

(2023) 10 GAU CK 0047

In the Gauhati High Court

Case No : Writ Appeal No. 258, 259, 262 Of 2022

N.C. Das

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 16-10-2023

Acts Referred:

Assam Minor Mineral Concession Rules, 1994 — Rule 31, 46, 48

Citation : (2023) 10 GAU CK 0047

Hon'ble Judges : Sandeep Mehta, CJ;Kardak Ete, J

Bench : Division Bench

Advocate : U.K. Goswami, R.K. Bothra, K. Gogoi, D. Gogoi

Final Decision : Dismissed

Judgement

1. Heard Mr. U.K. Goswami and Mr. R.K. Bothra, learned counsel for the appellants. Also heard Mr. K. Gogoi, learned standing counsel, N.F. Railway and Mr. D. Gogoi, learned standing counsel, Forest Department, representing the respective respondents.

2. These 3(three) intra-Court writ appeals involve identical, factual and legal issues and arise out of a common judgment & order dated 30.06.2022 rendered by the learned Single Bench in a bunch of writ petitions led by WP(C) No.9227/2019. Hence, all the appeals have been heard and would be decided together by this common judgment.

3. The core question, which this Court is required to adjudicate in this batch of writ appeals, is regarding the legality and validity of the notice dated 08.02.2021 issued by the Northeast Frontier Railway requiring the appellants to provide the Forest Royalty Clearance Certificate (FRCC) regarding 5(five) components of the work order in question, i.e. (i) earth work; (ii) total sand; (iii) quarry dust; (iv) stone chips, and (v) boulder. The letter mentions that the Forest Royalty Clearance Certificate of the quantities of material utilized by the contractor would have to be submitted before clearing the next bill submitted towards the

construction works awarded by the Northeast Frontier Railway to the contractor(s), viz. B.G. standard formation; minor bridges including retaining wall; side drains; catch water drains; ground improvement works and all other connected ancillary works in between km 44.13 (including Digaru Station yard) to km 98.00 in connection with Digaru-Hojai Double Line Project of N.F. Railway.

4. The appellants questioned the legality and validity of the aforesaid order by filing the captioned bunch of writ petitions, which came to be disposed of by the learned Single Judge vide judgment & order dated 30.06.2022, with the following observations and directions:-

"18. Conclusion:

In view of the aforesaid discussion and reason, this court concludes as follows:

I. That ordinary earth is a minor mineral and royalty is leviable upon the same as held in Rohit Newar (*supra*) and Som Datt Builders (*supra*).

II. The notification dated 01.09.2009 shall be applicable only when a permit is applied under clause 20B(1) and (2) by the employer department/ undertakings and granted by the forest department under clause 20B(4) of the Notification, which is not the case in the present batch of writ petitions.

III. In absence of any contract condition, when a contractor is unable to produce a certificate showing the use of forest produce on which royalty has been collected, the recovery from the bill against forest royalty cannot be made.

IV. Without certainty of the fact that royalty is payable on the materials used by the contractors, the same cannot be recovered without giving any opportunity to the contractors before deduction/ recovery from their bills.

V. In those contracts where such conditions are incorporated, the employer shall be within its competence and jurisdiction to recover the forest royalty from the bills of the contractors/from the security deposits/earnest money etc. as per OM 17.06.2000 and the principle laid down in Durga Krishna Stores (*supra*) shall be applicable.

VI. Those contractors, where the Office Memorandum dated 17.06.2000 is a part of contract and the same has been signed by the contractors and the employer, the contractors shall be bound by the Office Memorandum dated 17.06.2000, only when a specific clause is incorporated in the contract that the materials required, should be collected either through permits etc. under MMC Rules, 2013 and/or through permits issued under Assam Forest Regulations, 1891 and the Rules and Notifications issued thereunder.

19. Directions:

For the forgoing reasons, conclusion and findings, this court directs the followings:

i. The employer shall verify the contract of the petitioner(s) herein and if it is

found that forest royalty is recoverable in terms of the determinations/ conclusions made in the present lis, a reasonable opportunity to produce the proof of payment of forest royalty be granted to them and if the contractor(s) satisfy the authority that forest royalty has already been paid, no recovery shall be made and the pending bills/security deposits/earnest money etc. shall be released within six weeks from submission of such materials, if the same is not recoverable for any other contractual liabilities.

And

If such proof is not available, the authority shall be at liberty to recover the forest royalty.

ii. In the other cases, the employer shall forthwith release the pending bills/ security deposit/earnest money etc., if those are withheld against forest royalty.

And

In those cases, where the recovery has already been made against forest royalty, the same be released forthwith."

5. Mr. U.K. Goswami, learned counsel representing the appellants, vehemently and fervently urged that the contract, more particularly, Condition No.13.2 thereof, which reads as – "Whenever forest produces like sand, stone, timber, etc. are used in the work, the contractor(s) will have to furnish documentary proof that requisite royalty on such produces has been paid to the concerned departments", covers within its ambit forest produce like sand, stone and timber qua which only the contractor is required to furnish documentary proof of royalty payment to the concerned Department. He urged that by dint of the impugned notice dated 08.02.2021, the authorities have travelled beyond the conditions of the contract by requiring the appellants herein to produce the royalty certificates for items which were not covered under the contract, i.e. earth work and boulders. He vehemently and fervently contended that the view taken by the learned Single Judge runs contrary to the judgment of this Court in the case of State of Assam & Ors. -Vs- Muslim Ali (Md.), reported in 2013 (2) GLT 945. Mr. Goswami has also placed reliance on a judgment passed by the learned Single Bench of this Court in the case of M/s Raitani Engineering Works Private Limited - Vs-Union of India & 5 Ors. [WP(C) No.1463/2021]. He thus, urged that the view taken by the learned Single Judge, whereby the grossly illegal notice issued to the appellants was not interfered with and rather, directions beyond the scope of the writ petition were issued, does not stand to scrutiny and the impugned judgment & order dated 30.06.2022 deserves to be reversed.

On these grounds, Mr. Goswami implored the Court to accept the appeals and reversed the impugned judgment & order passed by the learned Single Judge and so also the notice dated 08.02.2021 impugned in these writ petitions.

6. Per contra, Mr. K. Gogoi, learned standing counsel, N.F. Railway and Mr. D. Gogoi, learned standing counsel, Forest Department, representing the

respondents, vehemently and fervently opposed the submissions advanced by the learned counsel for the appellants.

7. Mr. D. Gogoi referred to the Assam Minor Mineral Concession Rules and pointed out that ordinary earth is a minor mineral and royalty is leviable thereupon. He urged that the only purpose behind issuance of the notice dated 08.02.2021 was to ensure that the raw material being minerals covered under the statutes had been procured by the contractor from valid sources.

8. Mr. K. Gogoi, learned standing counsel, Railway submitted that the judgment in the case of Muslim Ali (Md.) (supra) is based on a totally different fact scenario because therein, the Division Bench came to a conclusion that the Office Memorandum dated 17.06.2000 issued by the Finance Department was not incorporated as one of the contract conditions and thus, the Public Works Department was held to be disentitled from realizing royalty on forest produces. Mr. Gogoi has placed reliance on a subsequent Division Bench judgment of this Court in the case of State of Assam & Ors. -Vs- G.H. Vijapura & Co. (M/s) & Ors., reported in 2017 (3) GLT 478, wherein the judgment in the case of Muslim Ali (Md.) (supra) was also considered and the view taken by the learned Single Judge to the effect that no royalty is required to be paid for extracting earth from private patta land as well as from non-forest area was reversed. Referring to Rules 46, 48 and 31 of the Assam Minor Mineral Concession Rules, 1994, it was further held that earth being a minor mineral is subject to payment of royalty even on being extracted from private patta land and other lands located in non-forest areas.

9. Mr. Gogoi thus, urged that the view taken by the learned Single Judge in Paragraphs 18 & 19 of the impugned judgment is beyond the scope of interference. It was contended that the notice dated 08.02.2021 only requires the appellants to submit the Forest Royalty Clearance Certificates, which is the requirement of law and hence, the legality of the said notice is irrefutable. He further urged that the learned Single Judge has directed the employer to verify the contract/contracts of the writ petitioners and thereafter, if it is found that forest royalty is recoverable in terms of the observations made in the impugned judgment, a reasonable opportunity to produce the proof of payment of forest royalty shall be allowed to the contractor concerned and upon proof of payment of royalty being produced, no recovery would be made and the pending bills/ security deposits/earnest money would be released within 6(six) weeks. In the alternative, the authority concerned has been given liberty to recover the forest royalty and in other cases, the employer has been directed to release the pending bills/ security deposits/ earnest money, etc.

Mr. Gogoi thus, urged that no prejudice has been caused to the appellants herein because the learned Single Judge has just directed a verification exercise to be carried out in view of the prevailing legal and factual position and hence, no grievance can be raised against such a direction.

10. We have given our thoughtful consideration to the submissions advanced at the Bar and have gone through the material placed on record.

11. The main submission of the learned counsel for the appellants in reference to the Condition No.13.2 (supra) of the contract, was that as ordinary earth was not covered under Clause 13.2 of the tender document, the employer Railways was not at liberty to demand the Forest Royalty Clearance Certificates from the appellants regarding the said mineral used in the construction works. However, we are not in the least impressed by the said submission for the simple reason that Clause 13.2, referred to supra, is not exhaustive in its operation because it only refers to sand, stone and timber in a generic sense as covered under forest produces. The governing phrase of the said clause is forest produces. Examples in the form of sand, stone, timber are given but thereafter, the word "etc.", is used which means that whichever forest produce/ mineral is used in the construction works, the contractor would have to furnish documentary proof that requisite royalty on such produces has been paid to the concerned Department. It has been clearly held by Division Bench of this Court in the case of G.H. Vijapura & Co. (supra) that ordinary earth even if extracted from patta land and/or non-forest area is liable to levy of royalty. As undeniably, ordinary earth has been used by the contractors for carrying out the works in question, proof of royalty being paid would have to be provided by the contractor to the employer before the bills can be paid.

12. In this background, the notice dated 08.02.2021 issued by the employer to the appellants herein requiring them to present the Forest Royalty Clearance Certificates cannot be termed to be illegal or unjustified in any manner. Thus, requiring the appellants herein to present the Forest Royalty Clearance Certificates for the components of ordinary earth and boulders cannot be considered to be beyond the scope of the tender document/contract so as to warrant interference. The learned Single Judge has already directed the employer to conduct a verification of the contracts and to determine whether forest royalty is recoverable and only thereafter, the follow up action has been permitted. Thus, the writ appellants cannot claim to be prejudiced by the aforesaid directions, which otherwise also, stand the scrutiny of law.

13. In view of the discussion made herein above, we are of the firm opinion that the impugned judgment & order dated 30.06.2022 rendered by the learned Single Judge does not suffer from any infirmity warranting interference. Hence, the writ appeals fail and are being dismissed as being devoid of merit.