

GAHC010230422019



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

Case No. : WP(C)/7111/2019

BISHNU PRATIM BORAH
S/O SRI JADAV CHANDRA BORAH, R/O VILL. BALIPUKHURI, P.S.
DURPANG, PIN, 787033, DIST. LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
FOREST AND ENVIRONMENT DEPTT. DISPUR, GUWAHATI-781006,
KAMRUP (M), ASSAM

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF
FOREST FORCE
ASSAM
ARANYA BHAWAN
PANZABARI
GUWAHATI-781037
KAMRUP (M)
ASSAM

3:THE DIRECTOR OF GEOLOGY AND MINING
ASSAM
GUWAHATI-781019
KAMRUP (M)
ASSAM

4:THE CHIEF CONSERVATOR OF FOREST
NORTHERN ASSAM CIRCLE
TEZPUR
PIN-784001
DIST. SONITPUR
ASSAM

5:THE DIVISIONAL FOREST OFFICER
LAKHIMPUR DIVISION

NORTH LAKHIMPUR
PIN-787001
DIST. LAKHIMPUR
ASSA

For the Petitioner (s) : Mr. P. Hazarika, Advocate.
Mr. B.K. Bora, Advocate.

For the Respondent (s) :Mr. R.R. Gogoi, Advocate.

Date of Hearing & Judgment : **15.09.2023**

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER(ORAL)

The instant writ petition is filed by the Petitioner challenging the imposition of 10% reclamation and restoration work fees of Rs.42,500/- and 10% of D.M. Fund of Rs. 42,500/- from the Petitioner in addition to the other amounts to which the Petitioner is liable to pay as per the Letter of Intent (LOI).

2. The facts involved in the instant case is that a Re-Sale Notice was issued on 23.03.2015 by the Divisional Forest Officer, Lakhimpur Division from intending eligible tenderers for grant of mining contract for collection of Sand and Gravel in an area of 5.20 Hecter of Durpang Sand & Gravel Mining Contract Area for 7 years with an assessed quantity of 10,500.00M³ of Sand and 10,500.00M³ of Gravel. The

reserved price of the mining contract area was fixed at Rs.34,76,000/- and the earnest money was fixed at Rs.3,48,000/- @ 10% on the reserved price of the mining contract area. The Petitioner participated in the said tender process and was adjudged as the highest bidder at Rs.1,19,00,000/-.

3. Pursuant thereto, the Principal Chief Conservator of Forests & Head of Forest Force, Assam issued a Communication on 4th of August, 2016 thereby directing the Divisional Forest Officer to issue the provisional Letter of Intent (LOI) to the Petitioner being the successful bidder for granting the mining contract in respect to the mining area Durpang S & G area for 2015-22 (7 years) for the quantity 10500 cubic metre of sand and 10500 cubic metre of gravel at the offered price of Rs.1,19,00,000/-. It was also mentioned that the Letter of Intent holder shall be liable to pay other Government dues as and when necessary.

4. Thereupon a Letter of Intent was issued on 16.08.2016 by the Divisional Forest Officer, Lakhimpur Division to the Petitioner. In the Letter of Intent amongst others, it was also mentioned that the lessee/the contractor was awarded to operate the area hence, he/she would be liable to deposit/pay an additional amount equal to 10% of the due dead rent/royalty/contractor money alongwith the installments towards the "Mines and Minerals Development,

Restoration and Rehabilitation Fund” alongwith the quarterly installments of the dead rent/contract money in advance. Further to that, it was also mentioned that the Petitioner, who was the Letter of Intent holder shall prepare a mining plan alongwith the mining closure plan (progressive and final) including Environmental Impact Assessment duly approved by an officer authorized by the Director, Geology & Mining in that behalf within 45 days from the date of issuance of the LOI ensuring scientific and systematic mining and environmental safeguards. In the Schedule to the Letter of Intent, the boundaries of the mining area, the yearly contract money (for the 1st year), security 25% of the due dead rent/contract money, one month dead rent, sale tax (for the 1st year) as well as the income tax (for the 1st year) were duly mentioned.

5. The Petitioner thereupon submitted the Mining Plan under Rule 52(1) of the Assam Minor Mineral Concession Rules, 2013 (in short the 'Rules of 2013') which was approved by the Director, Directorate of Geology & Mining, Assam on 05.09.2016.

6. It is further relevant to mention that the Petitioner had also entered into an agreement with the Respondent Authorities in the Format as stipulated in Form MC-I. It is relevant to mention that a perusal of the said agreement amongst others stipulates at Clause No. 4 of Part III that the Petitioner who is the contractor shall also pay an

additional amount equal to 10% of the due contract money alongwith the amount of instalments on account of dead rent or royalty towards the fund.

7. The case of the Petitioner is that for the 1st to the 4th kist, there was no demand made by the Respondent Authorities towards the 10% of the Mines and Minerals Development, Restoration and Rehabilitation Fund as well as also for 10% on account of D.M. fund. However, while issuing the notice for the 5th kist on 21.06.2018, an amount of Rs.42,500/- was directed to be paid by the Petitioner on account of reclamation and restoration works fees as well as an additional amount of Rs.42,500/- was directed to be paid on account of D.M. Fund. It is under such circumstances that the Petitioner being aggrieved had filed the instant writ petition.

8. I have heard the learned counsel appearing on behalf of the Petitioner.

9. The question which arises for consideration is as to whether the Petitioner can be imposed or directed to pay 10% of the dead rent/royalty/the contract money on account of reclamation and restoration work as well as 10% on account of D.M. Fund as was sought to be done by the impugned notice dated 21.06.2018.

10. Before dealing with the Letter of Intent as well as the Agreement in question, this Court finds it relevant to take note of Rule 58 and 59

of the Rules of 2013.

11. In terms with Rule 58 of the Rules of 2013, a fund known as 'Mines and Mineral Development, Restoration and Rehabilitation Fund' shall be established under 'Public Account' in the State of Assam under the administrative control of the Department to which rehabilitation charges payable under Sub-Clause (i) of Clause (1 A) of section 15 of the Act shall be credited in order to meet the various objectives including funding of restoration/ reclamation/rehabilitation works in the sites affected by mining operation.

12. A perusal of Rule 59 (1) of the Rules of 2013 stipulates that an amount equal to 10% of the dead rent or royalty or contract amount paid to the State shall be charged from the mineral concession holder in the nature of 'other charges' for restoration and rehabilitation works and credited to the fund in addition to the amount payable to the Government on account of such dead rent or royalty or contract money. In terms with Sub-Rule (2) of Section 59 of the Rules of 2013, the said contribution shall be remitted by the mineral concession holder in installments along with the installments of the dead rent or royalty or contract money, as the case may be. Such amount shall be reconciled at the close of the financial year and any differential of the amount due shall be adjusted or paid on reconciliation. In terms with Sub-Rule (3) of Rule 59 of the Rules of 2013, the department shall maintain complete account of receipts to the fund and the

expenditure therefrom and shall invest the progressive accumulated corpus in a manner so as to earn secure returns therefrom.

13. This Court further finds it relevant to take note of Rule 60 of the Rules of 2013 which stipulates that the amount available in the fund shall be utilised strictly for fulfilment of the objectives for which the fund is being set up and on the terms and conditions as may be stipulated by the Committee constituted under Rule 62. Apart from the above, it is also relevant to take note of another important provision which forms a part of the agreement entered into by and between the Petitioner as well as the Respondent Authorities in Form MC-I. The said agreement apart from mentioning the various details includes five parts. Part-III relates to the covenants of the contract. In terms with Clause 26 of Part-III the manner in which the payment of additional amount for reclamation/restoration have been duly mentioned. The said Clause 26 being relevant is reproduced hereinunder :-

“26. Payment of additional amount for reclamation/restoration :

The contractor shall also deposit/pay the additional amount equal to 10% of the amount of contract money by the 7th of every month to ensure the compliance of the reclamation and restoration works. This additional amount shall be refunded after satisfactory reclamation/restoration of the area after mining in accordance with the Mine Closure Plan.

Provided that in case the contractor fails to reclaim/restore the area as per

mining plan to the satisfaction of the Government, the amount deposited shall be forfeited and used for the restoration of the area.

Provided further that in case no rehabilitation position of the mine comes during the tenure of the mining contract, the amount so deposited shall be kept by the Government in the mining area development fund for future use as and when the mine reaches to a stage requiring restoration and rehabilitation.”

14. From a perusal of the above Clause, it would be seen that it is an agreed condition that the contractor has to deposit/pay the additional amount equal to 10% of the amount of contract money by the 7th of every month to ensure the compliance of reclamation and restoration work. It was further mentioned that the additional amount shall be refunded after satisfactory reclamation/restoration of the area after mining in accordance with the Mine Closure Plan. The first proviso to the said clause stipulates that in case the contractor fails to reclaim/restore the area as per the mining plan to the satisfaction of the Government, the amount deposited shall be forfeited and used for restoration of the area. The second proviso to the said clause further stipulates that in case no rehabilitation position of the mine comes during the tenure of the mining contract, the amount so deposited shall be kept by the Government in the mining area development fund for future use as and when the mine reaches to a stage requiring restoration and rehabilitation.

15. Therefore, from the above provisions of the Rules of 2013 read with the Agreement and the parts contained therein coupled with the Letter of Intent, it is clear that the Petitioner being the mineral concession holder is bound to pay an additional 10% of the contract money for the purpose of reclamation and restoration work on the basis of Rule 58 and 59 of the Rules of 2013. Therefore, the said imposition of Rs.42,500/- upon the Petitioner vide the notice dated 21.06.2018 i.e. 10% on account of reclamation and restoration work fees cannot be called in question. At this stage, it is pertinent to clarify that as per the Rules of 2013 and the contract entered into by and between the parties the Petitioner would be liable to pay additionally an amount equivalent to 10% of the contract money. The manner in which the said amount would be collected from the Petitioner/the Mineral Concession Holder and put to use are clearly mentioned in Rule 59 and 60 of the Rules of 2013 as well as Clause 26 of Part-III of the Agreement entered into by and between the parties.

16. Now coming to the second aspect as to whether another 10% of the contract money can be imposed upon the Petitioner on account of D.M. Fund which have been sought to be done vide the impugned notice dated 21.06.2018. This Court had put a specific query upon Mr. R.R. Gogoi, the learned counsel appearing on behalf of the Forest Department as to on what basis 10% of the contract amount had

been additionally charged on account of D.M. Fund. Nothing could be shown either in the Rules of 2013, the Letter of Intent or even the Agreement entered into by and between the parties that an additional amount of 10% would be recovered from the Petitioner on account of the D.M. Fund. Under such circumstances, the additional imposition of 10% of the D.M. Fund of Rs. 42,500/- vide the impugned notice dated 21.06.2018 is not in accordance with the provisions of the contract as well as the Rules of 2013.

17. Mr. P. Hazarika, the learned counsel appearing on behalf of the Petitioner submits that the said amount on account of the reclamation and restoration work fees as well as the D.M. Fund have been subsequently enhanced from time to time. This Court makes it clear that the Petitioner would be liable to pay in view of Rule 58 and 59 of the Rules of 2013 read with the Letter of Intent as well as the Agreement entered into by and between the parties the additional amount of 10% of the contract amount on account of the Mines and Mineral Development, Restoration and Rehabilitation Fund which is to be used for the purpose of reclamation and restoration works. However, the Petitioner would not be liable to pay any amount on account of the D.M. Fund for the reasons abovementioned.

18. Accordingly, the impugned notice dated 21.06.2018 insofar as the additional imposition of Rs. 42,500/- on account of D.M. Fund is concerned, the same is interfered with. Further to that, any further

amounts imposed upon the Petitioner on account of the D.M. Fund during the pendency of the writ petition is also interfered with. The Respondent Authorities shall either readjust the amount already recovered from the Petitioner towards the dues of the Petitioner or shall refund the same to the Petitioner, if otherwise permissible.

19. With the above observations and directions, the instant writ petition stands disposed.

JUDGE

Comparing Assistant