

GAHC010175422015



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

Case No. : WP(C)/1357/2015

M/S ABCI INFRASTRUCTURES PVT LTD.
FORMALLY KNOWN AS ANUPAM BRICKS and CONCRETE INDUSTRIES,
HAVING ITS REGISTERED OFFICE AT CLUB ROAD, SILCHAR, IN THE DIST.
OF CACHAR, ASSAM AND IS REP. BY ONE OF ITS AUTHORISED DIRECTOR
SHRI BUDHMAL BAID, S/O- LT. PEERCHAND BAID, R/O - CLUB ROAD,
SILCHAR, DIST. - CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, FOREST DEPTT., DISPUR,
GUWAHATI.

2:THE CHIEF CONSERVATOR OF FOREST
ASSAM
REHABARI
GUWAHATI.

3:DIVISIONAL FOREST OFFICER
CACHAR DIVISION
SILCHAR

Advocate for the Petitioner : MR.D SENAPATI

Advocate for the Respondent :

Linked Case : WP(C)/5052/2022

RAKESH KUMAR SINGH
S/OP LT. SAHEB SINGH
R/O NAMRUP DIST. DIBRUGARH ASSAM PIN-786623

VERSUS

THE STATE OF ASSAM AND 4 ORS.

REP

. BY THE SECRETARY TO THE GOVT. OF ASSAM FOREST DEPTT. DISPUR
GUWAHATI

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM FOREST DEPTT. DISPUR GUWAHATI

3:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
ASSAM

ARANYA BHAWAN
PANJABARI GUWAHATI

4:THE DIVISIONAL FOREST OFFICER
DIBRUGARH

ASSAM

5:THE RANGE FOREST OFFICER

JEYPORE RANGE

JEYPORE

DIST. DIBRUGARH

ASSAM

Advocate for : MR G N SAHEWALLA

Advocate for : SC

FOREST appearing for THE STATE OF ASSAM AND 4 ORS.

BEFORE

HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 21-06-2024

For the petitioner	G.N. Sahewalla, Senior Advocate. Md. Aslam, Mr. P. Deka, Ms. S. Todi, Mr. I. Kalita, Advocates
For the State respondents	Mr. P.N. Goswami, Addl. Advocate General, Assam. Mr. K.P. Pathak, Mr. R.R. Gogoi, Standing Counsel, Forest

	Department.
Date of hearing:	20.07.2023, 08.08.2023, 11.08.2023, 22.08.2023, 07.11.2023, 29.02.2024.
Date of re-hearing:	21.06.2024.
Date of judgment:	21.06.2024.

ORDER

Heard Mr. G.N. Sahewalla, learned senior counsel, assisted by Mr. P. Deka, learned counsel for the petitioner. Also heard Mr. P.N. Goswami, learned Additional Advocate General and standing counsel for the Environment and Forest Department, assisted by Mr. R.R. Gogoi, learned standing counsel for the Environment and Forest Department.

Case of the petitioner:

2. In brief, the case of the petitioner is that he is a sole proprietor of a "stone crushing unit" under the name and style of "Arkay Stone Mill". It is projected that the petitioner purchases stones from the stone quarry/mining lease holders and then crushed in his unit.

3. On 08.07.2022, two trucks carrying crushed stones, sold to a customer in Tinsukia were illegally detained in the highway by the Forest Range Officer, Jeypore, Dibrugarh (respondent no.5) without providing any seizure list. Hence, on 12.07.2022, the petitioner had submitted a representation before the respondent no.5 regarding detention of the said two trucks. Thereafter, the respondent no. 5 served two undated show-cause notice to the respective truck drivers on 13.07.2022 under the provisions of section 63, 64(i), and 73 of the Assam Minor Mineral Concession Rules, 2013 ("2013 Rules" for short). In the meanwhile, two "vehicle seizure penalty ticket" dated 12.07.2022 and

15.07.2022 were served on the truck drivers whose trucks had already been detained, by which the truck drivers were asked to pay a fine of Rs.50,000/- (Rupees fifty thousand only) each on account of price of minor minerals, royalty, GST, income tax, fine and processing fee.

4. Accordingly, by projecting that the provisions of section 63, 64 (i), and 73 of the 2013 Rules was not applicable on the stone crushing unit of the petitioner and that the penalty was illegally imposed upon the two truck drivers, who were carrying crushed stones of the petitioner and illegal detention of the vehicle and illegal imposition of penalty, this writ petition has been filed under Article 226 of the Constitution of India.

5. The prayers made in this writ petition are as follows, viz.

(i) why a writ in the nature of Mandamus be not issued directing the responding authorities to cancel, recall or otherwise forbear from giving effect to the Impugned notice issued to the driver of the truck bearing no. AS06 B 9835 carrying stones of the petitioner's stone crushers by the Seizing Officer, i.e. Range Forest Officer, Jeypore range under Section 63/64(1)/73 of the AMMC Rules and Section 49 of the AFR (Amendment) Ordinance, 1994 and rules made under Section 40 of the Transit Rules of AFR (vii) of 1891, and;

(ii) why a writ in the nature of Certiorari and/or any other appropriate writ setting aside and quashing the Impugned notice issued to the driver of the truck bearing no. AS06 B 9835 carrying stones of the petitioner's stone crushers by the Seizing Officer, i.e. Range Forest Officer, Jeypore range under Section 63/64(1)/73 of the AMMC Rules and Section 49 of the AFR (Amendment) Ordinance, 1994 and rules made under Section 40 of the Transit Rules of AFR (vii) of 1891 and;

(iii) why a writ in the nature of Mandamus be not issued directing the respondent authorities to cancel, recall or otherwise forbear from giving effect to the Impugned notice issued to the driver of the truck bearing no. AS23 CC 0218 carrying stones of the petitioner's stone crushers by the Seizing Officer, i.e. Range Forest Officer, Jeypore range under Section 63/64(1)/73 of the AMMC Rules and Section 49 of the AFR (Amendment) Ordinance, 1994 and rules made under Section 40 of the Transit Rules of AFR (vii) of 1891, and;

(iv) why a writ in the nature of Certiorari and/ or any other appropriate writ setting aside and quashing the Impugned notice issued to the driver of the truck bearing

no. AS23 CC 0218 carrying stones of the petitioner's stone crushers by the Seizing Officer, i.e. Range Forest Officer, Jeypore range under Section 63/64(1)/73 of the AMMC Rules and Section 49 of the AFR (Amendment) Ordinance, 1994 and rules made under Section 40 of the Transit Rules of AFR (vii) of 1891 and;

(v) why a writ in the nature of Mandamus be not issued directing the responder authorities to cancel, recall or otherwise forbear from giving effect to the Impugned penalty ticket number 1FSM415NFIED issued by the Divisional Forest Officer, Dibrugarh dated 12.07.2022 for the truck bearing no. AS06 B 9835 and;

(vi) why a writ in the nature of Certiorari and/ or any other appropriate writ setting aside and quashing the Impugned penalty ticket number 1FSM415NFIED issued by the Divisional Forest Officer, Dibrugarh dated 12.07.2022 for the truck bearing no. AS06 B 9835 and;

(vii) why a writ in the nature of Mandamus be not issued directing the respondent authorities to cancel, recall or otherwise forbear from giving effect to the Impugned penalty ticket number HAQN7TRVX7NC issued by the Divisional Forest Officer, Dibrugarh dated 15.07.2022 for the truck bearing no. AS23 CC 0218 and;

(viii) why a writ in the nature of Certiorari and/ or any other appropriate writ setting aside and quashing the Impugned penalty ticket number HAQN7TRVX7NC issued by the Divisional Forest Officer, Dibrugarh dated 15.07.2022 for the truck bearing no. AS23 CC 0218 and;

(ix) why a writ in the nature of Mandamus and/ or any other appropriate writ be not issued directing release of both the trucks of the petitioner's stone crushers bearing number AS06 B 9835 and AS23 CC 0218 along with the stones forthwith,

And/upon cause or causes being shown and after hearing the parties be pleased to make the rule absolute and/or pass such further or other order(s) as Your Lordships may deem fit and proper.

Submissions made on behalf of the petitioners:

6. The learned senior counsel for the petitioner has referred to the provision of clause (e) of section 3 of the Mines and Mineral (Development and Regulation) Act, 1957 ("MMDR Act" for short) and it has been submitted that "Minor Minerals" is defined to mean building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes and any other mineral which the Central Govt. may by notification in the Official Gazette declared to be a minor mineral".

7. By referring to the provisions of section 15 of the MMDR Act, it was submitted that the State Govt. was only vested with the powers to make rules in respect of minor minerals and that the competent authority in the State of Assam who is vested with the affairs relating to "minor minerals" is the Directorate of Geology & Mining. In this regard, reference has been made to the provisions of clause-(b) and (c) of sub-section (1) of section 2 of the Assam Minerals Regulation and Dealers Rules, 2020, which provides as follows:

“(b) "Competent Authority" means any Gazetted Officer, not below the rank of Deputy Director of the Directorate of Geology and Mining, Assam as authorized by the Government in the Mines and Minerals Department;

(c) "Competent Officer" means a Gazetted Officer authorized by the Deputy Commissioner of any district and Director, Geology and Mining, Assam.”

8. It has been submitted that under the provisions of MMDR Act, only Court having jurisdiction had the competence to take cognizance of offences punishable under the said Act or rules framed thereafter only on a complaint in writing made by a person authorized in this behalf by the Central Govt. or the State Govt. as the case may be. Moreover, it has also been submitted that the provisions of section 23-A, 23-B, and 23-C of the MMDR Act were only applicable there was any incident of illegal mining, transportation and storage of minerals and not for seizing trucks carrying stones on the highway.

9. The learned senior counsel for the petitioner has further submitted that the petitioner is operating a stone crushing unit on basis of "permission letter in respect of dangerous business" issued on 20.04.2021. It was also submitted that on 19.05.2021, the petitioner had applied before the Pollution Control Board of Assam for "consent to operate". The petitioner is also registered under the GST Act and a registration certificate to that affect was

issued by the competent authority on 20.09.2017.

10. It was further submitted that the Deputy Commissioner, Dibrugarh by an order dated 14.02.2012, had restricted the movement of vehicles carrying minor minerals from 09.00 PM to 04.00 AM and all the stone crushers in the district were directed to ensure that during carriage of minor minerals, the drivers of such vehicles do carry the necessary documents in Form-O issued by the lessee of the competent State agencies.

11. It was submitted that aggrieved by the aforesaid order dated 14.02.2012, the petitioner had filed a writ petition before this Court, which was registered as W.P.(C) 1622/2012 and this Court had disposed of the said writ petition by order dated 22.02.2018, by holding that the impugned order dated 14.02.2012, insofar as the same relates to insistence of Form-O of stone crusher unit run by the petitioner would not be sustainable in the eye of law. However, this Court had also observed that it would be open to the forest officials to take appropriate steps in the matter as may be permissible under the law, if so advised.

12. Accordingly, it was submitted that without having any power/authority of law, the respondent no.5 could not have illegally detained two trucks of the petitioner and also levied penalty illegally from the said trucks. It was submitted that to get the trucks released from detention, the penalty was paid during the pendency of the writ petition.

13. It was also submitted that the Govt. of Assam had published a notification dated 18.02.2021 in the Assam Gazette dated 11.03.2021, by which Assam Minerals Regulation and Dealers Rules, 2020 was brought into force. It

has been submitted that the petitioner is ready and willing to have his stone crushing unit registered in accordance with the said rules for smooth conduct of their business. It was submitted that the forest department officials were seizing the stone crushed by the petitioner and imposing penalty on the same without having power or jurisdiction.

14. It has been submitted that the Government of Assam has notified the Assam Stone Crusher Establishment and Regulation Rules, 2013 and accordingly, the petitioner has obtained N.O.C. from the Pollution Control Board, Assam. It has been submitted that similarly, by notifying the Assam Minerals Regulation and Dealers Rules, 2020, the requirement of registration is within the scope of the MMDR Act and not within the Forest Act or Assam Forest Regulation. Therefore, it has been submitted that the Forest Department had no locus to extend its power to business of manufacture, storage, sale and transportation of stones which are transported after being crushed in the stone crushing unit of the petitioner.

15. It has also been submitted that items which were originally extracted as a minor mineral, does not loose its characteristics as a minor mineral after it is extracted and therefore, it cannot be treated as a forest produce. In this regard, the learned senior counsel for the petitioner has referred to (i) Entry No. 55 of Second Schedule of the MMDR Act.

16. Moreover, it was submitted that illegality was in the action of the respondent authorities because while crushed stones were seized, the notice was issued under the Assam Forest Regulation, 1891 but the authorities were imposing and collecting penalty under the MMDR Act.

17. In support of his submissions, the learned senior counsel for the petitioner has placed reliance in the case of (1) *State of Gujarat & Ors. v. Jayeshbhai Kanjibhai Kalathiya & Ors.*, (2019) 16 SCC 513; (2) *Paramananda Choudhury v. State of Assam & Ors.*, (2014) 6 GLR 747; and (3) *Rengfrah Stone Crusher v. State of Assam & Ors.*, (2009) 3 GLR 586.

Submissions by the learned Addl. AG:

18. Per contra, the learned Addl. AG has submitted that stone, in the State of Assam, is a forest produce. In the State, while the mining activities are regulated by the Geology and Mining Department, Govt. of Assam under the MMDR Act and Rules framed thereunder, the manufacture, storage, sale and transportation of sand, gravel and stone aggregates including crushed stone are regulated by the Forest Department under Assam Forest Regulation, 1891 and Forest Act, 1927.

19. It has been submitted that the definition of “forest produce” as given in Section 3(4) of the Assam Forest Regulation, 1891 is *pari materia* to the definition of Forest Produce provided under Section 2(4) of the Forest Act, 1927. It was further submitted that as per Section 25 and 34 of the Assam Forest Regulation, 1891, quarrying of stone is a prohibited act, which is *pari materia* to the provisions of Section 26 and 33 of the Forest Act, 1927. Hence, it has been submitted that stone is a forest produce.

20. It has been submitted that power to regulate mines and mining activity is regulated under the MMDR Act. However, under Section 3(e) of the MMDR Act, “minor minerals” means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the official

Gazette, declare to be a minor mineral. In the said context, it has been submitted that from time to time, building stones, gravel, stones, boulder, kankar, stones used for making household utensils, have been classified as minor minerals. Section 15 of the MMDR Act gives power to the State Government to make rules in respect of minor minerals by providing under Sub-Section (1) of Section 15 of MMDR Act that the State Government may, by notification in the official Gazette, make rules for regulating the grant of quarry leases, mining leases, or other mineral concessions in respect of minor minerals and for purposes connected therewith. Accordingly, the State Government has framed the Assam Mines and Minerals Concession Rules, 2013.

21. It has been submitted that the transit permits annexed to the writ petition would show that the said passes are issued with a validity period. Accordingly, it has been submitted that with valid papers, transportation of legal crushed stone is permissible and the State is only making an endeavour to prevent illegal transportation of crushed stone.

22. Accordingly, it has been submitted that the Forest Department has the power to regulate business of sand, gravel and stone, which are forest produce and accordingly, it has been submitted that the petitioners are not entitled to any relief.

23. In support of his submissions, the following cases have been cited, viz., (1) *Divisional Forest Officer, South Kamrup Division v. Moolchand Saraugi Jain*, (1971) 1 SCC 272, (2) *State of Tamil Nadu v. M/s. Hind Stone*, (1981) 2 SCC 205, (3) *Commissioner of Sales Tax, U.P. v. Lal Kunwa Stone Crusher*, (2000) 3 SCC 525, (4) *Sakiri Vasu v. State of U.P.*, (2008) 2 SCC 409, (5) *Monnet Ispat and Energy Ltd. V. Union of India*, (2012) 11 SCC 1, (6)

Accountant General, State of Madhya Pradesh v. S.K. Dubey & Anr., (2012) 4 SCC 578, (7) State of Uttarakhand & Ors. v. Kumaon Stone Crusher, (2018) 4 SCC 537, (8) Bejiram Ingty v. State of Assam & Ors., (1981) 1 GLR 222, (9) M/s. Durga Krishna Stores Pvt. Ltd. V. Union of India, W.A. 168/2017 decided on 04.05.2018 by Division Bench of this Court [unreported], (10) Anil Kumar Singh v. State of Bihar, CWJ Case No. 8472/2020, decided on 26.03.2021 by Patna High Court [unreported].

24. It was submitted that the decision rendered in the case of *Moolchand Saraugi Jain (supra)*, followed in the case of *Bejiram Ingty (supra)* were in a different context and they cannot be considered as an authority on the point as to whether stone crusher unit to manufacture stone aggregate, storage, sale and transportation of stones after being crushed in the stone crushing unit of the petitioner would be within the scope and ambit of the Assam Forest Regulation, 1891 and the Forest Act, 1927. It was submitted that in a subsequent decision of the Division Bench of this Court in the case of *M/s. Durga Krishna Stone Pvt. Ltd. (supra)*, in reference to notification dated 01.09.2009, issued by the Government of Assam to prescribe rates of royalty leviable on all classes of forest produce, had held that stone ballast is a forest produce. Therefore, it has been submitted that on facts, the cases of *Moolchand Saraugi Jain (supra)*, followed in the case of *Bejiram Ingty (supra)* may not be relied on.

Reasons and decision:

25. Under Section 2(4) of the Forest Act, 1927, "forest produce" is defined as follows-

(4) "forest-produce" includes—

(a) the following whether found in, or brought from, a forest or not, that

is to say— timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, kuth and myrabolams, and (b) the following when found in, or brought from a forest, that is to say—

- (i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,*
- (ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,*
- (iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and*
- (iv) peat, surface soil, rock and minerals (including lime-stone, laterite, mineral oils, and all products of mines or quarries);*

26. The *para materia* provisions of Section 3(4) of the Assam Forest Regulation, 1891 is quoted below:-

(4) "forest produce" includes—

- (a) the following, whether found in, or brought from, a forest or not, that is to say— timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, myrabolams, and rhinoceros horns, and*
- (b) the following when found in, or brought from, a forest that is to say—*
 - (i) trees and leaves, and fruits and all other parts or produce, not hereinbefore mentioned, of trees,*
 - (ii) plants not being trees, including grass creepers, reeds and moss, and all parts of produce of such plants,*
 - (iii) wild animals and skins (tusk and horns, other than rhinoceros horns), bones, silk, cocoons, honey and wax and all other parts or produce of animals, and*
 - (iv) peat, surface-oil, rock and minerals (including limestone, laterite, mineral oils and all products of mines or quarries);*

27. Under Section 25 (e) of the Assam Forest Regulation, 1891, quarrying of stones is prohibited. The relevant provision is quoted below:-

25. *Acts prohibited in such forests.- Any person who—*

* * *

(e) quarries stone, burns lime or charcoal or collects, subject to any manufacturing process or removes any forest produces, or shall be punished with imprisonment for a term which is not less than one year but may extend to three years or with fine which may extend to five thousand rupees or with both.

28. The provision of Section 40 of the Assam Forest Regulation, 1891 empowers the State Government to make rules to regulate transit of forest produce. The said provision is quoted below:-

40. Power to make rules to regulate transit of forest produce.-

(1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all forest produce in transit by land or water, is vested in the State Government, and the Government may make rules to regulate the transit of any forest produce.

(2) Such rules may, among other matters—

(a) prescribe the routes by which alone forest produce may be imported into, exported from or moved within the territories to which this Regulation extends;

(b) prohibit the import, export, collection or moving of forest produce without a pass from an officer authorised to issue the same, or otherwise than in accordance with the conditions of such pass;

(c) provide for the issue, production and return of such passes;

(d) fix, or authorise any Forest Officer, subject to control of the State Government, to fix the fees payable for such passes;

(e) in the case of timber formed into a raft or fastened to the shore, prohibit the loosening of the setting a drift of such timber by any person not the owner thereof or not acting on behalf of such owner of the Government;

(f) provide for the stoppage, reporting examination and making of forest produce in transit in respect of which there is reason to believe that any money is payable to the Government or which is desirable for the purposes of this Regulation, to affix a mark;

(g) establish revenue-stations to which forest produce is to be taken by the person in charge of it for examination, or for the realisation of such money, or in order that such mark may be affixed to it, and prescribe, or authorize, a Forest Officer, subject to such control as aforesaid, to prescribe the conditions under which forest produce is to be brought to, stored at and removed from such revenue-station;

(h) provide for the management and control of such revenue stations, and for regulating the appointment and duties of persons employed thereat;

(i) authorise the transport of timber across any land, and provide for the award and payment of compensation for any damage done by the transport of such timber ;

(j) prohibit the closing up or obstruction of the channel or banks or any river used for the transit of forest produce and the throwing of grass,

brushwood branches or leaves into any such river, or any other act which tends to cause the obstruction of such channel;

(k) provide for the prevention and removal of any obstruction in the channel or on the banks of any such river and for recovering the cost of such prevention or removal from the person causing such obstruction;

(l) prohibit absolutely or subject to conditions and rules, within specified local limits, the establishment of saw mills, saw pits, veneer mills, plywood factories and any kind of forest based industries for the purpose of conversion, manufacturing, peeling, slicing, cutting, burning, concealing, marking or supermarking the timber, altering or effecting any of the marks on the same and possession or carrying of marking hammers or other implements, used for making timber ; and

(m) regulate the use of property-marks for timber and the registration of such marks, authorise the refusal or cancellation of the registration of any property-marks, prescribe the time for which the registration of property-marks hold good, limit the number of such marks which may be registered by any one person, and provide for the levy of fees for such registration.

(3) The State Government may direct that any rule made under this section may not apply to any specified class of timber or other forest produce or to any specified local area.

29. The residuary powers of the State Government to make Rules under the Assam Forest Regulation, 1891 is contained in Section 72 of the said Regulation, which is quoted below:-

R.72 Additional powers to make rules.- The State Government may make rules consistent with this Regulation:

(a) to declare by what Forest Officer or Class of Forest Officers the powers or duties conferred or imposed by or under this Regulation on a Forest Officer are to be exercised or performed;

(b) to regulate procedure of Forest Settlement Officers;

(c) to provide for ejectment of any person who has entered into unauthorised occupation in a forest reserve and for the disposal of any crops raised, or any building or other construction erected without authority in forest reserves;

No Civil Court shall exercise jurisdiction in any matter provided for by the rules made under this clause;

(d) to regulate the rewards to be paid to officers and informers; and

(e) generally, to carry out the provisions of this Regulation.

30. It may be mentioned that the learned Addl. AG has not brought to the notice of the Court any Rules that has been framed by the State Government in exercise of powers conferred under the provisions of Section 40 and 72 of the Assam Forest Regulation, 1891.

31. Minor mineral, as defined under Section 3(e) of the MMDR Act is quoted below:-

3. Definitions.-

(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be minor mineral;

32. The provision of Section 4 of the MMDR Act is quoted below:-

4. Prospecting or mining operations to be under licence or lease.-

(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of Section 617 of the Companies Act, 1956:

Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu.

(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the

rules made thereunder.

(2) No reconnaissance permit, prospecting licence or mining lease] shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made under Section 18, undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance permit, prospecting licence or mining lease.

33. The provision of Section 15 of MMDR Act is quoted below:-

15. Power of State Governments to make rules in respect of minor minerals.-

(1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of 3[quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.

(1A) In particular and without prejudice to the generally of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor;

(b) the time within which, and the form in which, acknowledgment of the receipt of any such applications may be sent;

(c) the matters which may be considered where applications in respect of the same land are received within the same day;

(d) the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;

(e) the procedure for obtaining quarry leases, mining leases or other mineral concessions;

(f) the facilities to be afforded by holders of quarry leases, mining leases or other mineral concessions to persons deputed by the government for the purpose of undertaking research or training in matters relating to mining operations;

(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;

(h) the manner in which rights of third parties may be protected (whether by way of payment of compensation or otherwise) in cases where any such party is prejudicially affected by reason of any prospecting or mining operations;

- (i) the manner in which rehabilitation of flora and other vegetation such as trees, shrubs and the like destroyed by reason of any quarrying or mining operations shall be made in the same area or in any other area selected by the State Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease;*
 - (j) the manner in which and the conditions subject to which, a quarry lease, mining lease or other mineral concession may be transferred;*
 - (k) the construction, maintenance and use of roads, power transmission lines, tramways, railways, aerial ropeways, pipelines and the making of passage for water for mining purposes on any land comprised in a quarry or mining lease or other mineral concession;*
 - (l) the form of registers to be maintained under this Act;*
 - (m) the reports and statements to be submitted by holders of quarry or mining leases or other mineral concessions and the authority to which such reports and statements shall be submitted;*
 - (n) the period within which and the manner in which and the authority to which applications for revision of any order passed by any authority under these rules may be made, the fees to be paid therefore, and the powers of the revisional authority; and*
 - (o) any other matter which is to be, or may be, prescribed.*
- (2) Until rules are made under sub-section (1), any rules made by a State Government regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force.*
- (3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty or dead rent whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals:*
- Provided that the State Government shall not enhance the rate of royalty or dead rent in respect of any minor mineral for more than once during any period of three years.*

34. It may be stated that no material has been placed before this Court to show that the State Government has framed any Rules under the MMDR Act, empowering the Forest Department to deal with the minor minerals as defined under the MMDR Act.

35. The facts leading to the case of *Moolchand Saraugi Jain (supra)*, was that the DFO, Kamrup Division had invited tenders for the purchase of monopoly rights to quarry stone from certain areas including Narengi Stone Quarry Mahal. Under the circumstances narrated therein, the DFO sought to recover a certain sum of money from the bidder, which was quashed by this Court. A 3-Judge Bench of the Supreme Court of India, while considering the scope of Section 75 of the Assam Forest Regulation, 1891 had held in this case that "*It was difficult to hold that 'stone' is a forest produce within the meaning of the Act.*" By referring to the said judgment, the Division Bench of this Court in the case of *Bejiram Ingty (supra)*, referring to the provisions of Section 3(4)(n) of the Assam Forest Regulation, 1891 expressed its doubt as to whether 'stone' was a forest produce.

36. In the considered opinion of the Court, the judgment of the Supreme Court of India in the case of *Moolchand Saraugi Jain (supra)*, with all respect, cannot be said to be an authority on the point that the stones that were seized by the Forest Range Officer in this case is a forest produce. In this regard, support is found from the case of *Anil Kumar Singh (supra)*.

37. The learned Addl. AG has referred to the notification no. FRS.1/2004/Pt/47 dated 01.09.2009, published in the Assam Gazette Extraordinary no. 306 dated 19.09.2009, by which schedule of rates of royalty on all classes of forest produce was prescribed. It was submitted that in the case of *M/s. Durga Krishna Stores Pvt. Ltd. (supra)*, the appellants therein had claimed that they had procured "stone ballast" from open market and were not required to pay royalty as per notification dated 01.09.2009. Against the order passed by the learned Single Judge an intra-court appeal was preferred. In the

said decision, the Division Bench had held that “stone ballast” was a forest produce and that the appellant had to inform the source from where the materials were procured. The relevant observation of the Division Bench of this Court was as follows:–

“8. ... On the other hand, if the notification dated 01.09.2009 of the Government of Assam is considered we can conclude that stone ballast is a forest produce and the notification dated 17.06.2000 binds the respondents Railway and for the said reason Clause 2.13 was stipulated in the contract agreement which the petitioner/ appellant is very much aware. ... In order to get it released, a duty is cast upon the petitioner/ appellant at least to inform the source from whom it purchased the said materials ...”

38. In the case of *Kumaon Stone Crusher (supra)*, The Supreme Court of India had referred to the observations made in the case of *Lal Kunwa Stone Crusher (supra)*, wherein it was held that the word “stone” was wide which includes various forms of “grits”, “gittis”, “kankar” and “ballast”. And it was further held that the crushing of stone and stone boulders into stone grits, stone chips and stone dust does not result into a new commodity different from forest produce. The Supreme Court of India had also held that the Forest Act, 1927 and Rules framed under Section 41 are neither overridden nor impliedly repealed, altered and amended by the MMDR Act. The facts of the said case of *Kumaon Stone Crusher (supra)* are more or less similar to the facts of the present case. Para 8, 10 and 215 thereof are quoted below:-

8. M/s Kumaon Stone Crusher filed a writ petition praying for quashing the order dated 14-6-1999 issued by the Conservator of Forests and order dated 1-6-1999 issued by Divisional Forest Officer directing for making recovery and levy of transit fee upon the finished item of stone i.e. stone grits, stone chips etc from the writ petitioner. The petitioner's case was that its stone crusher which collects the boulders from the bank of Sharda River, which is a forest produce, transit fee is charged and paid. After taking the boulders to the crushing centre and involving manufacturing process, boulders are converted into the commercial commodity, namely, stone grits and chips. It is pleaded that after it becomes a commercial

commodity, it ceases to be as forest produce and no transit fee can be charged and recovered thereafter.

10. The writ petitioners, proprietary firms were carrying on the business of manufacturing and sale of finished produce of washed and single pea gravel and bajri. The writ petitioner used to purchase riverbed material from the lessee of quarry on payment of royalty and trade tax on which transit fee is charged from the State of Uttarakhand. But when the writ petitioners transport their finished products from their factory to customers, transit fee is charged by State of Uttarakhand and further, when it crosses the border of Uttarakhand and enters into the State of U.P., the transit pass issued by the State of Uttarakhand is to be surrendered and again transit passes are to be taken by making payment of the transit fee.

215. In view of the foregoing discussion, we arrived at following conclusions:

215.1(a) The crushing of stones, stone boulders into stone grits, stone chips and stone dust does not result into a new commodity different from forest produce. The crushed materials continue to be stone and retain their nature of forest produce.

215.1(b) Coal with its various varieties, limestone, hydrated lime, quick limestone, slake lime, veneer and plywood waste are all forest produce.

215.1(c) Marble blocks, marble slabs, marble chips are all forest produce.

215.1(d) Fly ash, clinker, synthetic gypsum are not forest produce. Gypsum, however, is a forest produce.

215.2. The Indian Forest Act, 1927 and the Rules framed under Section 41 are neither overridden nor impliedly repealed, altered or amended by Mines and Minerals (Development and Regulation) Act, 1957 and the Rules framed thereunder. Both the above legislations operate in different spheres and fields.

215.3. The words "brought from" as occurring in Section 2(4)(b) of 1927 Act mean brought from forest from where forest produce has originated. The words "brought from forest" cannot be read as "brought through forest". We, however, clarify that for an item to be treated as forest produce, its origin may be in any forest within the State of U.P. or in a forest outside the State of U.P.

215.4. The forest has to be understood according to its dictionary meaning which covers the statutory recognised forest and also shall include any area regarded as forest in the Government record irrespective of the ownership. The meaning of forest cannot be restricted only to reserve forests, protected forests and village forests.

215.5. The roads notified by notification dated 10-2-1960 under Section 80A of 1927 Act cannot be read to mean that such roads have been declared as protected forest. The notification dated 10-2-1960 can only be read to mean that both sides of the road have been declared as protected forest on which Chapter IV of the

1927 Act shall be applicable.

215.6. Rule 3 of 1978 Rules is not independent of Rule 5 of 1978 Rules. Transit fee is payable on all kinds of transit passes and cannot be confined only to transit passes as referred to in Rule 4(1)(b) only.

215.7. After issuance of notification under Section 4 of 1927 Act, removal of forest produce therefrom shall be governed by the Rules framed by the State in view of U.P. Act 23 of 1965 by which original Section 5 has been substituted in its application in the State of U.P. The fact that no notification under Section 20 has been issued does not mean that restriction put by the State Government by Rules are not applicable.

215.8. The Division Bench of the Allahabad High Court by its judgment dated 11-11-2011 has rightly struck down Fourth and Fifth Amendment Rules to 1978 Rules as being excessive and confiscatory in nature.

215.9. The notification dated 28-5-2001 issued by the State of Madhya Pradesh in exercise of power under Rule 5 of 2000 Rules cannot be said to be beyond the scope of Rule 5 of 2000 Rules and Section 41 of 1927 Act. The State of Madhya Pradesh was fully justified in fixing rate of transit fee at the rate of Rs. 7/- and Rs. 4/- per tonne which was well within the power of the State under Rule 5 of 2000 Rules framed under the 1927 Act."

39. Thus, from the finding of the Supreme Court of India in the case of *M/s. Kumaon Stone Crusher (supra)*, there is no room for any doubt whatsoever that "stone" has been held to be a forest produce if its origin can be traced to a forest. In the case of *Lal Kunwa Stone Crusher (supra)*, the Supreme Court of India has held that the word "stone" was wide include various forms of "grits", "gittis", "kankar" and "ballast". And it was further held that the crushing of stone and stone boulders into stone grits, stone chips and stone dust does not result into a new commodity different from forest produce. Moreover, the Division Bench of this Court, in the case of *M/s. Durga Krishna Stores Pvt. Ltd. (supra)*, has held that "stone ballast" was a forest produce and that the appellant had to inform the source from where the materials were procured.

40. The learned senior counsel for the petitioner had cited the case of

Jayeshbhai Kanjibhai Kalathiya (supra), decided by the Supreme Court of India and the case of *Paramananda Choudhury*, decided by this Court. In the said two respective cases, the Supreme Court of India and this Court were both considering the facts of the said case in the light of MMDR Act and it was not considering the provisions of Forest Act, 1927 or the State laws on Forest, like the Assam Forest Regulation, 1891. However, in the case of *Lal Kunwa Stone Crusher (supra)*, *M/s. Kumaon Stone Crusher (supra)* and *M/s. Durga Krishna Stores Pvt. Ltd. (supra)*, the Supreme Court of India as well as this Court had held that "stone" was a "forest produce". Therefore, in light of the well settled law that "*a case is only an authority for what it decides and not what logically flows from it*", the Court is of the considered opinion that the case of *Jayeshbhai Kanjibhai Kalathiya (supra)* and *Paramananda Choudhury (supra)* do not help the petitioner under the distinguishing facts of this case in hand.

41. The learned senior counsel for the petitioner had also placed reliance on the case of *Rengfrah Stone Crusher (supra)*. However, having regard to the herein before referred cases of *Lal Kunwa Stone Crusher (supra)*, *M/s. Kumaon Stone Crusher (supra)* and *M/s. Durga Krishna Stores Pvt. Ltd. (supra)*, the Supreme Court of India as well as this Court had held that "stone" was a "forest produce", the said cited case would also not help the petitioner in any manner.

42. Once a commodity like stone is removed from a mine and/or forest, it would be impossible for the authorities to ascertain its source and therefore, it is quite possible that there may be instances of multiple authorities exercising jurisdiction or on other words, there may be overlapping of jurisdiction of more than one authority. Therefore, the Division Bench of this

Court, in the case of *M/s. Durga Krishna Stores Pvt. Ltd. (supra)*, had held that “stone ballast” was a forest produce and that the appellant had to inform the source from where the materials were procured.

43. Therefore, in the considered opinion of the Court, the present challenge fails and thus, this writ petition stands dismissed.

44. There shall be no order as to cost.

Observations, which are not to be considered as direction of the Court:

45. In this case two distinct authorities are dealing with same item like “stone”. Under the provisions of Section 23-C of the MMDR Act, the Government of Assam has framed the Assam Minor Mineral Concession Rules, 2013. Under Rule 2(1)(c) thereof, in respect of minor minerals as listed in Schedule-X, the “competent authority” is the Director of Geology and Mining, Assam. Under the same provision, in respect of minor minerals as listed in Schedule-Y thereof, the Chief Conservator of Forests and Head of Forest Force has been appointed to be the “competent authority”.

46. However, while the State Government has framed the Assam Minor Mineral Concession Rules, 2013, the State Government had not framed any Rules for dealing with minor minerals covered by Schedule-Y.

47. Therefore, it is hoped that the Government of Assam would be well advised to frame appropriate rules for the Environment and Forest Department of the Government of Assam to deal with “minor minerals” which are exclusively under their jurisdiction and/or area of operation. Such a Rule would go a long way in furtherance of one of the government goals of achieving *ease of doing business* in the State.

JUDGE

Comparing Assistant