

10.08.2022
Item No.10
Court No.6.
AB

**M.A.T. 1920 of 2017
With
I A CAN 1 of 2017
(Old CAN 11957 of 2017)**

**Sunil Kumar Roy
Vs
The State of West Bengal & Others**

Mr. P. K. Bhattacharyafor the Appellant.

Affidavit of Service is taken on record.

This appeal is directed against a judgment and order dated September 4, 2017, whereby the appellant's writ petition was dismissed by the learned Single Judge.

The appellant approached the learned Single Judge with the grievance that he had applied for a short term mining lease on March 18, 2015, (wrongly recorded as 'long term mining lease' in the impugned order) for extracting sand. The respondents not having considered his application, he approached this Court by filing W. P. No.10909 (W) of 2015.

By an order dated July 6, 2015, a learned Single Judge directed the State respondents to consider the appellant's application along with other applications that may be filed by other interested parties. With the

grievance that even thereafter his application was not considered, the appellant again approached a learned Single Judge of this Court by way of the present writ petition.

The learned Judge, after hearing the parties, held as follows:

“The application was filed by the petitioner under the provisions of the West Bengal Minor and Minerals Rule, 2002 which is repealed with effect from July 29, 2016 after coming into force of the West Bengal Minor and Minerals Concessions Rules, 2016. Since no action has been taken on the application filed by the petitioner under the West Bengal Minor and Minerals Rules, 2002, no action can be saved under the saving clause of Rule 62(2) of the West Bengal Minor and Minerals Concessions Rules, 2016. The application filed by the petitioner before coming into force of the West Bengal Minor and Minerals Concessions Rules, 2016 has become ineligible by virtue of Rule 61 of the Said Rules of 2016 as no grant order or letter of intent or any other Government order was passed by altering the position of the petitioner in connection with the mining lease.

In view of my above findings, the application of the petitioner cannot be considered under the provisions of the West Bengal Minor and Minerals Concessions Rules, 2016. The petitioner is at liberty to pray for mining lease for extracting sand in accordance with the provisions of the West Bengal Minor and Minerals Concessions Rules, 2016.

The writ petition is, thus, dismissed.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

The State is not represented.

We have heard learned Advocate for the appellant/writ petitioner. We do not find any infirmity in the order under appeal. After coming into force of the West Bengal Minor and Minerals Concessions Rules, 2016, all leases for mining purposes have to be granted following the 2016 Rules and through e-auction. We are unable to accept the contention of the appellant that since he had applied prior to the 2016 Rules coming into force, his application should be considered in terms of the 2002 Rules.

It is now well-settled that an application for grant of lease for mining purposes will have to be decided in terms of the Rules, which are in force as on the date of consideration of the application. After coming into force of 2016 Rules, the appellant's application, which was made in 2015, became ineligible by virtue of Rule 61 of the Said Rules of 2016. Hence, the learned Single Judge was absolutely right in dismissing the writ petition.

In this connection Rule 61 of the 2016 Rules may be noted:-

“61. Declaration of ineligibility of the pending minor mineral applications for mining lease including the applications of reclassified major minerals.- All applications for mining lease of minor minerals including the reclassified minor minerals vide SO No.- 423 (E) dated 12th February, 2015 received prior to the giving-

effect to this rules irrespective of its duration of pendency shall become ineligible.

Provided that if the applicant has been issued a Grant Order or Letter of Intent (Lol) or any other Government Order requiring the alteration of applicant's position then his mining lease application may be considered after due compliance of all the necessary conditions."

One may also refer to the decision of the Honourable Supreme Court in the case of ***State of Tamilnadu v. M/s. Hind Stone & Ors: (1981) 2 SCC 205***. In that case the writ petitioner had made an application for renewal of mining lease under Tamil Nadu Minor Mineral Concession Rules, 1959, for quarrying black granite. After he made the application, a sub-rule was introduced in the 1959 rules by a Government order to the effect that notwithstanding anything to the contrary contained in the Rules, on and from December 7, 1977, no lease for quarrying black granite shall be granted to private persons. Apart from holding that renewal of a lease amounts to grant of a fresh lease, the Supreme Court at paragraphs 12 and 13 of the reported judgment observed as follows: -

"12. The next question for consideration is whether Rule 8-C is attracted when applications for renewal of leases are dealt with. The argument was that Rule 9 itself laid down the

criteria for grant of renewal of leases and therefore Rule 8-C should be confined, in its application, to grant of leases in the first instance. We are unable to see the force of the submission. Rule 9 makes it clear that a renewal is not to be obtained automatically, for the mere asking. The applicant for the renewal has, particularly, to satisfy the Government that the renewal is in the interests of mineral development and that the lease amount is reasonable in the circumstances of the case. These conditions have to be fulfilled in addition to whatever criteria is applicable at the time of the grant of lease in the first instance, suitably adapted, of course, to grant of renewal. Not to apply the criteria applicable in the first instance may lead to absurd results. If as a result of experience gained after watching the performance of private entrepreneurs in the mining of minor minerals it is decided to stop grant of leases in the private sector in the interest of conservation of the particular mineral resource, attainment of the object sought will be frustrated if renewal is to be granted to private entrepreneurs without regard to the changed outlook. In fact, some of the applicants for renewal of leases may themselves be the persons who are responsible for the changed outlook. To renew leases in favour of such persons would make the making of Rule 8-C a mere exercise in futility. It must be remembered that an application for the renewal of a lease is, in essence an application for the grant of a lease for a fresh period. We are, therefore, of the view that Rule 8-C is attracted in considering applications for renewal of leases also.

13. Another submission of the learned Counsel in connection with the consideration of applications for renewal was that applications made sixty days or more before the date

of G.O Ms. No. 1312 (December 2, 1977) should be dealt with as if Rule 8-C had not come into force. It was also contended that even applications for grant of leases made long before the date of G.O. Ms. No. 1312 should be dealt with as if Rule 8-C had not come into force. The submission was that it was not open to the Government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force. **While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant or renewal of leases made long prior to the date of G.O. Ms. No. 1312 should be dealt with as if Rule 8-C did not exist.” (Emphasis is ours)**

In view of the aforesaid, the learned Single Judge rightly dismissed the writ petition. The order under appeal does not warrant interference.

Needless to say that if the concerned plot of land is proposed to be let out by the State for mining purposes, the appellant will be at liberty to participate in the process, which may be initiated by the State for granting such lease.

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

MAT No.1920 of 2017 stands dismissed along with CAN 11957 of 2017.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)