

16.12.2021
Item no.25
Court No.6.
AB

M.A.T. 1306 of 2021
With
I A CAN 1 of 2021
I A CAN 2 of 2021

The State of West Bengal & Others

Vs

Sk. Sabbir Ahmed

Mr. A. Banerjee,
Md. T. M. Siddiqui,
Mr. N. Chatterjeefor the Appellants.

Ms. Santi Dasfor the Respondent.

By consent of the parties, the appeal and the applications are taken up together for hearing.

In re : CAN 1 of 2021

This is an application for condonation of delay of 65 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I A CAN 1 of 2021 is, accordingly, disposed of.

In re : M.A.T. 1306 of 2021

The writ petitioner is in the business of extracting minor minerals. For that purpose, he obtains leases from the Government. He was successful in an e-tender and a mining lease was executed in his favour by the State on August 4, 2017 upon he depositing the requisite sum of

Rs.1,30,45,198/-. The lease was valid for a period of five years.

By a memo dated November 26, 2018, the Government suspended the operation of the lease in terms of an order passed by the National Green Tribunal. The writ petitioner says that he immediately requested the Government to refund the balance amount of the money paid by him after adjusting the period during which he could carry on mining activities. However, his requests were in vain. He wrote a letter dated October 1, 2019 to the concerned Officer in the Administration for refund of the balance amount. There was no response to such letter. Hence, he had no option but to approach the learned Single Judge by filing the writ petition sometime in July, 2020.

The learned Single Judge, in effect, allowed the writ petition. The operative portion of the order of the learned Single Judge reads as follows :

“Accordingly the instant writ petition is disposed of by directing the District Magistrate and Chairman, District Committee for Competitive Bidding, Paschim Medinipur, the respondent No.3 herein to process the prayer of the petitioner for refund of the lease amount upon adjusting the period during which the petitioner successfully performed the mining operation. The said respondent shall refund the balance amount along with the statutory interest calculated from the date of suspension of the lease

agreement within a period of ten weeks from the date of communication of a copy of this order.”

The State filed an application for review of the said order of the learned Single Judge being RVW No.113 of 2020. By an order dated August 12, 2021, the review application was dismissed. The learned Judge further directed that if interest was not paid to the writ petitioner in terms of the order dated September 18, 2020, i.e. the order impugned in this appeal, within 60 days, the writ petitioner will be entitled to receive additional interest @ 2% per annum over and above the statutory interest for the unpaid dues after the expiry of 60 days.

The State had preferred an appeal against the order dismissing the review application. However, we dismissed such appeal as not maintainable in view of the provisions of the Code of Civil Procedure. Accordingly, the present appeal has been filed against the parent order dated September 18, 2020.

We have heard learned Counsel for the parties. Mr. Siddiqui, learned Advocate appearing for the Appellants/State submits, on instructions that the State was not at fault. The State was bound to suspend the operation of the lease in view of the order of the National Green Tribunal. The State tried to get the order vacated and/or modified. Such efforts did

not succeed. The State did not earn interest on the money received from the writ petitioner. Such money was not invested in any interest bearing account but is kept in the State Exchequer. Hence, the State should not be burdened with interest. In any event, no statutory interest is prescribed in any relevant Act.

Learned Advocate for the writ petitioner/respondent submits that the State knew that it could not have entered into the concerned lease agreement. The writ petitioner was misled. He has been deprived of his money for a long period. He ought to be compensated for the same.

We are not inclined to go into the question as to whether or not the State was aware that the lease agreement would be in violation of any restrictive order of a competent forum as alleged by the writ petitioner. However, the fact remains that a substantial sum of money was paid by the writ petitioner to the State as consideration for the lease of five years. After about one year, the operation of the lease stood suspended. Hence, the writ petitioner is entitled to refund of the balance amount after adjusting the period during which he could carry on mining activities under the lease. We are told that the State has already refunded the principal amount to the writ petitioner in terms of the order of the learned Single Judge. The only

question that remains is whether the State should pay some amount of interest to the writ petitioner.

We are of the view that some amount of interest should be paid to the writ petitioner. The writ petitioner was in no way responsible for suspension of the mining lease. Ideally, the State should have refunded the balance principal amount soon after suspension of the lease. The same was not done. The writ petitioner has been deprived of user of his money. The State says that it was also not at fault.

Learned Counsel relies on the principle of *actus curiae neminem gravabit* – an act of God cannot prejudice anyone. We are of the view that such principle is not applicable in the present case.

On an overall consideration of the facts and circumstances of the case, we are of the view that ends of justice will be served if the State pays interest @ 5% per annum for the period from January 1, 2020, till the date of payment. Such payment is to be made within a month from the date of communication of this order. In the event such payment is not made within the aforesaid period of one month from the date of communication of this order by the writ petitioner/respondent to the concerned Officer, the applicable interest rate from January 1, 2020 would be 8% per annum till the date of payment.

The order impugned stands modified to the above extent.

Since we have not called for affidavits, the allegations in the stay petition are deemed not to be admitted by the respondents.

The appeal being MAT 1306 of 2021 along with application being I A CAN 2 of 2021 are disposed of.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)