
(2024) 09 GAU CK 1099
In the Gauhati High Court
Case No : WP(C) Of 4085 Of 2024

Amar Deka And Anr

APPELLANT

Vs

State Of Assam And 6 Ors

RESPONDENT

Date of Decision : 24-09-2024

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15(3)
Assam Minor Mineral Concession Rules, 2013 — Rule 5, 5(3), 5(4), 5(5), 8, 27, 27(4)

Citation : (2024) 09 GAU CK 1099

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : I Choudhury, D Gogoi, P Nayak, S Baruah

Final Decision : Allowed

Judgement

Devashis Baruah, J

1. Heard Mr. I Choudhury, the learned counsel appearing on behalf of the petitioners. Mr. D Gogoi, the learned counsel appears on behalf of the respondent Nos.1 and 2; Mr. P Nayak, the learned counsel appears on behalf of the respondent No.3, 6 and 7; and Mr. S Baruah, the learned counsel appears on behalf of the respondent Nos.4 and 5.

2. It is the case of the petitioners herein that the petitioner No.1 is the owner of a plot of land measuring about 1 katha 5 lechas covered by Dag No.2384 of KP Patta No.1299 under Revenue Village Dharapur, Mouza - Ramcharani in the district of Kamrup(M) Guwahati. The petitioners intend to build a residential apartment over the said plot of land and for the purpose sought for permission before the Guwahati Metropolitan Development Authority (for short, the GMDA) by paying the requisite application processing fee.

3. The case of the petitioners herein is that the petitioners herein proposed to construct buildings for their own use and for that purpose have sought for permission from the from both the GMC and the GMDA and these authorities had

made it a condition precedent for deposit of forest royalty for the grant of the necessary permission.

4. It is the further case of the petitioners that the both the GMC as well as the GMDA are acting on the basis of the communication dated 02.03.2023, whereby the Joint Secretary to the Government of Assam Mines and Minerals Department had extended the ambit of the Notification dated 07.10.2021, even to private agencies.

5. The petitioners herein have assailed the communication dated 02.03.2023 issued by the Joint Secretary to the Government of Assam Mines and Minerals Department i.e. the respondent No.5 herein whereby the Notification dated 07.10.2021 by which the Assam Minor Mineral Concession Rules 2013 (for short, 'the Rules of 2013') which was amended was extended even to private agencies.

6. It is seen that this Court has issued notice. However, none of the respondents have filed any affidavit.

7. I have heard the learned counsels appearing on behalf of the petitioners as well as the respondents. It is seen from the materials on record that the Rules of 2013 was amended by the Notification dated 07.10.2021 whereby Sub-Rule (3) of Rule 5, Sub-Rule (6) of Rules 8 and Sub-Rule(4) of Rule 27 were substituted.

8. Rule 5 of the Rules of 2013 relates specifically to quarrying of minor minerals by the Government Departments/Agencies/Contractors engaged by Government Departments or Agencies as would be apparent from a perusal of the heading of the said Rule. It is relevant to note that in terms with Sub-Rule (1) of Rule 5 of the Rules of 2013, an application is required to be made by the Officer authorized by the concerned Department to the competent authority for grant of mining permit for quarrying of minor minerals by the Notified Departments of State or Central Government or any other agencies for any work/project. The fact that it is an officer authorized of the concerned Department who is required to make an application and the use of the words 'for any work/project' as appearing in Sub-Rule (1) of Rule 5 of the Rules of 2013 has also to be construed as work/project of the State Government/Central Government or their agencies.

Sub-Rule (2) of the Rule 5 has a relation to Sub-Rule (1) of Rule 5 inasmuch as on the application so made in terms with Sub-Rule (1) of Rule 5, mining permit for required quantity would be issued to the contractors engaged for the work/project of the Government Department/Agencies.

9. In the backdrop of the above, let this Court take note of the amendment made to Sub-Rule (3) of Rule 5 vide the Assam Minor Mineral Concession (Amendment) Rules, 2021 (for short 'the Amending Rules'). Sub-Rule (3) of Rule

5 as it stands post the amendment is quoted herein below:

"(3) (I) - The minor minerals, when shall be used or consumed by Government Departments, the rates of Royalties shall be paid as per the rates prescribed in

the Third Schedule appended to these rules and other Ancillary Charges as shall be notified by Government, shall be deducted by the Government Departments through the Treasury in proportionate rate to the percentage of the total cost of project excluding taxes as GST, IT etc.,.

The minor minerals, when shall be used or consumed by Government Agencies the rates of Royalties shall be deducted as per the rates prescribed in the Third schedule appended to these rules and other Ancillary Charges as shall be notified by Government, at the time of payment of bills of contractors or suppliers in proportionate rate to the percentage of the total cost of project excluding taxes as GST, IT etc. and thereafter shall deposit in the appropriate Head of Account or Bank Account as shall be notified by Government for the said purpose.

(ii) The minor minerals, when shall be used or consumed by Central Government Departments or any of their Agencies, the rates of Royalties shall be paid as per the rates prescribed in the Third Schedule appended to these rules and other Ancillary Charges as shall be notified by Government. Such Departments or Agencies shall ensure that prescribed Royalties and ancillary charges have been paid by the Contractors/Suppliers/Agencies before making final payment against their bills.

(iii) Urban local bodies shall collect Royalty as prescribed in the Third Schedule in 4 (four) equal installments. The first installment shall be collected at the time of granting of building construction permission, the next two installments during construction and the final installment on completion of the" construction works. The Royalties as collected by the Urban Local Bodies shall be deposited the Head of Account or Bank account as shall be notified by the Government.

In rural areas, the existing procedure of making payments of Royalties shall continue.

(iv)The rates as appended in the Third Schedule and process as prescribed above shall be applicable to fresh tenders only. "

10. A perusal of the above quoted Sub-Rule would show that it relates specifically when minor minerals are used or consumed by the Government Departments, the Government Agencies or the Central Government Department or Agencies. This aspect is emphatically clear from a reading of Clause (i) and (ii) of the Sub-Rule (3) of Rule 5 of the Rules of 2013. It is also relevant to observe that the manner of deduction of the Royalty amount had also been stipulated. In the first paragraph of Clause (i) of Sub-Rule (3), it is stipulated that the amount of Royalty, if the minor minerals are used and consumed by the Government Departments, the same shall be paid by deducting by the Government Departments through the Treasury in proportionate rate to the percentage of the total costs of the project excluding taxes i.e. GST, IT etc. In the second paragraph of Clause (i) of Sub-Rule (3), it is stipulated that when the minor minerals are used and consumed by the Government Agencies, the rates of the Royalties shall be deducted as per the rate prescribed in the Third Schedule at

the time of payment of the contractors or suppliers in the proportionate rate to the percentage of the total costs of the project excluding taxes i.e. GST, IT etc. and thereafter to deposit in the appropriate Head of the Account or Bank as shall be notified by the Government.

In Clause (ii), a similar manner of payment and deduction have been envisaged when minor minerals are used and consumed by the Central Government or any of its Agencies.

11. For understanding the ambit of Clause (iii) of Sub-Rule (3) of Rule 5 of the Rules of 2013, one has to take note of the power given to the Urban Local Bodies. The Urban Local Bodies are small local bodies that administer or govern a city or town of a specified population. By the Constitution (Seventy Fourth Amendment) Act, 1992, which came into effect from 01.06.1993, these Urban Local Bodies have been granted a constitutional status. In Assam, as would be apparent from the website of the Housing and Urban Affairs Department, Government of Assam, there is One Corporation, thirty four Municipal Bodies and sixty six Town Committees. These Urban Local Bodies are vested with various functions which have been delegated by the State Government in order to promote the decentralization of power. In Assam, there are various enactments viz. the Guwahati Municipal Corporation Act, 1971; the Assam Municipal Act, 1956; Assam Municipal Corporation Act, 2022; the Assam Town and Country Planning Act, 1959 etc. by which the Constitution, regulation and control of these Urban Local Bodies are stipulated. These Urban Local Bodies are vested statutorily properties within their jurisdiction. Taking into account the status of these Urban Local Bodies as constitutionally and statutorily envisaged, they under no circumstances would come within the ambit of Government Department or their Agencies. Under such circumstances, the question arises as to how the royalty is to be realized in respect to consumption and use of minor minerals by the Urban Local Bodies. Clause (iii) of Sub-Rule (3) of Rule 5 of the Rules of 2013 is the answer to that question inasmuch as the Urban Local Bodies when they consume or use minor minerals, the Royalty in respect to the projects/works of the Urban Local Bodies are to be realized from the Urban Local Bodies or from their contractors in the manner stipulated in Rule 5(3)(iii) of the Rules of 2013.

12. The above interpretation is based upon a conjoint reading of Sub Rule (3) of Rule 5 of the Rules of 2013 with Sub-Rule (1) and (2) of Rule 5 which stipulates a manner of realization of Royalty when a mining lease is granted to the contractors engaged in the works/projects of Government Departments/Agencies as well as Urban local bodies. It is also very relevant to take note of Clause (iv) of the Rule 5(3) of the Rules of 2013 which categorically mentions that rates apprehended in the Third schedule and the process as prescribed in Clauses (i), (ii) & (iii) of Rule 5(3) shall only be applicable to fresh tenders only, meaning thereby, the applicability of Rule 5 is applicable to granting mining lease to the contractors engaged in projects/works which have been awarded by inviting a tender on or after 07.10.2021.

13. Rule 5(4) of the Rules of 2013 is also very relevant as it specifically lays down the distinction between Government Agency and corporation (i.e. Urban Local Bodies). It further provides that the Government Agencies and Corporation has to carry out the mining operations either themselves or through contractors, but the minor minerals shall not be sold to contractors. Rule 5(5) stipulates that a periodic patta holder is permitted to carry out mining operations up to a particular depth by paying 1.5 times of royalty by observing all Rules and Regulations.

14. In the above backdrop, if this Court takes note of Rule 8 of the Rules of 2013, it would be seen that the said Rule relates to grant of mining lease through competitive bidding. The fundamental difference between the mining lease in Rule 5 and Rule 8 is that whilst Rule 5 relates to a temporary mining lease connected to a specific work/project of the Government, its Agencies as well as the Urban Local Bodies to be issued to the contractor engaged, but in terms of Rule 8, it is a mining lease granted to any bidder through competitive bidding for a period ordinarily not less than 10 years, but not exceeding 20 years. The amendment made to Sub-Rule 6 of Rule 8 is *pari materia* to Sub-Rule 3 of Rule 5 of the Rules of 2013 except Clause (i) of Rule 8(6) and as such the interpretative opinion of this Court in respect to Sub-Rule(3) of Rule 5 would duly apply to the rest of Sub-Rule 6 of Rule 8 of the Rules of 2013. However, it is very pertinent to note Clause (i) of Rule 8(6) of the Rules of 2013, inasmuch as, it is the requirement that the lessee has to pay royalty in advance of each minor mineral extracted or removed or consumed by him or his Agents, Manager, Employee etc. as per the rates prescribed in the First Schedule. It is pertinent to mention that while Clause (i) of Rule 8(6) refers only to lessee, Clause (ii) to (vi) of Rule 8(6) has to be understood to be referring to Government, its Agencies as well as Urban Local Bodies, as well as the contractors engaged for works/projects for the Government, its Agencies as well as Urban Local Bodies.

15. Rule 27 of the Rules of 2013 relates to permits for extraction of ordinary clay/earth. Sub Rule (4) was substituted w.e.f. 07.10.2021. The contents of Clauses (ii) to (v) of Rule 27(4) of the Rules of 2013 are *pari materia* to Rule 5(3) and Rule 8(6) (ii) to (v) and as such, the interpretative opinion of this Court rendered above would apply. However, relevant herein is Rule 27(4)(i) which stipulates that when a permit is granted for extraction of ordinary sand/earth, the royalty which shall be charged on lump sum basis, on the basis of volume/quantity and shall have to be paid in advance by the permit holder for the complete financial year or part thereof.

16. Therefore from the above analysis, it would be apparent that the application of Rule 5(3), Rule 8(6) (ii) to (v) and Rule 27(4) (ii) to (v) of the Rules of 2013 shall only be applicable in respect to projects/works of Government, its Agencies or Urban Local Bodies and the imposition is upon the Government, its Agencies, Urban Local Bodies and the contractors engaged for projects/works of Government, its Agencies as well as Urban Local bodies. Therefore the question

of applying Rule 5(3)(iii), Rule 8(6)(iv) as well as Rule 27(4)(iv) of the Rules of 2013 in respect to private construction to be carried out do not arise. The natural corollary of the above analysis is that the GMC/GMDA/or other Urban Local Bodies cannot insist on the payment of royalty in respect to private construction to be carried out as also cannot insist payment of royalty for issuance of the permission.

17. This Court further finds it relevant to take note of the dispute from another angle. As stated above, the lessee in terms with Rule 8(6)(i) and the permit holder in terms with Rule 27(4)(i) of the Rules of 2013 has to pay the royalty in advance in order to extract the minor minerals or the ordinary clay/earth. In addition to that even a periodic patta holder has to pay royalty @ 1.5 times for the mining carried out as his/her patta land. It is also apparent that when temporary mining lease is taken in terms with Rule 5 of the Rules of 2013, it is the Government, its Agencies, Urban Local Bodies as well as the contractors engaged by the Government, Its Agencies as well as the Urban Local Bodies for their projects/works has to pay the royalty. This is so as it is at the behest of the Government, its Agencies, and Urban Local Bodies, temporary mining leases are issued and they are relegated to the status of lessee and hence the imposition. The question therefore arises that if the royalty in respect to minor minerals/ordinary clay/earth have already been paid by the lessee in terms with Rule 8(6)(i) or by the permit holder in terms with Rules 27(4)(i) of the Rules of 2013, would further realization of royalty in the manner sought to be done by the respondent GMC/GMDA be permissible? The answer has to be in the negative as it would amount to double payment of royalty on the same minor minerals/ordinary clay/earth in respect to which the lessee or the permit holder had already paid the royalty.

18. Adding further to what is opined hereinabove, it is important to note that a perusal of the Rules of 2013 would show that the incidence of the royalty is on the mining and extraction of the minor minerals as well as ordinary clay/earth. The imposition is upon the Government, its Agencies, Urban Local Bodies or its contractors, who takes a temporary mining lease for the project/works of the Government, its Agencies as well as Urban Local Bodies as per Rule 5 of the Rules of 2013. The imposition is upon the lessee of the mining lease of minor minerals in terms with Rule 8(6)(i) of the Rules of 2013. The imposition is also upon the permit holder who extracts ordinary clay/earth in terms with Rule 27(4)(i) of the Rules of 2013. In addition to that, the imposition is upon the patta holder who carries out mining operations upon his/her patta land subject to payment of 1.5 times the royalty as per Rule 5(5) of the Rules of 2013. It is also very pertinent to take note of Section 15(3) of the Mines and Minerals (Development and Regulation) Act, 1957 which categorically stipulates that the holder of the mining lease or any other mineral concession granted shall pay royalty or dead rent whichever is more in respect to minor minerals removed or consumed by him or by his Agents, Manager, Employee, Contractor or Sub-lessee. Under such circumstances, when the incidence and the imposition is

clearly mentioned in the Mines and Minerals (Development and Regulations) Act, 1957 (for short, 'the Act of 1957') as well as Rules of 2013 and there being no charge upon a private person/entity who purchases the minor mineral or ordinary clay/earth, the question of imposition upon the private person/entity is contrary to the Act of 1957 as well as the Rules of 2013.

19. In view of the above analysis, it is therefore the opinion of this Court that the impugned communication dated 02.03.2023 issued by the Joint Secretary to the Government of Assam, Mines and Mineral Department thereby stipulating that the amendments carried out by the Amending Rules would also apply to the private agencies is contrary to the Act of 1957 as well as the Rules of 2013 as amended by the Amending Rules. Accordingly, the impugned communication dated 02.03.2023 is set aside and quashed.

20. This Court further observes and declares that the Urban Local Bodies cannot impose royalty upon the private person/entity in respect to private constructions carried out and consequently cannot also insist on payment of royalty as a condition for issuance of permission to construct and to carry out construction on the basis of the permission so granted.

21. This Court, therefore, issues a writ in the nature of mandamus directing the GMC/GMDA not to insist upon payment of royalty upon the petitioner as a condition for granting permission to construct or carrying out construction pursuant to the permission so granted.

22. With the above observation(s) and direction(s), the instant writ petition stands allowed. No costs.