

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 7343 of 2012

**M/s. Taramaa Minerals
Vs.
The State of West Bengal & Ors.**

For the petitioner : Mr. Gobinda Kar

Judgement on : 25.07.2023.

Bibek Chaudhuri, J.

The instant writ petition was taken for argument on behalf of the petitioner on 24th July, 2023. The learned Advocate for the petitioner filed affidavit-in-reply which was taken on record. However, on careful scrutiny of the record as well as examining the orders passed by the Hon'ble Judges at different points of time who took up the matter for hearing, it is ascertained that affidavit-in-opposition has not been filed by the respondents. Mr. Kar, learned Advocate has filed a copy of the affidavit-in-opposition, which was served upon him.

Let the affidavit-in-opposition be kept with the record.

Though the respondents are not represented by the learned Counsel, for ends of justice, the affidavit-in-opposition and the affidavit-in-reply shall be considered at the time of delivery of judgment.

The instant writ petition has a chequered history.

Indisputably the petitioner was granted quarry permit to extract minor minerals viz. quartzite from plot No.9/183 of Mouza Bhur Kundathol, J.L.No.72 within Police Station Saltora in the district of Bankura measuring an area of 3.65 acres of land. At the time of quarry, the petitioner found major minerals, like mica, feldspher and quartz at the site. Therefore, the petitioner made an application to the Secretary to the Government of West Bengal, Department of Commerce and Industries requesting him to advice the Mining Officer In-Charge, Purulia Zone to issue prospecting license in favour of the petitioner. However, the said prayer was not considered by the State Authorities which compelled the petitioner to file a writ petition for appropriate relief being WP No.10476(W) of 2009. By a judgment and order dated 24th August, 2009, a Co-ordinate Bench dismissed the writ petition on the ground that the application for prospecting license filed by the petitioner was defective inasmuch as he prayed for permit/license on plot Nos.9/183, 184 and 185 of Mouza Bhur Kundathol. However, plot Nos.184 and 185 are raiyati lands. Though

the writ petition was dismissed, the petitioner was granted liberty to file fresh application before the appropriate authority, which was directed to be dealt with on its own merit and in accordance with law. The petitioner preferred an appeal before the Division Bench of this Court being MAT 1264 of 2009. In the said appeal it was contended on behalf of the appellant/petitioner that he is interested to have the licence in respect of plot No.9/183 only because the said plot is recorded in the Khatian of the State Government and objection raised by the Land and Land Reforms Department is not correct.

The Division Bench of this Court disposed of the aforesaid appeal with the following directions:-

“Upon considering the rival contentions, we are of the view that the State Authority should sympathetically consider the plight of the appellant. The State had already accepted royalty for quartzite, hence the appellant cannot be made to lose on that count, if he is not permitted to sell the minerals after extraction. At the same time appropriate royalty must be recovered from the appellant for feldspar and mica contents. If Commerce and Industry Department is the appropriate Authority, they must look into the matter.”

Thus, the applicant was directed to make a fresh application in respect of plot No.9/183 only before the Land and Land Reforms Department which in turn after due process would forward to the

Commerce and Industry Department and obtain their necessary approval so the entire process might be done as expeditiously as possible, preferably within a period of four weeks from the date of filing of such fresh application. In the above manner, the order of the learned Single Judge in WP No.10476(W) of 2009 was modified in appeal.

Accordingly, the petitioner filed a fresh application on 12th June, 2008 which was acknowledged by the Mining Officer-in-Charge of Purulia Zone. Subsequently, however, by an order dated 28th May, 2010, the Assistant Secretary to the Government of West Bengal rejected the application filed by the petitioner holding as hereunder:-

“Now, therefore, after careful consideration of all the facts and circumstances relevant to the case and in compliance with the orders of the Hon’ble High Court, Calcutta with regard to disposal of the application of Tara Maa Minerals, the Governor is pleased to refuse to grant Prospecting License (PL) in favour of M/s. TARAMAA MINERALS in Plot No.9/183 in Mouza- Bhurkundathol, J.L. No.72, under P.S. Saltora, District-Bankura with the provision that, if those 8 (eight) prior applications was rejected as per extant rules and provisions of M.C. Rules, 1960, M/s. Tara Maa Minerals’ application will be given a fresh look subject to the necessary criteria in this behalf and provisions under the MM (D&R) Act, 1957 and the Rules made thereunder.”

Though the respondents were not represented in the instant writ petition, an affidavit-in-opposition on behalf of respondent Nos.1 to 9 is on record.

It is the specific case of the respondents that the writ petitioner amalgamated quartzite and quartz as the same mineral. However quartzite is a minor mineral under Schedule VI of the Mineral Rules which is used for the purpose of construction of building and metallic portion of the road, while quartz is a major mineral as listed in Schedule II of the Mines and Minerals (Development & Regulation) Act, 1957. The provision of Section 5(2)(a) of the Mines and Minerals (Development & Regulation) Act, 1957 provides that no mining lease would be granted by the State, unless it is satisfied that there is evidence to show that the area applied for has been prospected earlier or the existence of minerals contained therein has been established otherwise than by means of such area. The minimum period of lease was at least 20 years in terms of provision of Section 8 of the Mines & Minerals (Development & Regulation) Act, 1957. The petitioner was granted quarry permit in respect of Plot No.9/183 to extract quartzite. However, during extraction the petitioner found major minerals like mica, quartz, feldspher etc. in the said plot. The petitioner was not granted quarry permit for such minerals and question of issuance of prospecting license does not arise at all.

The petitioner has used an affidavit-in-reply refuting the contention of the respondents. It is reiterated by the petitioner that at the time of extraction of quartzite, the petitioner found the existence of major minerals like quartz, mica, feldspar etc. in the said plot permit of which was given in the year 2005. Immediately he informed the authority concerned that the said major minerals were found at the site. Subsequently, in continuation of that application writ petition was filed, appeal was preferred and even contempt application was also filed against the respondents. Therefore, his application which was filed as per the decision of the Court of appeal in MAT No.1264 of 2009 should be considered as a continuation of his information given in 2008. Accordingly, the reasons subscribed by the Assistant Secretary to the Land and Land Reforms Department is not sustainable and should be rejected.

On due consideration of submission of the learned Advocate for the petitioner as well as the materials on record, this Court likes to record at the outset that Rule 4 of the West Bengal Minor and Minerals Rules, 2002 prohibits mining operation without permit or mining lease. Rule 4A provides the procedure for grant of lease or quarry permit. It is needless to say that the petitioner was granted quarry permit following the provisions of extant rules in respect of the plot No.9/183 of Mouza Bhurkundathol. Only during extraction of

quartzite, he found major minerals in the said plot. As a law-abiding citizen, he informed the matter to the concerned authority with a request to permit him to extract major minerals. The authority did not consider his prayer. Non-consideration of the application of the petitioner compelled him to file the writ petition. The said writ petition was dismissed on the ground that along with plot No.9/183, the petitioner joined raiyati plot Nos.184 and 185. The petitioner preferred an appeal. The Division Bench of this Court while disposing of the appeal directed the authority to consider the application of the petitioner sympathetically for prospecting license. The Mines and Minerals (Development & Regulation) Act, 1957 deals with prospecting license in respect of mining operation. Section 4 provides the detailed procedure. As per the order of the Hon'ble High Court in appeal, the petitioner preferred application in proper proforma on submission of necessary fees etc.

The authority considered the application prospectively from the date of filing of the said application without considering the fact that the application in question is the resultant effect of the judgment of the Division Bench of this Court in Mandamus Appeal wherein non-consideration of the petitioner's application dated 12.06.2008 was in issue.

In view of such circumstances, this Court is of the considered opinion that the competent authority rejected the petitioner's application for prospecting licence without considering the direction of the Division Bench to treat then said application sympathetically.

For the reasons stated above, the impugned order dated 28th May, 2010 passed by the Assistant Secretary to the Government of West Bengal, Commerce and Industries Department, Mines Branch is set aside and quashed.

The respondent authorities are directed to reconsider the petitioner's application sympathetically in the light of the observation made hereinabove to the effect that the application for prospecting licence shall be dealt with as an application on the basis of which quarry permit was granted in favour of the petitioner in respect of the plot No.9/183 of Mouza Bhurkundathol taking into consideration the provision of Section 11 of the Mines and Minerals (Development & Regulation) Act, 1957.

Entire exercise shall be concluded within a period of eight weeks from the date of communication of this order.

With the above order, the instant writ petition is **disposed of**.

There shall be, however, no order as to costs.

(Bibek Chaudhuri, J.)

Mithun De.
A.R. (Ct).
Sl No.11.