

GAHC010021012022



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

Case No. : WP(C)/697/2022

SIBABRATA SARMA
S/O- LATE LAKSHI NARAYAN SARMA, R/O- BHUBENESWAR SADHU
THAKUR ROAD, TARAPUR, P.O. TARAPUR, P.S. TARAPUR, DIST. CACHAR
SILCHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, ENVIRONMENT AND FOREST DEPARTMENT, DISPUR, GUWAHATI-
6.

2:THE SECRETARY TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE MEMBER SECRETARY
STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY
ASSAM
MINISTRY OF ENVIRONMENT
FOREST AND CLIMATE CHANGE
GOVT. OF INDIA
BAMUNIMOIDAM
GUWAHATI-781021
ASSAM

4:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF
FOREST FORCE
ASSAM
PANJABARI
GUWAHATI-37.

5:THE CHIEF CONSERVATOR OF FORESTS (T)
LOWER ASSAM ZONE
KACHARIGHAT
GUWAHATI-1
KAMRUP(M)
ASSAM

6:THE CHIEF CONSERVATOR OF FORESTS
SOUTHERN ASSAM CIRCLE
SILCHAR
ASSAM

7:THE DIVISIONAL FOREST OFFICER
CACHAR DIVISION
CACHAR
SILCHAR
ASSAM

8:THE FOREST RANGE OFFICER
UDARBOND RANGE
UDARBOND
CACHAR
ASSA

Advocate for the Petitioner : MR. J I BORBHUIYA

Advocate for the Respondent : SC, FOREST

BEFORE
HONOURABLE MR. JUSTICE NANI TAGIA

ORDER

Date : 21.06.2023

Heard Mr. J. I. Borbhuiya, learned counsel for the petitioner. Also heard Mr. R. R. Gogoi, learned standing counsel, Forest Department, Government of Assam, appearing on behalf of all the State Respondents.

Pursuant to the Sale Notice, dated 27.08.2013, issued by the Divisional Forest Officer, Cachar Division, Silchar, under the provision of Assam Minor Mineral

Concession Rules 32(1) and 33(1) of 2013 vide Memo. A/7(ii)/AMMC Rule/2013/864-865 and Memo. No. A/7(ii)/AMMC Rule/2013/5963-5971; the Daloo River Minor Mineral Unit No. 1(Sand) was settled in favour of the petitioner for the period w.e.f. 01.04.2014 to 30.04.2021 vide a letter written to the petitioner by the Divisional Forest Officer, Cachar Division, Silchar, under Letter No. B/7(ii)/Daloo River Minor Mineral Unit(Sand)/3117-18, dated 05.06.2014.

In terms of the Sale Notice, dated 27.08.2013, issued by the Divisional Forest Officer, Cachar Division, Silchar, under the provision of Assam Minor Mineral Concession Rules 32(1) and 33(1) of 2013; the successful bidder has to obtain the Environmental Clearance Certificate from the competent authority of Environment Impact Assessment(EIA) and bear all costs of account of such studies as may be required in assessing the environmental impact.

After the Daloo River Minor Mineral Unit No. 1(Sand) was settled in favour of the petitioner, as above; the petitioner had submitted an Environmental Clearance Certificate for extraction of sand from Daloo River mining contract area(Unit 1) of Daloo river bed under Cachar Forest Division, Cachar, vide letter, dated 20.05.2014, issued by the Member Secretary, State Level Environment Impact Assessment Authority (SEIAA), Guwahati, vide Memo. No. SEIAA.178/2014/56-A, for a period of 5 years from the date of issue of the order which is 20.05.2014.

The petitioner, thereafter, continued his business of extracting sand from Daloo River mining contract area(Unit 1) of Daloo river bed under Cachar Forest Division, Cachar, in terms of the settlement, dated 05.06.2014, until the extraction of sand from Daloo River mining contract area(Unit 1) of Daloo river bed under Cachar Forest Division, Cachar, was suspended by the Divisional Forest Officer, Cachar Division, Silchar, vide order, dated 12.09.2019, under Letter No. B/7(ii)/8811-12, on the ground

that the State Level Environment Impact Assessment Authority (SEIAA), had granted Environmental Clearance Certificate to the petitioner for extraction of sand from Daloo River mining contract area(Unit 1) of Daloo river bed under Cachar Forest Division, Cachar, only for a period of 5 years which had since expired.

Thereafter, an application for grant of Environmental Clearance Certificate submitted by the petitioner was forwarded by the Divisional Forest Officer, Cachar Division, Silchar, to the Chairman, State Level Environment Impact Assessment Authority (SEIAA), Guwahati, vide Letter No. B/7(ii)/Daloo River Minor Mineral Unit(Sand)/8883-84, dated 19.09.2019, whereafter, the petitioner was issued with an Environmental Clearance Certificate for extraction of sand from Daloo River mining contract area(Unit 1) of Daloo river bed under Cachar Forest Division, Cachar, for a period of 2 years by the Chairman, State Level Environment Impact Assessment Authority (SEIAA), Guwahati, vide letter No. SEIAA.178/2014/Pt-I/EC/16/1147, dated 22.10.2020.

After the Environmental Clearance Certificate was issued in favour of the petitioner on 22.10.2020, it is the further case of the petitioner that the Divisional Forest Officer, Cachar Division, Silchar, vide Letter No. B/7(ii)/Daloo River Minor Mineral Unit (Sand)/8883-84, dated 09.11.2020, had written to him, indicating the kist money to be deposited on 05.08.2021, 05.11.2021, 05.02.2022, and 05.05.2022, respectively, in respect of 25th kist, 26th kist, 27th kist and 28th kist.

The petitioner further contends that though he had deposited the kist money, in terms of the letter, dated 09.11.2020, referred to above, for extraction of sand from Daloo River mining contract area(Unit 1) of Daloo river bed under Cachar Forest Division, Cachar; by the impugned Letter No. B/7(ii)/626-27, dated 29.01.2022, written to the petitioner, the Divisional Forest Officer, Cachar Division, Silchar, had directed

the petitioner to remove the men and machinery at the earliest immediately at the end of the kist period i.e. 05.02.2022, on the ground that there is no provision in the Assam Minor Mineral Concession Rules, 2013, for extension of time for operation of the mining contract area(MCA) beyond the original contract period and also as per Government Order No. FRM.266/2017/121 dated 23.03.2021, no extension of time for operation of mining contract area(MCA) could be considered beyond the contract/permit period on account of restriction imposed due to COVID-19 pandemic.

Assailing the impugned Letter No. B/7(ii)/626-27, dated 29.01.2022, written to the petitioner by the Divisional Forest Officer, Cachar Division, Silchar; the petitioner contends that he should have been allowed to extract the sand from Daloo River mining contract area(Unit 1) of Daloo river bed under Cachar Forest Division, Cachar, till the month of August, 2022.

The respondent No. 7 i.e. Divisional Forest Officer, Cachar Division, Silchar, has filed a counter affidavit wherein, in paragraphs No. 5, 6 & 7, it has been stated that there is no provision for extension of mining contracts/leases/permits as per the provisions of the Assam Minor Mineral Concession Rules, 2013, under which contract, the Daloo River mining contract area(Unit 1) of Daloo river bed under Cachar Forest Division, Cachar, was settled with the petitioner.

It has been further stated in the counter affidavit filed by the respondent No. 7, that letter, dated 09.11.2020, was issued by the Divisional Forest Officer, Cachar Division, Silchar, informing the petitioner to deposit the kist money, was not a valid letter since no extension of mineral concessions was permissible under the provisions of the Rules of 2013.

It has also been stated by the respondent No. 7 in the counter affidavit filed, that

there cannot be any extension of a mineral concession area in the absence of a specific provision under the statutory rules or the contract.

Upon hearing the learned counsels appearing for the parties and on perusal of the materials made available on record; it is noticed that the Daloo River mining contract area(Unit 1) of Daloo river bed under Cachar Forest Division, Cachar, was settled with the petitioner vide letter, dated 05.06.2014, written by the Divisional Forest Officer, Cachar Division, Silchar, under Letter No. B/7(ii)/Daloo River Minor Mineral Unit(Sand)/3117-18, for a period w.e.f. 01.04.2014 to 30.04.2014.

The aforesaid settlement letter, dated 05.06.2014, was issued by the Divisional Forest Officer, Cachar Division, Silchar, pursuant to a Sale Notice, dated 27.08.2013, issued by the Divisional Forest Officer, Cachar Division, Silchar, vide Memo. A/7(ii)/AMMC Rule/2013/864-865 and Memo. No. A/7(ii)/AMMC Rule/2013/5963-5971, which is a Sale Notice under the provision of Assam Minor Mineral Concession Rules 32(1) and 33(1) of 2013.

In the Sale Notice, dated 27.08.2013, referred to above; in Clause 1 thereof; it has been provided that the Environmental Clearance Certificate from the competent authority i.e. State Level Environment Impact Assessment Authority (SEIAA), has to be obtained by the lessee which, in the instant case, is the petitioner, herein.

Accordingly, in compliance thereof; the petitioner had obtained an Environmental Clearance Certificate issued by the Member Secretary, State Level Environment Impact Assessment Authority (SEIAA), Guwahati, dated 20.05.2014, vide Memo. No. SEIAA.178/2014/ 56-A, to the petitioner for extraction of sand from Daloo River mining contract area(Unit 1) of Daloo river bed under Cachar Forest Division, Cachar, for a period of 5 years from the date of issue of the order which is 20.05.2014.

As the settlement of extraction of sand from Daloo River mining contract area(Unit 1) of Daloo river bed under Cachar Forest Division, Cachar, was for a period of 7 years w.e.f. 01.04.2014 to 30.06.2021, it was incumbent upon the petitioner to submit yet another Environmental Clearance Certificate for the remaining 2 years of the contract lease period.

The initial Environmental Clearance Certificate submitted by the petitioner had expired on 19.05.2019, but, the petitioner, herein, failed to submit an Environmental Clearance Certificate before the expiry of the earlier Environmental Clearance Certificate on 19.05.2019, as was required to be done since the settlement was for a period of 7 years i.e. upto 30.06.2021.

The petitioner, however, was able to submit yet another Environmental Clearance Certificate from the competent authority on 22.10.2020 pursuant to the letter, dated 19.09.2019, written by the Divisional Forest Officer, Cachar Division, Silchar, to the Chairman, State Level Environment Impact Assessment Authority (SEIAA), Guwahati, whereafter, the petitioner had continued to extract the sand from the *Mahal* until the impugned letter, dated 29.01.2022 was issued by the Divisional Forest Officer, Cachar Division, Silchar, directing him to remove the men and machinery at the earliest on 05.02.2022.

Since the initial settlement of extraction of sand from the Daloo River mining contract area(Unit 1) of Daloo river bed under Cachar Forest Division, Cachar, was upto 30.06.2021, and the petitioner, as have been noted hereinabove, failed to submit the Environmental Clearance Certificate on time beyond 20.05.2019 for extraction of sand from the Daloo River mining contract area(Unit 1) of Daloo river bed under Cachar Forest Division, Cachar, as was required to be submitted in terms of the Sale

Notice, dated 27.08.2013; I am of the considered view that neither any fault can be found with the impugned letter, dated 29.01.2022, issued by the Divisional Forest Officer, Cachar Division, Silchar, nor, any direction can be given to the respondents for allowing the petitioner to extract the sand from the Daloo River mining contract area(Unit 1) of Daloo river bed under Cachar Forest Division, Cachar, beyond 30.06.2021, which is the date upto which the initial settlement was made with the petitioner, on the basis of subsequent correspondences made by the petitioner and the respondent No. 7.

Accordingly, the instant writ petition stands rejected being found to be devoid of merit.

However, liberty is granted to the petitioner to approach the appropriate authority under the Assam Minor Mineral Concession Rules, 2013, for refund of his already deposited kist money, if any.

The writ petition stands disposed of in terms above.

Interim order passed earlier, if any, stands vacated.

JUDGE

Comparing Assistant