

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

**W.P.A. 6296 of 2020
With
CAN 1/2020**

Jagannath Hansda

Vs.

The State of West Bengal & Ors.

For the Petitioner: Mr. Milan Bhattacharya
Mrs. Sulagna Bhattacharya

For the State: Mr. Sirsanya Bandyopadhyay
Mr. Arka Kumar Nag

Hearing concluded on: 10.12.2021

Date: 22.12.2021

SUVRA GHOSH, J. :-

1. Under challenge in the present writ petition is an order passed by the Additional District Magistrate and District Land and Land Reforms Officer, Birbhum, passed on 12th February 2021, rejecting the petitioner's application for grant of short term mining licence (hereinafter referred to as STML). The contention of the petitioner, in a nutshell, is that the petitioner who belongs to the Schedule Tribe, was granted long term mining lease (here inafter referred to as LTML) in respect of plot no. 554, Mouza Dhanyagram II in 2011 which expired in 2014. Thereafter, sand quarry permit was granted to the petitioner for a period of 40 days from

10th February 2014 to 21st March 2014 and royalty was accordingly paid. Further permit was granted in favour of the petitioner from 17.06.2014 to 16.07.2014. It was reported by the Revenue Inspector that there was plenty of sand in plot no. 554 and good road connectivity to the proposed site.

2. The West Bengal Minor Minerals Concession Rules 2016 came into force from 29th July 2016 and the petitioner applied before the authority for short term mining licence on 10th May 2018 subject to payment of the usual royalty of Rs. 3000/- and the said amount was deposited by the petitioner by challan. In rejecting the application of the petitioner, the petitioner was advised to take part in the e-auction with regard to long term mining lease in terms of the Rules of 2016. The authority, that is, the ADM and DL & LRO, vide Memo dated 24th May 2018, placed reliance on a judgment dated 27th February 2012 of the Hon'ble Supreme Court in the matter of Deepak Kumar etc. versus the State of Haryana and others and opined that lease of minor minerals, which includes extraction of sand, as well as renewal of such lease qua area of 5 hectares and below could be granted only after getting environmental clearance from the Ministry of Environment and Forests. Such lease was recommended to be granted for a period of minimum 5 years. The petitioner submits that his plot was not included in the e-auction floated by the authority and all the leases pursuant to e-auction were granted in exclusion of plot no. 554.
3. The petitioner filed a writ petition being WP no. 18410 (W) of 2018 against the action of the State respondents, particularly rejection of his claim for

STML and by an order dated 19th December 2018 a Co-ordinate Bench of this Court disposed of the writ petition with the following direction: -

“Accordingly, the respondent No. 4/the ADM and DL & LRO is directed to revisit the recommendation of the RI/the respondent No. 7 dated 27th January, 2014 on an in situ basis and take a just decision which would be then communicated to the petitioner.

Needless to iterate the petitioner and any other person and persons, who are required to be heard, shall be so heard and both officers on the ground as well as records on the ground situation shall be considered by the Respondent No. 4/the ADM and DL & LRO.

Needless to further iterate that in the event a positive decision is taken in favour of the petitioner, the petitioner shall comply with the formalities requiring compliance.

Needless to also reiterate that the respondent No. 4/the ADM and DL & LRO shall be entitled to take a decision purely on merits.

In view of the foregoing discussion and directions, the order impugned dated 24th May, 2018 stands permanently stayed.”

4. No appeal was preferred by the authorities against the said order. In terms of the said order of the Co-ordinate Bench, the petitioner’s prayer for grant of STML was reconsidered and the petitioner’s prayer was rejected by the order impugned in view of rule 43 (1) of the West Bengal Minor Minerals Concession Rules, 2016.

5. The petitioner has taken the Court to Rule 43(1) of the 2016 Rules which says that short term mining licence can be issued on pre-payment of royalty “under exceptional circumstances arising due to (a) judicial intervention, (b) non-availability of continuous stretch of the minimum area specified in these rules due to hydro-geological condition of the rivers, (c) unsuitability of any stretch for sustaining the period specified in these rules owing to possible change of river flow pattern, and (d) any other reason to be stated in writing.” According to the petitioner, he is entitled to grant of STML for a period not exceeding 90 days in terms of Rule 48. The impugned order violates the direction of this Court in the earlier writ petition and therefore judicial intervention was not heeded to by the authority in passing the impugned order. Though the petitioner was advised to participate in the e-auction for LTML, he does not have the financial capacity to participate in the competitive bidding.
6. The petitioner has prayed for setting aside the impugned order dated 12th February 2020 and allowing the petitioner to quarry sand in the plot in question for a period of 90 days by virtue of STML to be granted by the Authority in his favour.
7. Learned counsel for the petitioner has placed reliance on authorities in The Divisional Personnel Officer, Southern Railway and Another reported in (1976) 3 Supreme Court Cases 190 and The Barium Chemicals Ltd and Another versus SH. A.J. Rana and Others reported in (1972) 1 Supreme Court Cases 240 and has submitted that the prayer of the

petitioner ought to have been duly considered by the authority before dismissing the same.

8. Learned counsel has also placed reliance on the authority in *Whirlpool Corporation versus Registrar of Trade Marks, Mumbai and Others* reported in (1998) 8 Supreme Court Cases 1 for the proposition that the High Court, under article 226 of the Constitution, can deal with matters even where alternative efficacious remedy is available when the writ petition has been filed for enforcement of any fundamental right, where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.
9. In opposing the prayer of the petitioner, the respondents submit that the events which occurred after disposal of the earlier writ petition and after the 2016 Rules came into force are only relevant for the purpose of the present writ petition. Referring to the order of the Co-ordinate Bench, Learned Counsel for the respondents submits that the authority was directed to take a decision purely on merits and the Court chose not to intervene with regard to merits. Rule 43 of the 2016 Rules clearly lays down the conditions for grant of STML. In the petition filed by the petitioner before the ADM and DL & LRO, the conditions laid down in Rule 43 were neither mentioned, nor substantiated. The authority has rightly rejected the petition of the petitioner by a reasoned order and after taking into consideration the provisions laid down under Rule 43 (1) of the 2016 Rules. It is submitted on behalf of the respondents that mere

deposit of money does not automatically entitle the petitioner to STML in his favour dehors the Rules. Due consideration was given to the petitioner's case in the order impugned and the petition being devoid of any merit, is liable to be dismissed.

10. I have heard learned counsels for the parties.

11. The facts which are not in dispute are as follows:-

The petitioner was granted long term mining lease in respect of Plot No. 554, Mouza – Dhanyagram II in 2011 which expired in 2014. Thereafter sand quarry permit were granted to the petitioner on 10th February, 2014 which continued till 21st March, 2014. Further permit was granted to the petitioner from 17th June, 2014 to 16th July, 2014.

12. The petitioner has referred to a no objection certificate granted by the executive engineer, Mayurakshi Headquarters Divisional, Seuri, Birbhum (annexure P to the writ petition) in his favour on 8th July, 2011. The said no objection certificate demonstrates that it was granted for long term mining lease (LTML) pursuant to which the LTML was granted to the petitioner in 2011. Similarly, the sand quarry permit was granted in his favour on 10th February, 2014 pursuant to the memo issued by the Revenue Inspector on 22nd January, 2014 (annexure P-7 to the writ petition). Therefore these documents dated 8th July, 2011 and 22nd

January, 2014 cannot come to the aid of the petitioner with regard to his application for STML filed before the authority on 10th May, 2018.

13. The West Bengal Minor Minerals Concession Rules, 2016 came into force on and from 29th July, 2016. The Rules speak of initiation of e-auction for grant of LTML. The petitioner's prayer is for grant of STML of riverbed occurrences which is dealt with in Rule 43(1). Rule 43(1) is set out:-

“43. Grant of Short-Term Mining Licence of riverbed occurrences.- (1) The District Authority or any authorised officer in case of riverbed occurrences, may grant short term mining licence as per guidelines to be issued by Commerce and Industries Department from time to time to extract or remove from any specified land within the limits of his jurisdiction on pre-payment royalty at the rate as specified from time to time under exceptional circumstances arising due to (a) judicial intervention, (b) non availability of continuous stretch of the minimum area specified in these rules due to hydro-geological condition of the rivers, (c) unsuitability of any stretch for sustaining the period specified in these rules owing to possible change of river flow pattern, and (d) any other reason to be stated in writing.”

14. The petitioner's prayer was rejected by the authority on 24th May, 2018 following which the petitioner filed a writ petition before this court. By an order dated 19th December, 2018 in W.P. No. 18410 (W) of 2018, a co-ordinate bench of this court directed the fourth respondent to revisit the recommendation of the Revenue Inspector dated 27th January, 2014 and take a decision on the prayer of the petitioner purely on merits after giving an opportunity of hearing to the petitioner and any other necessary person. In compliance with the said direction the petitioner's prayer was reconsidered by the fourth respondent who rejected the prayer of the petitioner by the impugned order dated 12th February, 2020.
15. The moot question for consideration is the prayer of the petitioner and rejection of the same vis-a-vis the 2016 Rules. Rule 43(1) clearly demonstrates that STML can be granted under exceptional circumstances arising due to (a) judicial intervention, (b) non availability of continuous stretch of the minimum area specified in these rules due to hydro-geological condition of the rivers; (c) unsuitability of any stretch for sustaining the period specified in these rules owing to possible change of river flow pattern, and (d) any other reason to be stated in writing. The petitioner's prayer for grant of STML was made on 10th May, 2018, i.e., after the 2016 Rules came into force. In other words, the petitioner's prayer was governed by the said Rules. The petitioner deposited an amount of Rs. 3,000/- as royalty for issuance of STML but his prayer for grant of such licence does not demonstrate any exceptional circumstance for grant of such licence as required under section 43(1) of the Rules. In

the earlier writ petition, the co-ordinate bench directed the fourth respondent to reconsider the petitioner's prayer on merits after giving an opportunity of hearing to the petitioner and other necessary persons. In compliance with the said order the fourth respondent reconsidered the petitioner's prayer and the petitioner was heard at length. It was held by the authority that as the petitioner's prayer was submitted only in 2018 and no representation of the petitioner was found to be pending when the 2016 Rules came into force, the provision of Rule 62(2) is not attracted. For the purpose of better understanding, Rules 62(2) is set out:

“62. Repeal – (2) Notwithstanding such repeal, anything done, any action taken, or any prosecution started under the said rules, shall be deemed to have been validly done or taken or started, as the case may be, under the corresponding provisions of these rules.”

16. The authority dealt with the statement of facts submitted by the petitioner at the time of hearing and granted liberty to the petitioner to submit an application for STML in form- E under Rule 44 of the said Rules in following the norms as provided under Rule 43. Therefore by the impugned order the petitioner was granted another opportunity by the authority to submit an application for STML adhering to the relevant rules.

17. The order impugned suggests that the statement of facts submitted by the petitioner was considered on merits in rejecting the prayer. Therefore the authorities in the Divisional Personnel Officer, Southern Railway and another and the Barium Chemicals Ltd. and another (supra) are of no assistance to the petitioner herein.
18. The petitioner was invited to participate in the e-auction for LTML but submits that he does not have the financial capacity for the same and is only interested in STML. But I am afraid mere inability to participate in e-auction or deposit of royalty for STML does not ipso facto entitle the petitioner to grant of STML de hors the rules.
19. Last but not the least, Rule 51 provides for an appeal against an order made by the District Authority or any officer duly authorised by the District Authority in exercise of the powers conferred upon him by these rules. No such appeal has been preferred by the petitioner against the order impugned. Placing reliance upon the judgement of the Hon'ble Supreme Court in Whirlpool Corporation versus Registrar of Trade Marks, Mumbai and others reported in (1998) 8 Supreme Court Cases 1, learned counsel for the petitioner has submitted that this court has discretion to entertain a writ petition under article 226 of the Constitution of India despite an effective and efficacious alternative remedy being available in case of three contingencies where the writ petition has been filed for the enforcement of any fundamental right or where there has been a violation of principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

20. The ratio the said judgment can be distinguished from the fact situation of the present case. None of the four conditions demonstrated in the judgment are attracted herein and as such, it can very well be held that the petitioner has failed to avail of the alternative efficacious remedy that was available under Rule 51.
21. It is trite law that in its extraordinary jurisdiction under article 226 of the Constitution of India, the court can only deal with any lapse in the decision making process and not with the decision itself. In the case in hand, the order impugned suggests due consideration of the facts placed by the petitioner as well as the law on the point and the order does not call for intervention by this court.
22. Upon consideration of the submissions made on behalf of the parties and material on record, this court is of the view that the order impugned need not be interfered with and as such, the writ petition is liable to be dismissed.
23. However, the petitioner is at liberty to make an application for STML in form-E under Rule 44 of the Rules in following the norms as provided in Rule 43 as observed in the order impugned dated 12th February, 2020. In the event such application is filed by the petitioner, the fourth respondent shall consider the same after giving reasonable opportunity of hearing to the petitioner and dispose of the same within 8 weeks from the date of submission of such application, in accordance with law.

24. Accordingly, W.P.A. 6296 of 2020 is dismissed. Connected application being C.A.N. 1 of 2020 is disposed of.
25. There shall be no order as to costs.
26. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)