

(2005) 08 GAU CK 0042

Gauhati High Court (Kohima Bench)

Case No: WP (C) No. 49 (K) of 2004

Dimapur Bar Association

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision: Aug. 3, 2005

Acts Referred:

- Motor Vehicles Act, 1988 - Section 165(1), 166(1), 166(2)

Citation: (2006) 2 GLR 728

Hon'ble Judges: Aftab H. Saikia, J

Bench: Single Bench

Advocate: A. Zhimomi, for the Appellant; Y. Longkumar, for the Respondent

Final Decision: Allowed

Judgement

A.H. Saikia, J.

Heard Mr. A. Zhimomi, learned Counsel for the petitioner and Mrs. Y. Longkumar, learned State Counsel appearing for the official respondents.

2. By this writ petition, the petitioner, the Dimapur Bar Association, has made a limited grievance to the effect that though they have welcome the establishment of 5(five) Motor Accident Claims Tribunals (for short, the "Tribunal") for 5 territories curving out within the State of Nagaland to exercise territorial jurisdiction over the areas specifically demarcated therein vide Notification dated 24.9.2003, the last paragraph of the said Notification is disturbing inasmuch as the same is contrary to the provision of law laid down in Section 166(2) of the Motor Vehicles Act, 1988 (for short, "the Act").

3. For the sake of convenience, the Notification dated 24.9.2003 as well as Section 166(2) of the Act may be quoted as under:

GOVERNMENT OF NAGALAND

TRANSPORT and COMMUNICATION DEPARTMENT

KOHIMA
NOTIFICATION

Dated Kohima the 24th September, 2003

No. TPT/MV-12 - In order to facilitate the maximum possible accessibility to the public to prefer motor accident related compensation claims within the budgetary support available and in the larger interest of public service, the Governor of Nagaland is pleased to order as under:

(1) The appointment of Mr. I. Songsang, retired Deputy Commissioner (Judicial) as Member MACT under the establishment of the Transport Commissioner, Nagaland shall be terminated with effect from the date of completion on one month or 30 days, counted from the date of issue of this order. This shall be treated as one month notice given to the Officer as stipulated under Clause 3 of the terms and conditions indicated in the Officer's appointment order vide this Department Notification of even number dated 25.3.2002.

(2) Mr. L. Mangyand Lima, who by the same above cited order of this Department Notification dated 25.3.2003, had been appointed as ex-officio Member, MACT in addition to his duty as Judicial Magistrate 1st Class, shall be deemed to have ceased functioning as ex-officio Member, MACT, with effect from the date he demitted the office and handed over charge of Judicial Magistrate, 1st Class,.

(3) The following are appointed as ex-officio Member, MACT, with the territorial jurisdiction shown against each and on payment of an honorarium of Rs. 1,000 p.m. under the establishment of the Motor Vehicles Department.

The Officers shall perform duties from their own respective places of substantive posting as Judicial Officers, with the same man power and Office infrastructure provided to them by their parent department.

The Officers shall take over charge of cases pertaining to their respective territorial areas from Mr. L. Sosang Jamir, Member, MACT on expiry of one month notice given to the latter.

Sd/E.T. SUNUP

Addl. Chief Secretary to the Government of Nagaland

Dated Kohima the 24th September, 2004.

3. Section 166(2).

Every application under Sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed.

4. A common reading of the last paragraph, i.e., "The Officers shall take over charge of cases pertaining to their respective territorial areas from Mr. L. Sonsang Jamir, Member MACT on expiry of one month notice given to the latter" of the Notification and Section 166(2) of the Act above noticed clearly shows that the trial of the cases in MACT has been restricted to the respective territorial areas as specified in the Notification when law gives absolute discretion to the claimant to choose the forum for filing a claim petition which, according to him, seem to be proper and appropriate as per Section 166(2).

5. Mr. Zhimomi has stated that on the basis of the instant Notification and in terms of their purported territorial jurisdiction, the learned Member of the MACT are transferring and/or taking over the pending cases from Dimapur and the territorial jurisdiction is whimsically being determined on the basis of the addresses of the claimants. According to him, MACT cannot claim any jurisdiction for any claim case nor can the State Government confer territorial jurisdiction or transfer any claim case from one Tribunal to another as the same is not permissible Section 166(2) of the Act. He has further contended that being aggrieved by the said notification the members of the petitioner association submitted a representation dated 2.4.2004 to modify the said notification to the effect that (a) the transfer of pending MAC cases from the registry of the MACT at Dimapur should be made at the option of the concerned claimant; (b) That the Claim cases, if any, already transferred to some other MACT should be restored to the original MACT at the option of the concerned claimants. However, till date no action has been forthcoming.

6. It is contended by the learned Counsel that the grievance of the petitioner has also not been denied by the State-respondents in their counter affidavit.

7. Ms. Longkumar, learned Counsel appearing for the State-respondents. Referring to the counter affidavit filed on behalf of the State, has fairly contended that in paragraph 10, the Government has accepted that the constitution of the Additional Tribunals at different territories, i.e., Mon, Tuensang, Mokokchung and Kohima was done under the provision of Section 165(1) of the Act in the interest of public directly benefiting the claimants so that pending cases may be transferred to the newly established Tribunals having their territorial jurisdiction specified in the Notification itself. It is stated by the learned Government counsel that if there are cases under transfer that had occurred in Dimapur district but the claimant residing in the newly created jurisdictions, those may be reviewed. Referring to another a communication dated 15.1.2004 (Annexure 1 to the counter affidavit) Ms. Longkumar has also stated that the Government has already notified with regard to ongoing claim petition's that are being registered with MACT, Dimapur, transfer of such claim causes to respective territorial jurisdiction may be done in exercise of option to do so by the claimant.

8. In view of the submission so advanced by the learned Counsel for the parties, having regard to the provisions of law u/s 166(2) of the Act and also on close perusal

of the impugned paragraph of the Notification dated 24.9.2003, the Official respondents particularly No. 2 are directed to modify/clarify the last paragraph of the said Notification permitting/allowing the claimant/s to exercise his/their options in transferring the pending cases and/or restoring those transferred from one MACT to another in the tune of Section 166(2) of the Act immediately.

7. With this observations and direction, this writ petition stands allowed.

No costs.