

25.09.2023
D.L.-6(KB)
Ct. No.-654

W.P.A. 1157 of 2023

Dilip Mondal
-Versus-
The State of West Bengal & Ors.

Mr. Pinaki Ranjan Chakraborty
Mr. Pallav Chatterjee
... For the petitioner.

Mr. Sanjay Saha
Mr. Subhasish Bhattacharya
... For the W.B.M.D.T.C.

Mr. Soumitra Bandopadhyay
Mr. Priyabrata Batabyal
... For the State.

This is an application under Article 226 of the Constitution of India praying for direction of not to give effect to the order dated 2nd December, 2022 passed by the respondent no.4-Additional District Magistrate & District Land and Land Reforms Officer, Purba Bardhaman.

The brief fact of the case in nutshell is as follows:-

(i) By dint of mining lease executed on 13th December, 2017 the petitioner was granted mining lease for a period of five years for lifting of sand in respect of sand blocks Galsi-II/D. Bhasapur/94(P), Mouza: D. Bhasapur, J.L. No. 79, measuring an area of 10.00 acres, within Police Station: Galsi, District: Purba Bardhaman.

(ii) After execution of the said lease deed the petitioner started his business. However, during the subsistence of lease period on 6th September, 2019 the respondent no.4 issued a show cause notice upon the petitioner vide Memo No.548/MM/2019 dated 06.09.2019 for depositing the

rest installment bid money against Auction I.D.- 2017_DMBUW_443 and directed the petitioner to deposit the amount of Rs.1,87,83,000/- within 16th September, 2019 failing which the lease deed would be cancelled by the respondent and there would be forfeiture of the amount deposited by the petitioner.

(iii) On 24th September, 2019, the respondent no.4 directed respondent no.5 to stop issuance of challan and/or transit pass in favour of the petitioner due to non-payment of Rs. 99,40,640/-.

(iv) On 22nd April, 2022 the respondent no.4 issued payment certificate in favour of the petitioner and communicated to respondent no. 2 that the petitioner deposited the entire bid amount. Since the petitioner could not deposit the rest bid amount due to lockdown during Covid period, the petitioner made an application on 16th August, 2022 for extension of his mining lease for a period of fifteen months.

(v) The respondent authorities did not take any steps for extension of time period for mining lease and the petitioner was constrained to move a writ petition being WPA No.21082 of 2022, which was disposed of directing the respondent no.4 to consider and dispose of the representation of the petitioner dated 16th August, 2022 within a period of one month after giving the petitioner a reasonable opportunity of hearing in accordance with law.

(vi) In compliance to the order passed in WPA 21082 of 2022, the representation of the petitioner for extension

of time period of mining lease was considered and rejected by the respondent no.4 vide order dated 2nd December, 2022.

Hence, this writ petition.

Mr. Pinaki Ranjan Chakraborty, learned advocate for the petitioner submits that the petitioner's right to excavate sand in terms of the mining lease was stopped arbitrarily on the ground of non-payment of bid money. However, as per notification no.387-CI/O/MIN/GEN-MIS/21/2017 dated 22nd May, 2017, the bid money could have been deposited anytime prior to expiry of the lease period or closure of the mining operation and hence such stoppage is violative of the notification itself. After the petitioner was stopped from excavating sand, he deposited the entire bid amount and pay certificate was issued in his favour on 22nd April, 2022 and therefore when the entire amount of the bid has been deposited, the petitioner is entitled to excavate sand in respect of the period of 15 months which he could not due to issuance of instruction for stoppage of transit pass/challan on 24th September, 2019. As per the aforesaid notification of the Government of West Bengal, the respondent authority should not have issued such stoppage of transit pass/challan. Accordingly, since there was loss of business, the petitioner is entitled to extension of 15 months. He further submits that due to Covid Pandemic, the amount of the bid money could not be deposited. To buttress his contentions, he relies on an unreported

decision of this Court passed in ***Lachman Shaw versus State of West Bengal*** [in ***W.P. No. 20428 (W) of 2012***].

In light of his aforesaid submissions, he prays that necessary orders be passed directing the respondent authority to extend the period of lease so that the petitioner could excavate sand for 15 months, for which period he was prevented from excavating sand due to arbitrary act of the respondent authorities.

In reply to the contentions raised on behalf of the petitioner, Mr. Sanjay Saha, learned advocate for the respondent no.2-WBMDTC, submits at the outset that the order passed by the respondent no.4 is an appealable order under Rule 51 of the West Bengal Minor Minerals Concession Rules, 2016. To buttress his contentions, he relies on the unreported decision of this Court passed in ***Arsed Ali Sekh verus The State of West Bengal & Ors*** [in ***MAT 1186 of 2023 with IA CAN 1 of 2023***]. He further submits that the petitioner violated the terms of the lease agreement by defaulting to make payment. Such default in making payment has taken place prior to the setting in of Covid Pandemic. Due to such violation of the lease agreement to deposit the bid money, it has resulted in issuance of stoppage notice which has been rightly done by the respondent-authorities in terms of notification dated 22nd May, 2017. He further indicates that no such specification/quantum of loss has been placed by the petitioner. Accordingly, the act of the respondent authorities cannot be termed as arbitrary

rather the order has been passed in consonance with the notification of the Government of West Bengal. In light of his aforesaid submissions, he prays for dismissal of the writ petition.

Mr. Priyabrata Batyabal, led by Mr. Soumitra Bandopadhyay, learned advocate for the State-Respondents also submits in the similar fashion.

Mr. Chakraborty, learned advocate for the petitioner in reply to the maintainability of the present writ petition relying on a decision of the Hon'ble Supreme Court in ***Harbasnlal Sahnia & Anr. Verus Indian Oil Corpn. Ltd. And Others*** reported in ***(2003) 2 SCC 107*** submits that the writ petition is maintainable since the petitioner has sought for enforcement of his fundamental rights enshrined under Article 19(1)(g) of Constitution of India which has been violated due to arbitrary act of the respondent authorities.

Since the issue of maintainability of the present application has been raised, the same requires to be dealt with at the threshold.

It is an admitted fact that after depositing the bid money, the petitioner approached the respondent nos. 3 & 4 for extension of the mining lease. Since the representation was not considered, the petitioner approached this Hon'ble Court by way of a writ petition being WPA 21082 of 2022 and the said writ petition was disposed of with a direction upon the respondent no.4 to

dispose of the representation submitted by the petitioner on 16th August, 2022.

By order dated 2nd December, 2022, the aforesaid representation was considered by the authority concerned and was rejected.

The maintainability of the writ petition is precisely challenged on the ground of efficacious remedy being available by way of appeal provided under Rule 51 of West Bengal Minor Minerals Concession Rules, 2016 which is reproduced hereunder:-

“51. Appeal.- (1) Any person aggrieved by 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, may, within thirty days from the date of communication of the order to him, prefer an appeal against the order.

(2) The memorandum of appeal shall be made to the concerned Divisional Commissioner, if the order appealed against has been passed by the District Authority.

(3) Each memorandum of appeal shall be accompanied by a treasury challan showing the deposit of a fee of Rs.1000/- (rupees one thousand) only in the Government Treasury or sub-Treasury of the District concerned or in any branch of the State Bank of India doing treasury business or in the Reserve Bank of India at the credit of the State Government under the specified head.

(4) An appeal may be entertained even after the period specified in sub-rule 1(a), if the applicant satisfies the appellate authority that he had sufficient reasons, for not preferring the appeal within the prescribed period.

(5) The order passed on an appeal shall be final and there shall be no second appeal.”

The aforesaid rule clearly manifest that any person aggrieved by an order made by the District Authority or officer duly authorized by District Authority in exercise of the power conferred upon him by this rule may within 30 days from the date of communication of the order to him

prefer an appeal against the said order. Therefore, the order passed by the competent authority is appealable under Rule 51 of West Bengal Minerals Concession Rules, 2016.

Mr. Chakraborty, learned advocate for the petitioner argued that there was infringement of fundamental rights granted under Article 19(1)(g) of the Constitution of India. The stoppage of transit pass/challan admittedly was stopped due to non-payment of bid amount which, as per lease deed, the petitioner was supposed to deposit in terms of the schedule of payment provided therein. Such schedule is made in consonance with notification no.387-CI/O/MIN/GEN-MIS/21/2017 dated 22nd May, 2017.

During the course of hearing, learned advocate for the petitioner admitted the fact that the said amount was not deposited as per schedule of payment provided in the lease agreement. Learned advocate for the petitioner argued that the said bid amount as per the notification could have been deposited anytime within the lease period and as such there was no violation. For better appreciation of the argument advanced on behalf of the petitioner it would be profitable to reproduce the relevant notification.

*“GOVERNMENT OF WEST BENGAL
DEPARTMENT OF INDUSTRY, COMMERCE &
ENTERPRISES
Mines Branch
NOTIFICATION*

No.387-CI/O/MIN/GEN-MIS/21/2017 – 22nd May, 2017. – Whereas it is expedient to amend the existing procedure of payment of bid amount in the interest of smooth and effective execution of bidding process of minor

minerals by the District Committee for Competitive Bidding in each district of this state;

And, Whereas the provision under sub-rule (2) of Rule 10 of West Bengal Minor Minerals(Auction) Rules, 2016 (hereinafter the said rules) is causing hardships for most of the successful bidders as declared under sub-rule(1) of the said Rules;

Now, Therefore after careful consideration of the matter, the Governor is pleased hereby to order as follows:-

The District Authority shall follow the revised procedures of payment of bid amount as specified below:-

- 1) The successful bidders who have deposited one-third of the bid money may be allowed to commence mining operations and lease deed may be executed.*
- 2) The balance amount of bid money shall be payable in three instalments with a gap of maximum of 45 days each from the date of first instalment, which shall in no case exceed the lease period or the closure of mining operation.*
- 3) The payment conditions of rest amount of the bid money shall be incorporated in the mining lease deed conditions appropriately. No further relaxation in the periodicity of deposit of bid money shall be allowed and in case of delay of more than the prescribed tenure, the mining lease shall be cancelled immediately.*

This Order supersedes anything contained anywhere in the West Bengal Minor Minerals (Auction) Rules, 2016 or in any existing executive orders issued by this Department, to the extent the said rules or said orders differ from the procedure introduced by this order.

This Notification shall come into effect from the date of its publication in the Official Gazette.

*By order of the Governor,
[ILLEGIBLE],*

Addl. Chief Secy. to the Govt. of West Bengal.”

The notification indicates that the balance amount of bid money shall be payable in three installments with a gap of maximum of 45 days each from the date of first installment, which shall in no case exceed the lease period or the closure of mining operation. No further relaxation in the periodicity of the bid money shall be allowed and in case of delay of more than the prescribed

period the mining lease shall be cancelled immediately. Bearing in mind the aforesaid, if the contention of the petitioner that the bid amount could have been deposited anytime within the lease period as above, is accepted, then the clause 3 of the notification becomes insignificant. Upon reading of Clause 2 and 3 of the said notification together, it will indicate that the petitioner was supposed to deposit the balance bid money in three installments of gap of maximum of 45 days each from the date of first installment. In default in making payment, it would certainly lead to cancellation of the lease. Accordingly, stoppage of transit pass/challan for non-deposit of the bid money cannot be termed as arbitrary act resulting in infringement of rights.

Thus, the arguments advanced on behalf of the petitioner in this regard relying on *Harbasnlal Sahnia (supra)* does not hold good.

Further the facts involved in *Lachman Shaw (supra)* is distinguishable.

In view of the above, since an alternative efficacious remedy under Rule 51 is available to the petitioner to file appeal, the writ petition is liable to be dismissed as not maintainable. I find substance in the submission of Mr. Saha, learned advocate for WBMDTC.

Accordingly, the petitioner is granted liberty to file appeal before the appropriate authority challenging the order passed by Respondent no.4. However, since Rule 51 prescribes a period of limitation, in the event, the

petitioner prefers an appeal within a period of fifteen days from date, the appellate authority is requested to consider such appeal to be within the period of limitation prescribed by the statute.

It is made clear that the observation made hereinabove is for the sake of disposal of the writ petition and shall not have any bearing in appeal before appellate authority.

With the aforesaid observation, the writ petition stands dismissed. No order as to costs.

All connected applications, if any, are also disposed of.

Interim order, if any, stands vacated.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Bivas Pattanayak, J.)