

10.08.2023
Item No.02
RP/AN
Ct. No.1

MAT 1421 of 2022
+
IA No.CAN 1 of 2022
IA No.CAN 2 of 2022
State of West Bengal & Ors.
Vs.
Arup Dey

Mr. Amitesh Banerjee, Sr. Adv.
Ms. Ipsita Banerjee
Mr. Suddhadev Adak
... for Appellant/State

Mr. S.N. Mitra, Sr. Adv.
Mr. Soumen Dutta
Mr. Sabyasachi Bhattacharjee
... for respondent/writ petitioner

1. There is delay of 39 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find that sufficient cause has been shown for not being able to prefer the appeal within the period of limitation. Accordingly, CAN 2 of 2022 is allowed and delay is condoned.
2. This intra-Court appeal preferred by the State of West Bengal is directed against the order dated 7th June, 2022 passed in WPA 8290 of 2022. The respondent/writ petitioner filed the said writ petition challenging an order passed by the Additional District Magistrate and District Land

and Land Reforms Officer, Jhargram dated 29th March, 2019. The said authority is the third appellant in this appeal. By the said order the allotment of an alternate sand block in favour of the respondent/writ petitioner was cancelled. The said order of cancellation dated 29th March, 2019 is solely based upon the order passed by the learned Single Bench of this Court in WP 5166 (W) of 2019 filed by one Sri Ashok Kumar Singh @ Ashoke Kumar Singh. In the said writ petition a prayer was made to dispose of an application filed by the said Ashok Kumar Singh along with the representation made with regard thereto. The learned writ Court came to the conclusion that allocation of sand block (in favour of the respondent/writ petitioner) can be done only by a transparent process of calling for a tender and the concerned authority cannot allot a new sand block in favour of a third party without adopting the tender process.

3. There are certain facts, which have to be taken note of us, as to under what circumstances an alternate sand block was allotted to the respondent/writ petitioner. The respondent/writ petitioner participated in an e-tender conducted by the appellants' department for allocation of sand

block to enable him to carry on mining of sand. The respondent/writ petitioner has emerged to be the successful tenderer by the proceedings conducted by the third appellant on 10th March, 2017. Subsequently, Letter of Intent was issued on 17th April, 2017 and the respondent/writ petitioner made full payment of the bid amount amounting to Rs.1,04,50,568/-. Thereafter, a mining lease was executed in favour of the respondent/writ petitioner on 2nd May, 2017. Possession of the sand block was handed over on 5th May, 2017. The respondent/writ petitioner submitted a representation before the appellant stating that the area, which has been allotted for mining of sand, falls within the forest area and no mining is permissible and, therefore, sought for allotment of an alternate sand block which would have been well open to the appellants to refuse to consider such request. Since the argument was made before the learned writ Court that merely because the allotted area falls within the forest area cannot be a reason for seeking alternate sand block but the appellant chose to take such a stand rather acceded to the prayer made by the respondent/writ petitioner and allotted an alternate sand block. However, this allotment was dragged into litigation and ultimately pursuant to the order dated

19.03.2019 passed in WP 5166 (W) of 2019 though in the said writ petition there was no specific challenge to the allotment of alternate sand block made in favour of the respondent/writ petitioner. The appellant had passed the order of cancellation on 29.03.2019 cancelling the allotment of alternate sand block. It is not in dispute that the appellant had paid the entire bid amount of Rs.1,04,50,568/. Thus, the appellants having decided to cancel the alternate allotment by order dated 29.03.2019 ought to have refunded or paid back to the respondent/writ petitioner the bid amount, which was remitted by him at the first instance, since it has been the case of the respondent/writ petitioner that he could not carry on any sand mining operation post agreement which was entered into by and between the appellants and the respondent/writ petitioner.

4. Learned counsel appearing on behalf of the State submitted that the respondent/writ petitioner had carried on mining operation for a brief period. This submission is objected to by the learned senior advocate appearing for the respondent/writ petitioner.

5. On going through the impugned order, we find that no such submission was made before the learned Single Bench. In any event, this is a matter which is not germane for challenge to the correctness of the order passed by the appellants dated 29.03.2019 impugned in the writ petition. Learned Single Bench after taking note of the entire facts and circumstances has rightly held that the respondent/writ petitioner is entitled to be refunded the bid amount which was remitted by him. Learned Single Bench also directed payment of interest at the rate of 6% payable from 02.05.2017. Thus, considering the facts and circumstances of the case, we find that the appellants have not made any ground to interfere with the order passed in the writ petition. However, with regard to the rate of interest, we find the same is reasonable. However, with regard to the date from which the respondent/writ petitioner would be entitled to payment of interest, according to us, should commence on and after 29.03.2019 and not from 02.05.2017 as ordered by the learned Single Bench in the impugned order.
6. For the above reason, the appeal and the connected application are dismissed except the earlier direction to refund the bid amount together with

interest at the rate of 6% p.a. till the date of payment. The above direction shall be complied within three months from the date of receipt of the server copy of this order.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)