
(2004) 09 GAU CK 0024
In the Gauhati High Court
Case No : Writ Petition (C) No. 7088 of 2004

Brahmaputra Consortium Ltd.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 27-09-2004

Acts Referred:

Assam Forest Act, 1891 — Section 32
Constitution of India, 1950 — Article 32

Citation : (2005) 1 GLT 364

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : M. Bhuyan, for the Appellant; R. Chakraborty, for the Respondent

Judgement

B.K. Sharma, J.—Heard Mr. M. Bhuyan, learned Counsel for the Petitioner and Ms. R. Chokraborty, learned State counsel, Assam.

2. By this writ application the Petitioner has prayed for a direction to the Respondent Nos. 5 and 6 not to insist upon payment of royalty and obtaining forest permit for the purpose of extracting earth from the site in question.

3. The Petitioner in response to invitation of offer in the month of March/04 from eligible contractors for execution of earth filling works at the National Games Sports Stadium sites submitted its offer on 16.04.04. Its offer was accepted and was entrusted with the job. It is the case of the Petitioner that when the work was about to start, the Forest Department intervened in the matter and insisted upon the Petitioner for obtaining forest permit in respect of the excavation of earth. According to the Petitioner the land from which the earth is being extracted being not forest land, the Forest Department is not within its competence and jurisdiction to demand the payment of royalty from the Petitioner. However, the Petitioner was constrained to make the payment to the tune of Rs. 2,40,000/- as payment of royalty. Consequent upon such payment, the Petitioner could commence its work and he was issued with a permit in respect of 30,000 c.b. metric ton valid for sixty days. In this connection the

Petitioner has annexed the Annexure-2 letter addressed to the Range Officer, South Guwahati Range issued by the D.F.O., Kamrup East Division, Guwahati dated 18.06.04 by which while forwarding the original T.C. No. 82 dated 18.06.04 for Rs. 2,40,000/- being realization of forest royalty, the Range Officer was directed to issue forest permit.

4. It is the case of the Petitioner that the site from which the earth is being extracted being not in the forest land, the Forest Department has no authority to levy the royalty against the Petitioner.

5. In paragraph 6 of the writ petition the Petitioner has made the following statement:

6. That the Petitioner states that accordingly the Divisional Magistrate, Kamrup (M), Guwahati vide his order contained in Memo No. KMJ-23/2002/Pt/92/533 dated 16.06.04, granted permission in favour of the Petitioner for a period of 60 days for cutting of Earth for construction of National Games Sport Complex at Sarusajai Guwahati from the land covered by Dag No. 384 under Beltola Mouza. The Petitioner craves leave to furnish the said order dated 16.06.04 as and when made expedient to do so.

6. The learned State Counsel who was requested to obtain instruction has produced the records including the remarks of the D.F.O., Kamrup East Division, which reads as follows:

M/s Larsen and Toubro Ltd., ECC Division, Sports Complex Site, Guwahati has been awarded works of sports complex for National Games-2005, Guwahati, Assam. Project Manager, Larsen and Toubro Ltd. vide application dated 11 June/04 to the Divisional Forest Officer, Kamrup East Division stated that outside earth filling for construction of National Games sports complex package I and II has been awarded to M/s. Brahmaputra Consortium Ltd. All requirements to do the work including payment of royalty charge, taxes and duties applicable will be paid by them. District Magistrate, Kamrup vide order No. KMJ.25/2002/pt/92/533 dated 16.06.04 allowed M/s. Brahmaputra Consortium Ltd. for Larsen and Toubro Ltd. for cutting of earth from Dag No. 384 under Beltola Mouza on the condition - Divisional Forest Officer Kamrup East Division will depute officer who will supervise and monitor day to day excavation works and royalty will be paid by the Forest Department as per existing rules and rate. On the strength of order of the District Magistrate, Kamrup M/s. Brahmaputra Consortium Ltd. was allowed to deposit royalty and taxes against 30,000 cum. of earth after observing all formalities. Accordingly Brahmaputra Consortium Ltd. deposited Rs. 2,40,000/- as royalty against 30000 cum. earth to be extracted from Dag No. 384 of Saru Sajai village under Beltola Mouza vide Treasury Challan No. 82 dated 18.06.04 alongwith Sales Tax of Rs. 21,120/- and income tax of Rs. 36,000/-. Range Officer, South Guwahati Range was directed to issue permit vide letter No. B/Earth cutting/8994-98 dated 18.06.04 from the above mentioned plot of land. Necessary challans were also issued for transportation of earth. The Director,

Brahmaputra Consortium Ltd. further applied for additional quantity of earth, i.e. 50,000 cum. from the said plot of land vide letter dated 19.07.04 stating that they shall be paying the royalty and other taxes and duties as applicable.

The Director Shri Sanjeev Kr. Pithani, M/s. Brahmaputra Consortium Ltd. filed a writ petition in Hon"ble High Court, Guwahati stating that earth is not leviable and the Respondent authority cannot demand for royalty against earth collection from non-forest land. In this connection it is to be mentioned that the royalty is realised as per Assam Minor Mineral Concessions Rules, 1994. Principal Chief Conservator of Forests, Assam, is the competent authority or any authorised officer is empowered to control the listed minor minerals and the Respondent authorities acted as per existing rule. Moreover, the land under Dag No. 384 is Saru Sajari Village is a Govt. U.S.F. Land. All listed Minor Minerals from any Land is Leviable to the Govt. as per rule and rate. M/s. Brahmaputra Consortium Ltd. in the letter dated 11.06.04 and 19.07.04 addressed to the Divisional Forest Officer, Kamrup East Division stated that all the required payment of royalty, taxes will be made by them as applicable.

Now, by filing the writ petition in the instant case contradict their own letter and trying to mislead the Hon"ble Court.

Divisional Forest Officer Kamrup East Division, Basistha, Ghy-29.

7. The records also contain the most important order dated 16.06.04 about which the above quoted statements have been made by the Petitioner. The order reads as follows:

Government of Assam Office of the District Magistrate Kamrup (Metro) Guwahati (Magisterial Branch)

ORDER

Permission is hereby extended to M/s. Brahmaputra Consortium Ltd. for L and T for a period of 60 (sixty) days w.e.f. 17.06.04 for cutting of earth for construction of National Games Sports Complex at Sarusajai, Guwahati covered by Dag No. 384 under Beltola Mouza on the following conditions. The permission may be withdrawn at any time on violation of the conditions.

(A) The Circle Officer, Dispur Revenue Circle will supervise and monitor the day to day excavation work and he will ensure that the excavation work is done properly and no fresh hill cutting takes place. He will submit the exact date of starting of the work, quantity of earth excavated per day and nos. of trucks engaged to the Deputy Commissioner, Kamrup (Metro) every day positively. Any violation of the conditions should be immediately reported.

(B) The D.F.O., Kamrup East Division will depute some officer to supervise and monitor the day to day excavation work. Royalty should be paid by the Forest Department as per existing rules and rates.

(C) Earth is to be removed from the plot in consultation with "Prakriti Co-Op.

Housing Society" as per Engineering drawing given by the Society.

(D) The total value of earth to be removed shall be determined by the said Co-Op. Society.

Sub-Divisional Magistrate Kamrup (Metro) Dist. Guwahati.

Memo No. KMJ.15/2002/pt./92/533

Dated 16/06/2004

Copy to:

1. The Superintendent of Police (City), Guwahati 2. The Addl. S.P. (Traffic) City, Guwahati 3. the D.F.O., Kamrup East Division 4. The Circle Officer, Dispur Rev. Circle, 5. The O/C, Dispur, P.S. 6. M/s. Brahmaputra Consortium Ltd., Guwahati Sub-Divisional Magistrate Kamrup (Metro) Dist. Guwahati.

8. On perusal of the said order, it appears that it is the Sub-Divisional Magistrate, Kamrup (Metro) District, Guwahati which has issued the parent order permitting the Petitioner, cutting of earth under the supervision Dispur Revenue Circle providing that there should be no hill cutting. As per the said order, the DFO, Kamrup East Division would depute some other officer to supervise and monitor the day to day excavation work with the stipulation that the royalty should be paid by the Forest Department as per existing rules and rates. Thus, it will be seen that it is not the Forest Department which issued the order towards realisation of royalty, but it is the District administration, i.e. the Office of the District Magistrate, Kamrup (Metro), Guwahati who has issued the aforesaid order on the basis of which the Forest Department has taken action as entrusted to them by the District Administration.

9. The aforesaid order dated 16.06.04 has been conveniently suppressed by the Petitioner and it gives an impression that the same has been deliberately withheld. Although in paragraph 6 of the writ petition there is a mention about the order dated 16.06.04, the Petitioner conveniently suppressed the conditions attached to the order and only prayed or leave to furnish the said order as and when made expedient to do so. It was the duty of the Petitioner to annex a copy of the said order. The Petitioner has also not made the District Magistrate, Kamrup (Metro), Guwahati a party Respondent who has passed the said order dated 16.06.04.

10. The Petitioner being not content with the suppression of material fact has moved the writ Court in a clandestine manner suppressing that after issuance of the aforesaid order dated 16.06.04 and letter dated 18.06.04, the Petitioner himself made applications before the D.F.O., Kamrup East Division, on 19.07.04 undertaking to pay the royalty and other tax and duties. The file produced by Ms. R. Chokraborty, learned State Counsel contains the said letter dated 19.07.04 in original. The contents of the said letter are quoted below:

To,

The D.F.O.

Kamrup East Division, Guwahati, Assam.

Sub: Excavation of earth from Dag No. 384 at village Sarusajai under Beltola Mouza for construction of National Games Sports Complex, Guwahati

Ref: Your Memo No. KMJ-25/2002/85/225

dated 16.3.04

Dear Sir,

In pursuance of your order dated 16.03.04 we would request you to kindly issue permit for excavation of another 50000 cum. of Earth for the above mentioned land.

Your action in this regard will be highly appreciated.

We shall be paying the royalty and other taxes and duties as applicable.

Thanking you, Yours faithfully, for Brahmaputra Consortium Ltd.

Director

11. Thus, from the above narration of the fact it is crystal clear that the Petitioner is the beneficiary of the order dated 16.06.04 which clearly speaks of payment of royalty by the Petitioner. In fact, the Petitioner has paid royalty for the first lot and it is only in the threshold of the second lot for which the Petitioner has given his undertaking, he has moved this Court by filing the instant writ petition with material suppression of facts praying for favourable consideration. But for the production of records, in all possibility, the matter would have gone unnoticed including the contents of the order dated 16.06.04. The Petitioner knowing it fully well that he is bound to pay royalty in terms of the said order, deliberately withheld the same from the Court and filed the writ petition giving an impression that it is the Forest Department which has necessitated the payment of royalty. While doing so, the Petitioner obviously could not have made the District Magistrate, Kamrup a party Respondent inasmuch it is the order of the District Magistrate from which the right of the Petitioner to extract earth has flown. There is another aspect of the matter. As per the instruction furnished to the learned State counsel by the Forest Department, the land falls in the category of Govt. USF (Unclassified State Forest) land. Rules regarding UCF u/s 32(a) of the Assam Forest Regulation, 1891 itself provide for payment of royalty. Further as per the decision of this Court reported in 2003 (2) GLT 446 Brihattar Dispur Mati Truck Malik Santha v. State of Meghalaya the earth can be described as Minor Minerals under certain circumstances and for removal of earth from forest royalty is leviable. Be that as it may, the Petitioner having bound himself with the order dated 16.06.04 in terms of which he is to pay royalty and he having not challenged the said order dated 16.06.04 and naturally so when he is the beneficiary of the said order

cannot turn down the same and make a challenge to the follow up action of the Forest Department which has simply complied with the conditions and the directions laid down in the said order dated 16.06.04.

12. There is another aspect of the matter. The job in question was originally entrusted to M/s. Larsen Toubro Ltd. (L and T) on the same condition of payment of royalty as was imposed on the Petitioner. The records reveal that said L and T Ltd. bound itself with the Respondents by their communication dated 31.03.04 to the D.F.O., Kamrup East Division. The records further reveal such further communication undertaking payment of royalty by the L and T Ltd. The L and T Ltd. before issuance of the above quoted order dated 16.06.04, by their communication dated 11.06.04 intimated the D.F.O., Kamrup East Division about their decision to award the work to the Petitioner binding it to the effect that all the requirement to do the work including payment of royalty and other charges etc. would be paid by the Petitioner. Thus both the predecessor of the Petitioner and the Petitioner bound themselves with the agreement that royalty would be paid for extraction of earth. As indicated above, the Petitioner itself made a communication dated 19.07.04 to the D.F.O., Kamrup East Division making a request to permit them for excavation of another 5000 cum. of earth and undertook to pay the royalty etc. Now by filing the instant writ petition the Petitioner not only has resiled back from such promise made out to the Respondents but also suppressed the material fact. Here is a case in which the Petitioner who is the beneficiary of the above quoted order dated 16.06.04 issued by the District Magistrate, Kamrup (Metro) which itself provides for payment of royalty, without making any challenge to the same and without making the authority which issued the said order party Respondent in this proceeding, has challenged the actions taken by the Respondents Nos. 5 and 6 in terms of the said order. This is precisely the reason why the Petitioner deliberately withheld the said order dated 16.06.04 and not even disclosed in the writ petition about the terms and conditions in the said order.

13. Writ petitions are decided on the basis of statement on affidavit. When a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ Petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the Respondent, from the counter affidavit. If the petition contains misleading, inaccurate statement or there are suppression of material facts, the writ Court will not entertain the petition, In R. v. Kensington, Income tax Commissioner (1917) 1 KB 486, 506, it was held that:

the prerogative writ is not a matter of course, the applicant must come in the manner prescribed and must be perfectly frank and open with the Court. It has been for many years, the rule of the Court and one which it is of greatest importance to maintain that where an applicant comes to the Court to obtain relief on an ex parte statement, he should make full and fair disclosure of material facts- facts not law. He must not mistake the law if he can help it - the

Court is supposed to know law. But it knows nothing about the facts and the applicant must state fully and fairly the facts and the penalty, by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect.

14. In *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, the Apex Court held that the Petitioner has no right to move the Court under Article 32 of the Constitution for encroachment of its fundamental rights on a petition containing misleading and inaccurate statement and the Court must dismiss such petition. In *State of Haryana v. Karnal Distillery* as reported in AIR 1977 SC 718, the Apex Court refused to grant relief on the ground that the applicant misled the Court. The purpose of prerogative writ is to remedy a wrong and not to promote one. It will not be granted in the aid of those who do not come to the Court with clean hand.

15. In the instant case as has been found, there is total suppression of material fact on the part of the Petitioner in not disclosing the terms and conditions, more particularly the one relating to payment of royalty which it undertook to pay. It is projected with definite statement that the Respondents 5 and 6 made demands illegally for payment of royalty without disclosing the fact that such condition was already there in the order dated 16.06.04 issued by the District Magistrate, Kamrup(M), Guwahati, on which the Petitioner relies towards performance of the job entrusted to it. As against the stand in the writ petition, the records have clearly revealed the aforesaid factual positions. This being the position and suppression of material facts on the part of the Petitioner staring on the face of it, the writ petition is liable to be dismissed on that score alone.

16. For the foregoing reasons and discussions, I do not find any merit in the writ petition and the same stands dismissed awarding a cost of Rs. 5,000/- to be realized by the Registry in accordance with the High Court Rules.

17. Let a copy of this order be immediately sent to the District Magistrate, Kamrup (M). Guwahati for his information and necessary action, if any.