

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH
(NAHARLAGUN)

WP(C)295(AP)2014

Smti Miti Perme Mitkong,

W/o Shri Tobing Mitkong, aged about 45 years, r/o-Maryiang village, PO/PS-Maryiang, Upper Siang District, Arunachal Pradesh.

.....*Petitioner*

- Versus -

1. The State of Arunachal Pradesh represented by the Chief Secretary, Government of Arunachal Pradesh, Itanagar.
2. The Deputy Commissioner, Upper Siang district, Yingkiong, Govt. of Arunachal Pradesh.
3. The Sub-Divisional Officer, Yingkioing, Upper Siang District, Arunachal Pradesh.
4. The Extra Assistant Commissioner, O/o-Deputy Commissioner, Upper Siang District, Yingkion.
5. Shri Anying Perme, r/o- Damro village, PO/PS-Marying, Upper Siang District, Arunachal Pradesh.

.....*Respondents*

Advocates for the petitioner:

Mr. D. Panging

Advocates for the respondents:

Ms. P. Pangu (Govt. Advocate)
Shri. C. Modi (Respondent No. 5)

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing : 08.08.2019
Date of Judgment & order : 08.08.2019

JUDGMENT AND ORDER(Oral)

Heard Shri D. Panging, learned counsel for the petitioner. Also heard Ms. P. Pangu, learned Jr. Govt. Advocate who appears for the respondent Nos. 1, 2, 3 & 4 and Shri C. Modi, learned counsel for the respondent No. 5.

2. The extra ordinary jurisdiction of this court has sought to be invoked by filing this application under Article 226 of the Constitution of India, whereby, the petitioner has put to challenge an order dated 11.08.2014 passed by the Deputy Commissioner, Upper Siang District. The petitioner has also brought to the notice of this Court that vide a subsequent order dated 27.08.2014, the date of hearing was re-scheduled.

3. A brief narration of the facts would be useful for the purpose of adjudication of the case.

4. The petitioner was accused of commission of the offence of theft of certain local traditional beads owned by the respondent No. 5. The said dispute was decided by a Kebang by traditional method, wherein, the petitioner was held to be guilty and accordingly, he was directed to pay a fine of Rs.1 Lakh, apart from other amounts. Being aggrieved, the petitioner had preferred an appeal under *The Assam Frontier (Administration of Justice) Regulation, 1945*. The Appellate authority vide the impugned order dated 11.08.2014 had simply remanded back the matter to the Kebang for fresh hearing. As indicated above, by the subsequent order dated 27.08.2014, the scheduled date of 27.08.2014 was re-fixed on 09.09.2014.

5. Shri D. Panging, learned counsel for the petitioner fairly submits that though the provisions of appeal in the aforesaid Regulation of 1945 is stipulated in Regulation 24, the appeal was filed by the petitioner under Regulation 25, which is in fact the provision for second appeal.

For ready reference, Regulation 24 and 25 of the Regulation, 1945 are extracted herein below:

"24. Any party aggrieved by a decision of a village authority may appeal within Thirty days to the (Assistant Commissioner) who on receipt of such appeal, shall try the case de novo.

25. An appeal shall lie from an original decision of an (Assistant Commissioner) to the (Deputy Commissioner)."

6. Nonetheless, the appeal was disposed of by the Deputy Commissioner, Upper Siang by remanding the matter to the Kebang, fixing 27.08.2014 for such date of hearing. Vide the subsequent order dated 27.08.2014, the date of hearing was re-scheduled on 09.09.2014.

7. Shri D. Panging, the learned counsel for the petitioner submits that though the appeal was filed under Regulation 25, the same ought to have been considered to be an appeal under Regulation 24 as it is this Regulation which provides for preferring an appeal against any decision of a Village authority. The learned counsel submits that it is the substance and not the Regulation as such, which is to be taken into consideration and there may not be any second opinion as regards the provision of appeal which is laid down in Regulation 24.

8. It is submitted that the said Regulation 24 confers a jurisdiction to the Appellate Authority to try the case *de novo*. In other words, it is the Appellate Authority, namely, the Assistant Commissioner who would decide the case on its own merit *de novo*. However, in the instant case, the same

was not done and the matter was simply remanded to the Kebang for a fresh hearing which as per the submission of the learned counsel, is not the mandate of Regulation 24.

9. On the other hand, Shri C. Modi, learned counsel for the respondent No. 5 submits that the Kebang has been stipulated to be presided by an EAC and therefore, there is substantial compliance of the mandate of Regulation 24. Learned counsel submits that the Kebang being headed by an EAC, the impugned order has been rightly passed by the Deputy Commissioner, remanding the matter to the Kebang presided by an EAC for fresh hearing. It is accordingly, submitted that there is no procedural illegality or impropriety in the impugned order.

10. Ms. P. Pangu, learned Jr. Govt. Advocate also endorses the submission of Shri Modi, learned counsel and submits that no interference is called for from this Court in the instant case as the order appears to be passed in accordance with law.

11. The rival contentions of the respective counsels have been duly considered and the materials before this Court have been duly examined.

12. Regulation 24 in clear terms stipulates preferring of an appeal against a decision of a Village authority within a stipulated time of 30 days. Though the records reveal that the appeal was preferred before the Deputy Commissioner, by going through the substance of the appeal, it appears that the same ought to have been filed under Regulation 24. It is a settled position of law that wrong quoting or not quoting a provision of law will not be fatal if a party substantially meets the requirement of the said provision of law.

13. In the instant case, there is no dispute that the decision of the Kebang was a subject matter of the appeal and Regulation 24 mandates that such appeal has to be tried by the Appellate Authority *de novo*.

However, in the instant case it appears that the Appellate Authority has abdicated his powers and jurisdiction to the primary authority i.e. Kebang, which is not the mandate of Regulation 24. Though Shri Modi, learned counsel had tried to argue that since the Kebang will now be presided by an EAC, in the opinion of this Court, the same will not change the nature and character of the Kebang and the decision rendered by the same will still continue to be a decision of a Village authority.

14. Considering the aforesaid facts and circumstances and also the fact that the appeal was preferred before an authority not prescribed by law, the petitioner will be at liberty to re-file the appeal before the Assistant Commissioner of the concerned District. It is further made clear that though the period prescribed for preferring such appeal was 30 days, since, originally the appeal was filed within the prescribed time, the appeal which would be re-filed will be decided on its merits by considering the same to have been filed within time.

15. Accordingly, the order dated 11.08.2014 and the subsequent order dated 27.08.2014 are interfered with and accordingly, set aside.

16. It is further made clear that since this court has not expressed any opinion on the merits of the dispute, both the petitioner and the private respondent No. 5 shall be given opportunity by the Appellate Authority, while deciding the appeal *de novo* in accordance with Regulation 24 of the Regulation of 1945. The petitioner may re-file the appeal on 30.08.2019 on which date both the parties would appear before the learned Appellate Authority/the Assistant Commissioner, who shall try the case *de novo*. The Assistant Commissioner, the Appellate Authority would decide the appeal as expeditiously as possible and in any case within a period of 3(three) months from the date of taking of the appeal on record.

17. Since, this order is passed *inter-parte*, there would be no further requirement of issuance of notice to the respective parties by the Appellate Authority.

18. The writ petition accordingly stands **disposed of**.

JUDGE

Victoria