

December 14, 2021

ARDR

(10)

WPA 24071 of 2019

Biswajit Koley

Vs.

The State of West Bengal & Ors.

Mr. Susanta Kumar Rakshit,

Mr. Sayantan Rakshit,

...for the petitioner.

Mr. Chandi Charan De,

Mr. Robiul Islam,

...for the State.

Report in the form of affidavit and Affidavit in reply thereto filed by the State respondents and the petitioner respectively are taken on record.

Heard learned counsels for the parties.

It is submitted on behalf of the petitioner that he was granted long term mining lease by the State respondents on 11th October, 2010 for a period of five years which expired on 10th October, 2015. The petitioner applied for renewal of the said lease in terms of Rule 12 of the West Bengal Minor Mineral Rules, 2002 within the statutory period of time and as the petition was not disposed of, the petitioner filed a writ petition before this Court praying for consideration of his renewal application by the authority. By an order dated 22nd December, 2015 in W.P. 29747 (W) of 2015, this Court directed the District Magistrate, Bankura to dispose of the relevant application within four weeks from the date of receipt of the order and granted liberty to the petitioner to continue

with mining operations by virtue of Rule 12(6) of the 2002 Rules.

The petitioner submits that in compliance with the said order the petitioner was called for hearing on 11th July, 2016 and by an order dated 21st October, 2016 communicated on 2nd December, 2016, the District Magistrate rejected the prayer of the petitioner on two fold grounds:-

- (i) The petitioner had a shortfall of extraction of 1,40,000 cubic square feet of sand and did not fulfill the minimum target of extraction of sand in the year 2011-12; and
- (ii) After West Bengal Minor Mineral Rules, 2002 was replaced by The West Bengal Minor Minerals Concession Rules, 2016 with effect from 27th July, 2016, the petitioner's prayer for renewal of the earlier lease could not be considered in view of Sections 61 and 62(1) of the 2016 Rules.

Aggrieved by the said order, the petitioner draws the attention of the Court to Annexure "E" to the report in the form of affidavit filed by the respondents, which is a status report regarding minimum target for extraction of sand. It appears from the said report that though there was a shortfall in extraction in the first year, such shortfall was made up in the following years and the lessee/petitioner extracted much more than the total minimum target for extraction set for the five years. The said letter dated 5th

July, 2016 issued by the Sub-Divisional Land and Land Reforms Officer, Bishnupur to the Additional District Magistrate and District Land and Land Reforms Officer, Bankura suggests waiver of the shortfall in the first year. So, this ground taken by the respondents has too weak to let to stand upon.

Secondly, the lease was granted to the petitioner in terms of 2002 Rules and the application for renewal was submitted in terms of Rule 12(6) of the said Rules. Referring to Section 62(2) of the West Bengal Minor Minerals Concession Rules, 2016, learned counsel for the petitioner submits that in view of the said provisions, any action taken under the previous Rules shall be deemed to have been validly done or taken, under corresponding provisions of the present Rules.

Learned counsel for the respondents relies upon the report submitted by the respondents and submits that the prayer of the petitioner cannot be acceded to in view of shortfall in extraction of sand as well as the 2016 Rules which has taken the place of 2002 Rules. According to learned counsel, the renewal application filed by the petitioner under the 2002 Rules cannot be considered in view of specific provisions of e-auction laid down in the 2016 Rules.

The petitioner has submitted an application dated 17th December, 2019 before the concerned authority for

reconsideration of his renewal application, which is pending before the authority.

Having considered the submissions made on behalf of the parties as well as material on record, this Court is of the view that the 3rd respondent should consider the representation for reconsideration filed by the petitioner keeping in view the observations made in this order.

I, therefore, dispose of the writ petition with a direction upon the 3rd respondent to consider and dispose of the representation filed by the petitioner dated 17th December, 2019 on merits within two months from the date of communication of this order, after affording reasonable opportunity of hearing to the petitioner, in accordance with law. The observations made in this order may be taken into consideration by the 3rd respondent while disposing of the representation.

With these observations and directions, WPA 24071 of 2019 is disposed of. However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)