
(2023) 09 GAU CK 0001

Gauhati High Court

Case No: Writ Petition (Civil) No. 1476 Of 2023

Bolai Roy

APPELLANT

Vs

State Of Assam And 4
Ors

RESPONDENT

Date of Decision: Sept. 1, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 226

Citation: (2023) 09 GAU CK 0001

Hon'ble Judges: Manish Choudhury, J

Bench: Single Bench

Advocate: Junm Laskar

Final Decision: Disposed Of

Judgement

1. Heard Mr. K.P. Pathak, learned senior counsel assisted by Mr. J.U.N.M. Laskar, learned counsel for the petitioner; Mr. D. Gogoi, learned

Standing Counsel, Forest & Environment Department for the respondent nos. 1 & 5; and Mr. A.K. Azad, learned counsel appearing for Tikalpar

Gaon Panchayat.

2. The case projected by the petitioner in this writ petition instituted under Article 226 of the Constitution of India, in brief, is that : desirous to set up a

Stone Crusher Unit in the name and style of M/s Bholanath Stone Crusher on a plot of land, covered by Dag no. 31, 43, 86 & 71 R.S. Patta

no. 4, situated in Village Shiberbond, Udharbond Revenue Circle, District Cachar [the subject-plot, for short], the petitioner submitted

an application in the prescribed form before the respondent authorities in the Forest & Environment Department on 07.12.2020 to grant him such permission.

3. A set of Guidelines for installation of a stone crushing machine [Stone Crusher] within the State are in place in the form of a Notification bearing

no. FRM.152/2001/54 dated 29.01.2003, issued by the Forest Department, Government of Assam. As per the Notification, no Stone Crusher unit can

be installed in the State without obtaining a Permit from the State Government in the Forest Department. It has been stipulated therein that if a person

wants to install a Stone Crusher, he is required to submit an application to that effect before the jurisdictional Divisional Forest Officer [DFO] as per

the prescribed format accompanied by the documents listed in the Notification and the prescribed application fee of Rs. 3,000/-. On receipt of the

application, the DFO is required to cause field verification and thereafter, to forward the application to the jurisdictional Conservator of Forests along

with his comments. At the Circle level, a Permit Committee is constituted with the following as members " [i] the Conservator of Forests :

Chairman; [ii] the Divisional Forest Officer [DFO] of concerned Division : Member; [iii] the District Industries Officer : Member; [iv] a

Representative from Pollution Control Board : Member; and [v] a Representative of the Deputy Commissioner of the concerned District : Member.

The function of the Permit Committee is to examine the applications received from the DFO within the Circle and take a decision accordingly. On

being approved by the Permit Committee at the Circle level for issuance of a Permit, the Conservator of Forests is to intimate the concerned DFO and

the concerned DFO is authorized to issue a Permit accordingly. The Permit Committee is also empowered to consider the cases for renewal of the

Permits issued earlier. Applications for renewal of Permit are to be submitted by the interested parties to the DFO as per the prescribed format by

paying requisite fee by treasury challan. As per the Guidelines, any Permit so issued is to remain valid for one calendar year or part thereof, and in no

case, the Permit shall remain valid beyond 31st December of a calendar year.

4. It transpires that in the case in hand, the Circle Level Permit Committee, Southern Assam Circle after scrutiny and consideration of the application

of the petitioner in its Meeting, held on 17.10.2022, accepted the petitioner's application for installation of Stone Crusher, subject to fulfillment of

certain conditions. On receipt of the Minutes of the Permit Committee communicated vide letter bearing no. FGS.39/Crusher/06/C/Par-II dated

28.10.2022, the DFO, Cachar, Silchar conveyed the decision to the petitioner about the acceptance of his application for issuance of the Permit for

installation of a Stone Crusher Machine at the subject-plot. On the basis of such decision of the Permit Committee, the DFO, Cachar Division, Silchar

[the respondent no. 4] issued the Permit for installation of the Stone Crusher Unit vide letter no. B/7(ii)/7826-27 dated 09.11.2022, subject to the terms

and conditions set forth therein. It was specifically mentioned in the said Permit that the Permit would be valid for the calendar year only, that is, up-to

31.12.2022.

5. The petitioner has, in this writ petition, challenged a letter bearing no. B/7(ii)/1175-76 dated 17.02.2023 issued by the respondent no. 4 whereby the

said respondent has suspended the letter bearing no. no. B/7(ii)/7826-27 dated 09.11.2022.

6. Mr. Pathak, learned senior counsel appearing for the petitioner has submitted that the respondent no. 4 as the jurisdictional DFO, that is, the

respondent no. 4 has no authority and jurisdiction to do so and by doing so, he usurped the authority and jurisdiction of the Permit Committee. As the

Permit issued to the petitioner had a validity period up-to 31.12.2022, the petitioner had, in the meantime, submitted his application for renewal on

07.12.2022 by depositing the prescribed renewal fee by treasury challan. Mr. Gogoi, learned Standing Counsel, Forest Department has contended that

the writ petition has become infructuous as the validity period of the Permit expired on 31.12.2022.

7. From the Guidelines for setting up Stone Crusher Units, as notified by the Notification dated 29.01.2003, it is the Circle Level Permit Committee

comprising of the Chairman and the Members, mentioned therein, which has the power, authority and jurisdiction to issue a Permit to set up a Stone

Crusher Unit. The jurisdictional DFO has not been delegated with any independent authority and jurisdiction to interfere with a Permit issued with the

approval of the Permit Committee. As per the Guidelines, an application for renewal is also to be considered and approved by the Permit Committee.

When the petitioner was expecting consideration of his application for renewal, the respondent no. 4 issued the impugned letter no. B/7[ii]/1175-76

dated 17.02.2023 whereby the respondent no. 4 suspended the letter no. B/7[ii]/7826-27 dated 09.11.2022. As the letter no. B/7[ii]/7826-27 dated

09.11.2022 had validity up-to 31.12.2022, it is evident that by the time the respondent no. 4 issued the letter no. B/7[ii]/1175-76 dated 17.02.2023, the

period of validity given by a letter no. B/7[ii]/7826-27 dated 09.11.2022, had expired. Thus, it is clear that when the respondent no. 4 issued the letter

no. B/7[ii]/1175-76 dated 17.02.2023, the letter no. B/7[ii]/7826-27 dated 09.11.2022 was not in existence and as such, the letter no. B/7[ii]/1175-76

dated 17.02.2023 is to be treated as non est in law and it is accordingly treated. As it is noticed that the petitioner had already submitted his application

for renewal by depositing requisite renewal fee on 07.12.2022, it is observed that the consideration of such application for renewal is to be made in

terms of the Guidelines notified by the Notification dated 29.01.2003. The writ petition is disposed of with the afore-mentioned terms. There shall be

no order as to cost.