

GAHC010234322017



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

Case No. : WP(C)/1934/2017

ANIL CHANDRA PATHAK and ANR.
S/O. LT. SRI KANTA PATHAK, R/O. VILL. NAKHULA PAJAKUCHI, P.S.
JAGIROAD, DIST. MORIGAON, PIN-782410, ASSAM.

2: M/S R.D. ENTERPRISE

PROPRIETOR SRI RAJU KR DAS
S/O. SRI RANJIT KR DAS
R/O. VILL. GANESH VALLEY
P.S. NELLIE
DIST. MORIGAON
ASSAM

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
DEPTT. OF ENVIRONMENT and FOREST, DISPUR, GUWAHATI.

2:PRINCIPAL CHIEF CONSERVATOR OF FOREST and HEAD OF FOREST
FORCE

ASSAM
ARANYA BHAWAN
PANJABARI
GUWAHATI-37.

3:THE DIVISIONAL FOREST OFFICER

NAGAON DIVISION
NAGAON.

4:SRI NRISHINGHA HAZARIKA
S/O MR. NATHURAM HAZARIKA

R/O VILL- SHIMALUGURI
P.O.- AHATGURI
P.S. DHARAMTUL
MOUZA- UTTARKHULA
DIST- MORIGAON
ASSAM

Advocate for the Petitioner : Mr. K. K. Dey, Advocate

Advocate for the Respondents : Mr. R. R. Gogoi, Advocate for Forest Department
: Mr. A. Sandilya, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 27-07-2023

1. The two writ petitioners herein have approached this Court challenging the issuance of a fresh Short Tender Notice for grant of mining contract to collect minerals from Bajrang and Sivakunda Stone Mahals in Dharamtul West Range of Nagaon Division which was invited by the Principal Chief Conservator of Forest, Guwahati.

2. It is the case of the Petitioners herein that they had participated in pursuance to a Notice Inviting Quotation dated 07.02.2014 in respect to Bajrang Stone Quarry area and Sivakunda Stone Quarry area. It is relevant to take note of that from a perusal of Notice Inviting Quotation dated 07.02.2014, it appears that for the Bajrang Stone Quarry area the total quantity per annum was 2000 m³ with a reserve price of Rs.258 per m³ and the Government value was Rs.5,16,000/-. In respect to Sivakunda Stone Quarry area, the quantity

was 2000 m³ per annum with a reserve price of Rs.252 per m³ and the Government value was Rs.3,04,000/-. The Petitioners claims that they had participated in the said tender proceedings. It is the case of the Petitioners that the Petitioner No.1 was the highest bidder in respect to Bajrang Stone Quarry whereas the Petitioner No.2 was the highest bidder in respect to Sivakunda Stone Quarry.

3. Be that as it may, the Petitioners herein were expecting they would be settled said Quarries when a Short Tender Notice for sale of Minor Minerals was issued by the Principal Chief Conservator of Forest and Head of Forest Force, Assam on 15.03.2017. It is under such circumstances, that the Petitioners have therefore approached this Court challenging the said tender notice. The said tender notice has been enclosed as Annexure-10 to the writ petition and from the said tender notice, it reveals that the said tender was called for a period of 5 (five) years.

4. The Respondent No.3 i.e. the Divisional Forest Officer, Nagaon Division has filed an affidavit-in-opposition. In the said affidavit-in-opposition, a reference was drawn to a letter No.B/Stone Quarry Area/2014/1460 dated 04.03.2014 issued to the Member Secretary, State Environmental Impact Assessment Authority, Assam by the then Divisional Forest Officer, Nagaon Division, Nagaon for according Environmental Clearance in respect of Sivakunda Stone Quarry under Kholahat Reserve Forest wherein it was clearly mentioned that the said letter is neither a Letter of Intent nor a settlement order. It was further mentioned that only after obtaining the Ministry of Environment and Forest's final approval as per Section 2 of the Forest Conservation Act, 1980 from the Regional Officer of the Ministry of

Environment and Forest, Shillong, the area would be allowed for settlement after the issuance of Letter of Intent from the higher authority. It was therefore submitted that the Petitioner No.2's bid in respect to Sivakunda Stone Quarry having not been accepted by the higher authority and a Letter of Intent having not been issued, the entire case of the Petitioners are baseless. It was further mentioned that though the Notice Inviting Quotation was issued on 07.02.2014 by the Divisional Forest Officer, Nagaon but the said Authority was not the competent authority pertaining the Minor Minerals vide Government notification No.FRM.300/2012/321 dated 17.05.2013 to accept bid/rates of an amount more than Rs.25,000/- under the provisions of the Delegation of Financial Power Rules, 1999. It is under such circumstances, upon receipt of the quotations they were forwarded to the higher authorities for necessary acceptance of the bids/rates. However, the same was returned back by the Office of the Principal Chief Conservator of Forests and Head of Forest Force, Assam through the Additional Principal Chief Conservator of Forests (T), Upper Assam Zone vide a letter dated 15.10.2014 for taking necessary action as per Rule. It is further stated that the Divisional Forest Officer, Nagaon Division mentioned in his letter that as there was no clear cut Rules regarding settlement of Minor Minerals Mahals within the R.F. Areas under the Assam Minor Mineral Concession Rules, 2013 and Section 2 of the Forest Conservation Act, 1980 which prohibits tender sale of Mahals under the R.F. Area, the Divisional Forest Officer, Nagaon Division had to cancel the whole Notice Inviting Quotation vide an office order No.5 dated 02.01.2015 and communicated to all concerned vide a Memo dated 02.01.2015. It was further mentioned that all the quotationers were also informed vide another Memo dated 02.01.2015 to collect their Earnest Money draft from the Office of the

Divisional Forest Officer, Nagaon Division. It was further mentioned that the above submission of the then Divisional Forest Officer, Nagaon Division was forwarded to the Additional PCCF (T), UQAZ by the Conservator of Forest, NAC Tezpur vide a communication dated 09.03.2016.

5. It further reveals from the records that an affidavit-in-reply was filed by the Petitioners wherein it has been mentioned that the cancellation of the notice inviting quotation dated 07.02.2014 vide the Office Order dated 02.01.2015 was not communicated to the Petitioners and as such the Petitioners had no knowledge about the same. It was further mentioned that the statements made in the affidavit-in-opposition by the Respondent No.3 about the Office Order No.5 dated 02.01.2015 was an afterthought void document prepared with the view to give undue advantage to a third party.

6. Be that as it may, it is however relevant to take note of that the Petitioners themselves have enclosed the Office Order No.5 dated 02.01.2015 as Annexure-12 to the affidavit-in-reply which clearly shows that the notice inviting quotation dated 07.02.2014 and the corrigendum notice dated 20.02.2014 was cancelled due to technical difficulties and the bidders were requested to collect their earnest money which was submitted along with the quotation on 28.02.2014.

7. I have heard the learned counsels for the parties. Mr. R. R. Gogoi, the learned counsel appearing on behalf of the Forest Department submits that the notice inviting quotation dated 07.02.2014 had to be cancelled in view of the reasons which have been duly mentioned in the affidavit-in-opposition filed by the Respondent No.3 in paragraph No.7. The learned counsel further submits that on account of the above, the Divisional Forest Officer had himself

cancelled the said notice inviting quotation on 02.01.2015 and had asked the all the concerned bidders to collect their earnest money. The learned counsel further submitted that subsequent thereto, the competent authority i.e. the Principal Chief Conservator of Forest had issued the impugned Notice Inviting Tender for sale of the Minor Minerals on 15.03.2017. The learned counsel however submits that the said Short Tender Notice for sale of the Minor Minerals which have been impugned have also been rendered infructuous now taking into account the period of 5 (five) years have elapsed and further that the Forest Department has to take the permission from Ministry of Environment, Forest for conversion of Reserve Forest into non-forest activity. He therefore submits that the said Short Tender Notice for sale of Minor Minerals cannot be acted upon now by the Forest Department without the said permission.

8. From the above submissions so made by the learned counsel for the Forest Department and taking into account that the Stone Quarries in question are in the Reserve Forest area and there is no approval yet given by the Ministry of Environment and Forest for conversion of the Reserve Forest Area into non-forest activity, it is the opinion of this Court that both the Notice Inviting Quotation dated 07.02.2014 as well as the Short Tender Notice for Sale of Minor Minerals issued by the Principal Chief Conservator of Forest and Head Forest dated 15.03.2017 are not permissible in law. In that view of the matter, the Notice Inviting Quotation dated 07.02.2014 as well as the Short Tender Notice for Sale of Minor Minerals dated 15.03.2017 cannot be acted upon in view of the non receipt of the approval from the Ministry of Environment and Forest. Under such circumstances, there is no enforceable right which had accrued upon the Petitioners on the basis of being the highest tenderer in

respect of a Notice Inviting Quotation which is otherwise not permissible under law as observed above.

9. Accordingly, this Court does not find any merits in the instant writ petition for which the writ petition stands dismissed.

10. Interim order passed if any, stands vacated.

JUDGE

Comparing Assistant