

GAHC010240182022



2026:GAU-AS:814

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

Case No. : WP(C)/7559/2022

M/S RANA CONSTRUCTION AND ENGINEERS PVT LTD
SURAJ COMPLEX, ULUBARI CHARIALI, KAMRUP (M), GUWAHATI-781007,
ASSAM REP. BY ONE OF ITS DIRECTORS RANA ZAMAN, S/O. ALHAZ
RAHMAN ALI, R/O. HOUSE NO. 62, RAHMAN MANSION, SOUTH SARANIA,
P.O. ULUBAI, DIST. KAMRUP (M), ASSAM, GUWAHATI-781007.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
PUBLIC WORKS DEPTT. (ROADS), DISPUR, GUWAHATI-781006.

2:THE CHIEF ENGINEER
PUBLIC WORKS DEPTT.
ASSAM
(ROADS)
CHANDMARI
GUWAHATI-781003.

3:THE EXECUTIVE ENGINEER
PWD
NORTH KAMRUP TERRITORIAL ROADS DIVISION
RANGIA

Advocate for the Petitioner : MR. K N CHOUDHURY, MR. R M DEKA, MS N MAHANTA, N
GAUTAM

Advocate for the Respondent : SC, PWD,

BEFORE

Hon'ble MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri R.M. Deka, Advocate.

Advocate for the respondents : Shri B. Gogoi, SC, PWD.

**Date on which judgment is : NA
Reserved.**

**Date of pronouncement of : 22.01.2026.
Judgment.**

**Whether the pronouncement : NA.
is of the operative part of the
judgment?**

**Whether the full judgment : Yes.
has been pronounced?**

JUDGMENT & ORDER (Oral)

A communication dated 31.08.2022, issued by the Executive Engineer, PWD North Kamrup Territorial Roads Divisions, Rangia, whereby, the petitioner was requested to furnish relevant documents as proof of payment of forest royalty utilized for the work in question for taking necessary action for release of the forest royalty, is the subject matter of challenge in the present writ petition.

2. The facts as projected, in brief, are that a work was allotted to the petitioner and for the execution of the same, forest royalty of Rs.40,59,340.00 has been

realized. By the impugned communication dated 31.08.2022, the petitioner was directed to furnish proof of such payment for release of the aforesaid amount. Instead of taking the opportunity to submit proof of payment of forest royalty, the petitioner has questioned the validity and legality of the said move of the Department.

3. I have heard Shri R.M. Deka, learned counsel for the petitioner. I have also heard Shri B. Gogoi, learned Standing Counsel, PWD.

4. The primary contention of Shri Deka, learned counsel for the petitioner is that there is no stipulation in the tender for making such deduction and this aspect was considered by this Court in a batch of writ petitions which was disposed of vide order dated 30.03.2017, the lead case, being WP(C)/1234/2017. In the said batch of cases, this Court had observed that though there was a reference in the Preamble regarding deduction on various charges, including forest royalty, in the absence of a specific clause in the contract, such deduction could not have been made. The learned counsel for the petitioner has also drawn the attention of this Court to a judgment dated 30.06.2022, passed in WP(C)/9227/2019 wherein, it was held that 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. A modality of claiming such amount which has been withheld by the Department has also been laid down in the form of a direction. The learned Counsel submits that the aforesaid direction would squarely cover the case of the petitioner and accordingly, a case for interference is made out.

5. *Per contra*, Shri Gogoi, learned Standing Counsel has submitted that the factual projection made on behalf of the petitioner is not wholly correct. By drawing the attention of this Court to the affidavit-in-opposition filed on 16.07.2024 by the respondent no. 2, the learned Standing Counsel has submitted that apart from

Preamble 10 which stipulates deduction of charges, including forest royalty, there is a specific clause, being Clause No. 38 in the contract whereby such charges are deductible. He submits that in view of such factual position which is not disputed, the observations made by this Court in the order dated 30.03.2017 would not be binding and at best, it can be restricted to the facts and circumstances of that case. Shri Gogoi, learned Standing Counsel has, however, fairly submitted that the petitioner would still be at liberty to produce authentic documents as proof of payment of forest royalty while procuring the goods and accordingly, the amount which is found entitled to by the petitioner would be duly released to it.

6. The rival submissions have been duly considered and the materials placed before this Court have carefully been examined.

7. The thrust of the arguments made on behalf of the petitioner is primarily based on the judgment dated 30.03.2017 passed in a batch of writ petitions, including in WP(C)/1234/2017. In the said judgment, this Court had made an observation in paragraph 9 that apart from the Preamble, there was no other clause regarding realization of forest royalty. The subsequent judgment dated 30.06.2022 passed in WP(C)/9227/2019 is with regard to the directions and consequential actions.

8. A perusal of the facts and circumstances, including the documents, more particularly, the part of the agreement which has been enclosed to the affidavit-in-opposition, would, however, show that under Clause 38 of the Additional Special Conditions, there is a specific provision for deduction of forest royalty. For ready reference, the said clause is extracted hereinbelow:

“38. AGST, Forest Royalty including other charges levied by the Forest Department on forest products including any other taxes as applicable is to be paid by the contractor. The department shall deduct the amount of AGST, FR & ST, Labour cess (1%) and any taxes from the contractor’s bill, if the contractor fails to produce the valid certificates from the concerned departments.”

9. This Court has noticed that the aforesaid condition is accepted by the petitioner whose signatures appear in the documents. In view of such undisputed factual position, this Court is of the opinion that the observations made by this Court in an order dated 30.03.2017 has to be held to be confined to the facts and circumstances of those cases and cannot be said to have a general application.

10. The observations and directions given by this Court in the judgment dated 30.06.2022 passed in WP(C)/9227/2019 is based on the presumption that no such condition exists in the tender between the parties. The facts in the present case are distinguishable in view of the specific clause as mentioned above.

11. In view of the aforesaid discussions and the factual position, this Court is of the opinion that the present challenge does not have any merit and accordingly, the writ petition stands dismissed. However, as agreed to by the learned Standing Counsel, the petitioner would be at liberty to produce authentic documents as proof of payment of forest royalty to make any claim for release of the forest royalty which has been deducted from the bills of the petitioner.

12. Since the communication dated 31.08.2002 by which request for payment of forest royalty was made is of the year 2022, in the interest of justice, a further period of 45 days is granted to the petitioner to make such claim and if the same is done within the aforesaid period, the same is to be duly considered by the respondent

authorities in accordance with law.

JUDGE

Comparing Assistant