the Lusai Hills District Autonomous District (Administration of Justice) Rules, 1953, courts have been constituted who can try Civil suits in respect of the matters which have been specifically conferred on them. "The Rules" have been made under subparagraph 4 of paragraph 4 of the Sixth Schedule to the Constitution which conferred power and jurisdiction to the District Council Courts, including the Subordinate District Council Courts, to try some specific suits. Admittedly the suits of the present nature cannot be tried by the Village Council Courts, as they can try cases falling within the purview of village or triable laws and customs. A Subordinate District Council Court, or an Additional District Council Court or Courts have original jurisdiction in all suits or case. Rule 23 contains many constrictions and restrictions. However, we are concerned only with the restriction mentioned in Rule 23 (1) (b) which we extract below:

"23 (1) A Subordinate District Council Court or an Additional Subordinate District Council Court shall not try suits and cases.

(a) * * *

(b) In which one of the parties is a person not belonging to a Scheduled Tribe.
[Emphasis added]

7. It will be seen that the District Council Court or the District Council Courts are incompetent to try suits in which one of the parties is a person not belonging to a Scheduled Tribe. The Courts constituted under the "the Rules" have been empowered to try suits in which all the parties to the suit belong to Scheduled Tribe. The Scheme and object of the Rules are in conformity with the provisions contained in the Sixth Schedule. The object is that local Judicial Officers should try cases of the tribals of Mizoram, to achieve the functional success of the administration of Justice in Mizoram. According to the commands of the Rules the District Council Courts can try suits when all the parties belong to Scheduled Tribe. However, the Courts are incompetent to try any action or case in which one of the litigants does not belong to a Scheduled Tribe. The cases in which a party does not belong to a Scheduled Tribe must be tried under the Rules for the Administration of Justice, 1937. There cannot be any dispute in this regard.

8. Now we are to consider whether the Union Territory of Mizoram is a person belonging to a Schedule Tribe. If all the litigants belong to the Schedule Tribe the District Council Courts can undoubtedly try the action and no problem arises. However, when one of the litigants is a person not belonging to the Schedule tribe a suit cannot be entertained by the District Council Courts. It is very much significant that the term "person" is enjoined by certain qualifying words "belonging to a Schedule Tribe". So, "the person" must have the requisite qualities or characteristics. "The person" must have the capability or faculty to inherit or acquire the characteristics of a Tribal. The Rules have been made for the simple minded Mizos and they should take simple construction. There cannot be any debate that the prime case of a person is a human being, and personality would seem to entail the possession of those characteristics belonging to mankind, i.e. the power of thought, speech and choice. Only "a natural person" can belong to or accepted as a Tribal by a particular tribe. No Tribe or clan can recognize "a being" other than "human being" can be longing to the tribe or clan. Generally speaking only "a human being" can be a member of a Schedule Tribe. It is difficult to accept that any "non human being" can belong to a Schedule Tribe. Only a human being can either inherit or acquire the qualities and characteristics of a tribe. A human being is a natural person and only a natural persons can inherit or acquire the characteristics of a tribe. Under these circumstances we hold that a legal or juristic person cannot be a person "belonging to a Schedule Tribe, and, accordingly the Subordinate District Council Courts cannot entertain any suit or action against any juristic or legal person like the Union Territory of Mizoram. As such, the impugned Judgment and Order were passed by a court which could not entertain or try the suit, involving the question of right, title and possession of a juristic person, that is, the Union Territory of Mizoram.

9. However, a State or Union Territory may be a "person", as apart from "natural

person" there may be legal or juristic "person". Legal or juristic persons are "beings". They may be real or imaginary, who for the purpose of legal reasoning are treated in the category of human beings. It appears from the scheme of the Rules that the District Council Courts have been empowered to try cases of natural person belonging to Scheduled Tribe and they have not been authorised to try actions by or against any juristic or legal person like the State and/or the Government.

10. Under our Constitution a State can sue or be sued as a juristic personality: vide the State of Punjab vs. O. G. C. Syndicate, AIR 1964 SC 669. In P. C. Biswas vs. Union of India, AIR 1956 Assam 85, this High Court has held that subject to the limitations prescribed in Art. 229 and other provisions of law, the contractual liability of the State is the same as that of the individual under the ordinary law of contract. In State of West Bengal vs. Corporation of Calcutta, AIR 1967 SC 997, it has been held that in republican India, the State is also bound by a statute unless expressly excluded. It has been held that the word "person" by itself is not conclusive to exclude the State from the purview of an Act. The term "person" may include the State for incurring the liability to be prosecuted. The same view has been expressed by the Supreme Court in Union of India vs. Jubbi, AIR 1968 SC 360 (364) and The State of Bihar vs. Sonabati, AIR 1961 SC 221. As such the term "person" may include a State. It may sue or be sued but is it possible to fit in a legal or juristic person in Rule 23(1) (b) of the Rules, as a person belonging to a Scheduled Tribe? The State cannot acquire the quality or characteristics of a Scheduled Tribe. At least in republican India no State or Union Territory can claim that it belongs to "a Scheduled Tribe". No State or Union Territory can claim to be tribal or nontribal. Similarly, the Union Territory of Mizoram and/or the Administrator cannot claim as persons belonging to a Scheduled Tribe. There is nothing in the Constitution and the law that only a Tribal can get elected in the Union Territory of Mizoram and form Govt. and/or the State does not comprise exclusively of the members of the Scheduled Tribe persons. Even where the constituents of the State and/or the Govt. are composed of only Scheduled Tribes people, the Constituents shed their Scheduled Tribes trappings while taking the composite character. No State or Govt. can claim itself to be "belonging to a Scheduled Tribe". A similar question came up before a Division Bench of this Court in North Cachar Hills District Council (Secretary Executive Committee) vs. Neithang Hmar and anr. 1973 Assam Law Reports 312. The moot questions were, whether the District Council could be regarded as belonging to a Scheduled Tribi, and, whither the District Council Courts had jurisdiction to try a suit against the District Council. It has been held that the District Council do not belong to any Scheduled Tribe and that the District Council Court has had no jurisdiction to try any suit by or against the District Council. We respectfully agree with the view. Therefore, we reach the conclusion that the Union Territory of Mizoram is not a person belonging to a Scheduled Tribe". As such, the District Council Court has had no jurisdiction to try any suit by or against the Union Territory. Now, the question is which court

will try this action? This question has been answered in *Nirasingh Momin vs. Jengno Marak*, 1972 CrL. L. J. 68 where a Full Bench of this Court having held that the District Courts had no jurisdiction to try the case in view of the nature and character of the action held that the other existing courts in the State will be competent to try the same. In Mizoram trial of suits and cases of specified description have been conferred on the District Council Courts to the exclusion of other courts. However, when the District Council Courts cannot try a case or are not authorised to try it, the ordinary court shall be competent to try the action in the absence of a positive command. The trial of suits against a person not belonging to a Scheduled tribe has been excluded from the jurisdiction of the District Council therefore such actions can be tried by the ordinary courts constituted to try actions. As such, we hold that when the District Council Court is not competent to try the present action, the case can be tried exclusively by the courts constituted under the Rules for the Administration of Justice, 1937.

11. As a result of the foregoing discussions, we reach the conclusion that the state is not a natural person, the Rule 23(1) (b) of the Rules includes only natural person belonging to a Scheduled Tribe, that the State is a legal or juristic person which can sue or be sued but they cannot be termed as "person belonging to a Scheduled Tribe" and that the District Council Courts can try cases between natural persons all of whom belong to the Scheduled tribes and cannot try the cases wherein one of the parties does not belong to a Scheduled Tribe.

12. In the result, we hold that the Additional District Council Court has had no jurisdiction to try the action against the Union Territory of Mizoram. The impugned judgment, order and the follow up orders are set aside, therefore, they are set aside. We hold that suit is exclusively triable by the Deputy Commissioner and/or the Additional Deputy Commissioner, Aizawl under the Rules for the Administration of Justice, 1937. Upon setting aside the impugned judgment, order, decree and the follow up orders arising out of the Misc. Case, we direct the Subordinate District Council Court, Aizawl to return the plaint to the plaintiff to present the same in the appropriate court. The petition is accepted. However, we make no order as to costs.