

GAHC010131092023



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

Case No. : WA/220/2023

G D INDUSTRIES AND 4 ORS.
HAVING OFFICE AT BADARPURGHAT PS- PANCHGRAM, DIST-
HAILAKANDI, ASSAM REPRESENTED BY ITS PARTNER ASHISH TUSNIAL,
AGED ABOUT 47 YEARS S/O . SHYAM LAL TUSNIAL RESIDENT OF
BADARPURGHAT PS- PANCHGRAM, DIST- HAILAKANDI, ASSAM.

2: ANNAPURNA GRANULATOR HAVING OFFICE AT DEVENDRANAGAR

P.O - BADARPURGHAT
PS- BADARPUR
DIST- KARIMGANJ
ASSAM REPRESENTED BY ITS PARTNER ASHIM KUMAR ROY
AGED ABOUT 53 YEARS S/O- LATE AMALENDY ROY I RESIDENT OF ROY
PATTY
KARIMGANJ P.O
PS AND DIST- KARIMGANJ
ASSAM

3: M/S ASSOCIATED ENTERPRISE HAVING OFFICE AT DEVENDRANAGAR

P.O- BADARPURGHAT
PS- BADARPUR
DIST- KARIMGANJ
ASSAM REPRESENTED BY ITS PROPRIETOR SALEHA BEGUM
AGED ABOUT 53 YEARS W/O. LATE KHALILUR RAHMAN RESIDENT OF
MISSION
ROAD BADARPUR
P.S BADARPUR
DIST- KARIMGANJ
ASSAM.

4: M/S S.S. ENTERPRISE
HAVING OFFICE AT KATIRAIL
P.O AND P.S- KATIGORAH

DIST- CACHAR
ASSAM REPRESENTED BY ITS PROPRIETOR AHMED SAHIL
AGED ABOUT 38 YEARS S/O. LATE KHALILUR RAHMAN RESIDENT OF
MISSION
ROAD BADARPUR
P.S BADARPUR
DIST- KARIMGANJ
ASSAM.

5: ASCENT STONE CRUSHER
HAVING OFFICE AT MOHANPUR PART I P.O AND PS. KATIGORAH
DIST-CACHAR
ASSAM REPRESENTED BY ITS PROPRIETOR JAINAL ABDIN CHOUDHURY
AGED ABOUT 47 YEARS S/O. LATE SIRAJUL HOQUE CHOUDHURY
RESIDENT OF WARD NO. 2
BSF CAMP ROAD
1STBYE LANE
P.O
PS AND DIST- KARIMGANJ
ASSAM

VERSUS

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

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF
FOREST FORCE

PANJABARI
GUWAHATI- 7810037

3:THE CHIEF CONSERVATOR OF FOREST

SOUTHERN ASSAM CIRCLE
SILCHAR
DIST- CACHAR
PIN- 78801

4:THE DIVISIONAL FOREST OFFICER
HAILAKANDI DIVISION
HAILAKANDI PIN- 788151.

5:THE DIRECTOR OF GEOLOGY AND MINING

ASSAM DAKHIN GAON

KAHILIPARA
PIN- 781034

6:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF FORCE

SYLVAN HOUSE
LOWER LACHUMIERE
SHILLONG
MEGHALAYA PIN- 793001

7:THE DIVISIONAL FOREST OFFICER (T)
JAINTIA HILLS DIVISION
JOWAI
MEGHALAYA PIN-79315

For the petitioners : Mr. B. D. Das Senior, Advocate
: Mrs. R. Deka, Advocate

For the respondents : Mr. P. N. Goswami, Advocate

BEFORE

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 16.06.2023
(D. Baruah, J)

1. The instant intra Court appeal is directed against the order dated 29.05.2023 passed in WP(C) No.2714/2023 on the ground that the learned Single Judge refused the interim relief as sought for.
2. The brief facts of the instant case are that the Appellants herein are carrying on the business of stone crushing. The Appellants initially took due permission from the forest authority to set up stone crushing units in their own land with their own stone crushing machines and other related materials. Subsequent thereto, the stone crushing permission was cancelled by the

Divisional Forest Officer, Karimganj vide an order dated 01.01.2022. Prior to the said order, the Divisional Forest Officer, Karimganj vide a letter dated 11.03.2020 had directed the Appellants not to use limestone in crusher units until the same is allowed by the competent authority i.e. the Director of Mining and Geology, the Respondent No.5 herein. The Appellants thereupon applied for registration as dealers before the Respondent No.5 who is the competent authority to issue registration of dealership in terms with the Rule 4 of the Assam Minerals Regulation and Dealers Rules, 2020 for doing business of processing, storing, selling and trading of limestone. The Respondent No.5 granted the registration to the Appellants as dealers following due process of law and issued Mineral Dealer Licenses vide respective orders with a validity of 1 (one) year which was subsequently renewed and presently the said licenses are valid w.e.f. 01.04.2023 to 31.03.2024. It is the further case of the Appellants that they are carrying their business by purchasing limestone from Meghalaya through valid challans issued by the Divisional Forest Officer, Jowai, Meghalaya as well as through e-way Bills as per Assam Minerals Regulation and Dealers Rules, 2020 and thereafter crushes the said limestone in their crushing units followed by selling the same in different parts of the North Eastern Region particularly in Tripura and Nagaland.

3. The grievance of the Appellants herein is that the Respondents in the Forest Department vide the order dated 06.03.2023 has debarred the Appellants from crushing limestone in crusher units (Annexure-F) and further directed the Area Manager, North East Frontier Railway for not allowing the wagon loading and booking of limestone vide an order dated 16.03.2023 (Annexure-G). Being aggrieved, the Appellants as Petitioners filed the writ petition which was registered and numbered as WP(C) No.2714/2023 challenging the order dated

06.03.2023 (Annexure-F) and order dated 16.03.2023 (Annexure-G) issued by the Respondent Forest Department on the ground that the said Respondent Department had no authority to issue the said orders. It further reveals from a perusal of the writ petition that the Appellants have sought for stay of the order dated 06.03.2023 (Annexure-F) as well as the order dated 16.03.2023 (Annexure-G) pending disposal of the writ petition.

4. The learned Single Judge vide the impugned order dated 29.05.2023 issued notice of motion returnable by 19.06.2023. As regards the interim relief so sought for, the same was refused on the ground that limestone is a forest produce.

5. The Appellants herein have assailed the refusal to grant the interim relief by the impugned order dated 29.05.2023 on the ground that vide amendment to the Assam Minor Mineral Concession Rules, 2013, i.e. the notification dated 03.03.2022, Serial No.7 in Schedule "X" of the Assam Minor Mineral Concession Rules, 2013 was omitted thereby "any grade of limestone" was brought outside the purview of the Minor Minerals and as per the Fourth Schedule of the Mines and Minerals (Development & Regulation) Act, 1957 "Limestone" was listed as a Notified Mineral under the said Act of 1957 and it was the Respondent No.5 who was the competent authority in respect of limestone. It was the case of the Appellants that the Respondents in the Forest Department did not have the authority or jurisdiction to issue the order dated 06.03.2023 as well as the order dated 16.03.2023. It was the case of the Appellants therefore that the learned Single Judge did not consider the said aspect of the matter and on the ground that in the case of ***State of Uttarakhand and Others Vs. Kumaon Stone Crusher reported in (2018) 14 SCC 537***, "limestone" was held to be a forest produce and accordingly the interim relief so sought for was rejected.

6. It was the further case of the Appellants that the learned Single Judge failed to take note of that it was the admitted stand of the Forest Department in PIL No.76/2020 and PIL No.79/2021 as could be seen from the order dated 02.03.2023 that the Forest Department has no authority over the mineral "limestone" and it was also the opinion of this Court that as per Rule 3(a) of the Rules of 2013, it is the Director of Geology and Mining, Assam who alone is the competent authority to deal with minor minerals for industrial and specific uses as specified in Schedule "X" which includes limestone. This aspect of the matter was also not taken into consideration by the learned Single Judge. The Appellants further have drawn the attention of this Court to the order dated 06.03.2023 issued by the Principal Chief Conservator of Forests whereby the said authority had issued the order knowing fully well that the said Authority is not the competent authority over limestone but on the ground that limestone from Meghalaya is being used for construction activities instead of stones whereby the State of Assam is suffering huge royalty loss and that had led to inferior quality of construction.

7. It was further submitted that by the order dated 06.03.2023, the Principal Chief Conservator of Forests directed that no stone crusher unit throughout the State of Assam shall crush any material (including limestone of any grade) other than stones and in the event any crusher unit crushes limestone of any grade, the respective licenses of the crushing unit should forthwith be cancelled and appropriate penal action be initiated against such crusher unit in accordance with law. It is the case of the Appellants that the issuance of the order dated 06.03.2023 and the consequent order dated 16.03.2023 are not only without jurisdiction but also based upon extraneous and irrelevant considerations which aspect of the matter was not taken into consideration by the learned Single

Judge.

8. It is the further case of the Appellants that they have obtained the licenses from the Respondent No.5 which are valid for a particular period of time. The learned Single Judge failed to take note of that if the orders dated 06.03.2023 and 16.03.2023 are not stayed, the entire business of the Appellants would come to a standstill and as such, it was a fit case for stay of the impugned orders dated 06.03.2023 and 16.03.2023.

9. On the other hand, Mr. P. N. Goswami, the learned Standing counsel appearing on behalf of the Respondent Nos. 1, 2, 3, 4 and 6 submitted with all fairness that the Forest Department had no authority over the mineral "Limestone". However, he submitted that as limestone is now being used as a substitute to stones which is a minor mineral coming within the ambit of Schedule "Y" of the Assam Minor Minerals Concession Rules, 2013, the State Government is losing royalty. He further submitted that when limestone is being used in construction, the quality of construction is inferior. Therefore the order dated 06.03.2023 was issued by the Principal Chief Conservator of Forest and the Head of the Forest, Assam.

10. Upon hearing the learned counsels for the parties and on a perusal of the Assam Minor Minerals Concession Rules, 2013 and more particularly Rule 3 and Schedule "X" and "Y" read with the notification dated 03.03.2022, we are of the view that the appellant has plausible grounds to portray that the Forest Department is not the competent authority to regulate mineral "Limestone" which is a notified mineral within the meaning of Section 3(ea) of the Mines and Minerals (Development and Regulation) Act, 1957. It also appears that the Respondent Forest Department in fact duly admits its lack of competency to regulate limestone in the order dated 06.03.2023 but on the ground of losing

royalty because limestone is used as a substitute to the minor mineral “stones” which results in inferior constructions, the order dated 06.03.2023 was issued thereby not permitting limestone to be used in the crushing units. We are prima facie of the opinion that the challenge laid to the competency of the Respondent Forest Department to issue the order dated 06.03.2023 as well as the consequential order dated 16.03.2023 is based on substantial grounds which require adjudication in the writ petition filed by the Appellants.

11. We are also of the opinion that on one hand the Appellants have licenses issued by the Respondent No.5 who admittedly is the Competent Authority in respect to the limestone and the Appellants also have permission from the Pollution Control Board for running their crushing machines in their own land. On the other hand, as it appears that there is a serious question mark on the authority of the Respondent Forest Department to regulate “limestone”, merely on the ground that limestone is being used as a substitute for stones and it results in inferior construction work, in our opinion cannot permit the Respondent Forest Department to infringe on the rights of the Appellants to carry out their business.

12. At this stage, we also find it relevant to take note of that the order dated 06.03.2023 as well as the consequential order dated 16.03.2023 have the affect of bringing the business of the Appellants to a standstill. Accordingly, we are of the opinion that the balance of convenience is also in favour of the Appellants for passing interim directions in their favour.

13. We are also of the opinion that taking into account that the licenses issued by the Respondent No.5 are periodical licenses which requires yearly extensions and denial of an interim stay to the order dated 06.03.2023 and the consequential order dated 16.03.2023 would bring the Appellants’ business to a

standstill which would cause irreparable loss, harm and injury. Accordingly, we stay order dated 06.03.2023 (Annexure-F) and 16.03.2023 (Annexure-G) pending disposal of the writ petition, in the interest of justice.

14. It is made clear that the instant adjudication is being made only for the purpose of deciding the entitlement to interim directions pending disposal of the writ petition. The above observations are prima facie, which shall however not affect the adjudication of the writ petition on merits.

15. With above, the instant appeal stands disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant