

Form J(2)

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

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

WPA No. 16721 of 2016

**Shyamali Hazra
Vs.
State of West Bengal & Ors.**

**For the petitioner : Mr. Prabal Mukherjee, Sr. Adv.,
Mr. Nirmalya Biswas,
Mr. Ashok Hazra**

**For the State : Mr. Soumitra Bandyopadhyay,
Mr. Aniruddha Sen**

Judgement on : 20.06.2023.

Bibek Chaudhuri, J.

The petitioner applied for a long term mining lease for extraction of sand in Mouza – Mirchoba under the Police Station and District – Purba Burdwan. Initially, the lease was granted for a period of five years on 28th December, 2006. The deed of lease was executed on 26th April, 2007 for a period of five years. Subsequently, the said lease was extended for a period of further five years on 23rd July, 2012. Before expiry of the extended period the petitioner by a letter dated 8th February, 2016 applied for renewal of the said lease which was scheduled to be expired on 28th August, 2016. By a letter

dated 22nd February, 2016 issued by the Additional District Magistrate and District Land and Land Reforms Officer, Burdwan his prayer for renewal of lease was kept in abeyance till the disposal of a mandamus appeal filed by the State Government being MAT 2037/2014.

The petitioner has annexed an order sheet of a proceeding initiated in respect of the prayer for renewal of mining lease on the basis of an order passed in WP No. 24290 (W) of 2013 in the matter of Payel Chowdhury -Vs.- State of West Bengal. In the aforesaid writ petition a Coordinate Bench of this Court vide order dated 20th August, 2014 directed the respondent to decide and dispose of the application for long term mining lease by six weeks upon giving opportunity of hearing to the petitioner or his authorized representatives and to pass reasoned order and to communicate the same within two weeks from the date of passing of the order. Finally, vide order dated 7th July, 2015 long term lease was renewed in favour of the said Payel Chowdhury, petitioner of WP No. 24290 (W) of 2013 on the following grounds :-

"A long term mining lease deed was executed by and between the Government of West Bengal and the petitioner on 25th April, 2008 for extraction of sand over an area of 5.00 acres in plot no. 543(P) in Mouza – Mirchoba, JL No. 33 under Burdwan Police Station. The other details are stated below:-

Date of registration of lease deed : 25/04/2008

Date of Handing over of possession: 01/07/2008

Date of expiry of lease deed : 30/06/2013

The petitioner applied for renewal of the mining lease to the appropriate authorities in September, 2012 but renewal had not been made in view of the Notification dated December 01, 2011 by which Rules 16A and Rule 16B have been introduced to the West Bengal Minor Mineral Rules, 2002. For this reasons, the instant petitioner moved before the Hon'ble High Court, Calcutta. In the meanwhile, the Hon'ble High Court has struck down Rule 16A and Rule 16B of WBMM Rules, 2002. The State has already preferred an appeal in MAT 2037 of 2014 by challenging the said order dated 04/07/2014 in W.P. No. 16526 of 2013. No stay has so far been granted in the said appeal.

On the other hand, in another appeal vide MAT 947 of 2014 with CAN 6863 of 2014 in the matter of Smt. Mallika Biswas –Vs.- State of West Bengal & Ors. the Hon'ble High Court, Calcutta held that "until the order passed by the writ Court declaring these two provisions as ultra-vires is set aside by the Hon'ble Appeal Court, the law which has been laid down by the Writ Court in the said decision will be the law of the land and the rights of the parties at large will be governed by the

principles as laid down by the Writ Court in the order dated 4th July, 2014 passed in W.P. No. 16526(W) of 2013. It may also be kept on record that though such an appeal was filed but no interim order has yet been passed by the Hon'ble Appeal Court staying the operation of the order by which these two amended provision of West Bengal Minor Mineral Rules, were declared as ultra-vires".

In instant Writ Petition being Writ Petition No. 24290 (W) of 2013 the Hon'ble High Court directed the concerned respondents to decide and dispose of the application for long term mining lease by six weeks upon giving opportunity of hearing to the petitioner or his authorized representatives and to pass reasoned order and to communicate the same within two weeks from the date of passing of the order.

b) As per report of BL & LRO, Burdwan – 1 it appears that a mining dues amounting Rs.2500/- is remaining unpaid by the petitioner in respect of surface rent, water rent for the earlier lease period. The petitioner is liable to pay the said amount as per Rule 20 of West Bengal Minor Mineral Rules, 2002.

In view of the above, renewal is hereby granted in favour of the petitioner for a further term of five years from the date of registration of the renewal lease deed over the selfsame land subject to payment of the outstanding dues of Rs.2500/-. The case is thus disposed of".

It is submitted by Mr. Mukherjee, learned Senior Counsel on behalf of the petitioner that the petitioner is placed in similar circumstance. Therefore, petitioner's prayer for renewal of mining lease should be allowed following the decision taken by the Administrative Authority as quoted below:-

Next branch of argument of Mr. Mukherjee is that the respondent authorities through the Revenue Officer, attached to the office of the Additional District Magistrate and District Land and Land Reforms Officer, Purba Burdwaman has submitted a report in the form of affidavit assailing the prayer of the petitioner. It is contended on behalf of the respondents that in view of promulgation of the West Bengal Minor Minerals Concession Rules, 2016, the West Bengal Minor Minerals Auction Rules, 2016 with effect from 29th July, 2016, the West Bengal Minor Minerals Rules, 2002 has been repealed as per provision of Rule 62 of the said Rule. Rule 61 of the West Bengal Minor Minerals Concessions Rules, 2016 states as follows:-

"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 (LoI) 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."

Therefore, renewal application as per the provision of Rule 61 of the West Bengal Minor Minerals Concession Rules, 2016 cannot be allowed in view of repeal Clause contained in Rule 62 of the said Rules.

It is contended in this regard by Mr. Mukherjee, learned Senior Counsel on behalf of the petitioner that the aforesaid rules came into force on 29th July, 2016. The prayer for renewal of lease was made by the petitioner on 8th February, 2016, i.e. before the aforesaid rules coming into force. The petitioner was directed to pay royalty and cess for the proposed renewal period, which he paid on 4th February, 2016. Thus, the Administrative Authority already took action in respect of the petitioner's prayer for renewal of the lease before commencement of the West Bengal Minor Minerals Concession Rules, 2016. Next he submits that sub-rule (2) of Rule 62 states:-

"Notwithstanding such repeal, anything done, any action taken, or any prosecution started under the said rules, shall be deemed to

have been validly done or taken or started, as the case may be, under the corresponding provisions of these rules.

Thus, it is submitted by Mr. Mukherjee that before commencement of the West Bengal Minor Minerals Concession Rules, 2016, action for renewal of the lease was commenced or taken by the Administrative Authority and, therefore, the said action is to be treated as valid action according to the present rule.

Learned Advocate on behalf of the State has supported the report submitted on behalf of the respondent No.3. It is further contended by the learned Advocate for the State that the Government of West Bengal, Department of Industry, Commerce & Enterprises, Mines Branch issued a notification on 30th July, 2021 to the effect that WBMDTCL will be the designated agency in achieving the objectives of the said policy. The policy is to be implemented through certain steps which has been delineated in Clause 6 (ii) (viii). It is specifically designed that long term mining lease shall not be renewed and shall automatically be resumed and vested with the State Government, upon expiry of such leases. The State Government shall then lease the sand mines to WBMDTCL or any agency recommended by it. Therefore, in order to get mining lease, the applicant must process the application through WBMDTCL. If WBMDTCL finds the applicant suitable and the applicant will follow the terms and conditions of

WBMDTCL and the policy of the State Government, then only fresh mining lease can be granted and in no case there shall be renewal of any mining lease.

It is further submitted by the learned Advocate for the State that the West Bengal Sand Mining Policy, 2021 has been introduced keeping in mind the loudable provision of Article 39(B) of the Constitution of India which states that the natural resources of the community have to be distributed so as to sub-serve the common good of the community. Natural resources are legally owned by the State. The State should ensure equitable, sustainable and affordable distribution of natural resources.

It is submitted by the learned Advocate for the State that Directive Principles of the State policy being the policies to be followed and implemented by the State for common good of the community should be strictly adhered to and the State policy shall prevail even over the rules of 2016.

In reply, Mr. Mukherjee, learned Senior Counsel on behalf of the petitioner strenuously submitted that the State of West Bengal in its Cabinet Meeting held on 22nd July, 2021 is formulated a new Sand Mining Policy, 2021.

It is no longer a *res integra* that a policy has no statutory power or authority and statute must prevail over the policy. Therefore, it is

submitted by Mr. Mukherjee that the State policy is not applicable under the facts and circumstances of the case.

Having heard the learned Counsels for the parties and on careful perusal of the entire materials on record, it appears indisputably that the petitioner was a lessee of a mining lease. The said lease was initially for years, thereafter it was extended for another 5 years and then on 8th February, 2016, the petitioner prayed for renewal of the lease. On the date of submission of prayer, the West Bengal Minor Minerals Concession Rules, 2016 did not come into effect. This rule came into force from the date of their publication in the official Gazette. The said rule was notified in the official Gazette on 29th July, 2016. Thus, the said rule came into force on 29th July, 2016 and before the said rule coming into force, the petitioner already took step for renewal of the mining lease. The petitioner was also directed to deposit a sum of Rs.8,79,396/- and the said amount was deposited on 4th February, 2016 on the basis of the order passed by the Additional District Magistrate and DL & LRO, Burdwaman. The petitioner and one Payel Chowdhury whose case was decided in her favour by order dated 7th July, 2015 were directed to obtain Environmental Clearance from SEIAA or DEIAA within three months from the date of the order i.e. on 9th August, 2016. Therefore, it is crystal clear that even after Concession Rules of 2016 came into

force, the respondent authorities acted on the application made by the present petitioner.

In view of such circumstances, this Court has no other alternative but to hold that by the specific act done by the respondents, they started taking action on the application for renewal before and even after the commencement of Concession Rule of 2016 and by such action, the restriction of 2016 rules is saved and action taken by the respondents shall be taken to be the action under the Concession Rules, 2016.

In view of such decision, the respondent authorities, specially respondent nos.2 and 3 are directed to decide and dispose of the application for renewal of long term mining lease in favour of the petitioner within 60 days from the date of communication of the order after giving due opportunity to the petitioner or her representative for hearing.

The instant writ petition is, thus, disposed of on contest, however, there shall be no order as to costs.

(Bibek Chaudhuri, J.)

***Srimanta/
Mithun De.
A.R. (Ct).
SI No.09.***