

GAHC010307002019



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

Case No. : WP(C)/9269/2019

BINOY KALITA
S/O- LT. LAKSHI RAM KALITA, R/O- D.K. COLLEGE HOSTEL ROAD,
MIRZA, P.O. MIRZA, P.S. PALASBARI, PIN- 781125, DIST. KAMRUP,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. THROUGH THE CHIEF SECY. TO THE GOVT. OF ASSAM,
SACHIVALAYA, DISPUR, GHY.- 781006.

2:THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
FOREST AND ENVIRONMENT DEPTT.
SACHIVALAYA
DISPUR GHY.- 781006.

3:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS (T)
LOWER ASSAM ZONE
KACHARIGHAT GHY.- 781001.

4:THE CHIEF CONSERVATOR OF FORESTS (T)
CENTRAL ASSAM CIRCLE
GHY.- 781029.

5:THE DIVISIONAL FOREST OFFICER
KAMRUP WEST DIVISION
BAMUNIGAON GUWAHATI- 781029.

6:THE RANGE OFFICER
KULSI RANGE KULSI DIST. KAMRUP

Advocate for the Petitioner : MR. B D GOSWAMI

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 25.06.2024

1. Heard Mr. J. M. Gogoi, learned counsel for the petitioner and Mr. R. R. Gogoi, learned counsel for the Forest Department.

2. The petitioner's prayer in this writ petition is for a direction to be issued to the respondents, to set aside and quash the impugned letter dated 12.03.2019 issued by the Divisional Forest Officer (DFO), Kamrup West Division, informing the petitioner that the proposal for renewal of the settlement for operating the "Kulsi Bogapani Sand Mahal", which period had expired on 13.08.2011 could not be accorded, as the mining contract could not be allowed to operate, unless it was granted by way of a competitive bidding process, in terms of Rule 18(2) of the Assam Minor Mineral Concession Rules, 2013 (hereinafter referred to as the AMMC Rules, 2013).

3. The petitioner's case in brief is that Kulsi Bogapani Sand Mahal area was settled with the petitioner, for a period of five years in the year 2006 in terms of Assam Minor Mineral Concessions Rule, 1994 (hereinafter referred to as the 1994 Rules). The period of settlement ended in the year 2011. Before expiry of the settlement period, the petitioner had submitted a representation for renewal of the settlement period for mining the Kulsi Bogapani Sand Mahal for another period of five years. However, no action had been undertaken by the respondents. On 13.02.2019, the Chief

Conservator of Forest (T), Central Assam Circle wrote a letter to the Principal Conservator of Forest and Head of Forest, Assam, stating that the Ministry of Environment and Forest, Government of India had approved the renewal proposal of the Bogapani Sand Mahal. Accordingly, the User Agency had also deposited Net Present Value (NPV) and other required cost to the Government with approved Mining Plan and Environment Clearance issued from the concerned authority. Further, the Deputy Commissioner, Kamrup, Amingaon had also provided land for compensatory afforestation, in lieu of diversion of 0.8 hectares of forest land for "Kulsi Bogapani Sand Mahal". Thus, the Chief Conservator of Forest (T) recommended that the renewal proposal may be considered.

4. The petitioner's counsel submits that instead of granting renewal to the settlement period of the petitioner, the respondents have, vide the impugned letter dated 12.03.2019, rejected the petitioner's prayer for renewal of his settlement period and the petitioner has also been requested to collect the money deposited by him. He further submits that the rejection of the petitioner's prayer for renewal of his settlement period is unfair and unreasonable. He accordingly submits that the respondents should be directed to renew the mining/settlement period of the petitioner.

5. Mr. R. R. Gogoi, learned counsel for the respondents, on the other hand, submits that the petitioner's settlement period of the mining area had expired in the year 2011. Further, the petitioner's settlement period for 5 years had been given in terms of the provisions of the Assam Minor Mineral Concession Rules, 1994, which was repealed by the Assam Minor Minerals Concession Rules, 2013, which came into force w.e.f. 16.03.2014, when it

was published in the official Gazette. He accordingly submits that settlement of the Sand Mahal would have to be done in terms of AMMC Rules, 2013, which requires the same to be done through a competitive bidding/tender process. Further, there is no fundamental right on the part of the petitioner to be given renewal of his settlement period. He also submits that there is no fundamental right in mining, as held by the Supreme Court in the case of ***Monnet Ispat & Energy Ltd. Vs. Union of India***, reported in **(2012) 11 SCC 1**.

6. I have heard the learned counsels for the parties.

7. This Court finds that the respondents have not filed affidavit-in-opposition even after five years have elapsed. The respondents have been taking time continuously for filing affidavit and this Court is not inclined to give further time to the respondents to file any affidavit. Accordingly, this matter is being disposed of in terms of the materials on record and without the respondents filing any affidavit.

8. As can be seen from the facts stated by the parties, the petitioner had taken part in a tender process for settlement of the "Kulsi Bogapani Sand Mahal" for a period of five years. The petitioner came out as the successful bidder and was accordingly settled with the mining rights for the Sand Mahal for a period of five years, from 2006 to 2011. The petitioner completed the settlement period of five years. However, prior to the expiry period of five years, the petitioner submitted an application with the State Government, requesting them to give him renewal of his settlement period.

9. Thereafter, the Chief Conservator of Forest (T) wrote a letter dated 13.02.2019 to the PCCF, Assam, stating that the Government had approved the renewal proposal of Kulsi Bogapani Sand Mahal. Accordingly, User Agency had also deposited Net Present Value (NPV) and other required cost to the Government, with approved Mining Plan and Environment Clearance, issued from the concerned authority. Further, the Deputy Commissioner, Kamrup, Amingaon had provided land for compensatory afforestation, in lieu of diversion of 0.8 hectares of forest land for Kulsi Bogapani Sand Mahal. Thereafter, the Chief Conservator of Forest (T) recommended the petitioner's renewal proposal should be considered by the letter dated 13.02.2019.

10. The operative portion of the letter dated 13.02.2019 issued by the CCF is to the following effect:-

“In view of the above facts and circumstances it is clear that MoEF, Govt. of India had approved the renewal proposal of Kulsi Bogapani Sand Mahal. Accordingly the User Agency was also deposited NPV and other required cost to the Govt. with approved Mining Plan and Environment Clearance issued from concerned authority.

The Deputy Commissioner, Kamrup, Amingaon has also provided land for Compensatory Afforestation in lieu of diversion of 0.8 Ha. Forest land for the Kulsi Bogapani Sand Mahal.

Therefore I would like to recommend that the renewal proposal may kindly be considered.”

11. On considering the above letter issued by the CCF(T), this Court is of the view that even if the Government of India had approved the renewal proposal of the Sand Mahal, the final decision was to be taken by the

competent authority (State Government), as the settlement of the mining rights was to be given by the competent authority. The letter of the CCF(T) is only a recommendation to consider the petitioner's request. It is not an approval for renewal of the petitioner's request. The DFO thereafter issued the impugned letter dated 12.03.2019, stating that there could not be renewal of the settlement period in terms of Rule 18(2) of the AMMC Rules, 2013.

12. The letter dated 12.03.2019 issued by the DFO is as follows:-

“With reference to the above, it is to inform you that the proposal of renewal for collection of sand from river bed of Kulsi from 0.8 Ha forest land for operating Kulsi- Bogapani Sand Mahal, cannot be accorded as the mining contract cannot be allowed to operate unless it is granted by competitive bidding process and accepted by competent authority under Rule 18 (2) of AMMC Rule 2013.

Since the renewal proposal for collection of sand from Kulsi- Bogapani Mahal has not been considered by the higher authority, and the undersigned was directed to hand over the 2 Nos. D.D. No. 069571 dtd. 23.10.2013 for Rs. 3,54,914.00 and D.D. No. 064572 dtd. 23.10.2013 for Rs. 5,84,000.00 to you, hence you are requested to attend this office during office hours and collect the aforementioned drafts by producing your proper identity”

13. Rule 18(1)(2)(3)(4) of the AMMC Rules 2013 states as follows:-

“R.18 Grant of mining contract contracts by competitive bidding.:-

(1) The minor mineral deposits, where the competent authority decides to grant the mineral concession in respect of such area in the form of a contract, may be granted on mining contract, subject to rule 5, for a specified annual quantity (or parts thereof) of minor mineral for a period

ordinarily not less than seven years but not exceeding ten years following a competitive bidding process as prescribed under chapter 6 of these rules.

(1-A)

(2) No bid shall be regarded as successful unless accepted by the competent authority. The amount of the successful bid shall become the annual contract money payable by the contractor. The annual contract money determined in the time of initial grant shall be increased at the rate of twenty five percent on completion of each block of three years.

(3) The mining contract deed shall be executed by the successful bidder with the competent authority in the prescribed Form MC-1.

(4) Other terms and conditions of the contract shall be in accordance with provisions as contained in chapter 7.

14. This Court finds that as per the AMMC Rules, 2013, settlement rights can be given only after a due tender process has been followed for selecting the successful bidder, in terms of the AMMC Rules, 2013, which repealed the 1994 Rules. Further, as because the last settlement holder (petitioner) had asked for renewal of his settlement period, which period was from 2006-2011, the same does not ipso-facto mean that the settlement holder has a fundamental or legal right to be given renewal of his settlement period. Further, renewal of the settlement period, 13 years after the settlement expired, is unreasonable for many reasons, one being the rates of 2006-2011 cannot be applicable/commensurate with today's rates.

15. The petitioner's application for renewal of his mining lease had been made in terms of Rule 9 of the 1994 Rules. Rule 9(2) provides that an application for renewal of the mining lease shall be disposed of before the expiry of lease period. Rule 9(3) of the 1994 Rules provides that if an application is not disposed of within the period specified in Sub-Rule (2), it

shall be deemed to have been refused.

16. Rule 9 of the 1994 Rules is reproduced below:-

“9. Renewal of Mining Lease :-

(1) An application for the renewal of mining lease shall be made to the Director in respect of the minor minerals specified in Schedule "X" and to the Principal Chief Conservator of Forests or his authorised agent in respect of the minor minerals specified in Schedule 'Y'

(2) An application for renewal of mining lease shall be disposed of before the expiry of the lease period. after making such enquiries as the competent authority may deem fit.

(3) If an application is not disposed of within the period specified in sub-rule (2) it shall be deemed to have been refused.”

17. As can be seen from the facts of the case, the petitioner’s application for renewal of his settlement period had not been disposed of within the validity of his settlement period, i.e., before 2011. As such, his application was deemed to have been refused in terms of Rule 9(2) of the 1994 Rules.

18. In view of the above, there is no infirmity with the subsequent letter dated 12.03.2019 issued by the DFO, Kamrup West Division, rejecting the petitioner’s representation for renewal of the settlement period.

19. This Court also finds that no fundamental and legal right of the petitioner has been violated by the rejection of his request for renewal of his settlement period by the respondents, as no person can claim any right in any land belonging to the Government or in any mines belonging to the Government.

20. No person has any fundamental right to claim that he should be granted mining licence or prospecting licence or be permitted reconnaissance operation in any land belonging to the Government, as held by the Supreme Court in the case of ***State of Rajasthan vs. Sharwan Kumar Kumawat & others*** reported in ***2023 LiveLaw (SC) 586*** and in the case of ***Monnet Ispat (Supra)***.

21. In view of the reasons stated above, this Court does not find any ground to allow the writ petition. Accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant