

GAHC010065342023



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

Case No. : WP(C)/1744/2023

SANJIV GOGOI
S/O- SHRI MUKUL GOGOI, R/O- VILL.- DHULIAGAON, P.O. MORANGI, DIST.
GOLAGHAT, ASSAM, PIN- 785702.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, FOREST DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS
WILDLIFE AND CHIEF WILDLIFE WARDEN
ASSAM
PANJABARI
GUWAHATI-37.

3:THE CONSERVATOR OF FORESTS

EASTERN ASSAM CIRCLE
JOEHAT
ASSAM
JORHAT-785001.

4:THE DIVISIONAL FOREST OFFICER

GOLAGHAT FOREST DIVISION
DIST. GOLAGHAT
ASSAM
PIN- 785621.

5:THE PERMIT COMMITTEE
DEPARTMENT OF FOREST

DISTRICT- GOLAGHAT
ASSAM
REPRESENTED BY ITS CHAIRMAN
THE CONSERVATOR OF FORESTS
EASTERN ASSAM CIRCLE
JORHAT-785001.

6:THE POLLUTION CONTROL BOARD
ASSAM
BAMUNIMAIDAM
GUWAHATI-21

Advocate for the Petitioner : MR J PAYENG

Advocate for the Respondent : SC, FOREST

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 29-03-2023

Heard Mr. J. Payeng, learned counsel for the petitioner. Also heard Mr. D. Gogoi, learned counsel for the Forest Department and Mr. S. Baruah, learned counsel for the respondent No. 5.

2. The petitioner is aggrieved with the impugned Letter dated 10.03.2023 issued by the respondent No. 5, by which the permission for setting up a new Stone Crusher Unit by the petitioner has been rejected, as the location of the Stone Crusher Unit falls within the Eco-Sensitive Zone (ESZ) of 10 kms in the Nambor-Doigrung Wildlife Sanctuary in Golaghat District.

3. The petitioner's counsel submits that the petitioner's application for setting up a Stone Crusher Unit had been approved in principle by the Permit Committee in its Meeting Minutes dated 18.12.2021 held in the office chamber

of the Divisional Forest Officer, Golaghat. The in principle approval was however subject to fulfillment of all statutory conditions for setting up of the Stone Crusher Unit.

4. The petitioner's counsel submits that as the Pollution Control Board, Assam had also granted the petitioner permission to operate a Stone Crusher Unit, vide Consent to Operate dated 18.06.2022, the impugned Letter dated 10.03.2023 rejecting the petitioner's application should be set aside.

5. Mr. D. Gogoi, learned counsel submits that there is no infirmity with the rejection of the petitioner's application for setting up of a Stone Crusher Unit, in view of the Order dated 11.12.2018 and 03.06.2022 passed by the Supreme Court in Writ Petition (Civil) No. 202/1995 "*In Re T.N. Godavarman Thirumulpad Vs. Union of India & Others*".

6. The impugned Letter dated 10.03.2023 issued by the respondent No. 5 shows that the petitioner's application for setting up a new Stone Crusher Unit has been rejected on the ground that the Unit falls within the ESZ of 10 kms in the Nambor-Doigrung Wildlife Sanctuary in Golaghat District.

7. The Order dated 11.12.2018 passed by the Apex Court in WP(C) No. 202/1995 states that in respect of various National Parks and Wildlife Sanctuaries, an area of 10 kms around the said National Parks and Wildlife Sanctuaries should be declared as ESZ by the Ministry of Environment, Forest & Climate Change Department at the earliest.

8. In its Judgment dated 03.06.2022 passed in I.A.No. 1000/2003 in WP(C) No. 202/1995, the Apex Court had para 44 (h) has held as follows:-

*“(h) In respect of sanctuaries or national parks for which the proposal of a State or Union Territory has not been given, the 10 kilometers buffer zone as ESZ, as indicated in the order passed by this Court on 4th December 2006 in the case of **Goa Foundation** (supra) and also contained in the Guidelines of 9th February 2011 shall be implemented. Within that area, the entire set of restrictions concerning an ESZ shall operate till a final decision in that regard is arrived at.”*

A perusal of the above shows that a 10 km buffer zone as ESZ has to be kept in Sanctuaries and National Parks, till a proper notification is issued by the State Government.

9. As the Stone Crusher Unit proposed to be set up by the petitioner comes within the 10 kms ESZ in Nambor-Doigrung Wildlife Sanctuary in Golaghat District, there is no infirmity with the decision of the respondents in rejecting the petitioner’s application for setting up a Stone Crusher Unit at this stage. However, in the event that the ESZ in Nambor-Doigrung Wildlife Sanctuary in Golaghat District is notified by the State Government and the ESZ is reduced below 10 kms, the petitioner’s application for setting up of a new Stone Crusher Unit may be considered, provided the new ESZ does not cover the area in which the Stone Crusher Unit is proposed to be set up. It is needless to add that if the petitioner wishes to change the location for setting up of a new Stone Crusher Unit, the petitioner may make a fresh application for permission with the competent authority.

10. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant