



GAHC010026512022

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/919/2022

JAYDEEP GOALA

S/O- LATE DINESH PRASAD GOALA, R/O- VILL.- PAILAPOOL, P.O.
PAILAPOOL, CACHAR, PIN- 788098, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM, ENVIRONMENT AND FOREST DEPARTMENT, DISPUR, GUWAHATI-
781006.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
AND HEAD OF FOREST FORCE
ASSAM

ARANYA BHAWAN

PANJABARI

GUWAHATI-781037.

3:THE CHIEF CONSERVATOR OF FOREST
SOUTHERN ASSAM ZONE

SILCHAR

PIN- 788001

ASSAM

4:THE DIVISIONAL FOREST OFFICER
CACHAR DIVISION

SILCHAR

PIN- 788001

ASSAM

5:THE STATE LEVEL ENVIRONMENTAL IMPACT
ASSESSMENT AUTHORITY ASSAM



BAMUNIMAIDAN
GUWAHATI
PIN- 781021
REP. BY ITS MEMBER SECRETARY

Linked Case : WP(C)/921/2022

JAYDEEP GOALA
S/O- LATE DINESH PRASAD GOALA
R/O- VILLAGE PAILAPOOL
P.O- PAILAPOOL
CACHAR
PIN-788098
ASSAM

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GUWAHATI-781006

2:THE PRINCIPAL CHIEF CONSERVATOR
OF FOREST AND HEAD OF FOREST FORCE
ASSAM
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CACHAR DIVISION
SILCHAR
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ASSAM

5:THE STATE LEVEL ENVIRONMENTAL IMPACT ASSESSMENT AUTHORITY
ASSAM
BAMUNIMAIDAM
ASSAM
BAMUNIMAIDAM



GUWAHATI-21
REP. BY ITS MEMBER SECRETARY

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner : Mr. B.K. Mahajan
Mr. JUNM Laskar.
Mr. P. Mahanta. ... Advocates.

For the respondent no.2, 3 & 4: Mr. P.K. Pathak Advocate.

For the respondent no.1 : Ms. S. Sharma. ... Advocate.

Date of hearing & judgment : 11.02.2022

JUDGMENT AND ORDER

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 –

Longitude (East)	Latitude (North)
E-93 ⁰ 04'01.2"	N-24 ⁰ 53'25.3"
E-93 ⁰ 02'56.6"	N-24 ⁰ 50'34.4"

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 'the Rules 2013') 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 :

“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.”

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 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.

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, Lakhimpur 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.”*

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 07.11.2022 although as per the Final Settlement order as well as the agreement the mining contract was to terminate on 30.09.2021.

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 07.02.2022 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.

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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 –

Longitude (East)	Latitude (North)
E-93 ⁰ 04'01.4"	N-24 ⁰ 59'32.6"
E-93 ⁰ 03'36.5"	N-24 ⁰ 55'08.2"

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 07.11.2022 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. 01.10.2021 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 extract 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.

.....”

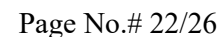
22. From the above it would therefore be apparent that the order dated 13.01.2020 issued by the Divisional Forest Officer, Cachar Division were *de hors* the Rules of 2013 in as much as, what the said officer did was nothing but an extension of the period of the contract beyond the period of 30.09.2021 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 'Y'. 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 01.09.2014 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.



23. Chinnappa Reddy, J. in S.L. Kapoor'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. Sharma*⁶. 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 Straughton 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 01.09.2014 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.

JUDGE

Comparing Assistant