

GAHC010094472022



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

Case No. : WP(C)/3271/2022

JAYDEEP GOALA
SON OF LATE DINESH PRASAD GOALA, RESIDENT OF VILLAGE
PAILAPOOL, P.O. PAILAPOOL, CACHAR, PIN- 788098, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, ENVIRONMENT AND FOREST DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF
FOREST FORCE
ASSAM
ARANYA BHAWAN
PANJABARI
GUWAHATI
781037.

3:THE CHIEF CONSERVATOR OF FOREST
SOUTHERN ASSAM ZONE
SILCHAR
PIN- 788001
ASSAM.

4:THE DIVISIONAL FOREST OFFICER
CACHAR DIVISION
SILCHAR
PIN- 788001
ASSAM.

5:THE STATE LEVEL ENVIRONMENTAL IMPACT ASSESSMENT

AUTHORITY ASSAM
BAMUNIMAIDAM
GUWAHATI
PIN- 781021 REPRESENTED BY ITS MEMBER SECRETARY

Advocate for the Petitioner : MR. B K MAHAJAN

Advocate for the Respondent : SC, FOREST

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner	: Mr. P Mahanta, Advocate.
For the Respondents	: Mr. D Gogoi, SC Mr. K Gogoi, CGSC
Date of Hearing	: 22.02.2024
Date of Order	: 22.04.2024

JUDGMENT AND ORDER (CAV)

1. Heard Mr. P Mahanta, learned counsel for the petitioner. Also heard Mr. D Gogoi, learned standing counsel for the Environment and Forest Department and Mr. K Gogoi, learned CGSC for the respondent No. 4.

2. The petitioner has inter alia assailed a speaking order dated 26.04.2022 passed by the respondent no. 2 whereby the application submitted by the petitioner for renewal of the mining contract in respect of the mining contract area viz. "Chiri River Minor Mineral [Stone] Unit-2" ['the Mining Contract Area', for short] has not been considered and a decision has been taken to put the said Mining Contract Area into a fresh E-auction sale. The petitioner has also assailed a Long E-auction Notice published by the respondent no. 4 on 29.04.2022 whereby, online bids have been invited to settle the same Mining Contract Area under the provisions of the Assam

Minor Mineral Concession Rules, 2013 [‘the 2013 Rules’, for short].

3. The petitioner earlier approached this court by filing a writ petition being WP(C) 919/2022 assailing an NIT dated 08.01.2022 and corrigendum dated 07.02.2022 for fresh settlement of the mine in question. The further challenge was an order dated 19.01.2022, whereby the petitioner was asked to remove his men and machinery from the mining site at the end of kist period i.e. on 16.02.2022. The said writ petition was disposed by an order 11.02.2022 by waiving the period of 18 months (prior to expiry of an existing contract) prescribed under Rule 19(1) of the 2013 Rules for seeking renewal of contract with a further direction to the competent authority, i.e. the respondent No. 2 to consider the application of the petitioner for renewal within the parameter prescribed under Rule 19 and Rule 20 of the 2013 Rules. It was further provided in the said order that till the disposal of the application for renewal, tender process initiated by E-auction notice dated 08.01.2022 in respect of the Mining Contract in question shall not be given effect to.

4. Thereafter, the respondent authority considered the renewal application filed by the petitioner and the by the impugned order dated 26.04.2022 rejected the claim of the petitioner for renewal of the mining contract and such order is under challenge in the present writ petition.

5. Argument advanced by Mr. P. Mahanta, learned counsel for the petitioner:

I. The impugned order dated 26.04.2022 passed by the competent authority does not indicate that the competent authority has considered the aspects stipulated in Rule 20 (1) of the 2013 Rules.

II. The competent authority while passing the impugned order, has considered only the aspect of revenue, that too, on the basis of a report

from a Sub-ordinate authority. It is the bounden duty of a competent authority to exercise its discretion while deciding the matter of renewal after having a satisfaction that the contractor has undertaken mining operation strictly in accordance with the terms and conditions of the grant etc. However, evidently such determination/ satisfaction is absent in the impugned order dated 26.04.2022.

- III. The impugned order does not disclose that the competent authority either have considered the aspects outlined under Clause (i) to (vi) of Rule 20(1) of the 2013 Rules.
- IV. The phrase "such other matters" used in clause (vii) of rules 20(1) is to be read as *ejusdem generis* with the previous clauses i.e. clause (i) to Clause (vi) and therefore, the revenue cannot be the sole consideration/satisfaction for rejection of renewal.
- V. Mr. Mahanta, also argues that the petitioner is having a vested right for consideration of his renewal application in terms of Clause-(vi) of Rule 20(1) of the Rules, 2013 inasmuch as the petitioner has raised issues of investment and non return of benefit for reasons beyond the control of the petitioner and also for reasons attributable to inaction of the respondent authorities.
- VI. In support of the aforesaid contentions, Mr. Mahanta, learned counsel relies on the decision of the Hon'ble Apex Court rendered in ***Commissioner of Police Vs. Gordhandas Bhanji*** reported in ***AIR 1952 SC 16***, and ***Union Bank of India Vs. Pijush Kanti Nandy*** reported in ***(2009) 8 SCC 605***.

6. Mr. D Gogoi, learned standing counsel argues the followings:

- I. By taking into consideration the fact that the mining contract executed between the petitioner and the respondent environment and forest department was executed in the year 2014 and taking into account the aspect of revenue which is likely to be earned as on date, the competent authority has decided not to consider the application of the petitioner for renewal.
- II. Relying on the decision of the Hon'ble Apex Court in the case of ***Monnet Ispat and Energy Ltd Vs. Union of India*** reported in ***(2012) 11 SCC 1***, Mr. Gogoi contends that no one has a legal or vested right for grant or renewal of a mining lease.
- III. Clause VII of Rule 20(1) of the 2013 Rule is exclusionary. Therefore, revenue can be the sole consideration for rejection of renewal regarding feasibility of renewal or otherwise.
- IV. The clause VII of Rule 20(1) of the 2013 Rules cannot be treated as *ejusdm generis* with previous clause (I) to (VI) of the 2013 Rules and the same has to be given a purposive interpretation.
- V. As regards the representation of the petitioner and claim under Clause-(vi) of Rule 20(1) of the Rules, 2013, the learned counsel argues that when the State authority decides in the interest of revenue to go for fresh sale, then, it is not under bounden duty to renew the contract for the reason of want of optimal benefit out of investment made by the contractor inasmuch as a prudent businessman, the contractor should anticipate such situation.

7. This court has given thoughtful consideration to the arguments advanced by the learned counsel for the parties, and also perused the materials available on record.

8. For the determination of the present lis and also in backdrop of arguments advanced, the provisions contained in Rules 18, 19 and 20 of the 2013 Rules are required to be examined.

9. Rule 18 of the 2013 Rules mandates that when the competent authority decides to grant mineral concession in the form of a contract for a specific area, such contract should be for a period, ordinarily for not less than 7 years but shall not exceed 10 years. The further mandate is that such contract can be executed following a competitive bidding process as prescribed under Chapter VI of the Rules, 2013.

10. Rule 19 of the 2013 Rules prescribes the procedure for renewal of mining contract. In term of the said Rule, the contractor is to submit an application before the competent authority for renewal of the mining contract, 18 months prior to the date of expiry of the contract period. In the present case, such period was waived by this Court in the earlier writ proceeding preferred by the petitioner. Such application is to be made as per the form prescribed, containing the complete details of mineral excavated, royalty paid, mineral reserve available, details of exploitation undertaken, if any, details of the areas reclaimed/ restored, etc. Such application is also to contain declaration as regards other statutory compliances, such as environment clearance, safety provisions under the Mines Act, 1952 etc.

11. Sub-rule (2) of Rule 19 prescribes that if the contractor has been found indulged in any violation of condition of original contract or condition of environmental clearance, no such application for renewal shall be considered.

12. Sub-rule (VII) of Rule 19 provides that a contract for minor mineral granted

under Rule 18 can be renewed only once. The period under such renewal cannot exceed 5 years. The said Sub-rule (VII) of Rule 19 further mandates that the competent authority must have a satisfaction that the contractor seeking renewal has undertaken the mining operations strictly in accordance with the terms and conditions of the grant, contract agreement and other approval / permission for mining granted by the competent agencies.

13. Thus, from the aforesaid Rule 19, it is clear that the renewal of a mining contract is not automatic and renewal can be granted subject to the fulfilling the conditions as stipulated under Rule 19 of the 2013 Rules subject to maximum period of 5 years, whereas the original contract generally should be for 7 years and not exceeding 10 years as prescribed under Rule 18.

14. Rule 20 (1) prescribes the criteria / condition satisfaction which are sine-qua-non for grant of renewal. A reading of both the Rules 19 and 20 disclose that in fact what is prescribed in Rule 19 is summarised under Rule 20, so that the competent authority while taking a decision of renewal under Rule 19, can record the satisfaction as per the prescription of Sub-rule 1 of Rule 20.

15. The Clause-(i) to Clause (v) of Rule 20(1) essentially deals with compliance of all terms and conditions of the contract and other permissions/ statutory compliances and scientific execution of the mining during the original contract. It also deals with the satisfaction as regard restoration/rehabilitation etc., as per Mining plan. It further deals with payment required to be made by the contractor, labour safety etc. The competent authority also needs to have satisfaction as regards the fact that the contractor has not been penalized during the original contract period. Thus, the Clauses- (i) to (v) relate to satisfaction as regard statutory compliance of different prescription under different statutes and compliance of terms and conditions of the original contract and implementation of the Mining Plan and the performance of the

contractor during original contract. Another satisfaction is that no penalty has been imposed upon the contractor including suspension of mining contract.

16. Another consideration and satisfaction which is required to be taken Under Clause-(vi) is that the contractor has invested for development of the mine, plant and machinery with a long term perspective, however, optimal benefit of the same have not been derived during the original contract period.

17. The State has urged that under the scheme of Rules 2013, more particularly, under Rule 18, Rule 19 and Rule 20, there is no vested right to have a mining contract renewed after expiry of the original contract and that no person has a legal or vested right to the grant or renewal of a mining contract. On the other hand, it is the contention of the petitioner that the word "may" used in Rule 19 actually shall mean "must", when the condition prescribed under Rule 19 are fulfilled and satisfaction is arrived in terms of the Rule 20(1).

18. Now, let this Court deals with such controversy. Sub Rule (7) of Rule 19 uses the word "may" as regards renewal of an original contract subject to compliance of the prescription as enumerated under Sub Rule (1) to (4) of Rule 19 more particularly, Sub Rule (3). Thus, a discretion has been granted upon the competent authority to renew an existing mining contract.

19. On a perusal of Rules 19 and 20 as detailed hereinabove, it is clear that such exercise of discretion is subject to fulfilment of the conditions as enumerated in the Rules 19 and 20, more particularly, under Sub Rule (1) of Rule 20.

20. Rule 19 signifies conferment of a power to grant renewal of a mining contract. Whether the competent authority is having an obligation to exercise such power to renew a contract on fulfilment of condition precedent prescribed and Rule 19

& 20 shall depend upon the "context" of such power and the right of the applicant seeking renewal. The Hon'ble Apex Court in **Monnet Ispat** (supra) held that mining contract is not a fundamental right. Therefore, one of the context/consideration for grant of renewal in the present case shall be such a right. The prescription under Rule 19 and satisfaction required under Rule 20 are condition precedents for renewal of such a contract but the next question is whether fulfilment of such condition shall create a right of renewal. The legislature has chosen the word "may" in sub rule 7 of Rule 19, while empowering the authority to grant renewal.

21. It is well settled that the word "may" and "shall" are distinct in meaning. Court does not interpret the word "may" as "shall" unless such interpretation is necessary and required to avoid absurdity, inconvenient consequence or is mandated by the intent of legislature, which is collected from other parts of the statute. Therefore, in the present case, the context is to be seen whether there is an obligation to use the discretion in certain way on fulfilment of the condition prescribed.

22. A right to be vested, there should be a statutory recognition. Such right has to accrue and any decision thereto will have to create the resultant injury. In the case in hand, the provisions made in Rule 19 are the considerations for renewal of license but fulfilment of the same shall not create a right of renewal inasmuch as, it is settled proposition of law that there is no fundamental right in mining and that paramount consideration under the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules 2013 is the preservation and development of mines and minerals and there is general restriction on mining. Therefore, in the aforesaid context and settled proposition of law, the word "may" used in Sub Rule (7) of Rule 19 cannot be construed as "shall".

23. A bare perusal of the impugned decision taken on the application for renewal of mining contract filed by the petitioner (mining contractor) discloses that the

considerations required to be made and satisfaction required to be arrived under Clause-(i) to (vi) of Rule 20(1) are not reflected.

24. It is the case of the respondent that Clause-(vii) of Rule 20(1) empowers the competent authority not to renew the mining contract for such other reasons/matters as may be considered. According to them, considering the interest of the State that in the event the mining area is put to fresh sale, the same will bring more revenue to the government, the renewal was declined. Therefore, according to them, once, it is decided to go for fresh sale, the recording of satisfaction under Clause-(i) to (vi) of the Rule 20(1) are not required. However, it is the case of the petitioner that the phrase "such other matters" used in Clause-(vii) of Rule 20(1) will take into its fold the conditions as enumerated under Clause-(i) to (vi) of the said Rule, and the principal of *ejusdem generis* is required to be applied.

25. *Ejusdem generis* means "of the same kind". *Ejusdem Generis* is a principle of statutory construction, where general words follow the enumeration of particular things and classes, and general words used will be construed as applying only to things of the same general class as those enumerated. Such general words under this principle are not be construed in their widest extent and are to be held as applying only to persons or things of same kinds and class as those specifically mentioned.

26. Mr. Mahanta, learned counsel is correct while arguing that the rule of *ejusdem generis* applies when (i) the statute contains enumeration of specific words; (ii) the subject of enumeration constitutes a class and category; (iii) the class or category is not existing by enumeration; (iv) general terms follow the enumeration and (v) there is no indication of a different legislative intent. However, in the case in hand, it cannot be said the enumeration under Clause-(i) to (vi) of Rule 20(1) belongs to same class and category inasmuch as Clause-(i) to (v) of Rule 20(1) of the Rules 2013 deals with the performance of the contractor and compliance of terms and

conditions of the original contract and other statutory compliances whereas, Clause-(vi) relates to an altogether different consideration, involving the investment made by the contractor and derivation of less than optimal benefit. The legislative intent under the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules, 2013 is also clear that there is no vested right either for lease or contract over mining or renewal thereof.

27. The determination made hereinabove, that the word "may" cannot be construed as "shall", also lead to a conclusion that the phrase used "such other matters" cannot be construed as applying only to things of the same general class as enumerated under Sub Clause (i) to (v) of Rule 20(1) inasmuch as the competent authority shall have a right to go for a fresh sale in the interest of revenue more particularly, when there is no vested and concluded right either for mining contract or for renewal thereof. Such right of the competent authority to go for higher revenue cannot also be limited to 25% enhancement as prescribed under Sub Rule (3) of Rule 20. Therefore, in the context of the aforesaid rule and in the backdrop of settled propositions of law as discussed hereinabove, this Court is of the unhesitant view that the principle of "Ejusdem Generis" cannot be applied in the present case. Therefore, the competent authority cannot also be faulted with for not recording the satisfaction in terms of Sub Clause (i) to (v) of Rule 20(1) when the renewal was not granted for the reason that the Government wants to proceed with a fresh sale of the mine in question in the interest of revenue.

28. The argument of Mr. Mahanta, that the competent authority could not have relied on the report of a sub ordinate authority as regards prospect of higher revenue also does not find favour of this Court inasmuch as the petitioner is not having any vested right as regards the procedure of determination of prospect of future revenue that may be adopted by the state authorities.

29. Having said so, yet another aspect still remains as regards mandate of clause VI of Rule 20(i). Clause (i) to (v) of Rule 20(1), prescribes for a satisfaction as regards the performance of the contractor during the original contract. However, Clause (vi) of Rule 20(1) relates to a consideration and satisfaction as regards investment made by the contractor and failure to derive such benefit.

30. In the case in hand, the subject mining in question was settled pursuant to a tender process for a period of 7 years with effect from 01.09.2014 to 30.09.2021 and the contract was entered on 01.09.2014. Another aspect of the matter is that though the contract for the mining unit was for the period of 7 years but the environmental clearance was granted for a period of 5 years w.e.f. 28.07.2014.

31. The Rules 18, 19 and 20 makes it abundantly clear that an original mining contract shall be for a minimum 7 years with a provision of renewal and consideration of renewal not only requires the proper compliances both statutory and contractual by the contractor during original period of contract but the competent authority also needs to look into the investment made and return derived. This court is of the view that prescription of minimum 7 years period of mining contract, provision of renewal and criteria of renewal for the reason of non derivation of return compared to investment made are mandated taking into consideration the principal object of maintenance and development of mining area and the interest of the contractor more particularly, the investment and return.

32. This court under its common judgment and order dated 11.02.2022 passed in WP(C) 919/2022 directed the competent authority to consider the application of the petitioner for renewal within the parameter prescribed under Rule 19 and Rule 20 of the 2013 Rules. It is a well settled principle of law that when a court records its findings as to the manner in which the decision should be made and then directs the authority to consider the matter, the authority will have to consider and decide the

matter in the light of its findings and observations of the court. Thus, it is clear that the competent authority is to pass an order in the light of the findings and observations made in the order dated 11.02.2022.

33. Therefore, in terms of the discussion made herein above, it is clear that for consideration for renewal, when it is claimed by the contractor that it has made substantial investment in the development of the mine, plant and machinery with a long time perspective but optimal benefit of the same could not have been derived during the original contract period, the contractor shall have a vested right for such consideration. In the case in hand, the environment clearance was given for five years on 28.07.2014 and the settlement order for seven years was given with effect from 01.09.2014 to 30.09.2021. The extension for environment clearance for two years in terms of the period of settlement was sought by the petitioner on 27.08.2019 and the DFO forwarded the extension application on 29.08.2019 and environment clearance was granted for another two years on 09.10.2020 i.e. after more than one year of seeking extension. In the meantime, the mining activities were stopped by the DFO on 12.09.2019 for want of environment clearance and such suspension was withdrawn on 13.11.2020. The fact also remains that the instalment were rescheduled up to 07.11.2022 and on 08.01.2022, the e-auction notice was issued. The petitioner also contended that the mining operation was stalled by certain activities by miscreants and the DFO also sought for deployment of CRPF in the mining area. In the representation dated 25.02.2022, the petitioner also raised the issue of investment and non receipt of benefit and the reasons of non availability of the environment clearance and disturbance by the miscreants. Therefore, in the aforesaid backdrop, the competent authority was duty bound under the Rule to deal with such claim of the petitioner and was also duty bound to record its satisfaction in terms of Clause –(vi) of Rule 20(1) of the Rules, 2013, which has not been done in the case resulting in violation of the petitioner's right under Article 14 of the Constitution of India and his

right under clause (vi) of Rule 20(1). There may not be any vested and concluded right for a mining contract but when already a contract is executed in terms of Rule 2013, such contract and right of renewal thereof shall be guided by the Rules 2013, more particularly, Rule 19 and 20 and the performance of the contractor in terms of rule 20(1)(i) to (v). However, the authority has failed to consider the claim of the petitioner in terms of rule 20(1)(vi). Therefore, the impugned order is passed in derogation of such rule and the direction issued by this court in its order dated 11.02.2022 passed in WP(C) No.919/2022.

34. Accordingly, in view of the reasons recorded herein above, it is held that:

- I. The word “may” used in Sub Rule (7) of the Rule 19 of the Rules, 2013 cannot be construed as “shall” or “must”.
- II. The principle of *ejusdem generis* cannot be made applicable to the phrase “such other matters” used in Clause-(vii) of Rule 20(1), to bring into its fold, the Clauses – (i) to (vi) of the said Rule of Rules, 2013.
- III. The petitioner is having a vested and concluded right in the given facts of the present case to get his application for renewal considered in terms of Clause-(vi) of the Rule 20(1) of the Rules, 2013 and such right has been violated by the respondent resulting in violation of petitioner’s right under Article 14.

35. Accordingly, this writ petition stands disposed of by setting aside and quashing the impugned speaking order dated 26.04.2022 with a further direction to the respondent No. 2 to consider the renewal application of the petitioner afresh in terms of the determination made herein above and also in terms of determination made in the judgment and order dated 11.02.2022 passed in WP(C)/919/2022. Such

exercise shall be carried out within a period of six weeks from receipt of a copy of the present judgment and order to be furnished by the petitioner. Till such determination is made, the impugned e-auction notice dated 29.04.2022 shall not be given effect to.

36. Accordingly, this writ petition is disposed of. Parties to bear their own cost.

JUDGE

Comparing Assistant