
(2021) 07 GAU CK 0120

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3354 Of 2021

M/S Yerool Hussain

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 23-07-2021

Acts Referred:

Citation : (2021) 07 GAU CK 0120

Hon'ble Judges : Prasanta Kumar Deka, J

Bench : Single Bench

Advocate : R M Deka

Final Decision : Disposed Of

Judgement

Heard Mr. K. N. Choudhury, the learned Senior Counsel assisted by Mr. R. M. Deka, the learned counsel for the petitioner.

The petitioner is apprehensive that the respondents more specifically the respondent No. 2 might deduct a portion of the amount out of the running bill

against the contract arising out of the construction of (i) RCC Br. No. 1½ on Tepujan Bridge at Naoboisa to Kakajan Duliagaon and (ii) Construction

of RCC Bridge No. 3/1 on Guwalgaon Road over river Kaliapani under Mahavir Lachit Chilarai Setu Nirman Abhijan under SOPD(G) for the

year 2018-2019(Package No. MLCSNA/SOPD-G/REOK/01) vide notice to proceed with the work dated 11.3.2019 issued by the Chief Engineer ,

Public Works Department (Roads), under the head royalty towards forest products.

It is submitted by Mr. Choudhury, the learned Senior Counsel for the petitioner that law is settled inasmuch as unless there is a specific provision in the

contract entered into by the respondents with the petitioner specifically stipulates

such deduction of forest royalty the respondents cannot deduct such royalty. In the present case without there being stipulated in the contract nor in the agreement such deduction the respondent authority has no right to deduct any amount under the heading forest royalty from the running bills of the petitioner.

Mr. P. N. Goswami, the learned Additional Advocate General, Assam referring to the various decisions of this court which are also relied by Mr.

Choudhury, countered the submissions of Mr. Choudhury that law is settled in so far the issue raised is concerned inasmuch as there are decisions of

this court wherein it permits the respondents to deduct the forest royalty from the running bill of a contractor. It depends on the facts pleaded in each case.

In view of the contentions made by both the learned counsel, in my considered opinion let notice be issued.

Mr. R. Dhar, the learned Standing Counsel for the PWD accepts notice on behalf of the respondent Nos. 1, 2 and 4 and Mr. D. Gogoi, the learned

Standing Counsel for the Forest Department accepts notice on behalf of the respondent No. 3. Necessary extra copies be served on the learned counsel for the respondents.

Notices are made returnable after four weeks.

In the meantime, the respondent shall not deduct any amount as forest royalty from the running bills of the petitioner against the aforesaid work

mentioned hereinabove but the petitioner shall submit an undertaking for refunding necessary forest royalty in the event of such order being passed by this court while disposing of this writ petition.