

GAHC010212652024



undefined

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

Case No. : WP(C)/5246/2024

KAILASH JALAN
S/O- LATE J.L. JALAN, R/O- CHALIHANAGAR, P.O., P.S. AND DIST.
TINSUKIA, ASSAM, PIN- 786125, REPRESENTED BY HIS ATTORNEY
NAMELY SRI SUDARSHAN RAI, SON OF LATE GANGA RAI.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, ENVIRONMENT AND FOREST DEPARTMENT, DISPUR, GUWAHATI,
ASSAM, PIN- 781006.

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

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

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

Advocate for the Petitioner : MR. P J SAIKIA, SR. ADV, MR. A K GUPTA, MR K J SAIKIA, MR.
R K MAHANTA

Advocate for the Respondent : SC, FOREST,

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 25-11-2024

Heard Mr. KJ Saikia, learned counsel for the petitioner. Also heard Mr. RR Gogoi, learned counsel for all the respondents.

2. The case of the petitioner is that the that the petitioner was settled with a mining permit area of Dilli River Stone Quarry for the period of 2016-2018, with effect from 28.01.2016 for a total quantity of 5000 Cu.M of stone, at the offered price of Rs. 5,55,123/-. Alleging that the Hindustan Fertilizer Corporation, Namrup raised the height of the concrete wall constructed in the mining area, which led to stoppage of the flow of water throughout the year, due to which the petitioner could not extract any stone from the river bed, the petitioner made several representations before the respondent authorities, highlighting the difficulties faced by the petitioner in the extraction of stones from the mining area. The petitioner prayed that he should be allowed time to extract the quantity of stone for which kist money was already paid, with an additional prayer for adjusting the refundable amount towards payment of 7th and 8th kist money. The petitioner also prayed that a fresh tender process for settlement of the stone quarry should not be initiated. However, according to the petitioner, such representations remained un-addressed and finally by order dated 16.12.2020, it was intimated to the petitioner that his request was not tenable.

3. Subsequently, the petitioner submitted a review petition before the competent authority, for review of the earlier order dated 16.12.2020. However, the respondent No. 4, by way of the order dated 19.06.2021, terminated the contract and debarred the petitioner from participating in future NITs and in being granted any fresh permit area/ mineral concession area in the State for a period of five years. Further the amount of Rs. 80,690/-, i.e., the 25% of the security money deposited in the course of settlement was directed to be forfeited.

4. Being aggrieved, the petitioner filed WP(C) 5650/2021 challenging the order dated 19.06.2021, on the ground that the same had been issued by violating the principles of natural justice. This Court, vide order dated 22.02.2022, set aside the order dated 19.06.2021, on the ground that the same had been issued without following the principles of natural justice. The respondent authorities were however given the liberty to proceed afresh against the petitioner. Subsequent to the order passed in WP(C) 5650/2021, the DFO, Sivasagar Division (T) issued a letter to the petitioner dated 22.12.2023, requesting him to appear before him for physical hearing, with respect to the review petition filed by the petitioner.

5. The petitioner's counsel submits that the petitioner could not appear on the date fixed for physical hearing, i.e., 15.03.2023, on the ground that he was unwell. The petitioner's counsel prays that subsequent to the above date fixed for hearing, no other date has been fixed for hearing by the DFO. He accordingly prays that a direction may be issued to the DFO concerned, to fix a date for physical hearing of the petitioner, in pursuance to the order passed by

this Court in WP(C) No.5650/2021.

6. The petitioner-in-person has appeared along with Mr. Sudarshan Rai, the Power of Attorney holder of the petitioner, whom the petitioner claims is his Power of Attorney holder.

7. Mr. RR Gogoi, learned counsel for the respondents submits that the Divisional Forest Officer, Sivasagar Division (T) has fixed 04.12.2024 at 11:30 a.m. as the time for giving physical hearing to the petitioner.

8. Mr. KJ Saikia, learned counsel for the petitioner and Mr. Kailash Jalan, the petitioner-in-person, both submit that even if the petitioner is unable to appear on 04.12.2024 at 11:30 a.m. in the office of the Divisional Forest Officer, Sivasagar Division (T), Mr. Sudarshan Rai, the petitioner's Power of Attorney holder shall appear on behalf of the petitioner. They also submit that in the event, the petitioner and/or the Power of Attorney holder is unable to appear on the said date, they will have no grievance if a decision is taken by the Divisional Forest Officer concerned, without hearing them.

9. In view of the stand taken by the respondents, the petitioner and/or his Power of Attorney holder, Mr. Sudarshan Rai shall personally appear in the office of the Divisional Forest Officer, Sivasagar Division (T) on 04.12.2024 at 11:30 a.m., wherein the Divisional Forest Officer concerned shall give an opportunity of physical hearing to the petitioner and/or his Power of Attorney holder. In the event, the petitioner and/or his Power of Attorney holder do not appear before the Divisional Forest Officer, Sivasagar Division (T) on the said date, the Divisional Forest Officer concerned is given the liberty to decide the matter in

their absence. No further opportunity of physical hearing shall be given to the petitioner and/or his Power of Attorney holder to appear before the Divisional Forest Officer, Sivasagar Division (T), except on 04.12.2024. Whether the petitioner and/or his Power of Attorney holder appear before the Divisional Forest Officer concerned on the said date, the Divisional Forest Officer concerned shall take a decision within a period of 3 (three) weeks thereafter.

10. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant