GAHC010120222023

2026:GAU-AS:9437

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

Case No. : WP(C)/3206/2023

SIMPLEX INFRASTRUCTURES LTD
HAVING ITS REGISTERED OFFICE AT SIMPLEX HOUSE 27 SHAKESPEARE SARANI KOLKATA PIN 700017 STATE WEST BENGAL AND REP. BY MR. ARINDOM CHOWDHURY SENIOR MANAGER ADMINISTRATIO

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM FOREST AND ENVIRONMENT DEPTT. DISPUR GUWAHATI 6

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF FOREST FORCE
ARANYA BHAWAN PANJABARI GUWAHATI 781037 ASSAM

3:THE DIVISIONAL FOREST OFFICER NAGAON DIVISION
NAGAON
ASSAM

4:THE ASSISTANT CONSERVATOR OF FOREST HEAD QUARTER
ASSAM

5:THE NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD.
3RD FLOOR PTI BUILDING 4 PARLIAMENT STREET NEW DELHI 110001 AND REP. HEREIN BY ITS MANAGING DIRECTOR

6:THE DEPUTY GENERAL MANAGER (PROJECTS)
NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD PMU TEZPUR SARAF TOWER 1ST FLOOR OPPOSITE DON BOSCO SCHOOL MAZGAON TEZPUR 784001 DIST. SONITPUR ASSA

Advocate for the Petitioner : DR. ASHOK SARAF, MS. S. TODI,MR G N SAHEWALLA,MR M SAHEWALLA,MS G DUGAR,MR. S CHETIA,MR P BARUAH,MR. N N DUTTA,MR S J

SAIKIA,MR P K BORA,MR. G. DUTTATRAY,B SARMA

Advocate for the Respondent : SC, FOREST,

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

Date on which judgment is reserved	**:**	**09.06.2026**
Date of pronouncement of judgment	**:**	**01.07.2026**
Whether the pronouncement is of the Operative part of the judgment	**:**	**N/A**
Whether the full judgment has been Pronounced	**:**	**Yes**

Judgment & Order (CAV)

Heard Mr. G. N. Sahewalla, learned Senior Counsel assisted by Mr. H. K. Sarma, learned counsel for the petitioner. Also heard Mr. D. Gogoi, learned Standing Counsel, Forest Department; Mr. C. Baruah, learned Standing Counsel, NHIDCL and Mr. U. Das, learned Senior Government Advocate for the State respondents.

2. By filing the present writ petition, the petitioner has assailed the communication dated 09.03.2023 issued by the Divisional Forest Officer, Nagaon Division, whereby a demand of Rs. 1,45,84,055/- (Rupees One Crore Forty-Five

Lakh Eighty-Four Thousand and Fifty-Five only) was raised towards forest royalty, price of minor minerals, GST, income tax and penalty in respect of earth, used in execution of the EPC contract awarded on 16.01.2017 for the work "Four Laning of NH-37 from Rangagara to Kaliabor Tiniali in the district of Nagaon", as well as the subsequent communications dated 17.03.2023 and 22.03.2023 reiterating the demand for payment.

3. The petitioner is a company registered under the Companies Act, 2013 having its registered office at "Simplex House", 27, Shakespeare Sarani, Kolkata–700017 in the State of West Bengal, engaged in large-scale infrastructure development works across the country, including execution of national highway projects and is a reputed engineering and construction company having long experience in execution of Engineering, Procurement and Construction (EPC) contracts of similar nature.

4. The case projected by the petitioner is that after emerging successful in the tender process, the petitioner was awarded the contract for construction of "Four Laning of NH-37 from Rangagara to Kaliabor Tiniali in Nagaon District under SARDP-NE, Phase-A on EPC basis" by the National Highways and Infrastructure Development Corporation Limited (NHIDCL) vide Letter of Award dated 16.01.2017. Pursuant thereto, a formal Contract Agreement was executed on 23.01.2017 and the petitioner commenced execution of the work.

5. According to the petitioner, large quantities of earth materials, sand, boulders and stone aggregates were required for execution of the work. Such materials, being minor minerals within the meaning of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "the Act of 1957") and the Assam Minor Mineral Concession Rules, 2013 (hereinafter

referred to as "the Rules of 2013"), were procured after obtaining requisite permissions and upon payment of royalty wherever applicable.

6. In exercise of powers under Sections 15(1) and 23(C) of the Act of 1957, the State Government framed the Rules of 2013, wherein Rule 5 governs quarrying operations by Government departments, agencies and contractors. The petitioner contends that in terms of the aforesaid Rules, requisite permits were obtained from the competent authority upon advance deposit of royalty for procurement of minor minerals. It is the specific case of the petitioner that, apart from materials procured from external sources, a quantity of 1,08,482.04 CuM of earth was excavated from within the project site itself, including side drains, foundations, embankments, service roads, bridges and other portions falling within the Right of Way handed over by NHIDCL. According to the petitioner, such excavated earth was reused within the same project site and, therefore, no royalty was payable thereon.

7. The petitioner submits that by communication dated 06.01.2023, the Deputy General Manager (Projects), NHIDCL forwarded a communication dated 05.01.2023 issued by the Divisional Forest Officer calling upon the petitioner to furnish particulars regarding quantity of forest produce utilized and royalty paid thereon. Subsequently, another communication dated 27.01.2023 was issued seeking further details. Pursuant thereto, the petitioner submitted a detailed reply dated 04.02.2023 furnishing particulars of forest produce utilized in the project and royalty paid thereon. According to the petitioner, out of the total quantity of 2,54,749.57 CuM of earth utilized, royalty had been paid in respect of 1,46,267.17 CuM procured from outside sources, whereas 1,08,482.04 CuM had been excavated and reused within the project site itself. The petitioner also

claimed to have paid royalty on the entire quantity of boulders and stone aggregates utilized in the project.

8. The representation dated 04.02.2023 submitted before respondent No. 6 was forwarded to respondent No. 3 for appropriate consideration. It is contended that, however, respondent No. 3, without examining the explanation furnished, proceeded to initiate a spot enquiry regarding the availability of earth at the project site and, vide communication dated 21.02.2023, informed respondent No. 5 that the Assistant Conservator of Forest (Headquarter) along with the Range Forest Officer would conduct a field inspection on 27.02.2023. The petitioner was not informed of the said exercise and came to know of it only on 01.03.2023 when a copy of the communication was handed over during the visit of the forest officials. It is stated that the petitioner was neither associated with the spot enquiry nor were the excavation locations taken into consideration and that the assessment was carried out on the basis of mere visual estimation, without proper verification or consultation, rendering the same unreliable.

9. Thereafter, respondent No. 3, on the basis of the survey report submitted by respondent No. 4, issued communication dated 09.03.2023 assessing the quantity of earth excavated from the project site at 28,200 CuM as against the petitioner's claim of 1,08,482.04 CuM, and treating the balance 80,282.04 CuM as procured from external sources. On that basis, a demand of Rs. 1,45,84,055/- towards forest royalty and price of earth materials was raised and respondent No. 6 was requested to direct the petitioner to deposit the said amount within seven days. It is stated that even while so assessing, the respondent No. 3 failed to properly account for the quantity assessed from the

project site and proceeded to levy royalty on the entire quantity claimed, apart from determining the price of earth materials without assigning reasons. The petitioner was also called upon to furnish details of permits and transit challans in respect of 1,46,267.17 CuM allegedly procured from outside sources and though the communication was addressed to respondent No. 6, a copy was forwarded to the petitioner for compliance.

10. Aggrieved thereby, the petitioner submitted a detailed representation dated 14.03.2023 before respondent No. 3 disputing the assessment and demand raised. It was contended that though the exercise was described as a joint survey, it was in fact conducted unilaterally by respondent No. 4 without obtaining signatures of all persons present at site. It was further stated that substantial quantities of excavated earth from cutting of MCW, service roads, two minor bridges and a flyover were not taken into consideration and that the earth constituted cut-and-fill material reused within the same project area, for which no royalty was leviable. Reliance was placed on the decision of the Hon'ble Supreme Court in **Promoters & Builders Association of Pune vs. State of Maharashtra, (Civil Appeal No. 10717 of 2014)**, reported in **(2015) 12 SCC 736**. A detailed calculation sheet was also furnished indicating that the total excavated earth worked out to 1,06,363 CuM based on original survey levels and sub-grade top levels. A similar representation dated 13.03.2023 was submitted before respondent No. 6 seeking a holistic consideration of the matter.

11. According to the petitioner, despite the detailed objections raised, respondent No. 3 did not consider the same and by communication dated 17.03.2023, reiterated the demand and called upon respondent No. 6 to ensure

payment of the royalty amount by 23.03.2023. The said communication was forwarded by respondent No. 6 to the petitioner on 18.03.2023 for compliance. By a separate communication of the same date, respondent No. 6 also informed respondent No. 3 that recovery-related notices ought to be served directly upon the petitioner and that the Forest Department was at liberty to take recourse to such remedies as available in law for recovery of any amount found due.

12. The respondent No. 3 thereafter issued another communication dated 22.03.2023 reiterating the demand of Rs. 1,45,84,055/- towards forest royalty and price of earth materials in respect of the quantity of earth stated to have been excavated and utilized within the same project site. According to the petitioner, none of the objections raised in the earlier representations were considered. In the said communication, respondent No. 3 reiterated that in terms of Rule 4(III)(2) of the Rules of 2013, royalty was payable on the entire quantity of earth materials as the same had been utilized for commercial purposes. Accordingly, the petitioner was directed to deposit the said amount and to furnish challans evidencing payment of royalty in respect of the balance quantity of earth materials allegedly procured from external sources.

13. Finding no alternative against what was perceived to be arbitrary and repeated demands raised by respondent No. 3, including in respect of earth excavated and reused within the same project site, a communication dated 05.05.2023 was addressed to respondent No. 6 seeking intervention for resolution of the issue. It was requested that the matter be examined by obtaining a fair and reasonable opinion from the Authority's Engineer, particularly with regard to the interpretation of the judgment of the Hon'ble Supreme Court in **Promoters & Builders Association of Pune (supra),** and

other connected technical aspects involved.

14. The petitioner submits that while awaiting resolution of the dispute through respondent No. 6, Forest Guards were deployed at the project site during the first week of May, 2023 by respondent No. 3, resulting in stoppage of work. It is stated that no written order was served, but the officials informed that the work would not be allowed to continue unless the amounts demanded under communications dated 09.03.2023 and 22.03.2023 were paid. Consequently, construction activities remained suspended thereafter.

15. The petitioner further submits that it approached respondent No. 3 seeking permission to resume construction activities in view of the time-bound nature of the project scheduled for completion by June, 2023. It was reiterated that no forest royalty was payable in respect of earth excavated and reused within the same project site, rendering the demand untenable in law. However, respondent No. 3 insisted that the work would not be permitted to continue unless the demanded amount was paid or an undertaking was furnished for payment within one month. In these circumstances, the petitioner, by communication dated 17.05.2023, furnished an undertaking stating that whatever royalty was legally payable would be paid within one month and sought permission to resume work.

16. The petitioner states that upon receipt of the communication dated 17.05.2023, respondent No. 3, by order dated 19.05.2023, permitted continuation of construction activities but recorded adverse observations, including that the petitioner had admitted non-payment of royalty. According to the petitioner, the said observation is misconceived, as the undertaking dated 17.05.2023 merely stated that whatever royalty was legally payable would be

paid and did not amount to an admission of liability in respect of the disputed demand.

17. Being aggrieved by the communications dated 09.03.2023, 17.03.2023 and 22.03.2023 issued by respondent No. 3, as well as the alleged action of the respondent authorities in restraining the petitioner from carrying out construction activities, the petitioner has approached this Court by filing the present writ petition, seeking appropriate reliefs.

18. Mr. G. N. Sahewalla, learned Senior Counsel for the petitioner submits that the petitioner was awarded the Letter of Award dated 16.01.2017 in respect of the EPC project for Four Laning of NH-37 from Rangagara to Kaliabor Tiniali in Nagaon District. It is submitted that though the project was awarded in the year 2017, the formal Contract Agreement came to be executed only on 19.01.2023, and the petitioner proceeded with execution of the work in terms of the contractual arrangement and the Right of Way handed over by the respondent authorities.

19. Learned Senior Counsel submits that in the course of execution of the project, the petitioner was called upon by the respondent No. 6 vide communication dated 06.01.2023 to furnish details of forest produce utilized and royalty paid thereon pursuant to a communication issued by the respondent No. 3 dated 05.01.2023. It is submitted that in compliance thereof, the petitioner submitted a detailed reply on 04.02.2023 furnishing complete particulars of the quantity of earth, sand and boulders utilized in the project and the royalty paid wherever applicable.

20. It is submitted that thereafter, respondent No. 3 initiated a unilateral

exercise and issued communication dated 21.02.2023 proposing a field inspection to be carried out on 27.02.2023. Learned Senior Counsel submits that pursuant to such inspection, without associating the petitioner and without conducting any scientific or joint measurement process, a report was prepared leading to issuance of the impugned communication dated 09.03.2023 assessing royalty liability of Rs. 1,45,84,055/-.

21. Learned Senior Counsel submits that the petitioner, upon receipt of the said communication, immediately submitted a detailed reply dated 14.03.2023 disputing the assessment. It is submitted that the petitioner pointed out that the so-called joint survey had in fact been conducted unilaterally without proper participation of the petitioner and that substantial quantities of excavated earth obtained from the cutting of the main carriageway, service roads, two minor bridges and the flyover had not been taken into account.

22. Learned Senior Counsel submits that the entire foundation of the impugned demand is legally unsustainable, inasmuch as 1,08,482.04 CuM of earth materials were excavated from within the same site forming part of the Right of Way, where forest royalty is not applicable. It is submitted that wherever procurement was made from external sources, the petitioner has duly paid royalty and obtained necessary permits, and therefore no outstanding liability survives against the petitioner.

23. It is submitted that despite detailed factual and legal submissions made by the petitioner, the respondent No. 3, without dealing with the objections, proceeded to reiterate the demand vide communication dated 17.03.2023 and further by communication dated 22.03.2023, directing payment of the entire assessed amount. Learned Senior Counsel submits that the said action is

contrary to the law laid down by the Hon'ble Supreme Court as well as the settled principles governing levy of royalty on excavated earth.

24. Learned Senior Counsel submits that the issue involved in the present case is no longer *res integra*, inasmuch as it has been settled by the Hon'ble Supreme Court that soil excavated and reutilized at the same site cannot be subjected to levy of royalty. It is submitted that despite the binding nature of the said legal position, the respondent No. 3 has sought to distinguish and dilute the same by adopting a narrow and erroneous interpretation, thereby acting in excess of jurisdiction.

25. In support of his submissions, learned Senior Counsel places reliance on the decision in **State of Assam vs. Muslim Ali,** reported in **(2013) 2 GLR 505**, to contend that in the absence of any specific contractual clause authorising deduction of royalty, the State authorities cannot unilaterally recover or adjust forest royalty from the bills or security deposits of a contractor and that such action cannot be based on presumption or surmises without statutory support or prior opportunity of hearing, as any such deduction may amount to impermissible double recovery. Reliance is also placed on **Dipayan Paul and Chanchal Paul JV vs. State of Assam,** reported in **2020 (4) GLR 284**, to submit that royalty cannot be imposed or deducted in a mechanical manner and must be supported by clear statutory authority and adherence to principles of natural justice.

26. Further reliance is placed on, **TATA Projects Ltd. vs. State of Maharashtra,** reported in **2018 (1) AIR Bom R 238**, wherein following the ratio laid down by the Hon'ble Supreme Court in **Promoters & Builders Association of Pune (supra)**, the Hon'ble Bombay High Court held that a

blanket determination of liability merely because ordinary earth was dug up would not be justified and that, unless there is a clear finding that the excavated earth was used and/or utilized for any commercial purpose or that the earth so extracted was not used and utilized on the very same plot of land, there is no question of imposing any royalty. Learned Senior Counsel submits that the legal position is well settled that the levy of royalty would depend upon the use or purpose for which the excavated earth had been put.

27. Learned Senior Counsel submits that in the present case, earth has been excavated from cutting of the main carriageway, service roads, two minor bridges and flyover, and the same has been utilized within the same Right of Way for leveling and construction purposes. It is submitted that as per Clause 8.1 read with Schedule A and Clause 28.1 of the Contract Agreement, the entire stretch constitutes the "Site" and therefore any utilization of excavated material within the same alignment amounts to internal reuse within the same site and cannot be treated as procurement from external sources.

28. Learned Senior Counsel submits that Rule 4 of the Rules of 2013 clearly exempts certain categories of excavation and further provides that no royalty shall be charged in specified circumstances, including *bona fide* personal use and certain exempted activities. It is submitted that the respondents have erroneously proceeded on the premise that any commercial usage automatically attracts royalty, which is contrary to the scheme of the Rules.

29. Learned Senior Counsel submits that Rule 64 of the Rules of 2013 is a penal provision applicable only in cases of illegal or unauthorized mining. It is submitted that in the present case, there is no allegation or finding of illegal mining against the petitioner, and therefore invocation of any consequence akin

to Rule 64 for levy of price of mineral, penalty or confiscatory charges is wholly without jurisdiction.

30. It is further submitted that Rule 64 does not empower the authorities to impose determination of price of earth material in an arbitrary or unstructured manner. Learned Senior Counsel submits that in the present case, the respondent No. 3 has mechanically fixed rates of Rs. 45 per CuM towards royalty and Rs. 80 per CuM towards price of earth, apart from GST and income tax, without any statutory basis, reasoning or supporting notification, rendering the entire computation *ex facie* illegal.

31. Learned Senior Counsel submits that the impugned action of the respondents in restraining the petitioner from carrying out construction activities by deployment of Forest Guards is wholly without authority of law. It is submitted that the Rules of 2013 do not contemplate stoppage of ongoing construction works as a mode of recovery and the statutory scheme provides only for recovery proceedings and imposition of penalty, if any, in accordance with law.

32. It is submitted that the petitioner is executing a time-bound EPC contract under the respondent No. 5 and Clause 10.3.2 of the Contract Agreement provides for imposition of liquidated damages in case of delay. Learned Senior Counsel submits that due to the illegal restraint imposed by respondent No. 3, the petitioner's project progress has been adversely affected, exposing it to contractual liability for no fault of its own.

33. Learned Senior Counsel submits that the undertaking dated 17.05.2023 furnished by the petitioner was not an admission of liability, but was given only

under compelling circumstances created by continuous pressure and obstruction of work by the respondents and clearly stipulated that payment would be made only if legally payable under law.

34. Learned Senior Counsel submits that the impugned communications dated 09.03.2023, 17.03.2023 and 22.03.2023 are *ex facie* illegal, without jurisdiction, contrary to the statutory scheme under the Act, 1957 and the Rules, 2013 and liable to be set aside and quashed.

35. *Per contra*, Mr. D. Gogoi, learned Standing Counsel, Forest Department, submits that the impugned communications have been issued strictly in accordance with the statutory framework governing extraction, transportation and utilisation of minor minerals in the State of Assam and do not suffer from any illegality or lack of jurisdiction.

36. Learned Standing Counsel submits that upon scrutiny of the records furnished by the petitioner in respect of utilisation of earth and other minor minerals in execution of the project, it was found that the petitioner had failed to furnish valid permits, transit challans, lifting permits or royalty receipts in respect of substantial quantities of minerals allegedly utilised in the project. It is submitted that although the petitioner claimed to have paid royalty in respect of 1,46,267.17 CuM of earth procured from external sources, the requisite supporting documents were not furnished to the satisfaction of the competent authority.

37. It is submitted that in view of such discrepancies, the respondent authorities initiated an enquiry and called upon the petitioner to furnish complete particulars regarding source-wise procurement of minor minerals,

royalty payments and transportation documents. Upon examination of the records and after reconciliation of materials furnished by the petitioner as well as NHIDCL, the competent authority arrived at a determination that royalty remained payable in respect of quantities not supported by valid statutory documentation.

38. Learned Standing Counsel submits that the petitioner has erroneously sought to rely upon Section 9 of the Act of 1957 in support of its contention that liability to pay royalty rests only upon the mining lease holder. It is submitted that such reliance is wholly misconceived inasmuch as Section 14 of the Act of 1957 excludes the applicability of Sections 5 to 13 thereof in respect of minor minerals. Consequently, the provisions of Section 9 have no application to the facts of the present case and the petitioner cannot avoid its statutory liability by seeking to shift responsibility upon an alleged lease holder or supplier.

39. Learned Standing Counsel further submits that Rule 5 of the Rules of 2013 specifically governs quarrying and utilisation of minor minerals by Government Departments, agencies and contractors engaged in Government projects. It is submitted that the petitioner, being a contractor executing a Government infrastructure project, was under a statutory obligation to obtain the requisite mining permits and to pay royalty, dead rent and other statutory dues in advance in accordance with the provisions of Rule 5. It is submitted that despite such statutory obligations, the petitioner failed to produce satisfactory documentation in support of the disputed quantities of minor minerals and therefore cannot deny liability arising under the Rules of 2013.

40. Learned Standing Counsel submits that adequate opportunity was afforded to the petitioner at every stage of the proceedings and that the principles of

natural justice were fully complied with. It is submitted that by communication dated 09.03.2023, respondent No. 3 informed respondent No. 6 regarding utilisation of ordinary earth in execution of the project and assessed the quantity of earth excavated and utilised at 1,08,482.04 CuM. Respondent No. 6 was accordingly requested to direct the petitioner to deposit the royalty payable thereon within the stipulated period. It is submitted that pursuant thereto, respondent No. 6 instructed the petitioner to take necessary action and furnish its response. The petitioner thereafter submitted its explanation contending that the earth had been excavated and reused within the project site and therefore did not attract royalty liability.

41. Learned Standing Counsel submits that the said explanation was considered by the competent authority. However, finding no justification to withdraw the demand, respondent No. 3 issued further communications dated 17.03.2023 and 22.03.2023 reiterating the requirement of payment of royalty and calling upon the petitioner to comply with the statutory demand. It is submitted that the petitioner thereafter approached this Court by filing the present writ petition. Learned Standing Counsel submits that by order dated 07.06.2023, this Court directed production of relevant records and further directed that no coercive action be taken for recovery of the demanded amount subject to the condition that the petitioner would secure the demand of Rs.1,45,84,055/- by furnishing an unconditional bank guarantee for a sum of Rs.1,00,00,000/-.

42. It is further submitted that by subsequent order dated 27.06.2023, this Court modified the earlier direction and permitted the petitioner to furnish a demand draft of Rs.1,00,00,000/- for securing the demand amount. The

petitioner was also required to ensure renewal of the instrument before expiry of its validity and it was specifically observed that failure to extend such validity would entitle the Forest Department to appropriate the amount towards the outstanding demand. Learned Standing Counsel submits that despite the aforesaid directions, the petitioner furnished only a demand draft for an amount of Rs.50,00,000/- on 28.07.2023 and failed to furnish the balance amount, which was also not renewed upon expiry of its validity.

43. It is submitted that respondent No. 3 thereafter addressed a communication dated 14.02.2024 directing the petitioner to furnish the remaining demand draft amount of Rs.50,00,000/- and to renew the existing demand draft in compliance with the orders passed by this Court. However, no response was received from the petitioner. Learned Standing Counsel submits that in view of such non-compliance, respondent No. 3 caused the demand draft to be revalidated through the concerned bank on 28.03.2024 and thereafter deposited the amount of Rs.50,00,000/- into the State exchequer on 30.03.2024 towards forest royalty. It is submitted that till date the petitioner has failed to furnish the remaining amount in terms of the directions of this Court.

44. Learned Standing Counsel further submits that the impugned demand cannot be characterised as arbitrary inasmuch as the quantities utilised by the petitioner were derived from records and statements furnished by NHIDCL officials themselves. It is submitted that upon verification of the available records, those quantities which were supported by valid royalty receipts and documentary evidence were excluded from computation and only the balance quantity unsupported by satisfactory documentation was subjected to assessment and demand. It is submitted that the determination thus arrived at

was founded upon verified records, field inspection reports and contemporaneous materials.

45. Learned Standing Counsel submits that respondent No. 3 was fully competent to issue the impugned communications and determine the liability in question. It is submitted that respondent No. 3 was functioning as Divisional Forest Officer and was duly empowered under the notifications issued under the Rules of 2013. It is further submitted that powers relating to determination of non-payment of forest royalty and enforcement of provisions governing Schedule-Y minerals had been delegated by the competent authority to the Divisional Forest Officers. It is therefore submitted that the challenge raised by the petitioner with regard to jurisdiction is wholly misconceived and without any legal basis.

46. Learned Standing Counsel submits that the petitioner has approached this Court without producing satisfactory documentary evidence to establish lawful extraction and utilisation of the disputed quantities of minor minerals and seeks to avoid payment of statutory dues constituting public revenue. It is submitted that the extraordinary jurisdiction under Article 226 of the Constitution is discretionary in nature and cannot be invoked to defeat recovery of lawful statutory dues in the absence of any manifest illegality, arbitrariness or lack of jurisdiction in the impugned action.

47. Learned Standing Counsel finally submits that the power to recover royalty, determine the price of minerals and impose penalty is specifically traceable to Rule 64 of the Rules of 2013 framed under Section 23(C) of the Act of 1957. It is submitted that the action taken by the respondent authorities is fully supported by the statutory scheme governing minor minerals in the State and

therefore the writ petition, being devoid of merit, deserves to be dismissed.Top of Form

48. Mr. C. Baruah, learned Standing Counsel for NHIDCL, submits that under the EPC Contract Agreement dated 23.01.2017, the obligation to obtain all Applicable Permits and to comply with Applicable Laws in respect of procurement, transportation and utilisation of earth, sand, boulders and other minor minerals rests exclusively upon the petitioner-contractor. It is submitted that NHIDCL, being the project implementing authority, has no primary statutory obligation in respect of payment of royalty or other dues arising from utilisation of minor minerals.

49. It is further submitted that Article 3 Clause 3.1.7 of the EPC Contract Agreement specifically mandates that the Contractor shall, at its own cost and expense, make necessary applications to the concerned Government instrumentalities for obtaining Applicable Permits and ensure compliance with all Applicable Laws. Schedule–F to the Agreement clearly stipulates that permissions relating to extraction of boulders from quarries and borrow earth from competent authorities are to be obtained by the Contractor. Therefore, procurement and lawful utilisation of construction materials is squarely the responsibility of the Contractor.

50. Learned Standing Counsel submits that Article 25 Clause 25.2.1 of the EPC Contract Agreement contains an indemnity clause, whereby the Contractor is required to fully indemnify and hold harmless NHIDCL and its officers against any loss, damage or liability arising out of failure of the Contractor to comply with Applicable Laws and Applicable Permits. It is therefore submitted that NHIDCL is contractually indemnified against any consequences arising out of

disputes relating to royalty or utilisation of minor minerals.

51. It is submitted that Article 19 Clause 19.1.2 of the EPC Contract Agreement further clarifies that the Contract Price is deemed to include all duties, taxes, royalty and fees payable in accordance with law, and that nothing in the Agreement absolves the Contractor from statutory obligations. It is therefore submitted that any liability, if at all, arising in respect of forest royalty or similar statutory dues is to be borne by the Contractor alone.

52. Learned Standing Counsel submits that NHIDCL, in discharge of its coordinating role, merely facilitated communication between the petitioner and the concerned Forest Authorities. It is submitted that NHIDCL has not undertaken any adjudication with regard to the quantum or liability of forest royalty and has acted strictly on the basis of communications received from the statutory authorities and implementing agencies.

53. It is submitted that upon receipt of communications from the Forest Department raising issues regarding utilisation of minor minerals in execution of the project, NHIDCL forwarded the same to the petitioner for necessary action and clarification. It is stated that NHIDCL has consistently directed the Contractor to liaise directly with the competent Forest Authorities for resolution of all disputes relating to royalty and allied statutory dues.

54. Learned Standing Counsel submits that NHIDCL has also written to the concerned authorities seeking clarification and resolution of issues relating to forest royalty in order to ensure smooth execution and closure of the project. It is submitted that such communications were issued only in a coordinating capacity and cannot be construed as acceptance of liability on behalf of

NHIDCL.

55. I have considered the submissions advanced by the learned counsel for the parties and have also perused the materials available on record.

56. The present writ petition arises out of an EPC contract awarded to the petitioner for execution of the project "Four Laning of NH-37 from Rangagara to Kaliabor Tiniali in Nagaon District". The dispute centres around a series of demand and recovery communications issued by the respondent Forest authorities whereby liability has been assessed towards alleged non-payment of forest royalty and other consequential statutory dues in respect of minor minerals, namely earth, sand, boulders and aggregates used in execution of the project. The initial demand vide communication dated 09.03.2023 assessed an amount of Rs. 1,45,84,055/-, which was thereafter reiterated vide communications dated 17.03.2023 and 22.03.2023.

57. The petitioner's case, in substance, is that there has been no illegal or unauthorised extraction of minor minerals. It is stated that the materials used in execution of the project were either procured from authorised sources upon payment of royalty under valid permits or excavated within the project Right of Way and re-utilised within the same alignment for construction purposes. It is therefore contended that levy of royalty on such internally excavated and re-used earth is impermissible in law and contrary to the statutory scheme.

58. The stand of the respondents, on the other hand, is that upon a detailed process of enquiry, verification of records furnished by NHIDCL and the petitioner and field inspection conducted by the Forest authorities, it was found that valid permits, transit challans and royalty receipts were available only in

respect of part quantities, whereas substantial quantities of minor minerals utilised in the project remained unsupported by valid statutory documentation. On that basis, it is asserted that such quantities fall within the ambit of unauthorised extraction attracting liability under the Rules of 2013.

59. In view of the rival submissions, the principal question which arises for consideration is whether the impugned communications dated 09.03.2023, 17.03.2023 and 22.03.2023 suffer from any illegality, arbitrariness or want of jurisdiction so as to warrant interference under Article 226 of the Constitution of India.

60. In order to appreciate the rival submissions, it would be apposite to refer to the statutory framework governing the field. Section 14 of the Act of 1957 excludes the application of Sections 5 to 13 thereof in respect of minor minerals and Section 15 empowers the State Government to frame rules regulating the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and matters connected therewith. Section 15(3) of the said Act further provides that the holder of a mining lease or any other mineral concession granted under the rules framed under Section 15(1) shall pay royalty or dead rent, whichever is higher, in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee, at the rate prescribed under the rules framed by the State Government.

61. The relevant provisions of the Rules of 2013 are extracted hereinbelow:

> "*5. Quarrying of minor minerals by Government Departments/ Agencies/ Contractors engaged by Government Departments or Agencies*
>
> *(1) An application for the grant of mining permit for quarrying of any minor mineral by the notified Departments of State or Central Government or any of their agencies for any work/project, shall be made by an officer authorised by the concerned*

Department to the competent authority.

(2) The contractors engaged for the works/projects of the Government Departments/Agencies shall be granted mining permit for the required quantity as specified in the detailed project report for execution of the works/projects on making an application under sub-rule (1) above.

(3) The Department or the agency or the contractor granted a permit under sub-rule (1) above, shall be liable to pay royalty/ dead rent/ fee etc. in advance as notified by the Government and shall abide by the terms and conditions of such grant and other laws as applicable to the lessee or any other concession holder(s) unless specifically relaxed."

"*63. Illegal or unauthorised Mining-*

Any person undertaking any mining operations without a valid mineral concession granted under the Act and the rules framed thereunder in any area shall be deemed to be indulging in illegal or unauthorised mining and shall be dealt in accordance with the provisions contained in this chapter."

"*64. Consequence of illegal or unauthorised mining:-*

(i). For a first time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorised operation, which may be released only upon realization of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than Ten Thousand rupees;

(ii). For a second time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorised operation for a minimum period of seven days, which may be released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than fifteen thousand rupees;

(iii) Whenever a person is found to be indulging in such offences for the third time or more, the officer concerned shall register an FIR and handover all such tools, equipment, vehicles or any other things used for such unauthorised operation to the Police. Any such offence shall entail (a) confiscation of all such tools, equipment, vehicles or any other thing used for such unauthorised operation for a period of minimum thirty days or more and (b) pecuniary penalty and punishment for the offence as provided under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957."

"*65. Offences by companies.*

(1) If the person committing an offence under these rules is a company registered under the Companies Act, every person, who at the time when the offence was committed, was in-charge and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-rule shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission ofsuch offence.

(2) Where an offence under these rules has been committed with the consent or connivance of any director, manager, secretary or other authorised representative of the company, such director, manager, secretary other authorised representative shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

62. A combined reading of Section 15 of the Act of 1957 and the Rules of 2013 leaves no manner of doubt that the State Government has been entrusted with the power to regulate extraction and utilisation of minor minerals and to prescribe the conditions subject to which such activities may be undertaken. Rule 5 of the Rules of 2013 specifically governs procurement of minor minerals for Government projects and contemplates grant of mining permits to contractors for the quantities specified in the Detailed Project Report, coupled with payment of royalty and other statutory dues.

63. Sub-rule (3) of Rule 5 of the Assam Minor Mineral Concession Rules, 2013 was substituted by Rule 2 of the Assam Minor Mineral Concession (Amendment) Rules, 2021, vide Notification No. PEM.130/2021/40 dated 07.10.2021, published in the Assam Gazette (Extraordinary) on 11.10.2021, with effect from 11.10.2021.

64. Rules 63 and 64, on the other hand, deal with cases of illegal or unauthorised mining. While Rule 63 defines illegal or unauthorised mining as

mining operations undertaken without a valid mineral concession granted under the Act and the Rules framed thereunder, Rule 64 prescribes the consequences flowing from such unauthorised extraction, including recovery of the price of minerals, applicable royalty and imposition of penalties. Thus, the statutory scheme itself draws a distinction between extraction undertaken pursuant to valid permits and extraction carried out without any lawful authority. Consequently, the existence or otherwise of valid permits and statutory authorisations assumes significance for determining whether the extraction in question falls within the ambit of Rule 63 and consequently attracts the consequences contemplated under Rule 64.

65. From the materials on record, it is seen that prior to issuance of the impugned communication dated 09.03.2023, the respondent authorities, through NHIDCL, had called upon the petitioner to furnish complete details regarding utilisation of earth and payment of royalty, to which the petitioner submitted its reply dated 04.02.2023, followed by further clarifications being sought. Thereafter, by communication dated 21.02.2023, the petitioner was specifically informed of the proposed inspection by forest officials and the inspection was accordingly carried out by the competent forest officials in the presence of available project representatives, followed by verification of records furnished by both NHIDCL and the petitioner. Thus, the petitioner was clearly put to notice not only with regard to scrutiny of records but also with regard to physical verification of the project site and the assessment of excavated and utilised earth was therefore not based on any unilateral assertion but on a combined exercise of field inspection and documentary verification, culminating in issuance of the communication dated 09.03.2023 determining the alleged liability.

66. It is further seen that upon receipt of the said communication, the petitioner submitted a detailed objection dated 14.03.2023 disputing the assessment and asserting that a substantial quantity of earth had been excavated within the Right of Way and re-utilised within the project alignment. The competent authority considered the said objection; however, the same was not found acceptable due to inconsistencies in the supporting records and lack of proper reconciliation of the relevant quantities with the available project documentation. The subsequent communications dated 17.03.2023 and 22.03.2023 were thus issued reiterating the earlier determination.

67. The contention of the petitioner that no royalty is payable for earth excavated and re-used within the same site cannot be accepted as a blanket proposition in the facts of the present case. The applicability of the said principle depends upon proper verification of source-wise excavation and utilisation, supported by contemporaneous measurement records and engineering data. In the present case, the respondents have recorded that the claim of internal utilisation is not fully substantiated by documentary evidence in respect of the entire quantity.

68. It is well settled that in large infrastructure projects involving cutting, filling, embankment and multiple structures, determination of earthwork quantity is a technical exercise which has to be based on verified records. Where such records are found insufficient or inconsistent, the competent authority is entitled to proceed on the basis of field inspection and available material for the purpose of determining royalty liability.

69. The statutory scheme under the Act of 1957 read with the Rules of 2013 clearly empowers the State authorities to regulate extraction and utilisation of

minor minerals and to ensure payment of royalty in accordance with law. Rule 5 specifically casts obligation upon contractors executing Government projects to obtain necessary permits and comply with royalty requirements. In the present case, the respondents, upon scrutiny, found that the petitioner had failed to produce complete documentation in respect of substantial quantity of earth and accordingly proceeded to determine liability under the statutory framework.

70. The invocation of Rule 63 and Rule 64 of the Rules of 2013 also cannot be said to be without jurisdiction. The authority has proceeded on the basis of non-substantiation of lawful procurement and utilisation of mineral quantities. Once such satisfaction is recorded on the basis of inspection and record verification, the statutory consequences under Rule 64 are attracted. Whether the petitioner is able to disprove such finding is a matter of factual adjudication, but the exercise of power cannot be faulted at the threshold.

71. The contention that no specific finding of "illegal mining" has been recorded does not detract from the statutory power exercised, inasmuch as Rule 63 does not require any particular form of declaration but is attracted once extraction is found to be without valid concession. Whether such conclusion is correct or not is a matter for factual adjudication, but the initiation of action cannot be faulted on the ground of lack of jurisdiction.

72. The submission that principles of natural justice have been violated is also not acceptable in view of the fact that the petitioner was given notice prior to inspection, was called upon to furnish details, was permitted to submit its reply and such reply was duly considered before reiteration of demand. Therefore, it cannot be said that the petitioner was not afforded reasonable opportunity at any stage of the proceedings.

73. The contention of the petitioner that earth excavated within the Right of Way and re-used within the same project alignment is not eligible to royalty raises disputed questions of fact relating to source-wise utilisation, cut-and-fill calculations, and accounting of earthwork in a large infrastructure project involving multiple components and activities. On the other hand, the respondents have recorded a categorical finding based on inspection and record verification that the claimed internal utilisation is not fully substantiated by contemporaneous records and that substantial quantities remain unaccounted for in terms of statutory documentation.

74. Such disputed factual issues cannot be effectively adjudicated in exercise of jurisdiction under Article 226 of the Constitution of India, which is primarily concerned with the decision-making process and not with re-appreciation of technical data, measurement records, or substitution of factual conclusions arrived at by the competent authority.

75. Insofar as the contractual framework is concerned, the EPC Agreement dated 23.01.2017, clearly casts the obligation upon the contractor to obtain all applicable permits, comply with statutory requirements and bear all taxes, royalties and statutory dues arising out of execution of the project. The indemnity clause further protects NHIDCL from any liability arising out of non-compliance by the contractor. In such circumstances, the act of NHIDCL in withholding payments pursuant to communications from the Forest authorities cannot be said to be arbitrary or dehors the contract, as it is only acting in a protective capacity pending determination of statutory dues.

76. Now coming to the case laws cited by the petitioner, the reliance placed on **Md. Muslim Ali (supra)** and **Dipayan Paul (supra)**, is misplaced, as those

decisions were rendered in a context where the State had effected recovery of royalty without a clear statutory determination and without proper contractual authority or prior adjudication. The Court therein interfered primarily on the ground that unilateral deductions from bills, based on presumptions and without due process, were impermissible. In the present case, however, the impugned action is founded on a structured statutory exercise under the Rules of 2013, involving notice, verification, inspection and assessment under Rules 63 and 64.

77. Similarly, in the case of **Promoters & Builders Association of Pune (supra),** while the Hon'ble Supreme Court held that a blanket determination of liability merely because ordinary earth was dug up would not be justified and that the liability to royalty would depend upon the use or purpose for which the excavated earth had been put, it was also emphasized that what is required is a precise determination of the end-use of the excavated earth. Likewise, in **TATA Projects Ltd. (supra)**, following the aforesaid ratio, the Hon'ble Bombay High Court observed that unless there is a clear finding that the excavated earth was used and/or utilized for any commercial purpose or that the earth so extracted was not used and utilized on the very same plot of land, there is no question of imposing any royalty.

78. Thus, all the decisions relied upon by the petitioner relating to levy of royalty on excavated earth are distinguishable, as those decisions were rendered in contexts where the factual foundation regarding source-wise utilisation was not in dispute or where no detailed statutory enquiry had been undertaken. In the present case, the impugned action is founded on a structured process of enquiry involving notices, submission of records, field inspection and subsequent verification and assessment.

79. In view of what has been discussed hereinabove and in view of statutory scheme governing the field, the nature of enquiry undertaken and the opportunities afforded to the petitioner at various stages, this Court is of the considered opinion that the impugned communications dated 09.03.2023, 17.03.2023 and 22.03.2023 do not suffer from any illegality, arbitrariness or want of jurisdiction as would warrant interference in exercise of writ jurisdiction under Article 226 of the Constitution of India.

80. Accordingly, the writ petition is dismissed.

81. However, it is clarified that the dismissal of this writ petition shall not preclude the petitioner from availing such remedies as may be available in law before the appropriate forum for adjudication of disputed factual issues relating to quantification of liability, if so advised.

82. There shall be no order as to costs.

JUDGE

Comparing Assistant