

(2021) 07 GAU CK 0007

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3192 Of 2021

Swapna Bania Das

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 01-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Assam Minor Mineral Concession Rules, 2013 — Rule 59

Citation : (2021) 07 GAU CK 0007

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : M Mahanta

Judgement

Heard Mr. M. Mahanta, learned counsel for the petitioner. Also heard MR. B. Gogoi, learned standing counsel for the Forest Department, respondent

nos.1, 2, 4 and 5 and Mrs. S. Sarma, learned Govt. Advocate appearing for respondent no.3.

Assailing the impugned letter dated 21.06.2021 by which the payment of balance Mines and Mineral Development Restoration and Rehabilitation

(MMDRR in short) Fund to be made within 7 (seven) days was issued in respect of Dikrong Sand and Gravel Mining Contract Area and the quashing

of action of the Divisional Forest Officer (respondent no.5) in charging payment of additional amount equal to 10% of the annual contract amount for

each year for MMDRR Fund/ Fees and seeking forbearance for giving effect of the impugned letter dated 21.06.2021, the present writ petition has

been filed under Article 226 of the Constitution of India.

The learned counsel for the petitioner has submitted that pursuant to the settlement of Dikrong Sand and Gravel Mining Contract Area to the petitioner

for the year 2014 to 2021 ending on 25.05.2021, the petitioner had submitted a mining plan, which was approved by the Director of Geology and

Mining as well as by the respondent department and it is submitted that in the said plan, it was also projected that after sand and gravel is removed

from the river bed in a systematic way, the river bed keeps filling up sand and gravel during monsoon and thus replenishes the reserve of the sand and

gravel every year and therefore, restoration of river bed is a natural process and no human effort is essential and that at the closure of the mine, the

river bed will come to its original position naturally and closure plan was not necessary. Accordingly, it is submitted that there was no justification in

the levy of MMDRR Fund. It is further submitted that the respondent authorities never raised any demand against MMDRR Fund from the petitioner

up to 16th kist money. However, when demand was raised in respect of 17th and 18th kist money, the petitioner made payment against the MMDRR

Fund and thereafter, since 19th kist became due, the petitioner had not made payment against MMDRR Fund. It is submitted that all throughout, the

respondent authorities never raised any demand. In this regard, it is further submitted that the issue relating to payment claimed under MMDRR Fund

is sub-judice before this Court in the case of David Kr. Gogoi vs. State of Assam & Ors, WP(C) No.8735/2018, wherein a similar question arose and

the issue is now pending for adjudication before the Court. The order of 19.02.2018 in the said writ petition is referred to by the learned counsel for

the petitioner. It is submitted that in the meanwhile, as the tenure of lease of the petitioner is coming to an end, the respondent authorities have issued

a short e-auction notice and also a long e-auction notice on 07.06.2021 (Annexure-11) and it is submitted that the last date of submission of online bid

is 05.07.2021. It is submitted that as the demand has been raised by the impugned order only on 21.06.2021, it would be impossible for the petitioner to

satisfy such demand within a short period of time, more so, when Covid-19 pandemic is going on. Accordingly, the petitioner prays for an interim relief

of suspension of the impugned letter dated 21.06.2021.

Per contra, the learned standing counsel for the Forest Department has submitted that in this writ petition, the petitioner has not assailed the legality

and validity of any Act, rules or notification by virtue of which the levy against MMDRR Fund has been made. Referring to the mining agreement

(Annexure-4), he has referred to Clause-10 of Part-V to project that the said agreement contains overriding effect, which provides that the said deed

was governed by the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the rules framed thereunder and it is further

provided that the provisions of the Act and Rules shall prevail over the terms and conditions of the agreement. Accordingly, it is submitted that the

MMDRR Fund is provided for in Rule 59 of the Assam Minor Mineral Concession Rules, 2013.

The Court is of the considered opinion that the issue raised in the present writ petition requires examination. Accordingly, let a notice returnable on

26.07.2021 be issued.

As all the respondents are represented, requisite additional copies of the writ petition be furnished to the learned Govt. Advocate as well as to the

learned standing counsel for the Forest Department within 2 (two) days.

Having regard to the facts and circumstances as projected in the writ petition, the Court is not inclined to stay the operation of the letter of demand

dated 21.06.2021 impugned in the present writ petition because of the fact that the reference to MMDRR Fund is found contained in the settlement

order dated 17.05.2014 and it is the projected case of the petitioner that she had satisfied the demand against the MMDRR Fund while paying 17th

and 18th kist money.

Taking note of the submission made by the learned counsel for the petitioner that the petitioner intends to participate in the tender process, the Court is

inclined to grant liberty to the petitioner to move the competent authority, i.e. Principal Chief Conservator of Forest & Head of Forest Force

(respondent no.2) with an appropriate request in respect of deferred payment of the dues against MMDRR Fund and as the date of opening of the

tender is scheduled on 05.07.2021 and in the meanwhile to permit the petitioner to participate in the tender process.

Taking note of the short time available, as an exception to the thumb rule to grant adequate time to the State authorities to respond, we hope and trust

that the respondent no.2 shall dispose of the representation within forenoon of 04.07.2021, if such representation is submitted by the petitioner within

the forenoon of 02.07.2021 along with a downloaded copy of the order. The respondent no.2 is at liberty to verify the correctness of the order from

the website of the Court and act accordingly.

List on 26.07.2021.