

(2022) 02 GAU CK 0033

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 919, 921 Of 2022

Jaydeep Goala

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 11-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Assam Minor Mineral Concession Rules, 2013 — Rule 2(e), 5, 18, 18(1), 18(3), 18(4), 19, 19(1), 19(2), 19(3), 19(4), 19(5), 19(6), 19(7), 20, 20(1), 20(2), 20(3)

Mines and Mineral (Development and Regulation) Act, 1957 — Section 5, 8A, 13, 14, 15(1), 23C

Mines Act, 1952 — Section 3

Citation : (2022) 02 GAU CK 0033

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : B.K. Mahajan, JUNM Laskar, P. Mahanta, P.K. Pathak, S. Sharma

Final Decision : Disposed Of

Judgement

1. Heard Mr. B.K. Mahajan, the learned counsel appearing on behalf of the Petitioners and Mr. K.P. Pathak, the learned counsel appearing on behalf

of the Respondent Nos.2, 3 & 4. Ms. S. Sharma, the learned counsel appears for the Respondent No.1. On account of the order which this Court

proposes to pass herein, the presence of the Respondent No.5 is not required.

2. Taking into account the similarity of the facts and the parties involved, both the writ petitions are taken up for disposal at the Motion stage.

WP(C) 919/2022

3. The Petitioner was settled with the sand Mining Unit namely Chiri River Minor Mineral (Sand) Unit-2 situated in the district of Cachar for a period

of 7 (seven) years. Pursuant to the intimation being given to the Petitioner, he

submitted his Mining Plan before the State Environmental Impact

Assessment Authority. On 28.07.2014, the State Environmental Impact Assessment Authority granted the Environmental Clearance for collection of

sand from Chiri River Mining Contract area Unit-II located in Chiri River bed near village-Joypur, Kamranga, Dikcha etc. P.O.-Poilapool, P.S.

Lakhipur under Jirighat Forest Range of Cachar Forest Division, Silchar, Assam in favour of the Petitioner. It may be relevant to take note of that the

area for which the Petitioner was granted falls in the Geo-co-ordinates â

Longitude (East) Â Â Â Â Â Â Â Â Latitude (North)

E-93004â??01.2â?? Â Â Â Â Â Â Â Â Â Â Â Â N-24053â??25.3â??

E-93002â??56.6â?? Â Â Â Â Â Â Â Â Â Â Â Â N-24050â??34.4â??

The said Environmental Clearance as was issued on 28.07.2014 for a period of 5 years from the date of issue of the said order meaning thereby that

the said Environmental Clearance was effective till 27.07.2019.

4. Thereupon on 22.08.2014 the Final Settlement order was issued by the Divisional Forest Officer, Cachar Division, Silchar and a perusal thereof

would reveal that this said Final Settlement order was issued after taking into consideration the clearance received for five years from the State

Environmental Impact Assessment Authority favouring the Petitioner, for a period of seven years, for an amount of Rs.97,96,500/-and for a quantity

of 31,500.0m³ of sand. The details of the payments how to be made was duly reflected in the said Final Settlement order.

5. At this stage it may be relevant herein to mention that the Assam Minor Mineral Concession Rules 2013 is applicable in respect to such settlement

being made and the same has the force of law as the said Rules (hereinafter referred to as â??the Rules 2013â??) were made in exercise of the

powers under Sub-Section (1) of Section 15 and Section 23 C of the Mines and Mineral (Development and Regulation) Act, 1957. Rule 18(1)

stipulates that 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 the Rules of

2013. Sub-Rule (3) of Rule 18 stipulates that the mining contract deed shall be executed by the successful bidder with the competent authority in the prescribed Form MC-1 and in terms of Sub-Rule (4) of Rule 18 that the other terms and conditions of the contract shall be in accordance with provisions as contained in Chapter-7. Rule 19 stipulates the power of the competent authority to grant renewal of mining contracts. Sub-Rule (1) of Rule 19 stipulates that the contractor shall submit an application to the competent authority for renewal of the mining contract 18 months prior to the date of expiry of the contract period in the prescribed Form MC-2 containing complete details of the mineral excavated, royalty paid, mineral reserves available, details of explorations undertaken, if any, along with the details of the areas reclaims/restored, the sites of overburden, restoration works undertaken etc. The details regarding compliance of other statutory requirements such as environmental clearance, safety provisions as per Mines Act, 1952 and the Rules and Regulations framed thereunder etc. shall also be provided. Sub-Rule (2) of Rule 19 puts an embargo in filing an application for renewal of a mining contract where the contractor has been found in indulging any violation of the conditions of the original contract grant or the conditions accompanying the environmental clearance and penalized or held accountable for any such violations. In such respect no application for renewal thereby can be considered. Therefore, it would be seen that in the circumstances as mentioned in Sub-Rule (2) of Rule 19, application for renewal of a mining contract can be considered. Sub-Rule (3) & (4) of Rule 19 relates to the procedure, the documents which needs to be filed, the application fee for renewal etc. Sub-Rule (5) of Rule 19 specifically stipulates that no renewal shall be granted for the mining contracts exempted under Section 3 of the Mines Act, 1952. Sub-Rule (6) of Rule 19 stipulates that an application for renewal of contract shall be considered only in cases where the contract has been granted after the commencement of the Rules of 2013. Sub-Rule (7) of Rule 19 stipulates that the contract for mining minerals granted under Rule 18 may be renewed only once by the competent authority for a period not exceeding five years, after having satisfied itself that the contractor has undertaken mining operations strictly in accordance with the terms and conditions of grant, contract agreement and other approvals/permissions for mining granted by Central/State agencies. To sum up if an application is being filed seeking renewal in terms with

Sub-Rule (1) and if there is no bar as stipulated in Sub-Rule (2) or Sub-Rule (5) and if the contractor had undertaken mining operations strictly in

accordance with the terms and conditions of the grant, contract agreement and other approvals/permissions for mining granted by the Central/State

agencies such application seeking renewal ought to be considered favourably by the competent authority. This aspect of the matter would be further

clear from a perusal of Rule 20 which stipulates that for the satisfaction of the competent authority to permit an application for renewal what needs to

be taken into consideration and as such Sub-Rule (1) of Rule 20 of the said Rules is quoted hereinbelow :

â??20.(1) The application for renewal of a mining contract shall be decided on satisfaction of the competent authority with regard to the

following :-

(i) The contractor has complied with all the terms and conditions of the contract agreements and other permissions for undertaking mining

operations.

(ii) The mining operation under the original contract grant have been carried out in a scientific manner.

(iii) The mined out area has been restored/reclaimed/ rehabilitated as per the progressive mine closure plan.

(iv) The contractor has not been default of submission of any returns with regard to the production, payment of contract money in time and

has not been found wanting in taking adequate measures for the labour safety.

(v) The contractor has not been penalized in any manner including suspension of the mining contract, for whatsoever reasons, during the

original contract period.

(vi) Substantial investment has been made by the contractor in the development of mine and plant and machinery with a long term

perspective and optimal benefit of the same could not have been derived during the original contract period and

(vii) such other matters as may be considered.â??

6. Sub-Rule (2) of Rule 20 grants the discretion to the competent authority to reduce the area of contract at the time of renewal for reasons to be

recorded in writing and Sub-Rule (3) of Rule 20 stipulates that when the competent authority accords approval to the renewal of a contract, the annual

contract amount shall be increased by an amount of 25% over the amount of contract money payable in the last year of the original contract grant.

Further, future increase in such contract amount, on the expiry of each block of three years, shall be regulated on the same terms and conditions as

applicable in the case of any contract granted on the first occasion.

7. In the backdrop of the scheme the grant of mining contracts and the manner in which the renewal can be granted, it would be further relevant to

take note of the facts involved in the instant case. In terms of Rule 18(3) a contract agreement was entered into on 01.09.2014 between the Petitioner

and the Governor of Assam represented by the Divisional Forest Officer, Cachar Division. A perusal of the contract agreement which have been

done in Form MC-1 stipulates that the period of the said contract was for a period of seven years from 1.09.2014 to 30.09.2021. As stated, the terms

of the contract entered into was in accordance with the Chapter-7 of the Rules of 2013.

8. As period of the Environmental Clearance dated 28.07.2014 was valid upto 27.07.2019 the Petitioner filed an application dated 27.8.2019 before the

Chairman, State Environmental Impact Assessment Authority for granting the necessary clearance for extraction of the balance tendered quantity of

sand. The said request made by the Petitioner was followed by a communication of the Divisional Forest Officer, Cachar Division on 29.08.2019 to

the Chairman of the Respondent No.5 requesting for grant of extension of validity of the environmental clearance for the remaining two years for

extraction of the balance tendered quantity of sand i.e. 9,000.m³ (4500.m³ per year) from the area where the settlement was granted taking into

account that the environmental clearance had already expired on 27.07.2019. The Divisional Forest Officer on 12.09.2019 directed the Range Officer,

Jirighat Range, Lakhipur to suspend the extraction/operation of the stone/sand from the settlement area until further orders.

9. The Respondent No.5 had on 09.10.2020 granted the Environmental Clearance for a period of 2 (two) years from the date of issue of the said

order. In terms with the said Environmental Clearance so granted it was mentioned that the quantity of sand to be collected and the area as quoted

hereinbelow :

1. Stone 9000 (Nine Thousand) Cu.M Sand for two years i.e. 4500 (Four

Thousand Five Hundred) Cu.M per year.

2. Total Allotted area : 7.5 Ha.â??

10. Pursuant thereto the Divisional Forest Officer vide the communication dated 13.11.2020 taking into consideration that the Environmental

Clearance was granted on 09.10.2020 modified the settlement period beyond the period which was envisaged in the Final Settlement order dated

22.08.2014 as well as the contract agreement dated 01.09.2014, thereby extended the period of the contract to 7.11.2022 although as per the Final

Settlement order as well as the agreement the mining contract was to terminate on 39.09.2021.

11. The Petitioner continued to extract minor minerals in terms with the order dated 13.11.2020. The Petitioner received from the Divisional Forest

Officer, Cachar Division a communication dated 19.01.2022 stating inter alia that the contract will no longer valid at the end of the kist period i.e. on

16.02.2022 as there is no provision in the Rules of 2013 for extension of the mining contract beyond the original contract period. The Petitioner was

directed to take necessary action to remove man and machinery if any at the earliest at the end of the kist period i.e. on 16.02.2022. In the meantime,

prior to the issuance of the order dated 19.01.2022 in respect to the same are as alleged by the Petitioner, an E-Auction Notice dated 08.01.2022 was

issued. By a Corrigendum dated 7.02.2022 the period of submission of Bids and the evaluation of the technical bids were extended thereby 14.02.2022

is the last date for bid document and purchase.

WP(C) 921/2022

12. The Petitioner was settled with the stone Mining Unit namely Chiri River Minor Mineral (Stone) Unit situated in the district of Cachar for a period

of 7 (seven) years. Pursuant to the intimation being given to the Petitioner, he submitted his Mining Plan before the State Environmental Impact

Assessment Authority. On 28.07.2014, the State Environmental Impact Assessment Authority granted the Environmental Clearance for collection of

stone/gravel from Chiri River Mining Contract area located in Chiri River bed near village, P.O. & P.S-Joypur, under Jirighat Forest Range of Cachar

Forest Division, Silchar, Assam in favour of the Petitioner. It may be relevant to take note of that the area for which the Petitioner was granted falls in

the Geo-co-ordinates â?

Longitude (East) Latitude (North)

E-93004 01.4 N-24059 32.6

E-93003 36.5 N-24055 08.2

The said Environmental Clearance as was issued on 28.07.2014 for a period of 5 years from the date of issue of the said order meaning thereby that

the said Environmental Clearance was effective till 27.07.2019.

13. Thereupon on 22.08.2014 the Final Settlement order was issued by the Divisional Forest Officer, Cachar Division, Silchar and a perusal thereof

would reveal that this said Final Settlement order was issued after taking into consideration the clearance received for five years from the State

Environmental Impact Assessment Authority favouring the Petitioner, for a period of seven years for an amount of Rs.3,78,84,000/-and for a quantity

of 84000.0m³ of stone. The details of the payments were to be made was duly reflected in the said Final Settlement order.

14. Thereupon in terms of Rule 18(3) a contract agreement was entered into on 01.09.2014 between the Petitioner and the Governor of Assam

represented by the Divisional Forest Officer, Cachar Division. A perusal of the contract agreement which have been done in Form MC-1 stipulates

that the period of the said contract was for a period of seven years from 01.09.2014 to 30.09.2021. As stated, the terms of the contract entered into

was in accordance with the Chapter-7 of the Rules of 2013. As period of the Environmental Clearance dated 28.07.2014 was valid upto 27.07.2019

the Petitioner filed an application dated 27.8.2019 before the Chairman, State Environmental Impact Assessment Authority for granting the necessary

clearance for extraction of the balance tendered quantity of stone. The said request made by the Petitioner was followed by a communication of the

Divisional Forest Officer, Cachar Division on 29.08.2019 to the Chairman of the Respondent No.5 requesting for grant of extension of validity of the

environmental clearance for the remaining two years for extraction of the balance tendered quantity of stone i.e. 24,000.m³ (12000.m³ per year) from

the area where the settlement was granted taking into account that the environmental clearance had already expired on 27.07.2019. The Divisional

Forest Officer on 12.09.2019 directed the Range Officer, Jirighat Range, Lakhipur to suspend the extraction/operation of the stone/sand from the

settlement area until further orders. The Respondent No.5 had on 09.10.2020

granted the Environmental Clearance for a period of 2 (two) years from the date of issue of the said order. In terms with the said Environmental Clearance so granted it was mentioned that the quantity of stone to be collected is quoted hereinbelow :

1. Stone 24000 (Twenty Four Thousand) Cu.M Stone for two years i.e. 12,000 (Twelve Thousand) Cu.M per year.

2. Total Allotted area : 13.5 Ha.

15. Pursuant thereto the Divisional Forest Officer vide the communication dated 13.11.2020 taking into consideration that the Environmental

Clearance was granted on 09.10.2020 modified the settlement period beyond the period which was envisaged in the Final Settlement order dated

22.08.2014 as well as the contract agreement dated 01.09.2014, thereby extended the period of the contract to 7.11.2022 although as per the Final

Settlement order as well as the agreement the mining contract was to terminate on 30.09.2021.

16. The Petitioner continued to extract minor minerals in terms with the order dated 13.11.2020. The Petitioner received a communication from the

Divisional Forest Officer, Cachar Division dated 19.01.2022 stating inter alia that the contract will no longer valid at the end of the kist period i.e. on

16.02.2022 as there is no provision in the Rules of 2013 for extension of the mining contract beyond the original contract period. The Petitioner was

directed to take necessary action to remove man and machinery if any at the earliest at the end of the kist period i.e. on 16.02.2022.

17. The Petitioner being aggrieved filed the two writ petitions challenging the communication dated 19.01.2022 whereby the order dated 13.11.2020

issued by the Divisional Forest Officer, Cachar Division in both the contracts having been held to be non est on the ground that there is no provision in

the Rules of 2013 for extension of the mining contract area beyond the original contract period.

18. Mr. B.K. Mahajan, the learned counsel on behalf of the Petitioners submits that the communication dated 19.01.2022 in respect to both the mining

contracts have been passed without following the principles of natural justice. He submits that the order dated 13.11.2020 is not a case of renewal or

extension. It is a case where during the pendency of the contract as the Environmental Clearance had expired and the fresh Environmental Clearance

was granted only on 09.10.2020, the Divisional Forest Officer had taken the said aspect of the matter and thereby modified the period of settlement

which originally would have expired on 30.09.2021 to expire on 07.11.2022 and as such he submits that the very premises on the basis of which the

communications dated 19.01.2022 were issued that the contract agreement is no longer valid on the ground that there is no provision in the Rules of

2013 for extension of the mining contract beyond the original contract period is totally misconceived. He further submits that the communications

dated 19.01.2022 violate Part-IV of the Agreement dated 01.09.2014 in as much as, a perusal thereof would show that suspension or termination of

the contract can only be done by providing an opportunity of hearing to the contractor. He submits that this is a pure case of premature termination of

the contract and the competent authority could not have exercised the power to issue the communications dated 19.01.2022 without giving a

reasonable opportunity to the Petitioner to show cause. He further submits that from the facts it would be apparent that it was not the fault of the

Petitioner for which the Petitioner could not extract the minor minerals as was granted by the contracts dated 01.09.2014. The Environmental

Clearance was issued initially on 28.07.2014 for a period of five years and on the basis of the said Environmental Clearance the Final Settlement

Order was also issued whereby the mining contract was granted for seven years. The Petitioner had duly applied for granting of the Environmental

Clearance on 27.08.2019 which was also followed by the request made by the Divisional Forest Officer on 29.08.2019 and in terms with the request

made by the Petitioner as well as by the Divisional Forest Officer, Cachar Division after a lapse of almost 14 months the Respondent No.5 granting

the clearance whereby permission was granted to the Petitioner to extract the quantity of stone/sand for a period of two years from the date of such

clearance being granted as mentioned in the respective orders dated 09.10.2020 itself. It was on the basis of the said clearances being granted on

09.10.2020 and taking into account that the Petitioner could not extract the minor minerals on account of the approval being pending before the

Respondent No.5, the Divisional Forest Officer had modified the period to 07.11.2022. He further submits that even otherwise the petitioner during the

period of the contract complied with all terms and conditions for which the Petitioner was entitled for renewal as there was no violation with the terms

and conditions of the contract agreement, permission for undertaking mining operations, etc. he further submits that the period mentioned in the communications dated 13.11.2020 if taken into consideration along with the original contract and thereby deducting the period during which the Petitioner could not extract minor minerals would be the period of seven years and nothing more than that and as such the impugned communications dated 19.01.2022 are liable to be interfered with. He also submits that the issuance of the notice inviting tender in respect to the mining area pertaining to WP(C) 919/2022 is also illegal and arbitrary in as much as, the Petitioner has a continuing interest till 07.11.2022.

19. Mr. K.P. Pathak, the learned Standing Counsel for the Forest Department submits that a perusal of the Rules of 2013 stipulates that it is on the basis of the mining contract agreement entered into in terms with Rule 18 that a mining contract can be granted. As per the said contract agreements with the Petitioner in both the cases, the same expires on 30.09.2021 and as such at present there is no contract agreement on the basis of which the Petitioner can be permitted to go ahead with the execution of the mining contract. He submits that in terms with the Rules of 2013 granting of extension of mining contracts is totally foreign and in that regard he places before this Court the judgment of a Coordinate Bench of this Court wherein in the case of Palashi Nath Mazumder vs. State of Assam and 4 Others dated 27.07.2021 in WP(C) 3270/2021 to contend that a Coordinate Bench of this Court have held that the Rules of 2013 do not contemplate granting of extension beyond the contract period. What it contemplates is a renewal of the contract agreement in terms with Rule 19 of the Rules of 2013. He submits that there is a difference between extension and renewal. While extension of a lease amount to extension of the period of subsistence but with the same terms and conditions but a renewal of a lease means re-creation of the legal relationship or replacement of an old contract with a new contract. He draws the attention of this Court to Rule 19((7) as well as Rule 20(2) and 20(3) and submits that while the competent authority grant a renewal, the renewed contract cannot be for a period not exceeding five years; the competent authority may reduce area of the contract at the time of renewal as well as there would be an increase in the amount of the contract money by 25% over the amount of the contract money payable in the last year of the original contract and so on. He submits that these Rules

so referred will categorically shows that by way of a renewal the old contract is to be replaced by a new contract on the basis of fresh terms and

conditions in accordance with the Rules 2013. He further submits that the Coordinate Bench of this Court in the above judgment of Palashi Nath

Mazumder (supra) having categorically held that the Rules of 2013 does not provide for an extension and as such the Divisional Forest Officer,

Cachar while issuing the order dated 13.11.2020 have exercised an authority and jurisdiction not conferred upon it. Further to that, he submitted that it

is only the competent authority who can do so and the Divisional Forest Officer is not competent authority to change the terms and conditions of the

original contract. On the question of violation of the principles of natural justice he submits that there are exceptions to the principles of natural justice

in cases where from admitted or indisputable facts it would lead to only one conclusion than the theory of useless formality would apply. In the instant

case as the Rules of 2013 does not provide a power for extension; no permission can be granted to extract minor minerals beyond the period of the

contract and the Divisional Forest Officer who had issued the order dated 13.11.2020 was not the competent authority, the admitted and indisputable

facts therefore would lead to only one conclusion that the Petitioner could not have been granted an extension beyond the original contract for which

the communication dated 19.01.2022 and the tender so issued was in accordance with law.

20. I have heard the learned counsels for the parties, perused the materials on record and given my anxious consideration.

21. The analysis of the Rules as made hereinabove more particularly Rule 18 clearly stipulates that if there is a mining contract given the same has to

be on the basis of a contract agreement in Form MC-1. Admittedly the said contract so issued to the Petitioner was for the period from 01.09.2014 to

30.09.2021. There is no contract w.e.f. 1.10.2021 till date. It is the requirement as per Rule 18 that a mining contract can only be granted in the form

of a contract deed in the prescribed Form MC-1. The period beyond 01.10.2021 cannot be taken that there is a mining contract. The said contracts

dated 01.09.2014 was extended beyond the period of 30.09.2021 by the orders dated 13.11.2020 by the Divisional Forest Officer. The question of

extension of a contract agreement or for that matter a settlement order does not arise in view of the specific mandate in the Rules of 2013 itself which

stipulates the concept of renewal of the mining contract. As already held by a Coordinate Bench of this Court in Palashi Nath Mazumder (supra) that

there is no provision of extension of contract under Chapter-IV of the Rules 2013. What it provides is a provision of renewal of the mining contract

and a contractor is required to seek renewal prior to 18 months from the date of expiry of the contract. The distinction as regards the terms

‘renewal’ and ‘extension’ have also been taken note of by this Court in the said judgment and the relevant portion of the said judgment is

quoted hereinbelow :

‘.....

On perusal of the contract annexed to this writ petition entered into by the petitioner and the Divisional Forest Officer, Hailakandi nowhere

any clause/ clauses are stipulated thereby providing for extension of the contract period. Rather under part 4 of the contract it is the manner

for suspension or termination of the contract and the determination, penalty etc. which are stipulated. Under such circumstances, the prayer

for extension of the contract period must flow from the statutory provision. In the present case in hand, the Rules, 2013 has its statutory

force inasmuch as the said Rules are framed on the basis of the power conferred by sub-section (1) of Section 15 and Section 23 C of Mines

and Minerals (Development and Regulation) Act, 1957 and on perusal of the various Rules under Chapter 4 there is no provision for

extension of the contract period rather there is a provision for the renewal of the mining contract and for that purpose the petitioner/

contractor is required to seek for renewal prior to 18 months from the date of expiry of the contract. Whether the term ‘renewal’ and

‘extension’ of a lease have the same meaning. Normally ‘renewal’ amounts to renewal of the lease after the term of its subsistence

is over and the lessor has the right to introduce new terms of lease and the lessee must be agreeable to it. On the other hand

‘extension’ of lease amounts to extension of the period of subsistence but with same terms and conditions. So extension of the lease

period must be carried out during the subsistence of the lease and renewal must be carried out after the lease period comes to an end by

efflux of time. Rule 19(1) of the Rules 2013 stipulates renewal only but not

extension. As per Black's Law Dictionary 9th Edition the term "renewal" means re-creation of a legal relationship or the replacement of an old contract with a new contract as opposed to mere extension of previous contract. So in my considered opinion there is no provision of extension of the contract period under Rules 2013. For renewal, Rule 19(1) stipulates a condition that the same must be sought for prior to 18 months from the date of completion of the contract period. Accordingly, the Rules 2013 are silent in respect of extension of period of contract and on the other hand question of applicability of Rule 19(1) does not arise as there was no such application for renewal. The submission of Mr. Choudhury in respect of applicability of Section 8A of the Act, 1957 cannot be considered as Section 14 of the said Act, 1957 specifically stipulates about the non applicability of the Sections 5 to 13 (inclusive) of the Act, 1957 in case of minor minerals. Thus neither the contract nor the statute authorizes the court to extend the contract period.

....."

22. From the above it would therefore be apparent that the order dated 13.01.2020 issued by the Divisional Forest Officer, Cachar Division were de

hors the Rules of 2013 in as much as, what the said officer did was nothing but an extension of the period of the contract beyond the period of

30.09.2021 executing without a renewal agreement as mandated in Rule 19 of the Rules of 2013. At this stage it may also be relevant to take note of

that Rule 2(e) defines the term "competent authority" which for the sake of convenience is quoted hereinbelow :

(e) "competent authority" means the Director of geology and Mining, Assam in respect of minor minerals as listed in Schedule "X"

or the Principal Chief Conservator of Forests and Head of Forest Force, Assam in respect of minor minerals as listed in Schedule "Y"

or any other authority specified by any Government Notification for exercise of such powers and carrying out of such functions as specified

in these rules"

23. A perusal of the said definition would show that it is the Director of Geology and Mining, Assam in respect of minor minerals as listed in Schedule

"X" or the Principal Chief Conservator of Forests and Head of Forest Force,

Assam in respect of minor minerals as listed in Schedule

â??Yâ??. As in the instant case, the contracts were in respect to extraction of sand and stone, it would be the Principal Chief Conservator of Forests

and Head of Forest Force, Assam or any other authorities specified by any Government Notification who shall be the competent authority. As perusal

of Rule 19 and 20 stipulates that it shall be the competent authority who shall take the decision as regards the renewal to be granted. A reading of

Rule 2(e) with Rule 19 and 20 would clearly show that the Divisional Forest Officer, Cachar is not the competent authority to grant the renewal and

the question of extension does not arise as already held hereinabove. In that view of the matter, the orders dated 30.11.2020 by which the extension

was so granted beyond the period of 30.09.2021 is without any authority or jurisdiction.

24. The next question which arise out here as to whether the Petitioner was entitled to a Notice before issuance of the communications dated

19.01.2022 and failure to do so could lead to violation of Part-IV of the Contract Agreement dated 01.09.2014 as well as the principles of natural

justice. As the contract dated 01.09.2014 stood terminated on 30.09.2021 by operation of the said contract agreement itself the question of compliance

of Part-IV of the Contract Agreement dated 1.09.2014 does not arise in as much as, Part-IV relates to suspension and termination. In the instant case

the question of suspension does not arise and the question of termination or premature termination does not arise as the contract already stood

terminated by efflux of time on 30.09.2021.

25. Now whether the communication dated 19.01.2022 issued to the Petitioner in respect to both the mining contracts were in violation to the

principles of natural justice for which the said communications are liable to be interfered with. To decide the said question it would be appropriate at

this stage to refer to a judgment of the Supreme Court in the case of Aligarh Muslim University vs. Mansoor Ali Khan reported in (2000) 7 SCC 529

and more particularly paragraph 20 to 26 which are quoted hereinbelow:

â??20. This is the crucial point in this case. As already stated under point 4, in the case of Mr. Mansoor Ali Khan, notice calling for an

explanation had not been issued under Rule 5(8) of the 1969 Rules. Question is whether interference is not called for in the special

circumstances of the case?

21. As pointed recently in *M.C. Mehta v. Union of India*¹, there can be certain situations in which an order passed in violation of natural

justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person

concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is

likely to result in revival of another order which is in itself illegal as in *Gadde Venkateswara Rao v. Government of Andhra Pradesh*², it is

not necessary to quash the order merely because of violation of principles of natural justice.

22. In *M.C. Mehta* it was pointed out that at one time, it was held in *Ridge v. Baldwin*³ that breach of principles of natural justice was in

itself treated as prejudice and that no other de facto prejudice needed to be proved. But, since then the regour of the rule has been relaxed

not only in England but also in our country. In *S.L. Kapoor v. Jagmohan*⁴, Chinnappa Reddy, J. followed *Ridge v. Baldwin* and set aside

the order of supersession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was

not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain

exceptions were laid down to which we shall presently refer.

23. Chinnappa Reddy, J. in *S.L. Kapoor*⁴'s case, laid two exceptions (at P. 395) namely, "if upon admitted or indisputable facts only one

conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other

words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in

violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In *K.L.*

*Tripathi v. State Bank of India*⁵, Sabyasachi Mukherji, J. (as he then was) also laid down the principle that not mere violation of natural

justice but de facto prejudice (other than non-issue of notice) had to be proved.

It was observed: quoting Wade Administrative Law, (5th Ed.

PP. 472-475) as follows : (para 31).

...It is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as their scope and extent ...There must

have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The

requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the

tribunal is acting, the subject matter to be dealt with and so forth.

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking

the same view have been exhaustively referred to in State Bank of Patiala v. S.K. Sharma⁶. In that case, the principle of prejudice has been

further elaborated. The same principle has been reiterated again in Rajendra Singh v. State of M.P.⁷.

25. The useless formality theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts lead ing

only to one conclusion" referred to above,- there has been considerable debate of the application of that theory in other cases. The

divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta referred to above. This

Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry,

J. and Staughton L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, De. Smith, Wade, D.H.

Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the

issue. Some others have said, that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via-media

rules. We do not think it necessary, in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a

particular case.

26. It will be sufficient, for the purpose of the case of Mr. Mansoor Ali Khan to show that his case will fall within the exceptions stated by

Chinnappa Reddy, J. in S.C. Kapoor v. Jagmohan, namely, that on the admitted

or indisputable facts - only one view is possible. In that

event no prejudice can be said to have been caused to Mr. Mansoor Ali Khan though notice has not been issued?

26. As already observed hereinabove, the order dated 13.11.2020 are on the face of it illegal, unauthorized and without jurisdiction and interference

with the communications dated 19.01.2022 in both the writ petitions would result in revival of an illegal order and as such as observed by the Supreme

Court in the above quoted judgment when quashing a order would result in the revival of an illegal order, it is not necessary to quash the order merely

because of violation of the principles of natural justice. Further to that, in the instant case, the exception to the principles of natural justice which is the

'useless formality' theory is squarely applicable in as much as, on the admitted or indisputable facts the authorities could have come only to one

conclusion i.e. sans a renewal contract the contract agreement dated 1.09.2014 stood expired on 30.09.2021. Under such circumstances applying the

principle of theory of useless formality, this Court therefore is of the opinion that the impugned communications dated 19.01.2022 cannot be set aside

on the ground of violation of the principles of natural justice.

27. However it needs to be also taken note of and more particularly in the peculiar facts of the case that on 01.09.2014 the Petitioner was granted the

contracts for seven years w.e.f. 01.09.2014 to 30.09.2021. It was on account of the expiry of the Environmental Clearance on 27.07.2019 and the

approval for granting the Environmental Clearance being pending before the Respondent No.5 for a period of almost 14 months and thereafter on

13.11.2020 the Divisional Forest Officer lifted the suspension that the Petitioner could carry out the extraction of sand/stone in terms with the

contract. It is also apparent, as contended by the learned counsel for the Petitioner, that the Petitioner was under the bonafide belief that it would get

the Environmental Clearance from the Respondent No.5 immediately then carry ahead with the contract in question and thereupon on 13.11.2020, the

Divisional Forest Officer, Cachar had granted an extension for the period during which the Petitioner could not extract on account of the approval

being pending before the Respondent No.5 and as such no occasion accrued upon the Petitioner to apply for a renewal. It also needs to be taken note

of that it was only on 19.01.2022 that the Respondent Authorities for the first

time intimated the Petitioner that the contract agreement dated 01.09.2014 stood expired.

28. In that view of the matter, this Court for the ends of justice on the peculiar facts of the case, permits the Petitioner to file applications seeking renewal of the contract agreements dated 01.09.2014 in respect to the contracts pertaining to the two writ petitions by waiving the period of 18 months as required under Rule 19(1) of the Rules of 2013. The said applications shall be filed within a period of 20 days from the date of the instant judgment and the Competent Authority shall consider the said applications for renewal within the parameters prescribed under Rule 19 and Rule 20 of the Rules of 2013. It is further directed till the disposal of the applications for renewal, the tenders so issued as impugned in the WP(C) 919/2022 or proposed to be issued in respect to the area being the subject matter of WP(C) 921/2022 shall not be given effect to.

29. With the above observations both the writ petitions stand disposed of.