

GAHC010176322021



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

Case No. : WP(C)/5638/2021

KAILASH JALAN
S/O LATE J.L. JALAN, R/O CHLIHANAGAR, TINSUKIA, P.O. TINSUKIA, DIST.
TINSUKIA, PIN 786125

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM,
ENVIRONMENT AND FOREST DEPTT., DISPUR, GUWAHATI, ASSAM, PIN
781006

2:THE ADDITIONAL PRINCIPAL CHIEF CONSERVATOR OF FOREST (T)
UPPER ASSAM ZONE
GUWAHATI
PIN 781001

3:THE CHIEF CONSERVATOR OF FOREST
EASTERN ASSAM CIRCLE
JORHAT
DIST. JORHAT
PIN 785001
ASSAM.

4:THE DIVISIONAL FOREST OFFICER
SIVASAGAR DIVISION
SIVASAGAR
DIST. SIVASAGAR
PIN 785640
ASSAM.

5:DEPUTY COMMISSIONER
CHARAIDO
DIST. CHARAIDO
PIN 782445

ASSAM

Advocate for the Petitioner : MR C BARUAH

Advocate for the Respondent : SC, FOREST

BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

O R D E R

08.04.2024.

Heard Mr. B. Baruah, learned counsel for the petitioner. Also heard Mr. D. Gogoi, learned Standing Counsel, Forest Department, Assam for the respondents.

2) By filing the present Writ Petition, the writ petitioner is challenging the impugned communication vide Memo No.O.O.No.317(A), dated 19.06.2021, issued by the Divisional Forest officer, Sivasagar Division (T), Sivasagar debarring the petitioner from granting any fresh mining permit area for a period of five years and further making the petitioner not eligible to participate in the bid process w.e.f. the issue of the said order of the communication.

3) The brief facts of the present Writ Petition is that the petitioner was settled with a mining permit area of Dilli River Stone Quarry C (II A) for the period of 2013-2015 with effect from 28.01.2016 from the date of settlement for granting of 10000 Cu.M. of stone at the offered price of Rs.20,05,023/- (Rupees twenty lacs five thousand twenty three) only. Accordingly the petitioner, as a settlement holder, deposited the first installment with taxes in advance amounting to Rs. 25,063.00/-. The further case of the petitioner is that, after

issuance of the order of settlement for the aforesaid River Stone Quarry, the Hindustan Fertilizer Corporation (BVCL), Namrup, raised the height of the concrete wall constructed by them in the mining area and stop the flow of water throughout the year, for which the petitioner could not extract any stone from the river bed and immediately informed the matter to the concerned Forest Officials of Sivasagar Division and they have physically verified the mining area and appreciated the problem caused to the petitioner in extracting the stone.

4) In this regard there was an enquiry by group of officers deputed by the DFO, Sivasagar Division, and on field verification of the mining area found that there was no scope for the settlement holder to extract stones from the river bed due to erection of the concrete wall by the BVCL, Namrup, in the permitted mining area.

5) The petitioner also made several representation/letter starting from 29.10.2015 to 30.09.2019, before the respondent authorities expressing the difficulties faced in extraction of stone from the mining area. In the said representation the petitioner narrated the facts which caused problem/obstruction for extracting minor minerals in the mining area and prayed for renewal of mining permit. However the said representations remained unattended by the respondent authorities, to consider the impossibilities faced in the Mining Permit Area. It is the further case of the petitioner that he could not collect single quantity of stone from the settled quarry, which is also mentioned in the representation/petition dated 01.02.2021, which is pending for disposal. But surprisingly, by the impugned Order dated 19.06.2021, the respondent No.4, without hearing the petitioner, debarred him from granting any fresh mining permit area for a period of 5 (five) years and further making the petitioner not eligible to participate in the bid process in the entire State of

Assam, which is arbitrary, illegal and is also in excess of jurisdiction, in violation of the provisions of Assam Minor Mineral Concession Rules, 2013. Again, the present Writ Petition has been filed.

6) The basic ground of challenge by the petitioner is the violation of principle of natural justice. According to the petitioner without any notice he has been black listed and/or debarred from participating in future tender processes for a period of five years as well as directed to forfeit the amount of money. According to the learned counsel for the petitioner this is in blatant violation of the principle of natural justice.

7) The principle of natural justice mandates that a reasonable opportunity must be given to a person before taking any action against him. The adjudicating authority must disclose all the material placed before it and must give reasonable opportunity to the affected interest to submit his/ their case. A fair hearing means that a person against whom an adverse order is passed should be informed of the charges against him giving him opportunity to submit his explanation to the charges and the person is also have a right to know the material on the basis of which the allegation is proposed to be decide.

8) In the case in hand, admittedly, before passing the order impugned, the allegation was not disclosed to the petitioner and he was also not asked for any reply from his side to put his rebuttal to the allegation of violation of the terms of the settlement.

9) Mr. Gogoi submits that the department has decided to revisit the matter as there are lapses in issuing this order and the department has decided to initiate a fresh proceeding as per the Rules and following due process of principle of natural justice.

10) This court is of the view that the impugned order has been issued without following the principle of natural justice. In view of the fair submission of Mr. Gogoi and finding of this court the impugned order dated 19.06.2021 is set aside and quashed. However, a liberty is granted to the respondent authority to proceed afresh if so advised.

11) In the above terms, this writ petition is disposed of, however no order as to cost.

JUDGE

Comparing Assistant