

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA/16722/2012

Sayed Neajuddin
-Vs-
State of West Bengal & Ors.

For the Petitioner: Mr. Mir Anawar, Adv.

Heard on: 24 July, 2023.

Judgment on: 24 July, 2023

BIBEK CHAUDHURI, J. : –

1. The petitioner is aggrieved for refusal of granting mining lease in respect of plot No.2103 of Mouza Berugram, JL No.32 within P.S Jamalpur in the District of Burdwan on a piece and parcel of land measuring about 23 acres on the basis of his application dated 1st August, 2005. It is the case of the petitioner that the petitioner filed an application in prescribed form for mining lease for minor minerals before the Secretary, Government of West Bengal, Commerce and Industries Department, Writers Building through the Chief Mining Officer, Government of West Bengal for mining lease for minor minerals from the river bed of Damador on 1st August, 2005. The respondent authority failed to consider his application as a result of which the petitioner filed WP 1142(W) of 2007 for appropriate relief under Article 226 of the Constitution. A Coordinate Bench of this Court disposed of the said writ

petition vide order dated 26th March, 2007 directing the respondent No.6 to take a decision to forward the said application of the petitioner dated 1st August, 2005 to the District Magistrate, Burdwan within a period of four weeks from the date of communication of this order. The said application was sent to the District Magistrate, Burdwan who transmitted the record to the Additional District Magistrate and DL and LRO, Burdwan for disposal of the application filed by the petitioner. The ADM and DL and LRO, Burdwan by his order dated 9th June, 2011 rejected the application filed by the petitioner on the following grounds:

“Therefore, in this case, I see, presently there is no area available vacant for allowing LTML in respect of the lands in question among such a good number of petitioners.

Considering the above petitions, with giving due honour to the order and directions of the Hon’ble High Court’s order above, the feasibility report of the CMO, W.B the report of the BL and LRO, Jamalpur and my observations above I reject the petitions and thus disposed of. The order passed is declared in presence of the petitioners present. Certified copy, if applied shall be issued to the petitioners.”

2. It is contended by the writ petitioner that after passing the above order dated 9th June, 2011 rejecting petitioner’s application dated 1st August, 2005, the ADM and LRO granted long term mining lease of sand in favour of one Abdul Motin in respect of plot No.2103(P) of Mouza Berugram in respect of land admeasuring 7 acres on 17th April, 2012. The petitioner made representation before the District Magistrate and Collector, Burdwan and the Additional District Magistrate and DL and

LRO, Burdwan raising his grievance that when his petition for granting mining lease in respect of plot Nos.2103 and 2104 of Mouza Berugram was rejected by the ADM and DL and LRO on 9th June, 2011 how on a subsequent date another person's prayer for mining lease in respect of plot No.2103 was granted by the same authority.

3. It is submitted by the learned Advocate for the petitioner that the West Bengal Minor Mineral Rules, 2002 was repealed by West Bengal Minor Minerals Concession Rules, 2016. However, sub-section (2) of Rule 62 of the West Bengal Minor Minerals Concession Rules, 2016 provides as follows:-

“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.”

4. Thus, in spite of repeal of the West Bengal Minor Mineral Rules, 2002 the respondents are bound to consider the representation filed by the petitioner on 19th June, 2012.

5. It is ascertained from the annexure P9 that the respondent authority granted long term mining lease in favoru of one Abdul Motin vide order dated 17th April, 2012. Though, on 9th June, 2011 the ADM and DL and LRO specifically recorded in his order that there is no land in the said area and therefore petitioner's prayer could not be considered. The order dated 17th April, 2012 contradicts the finding of the respondent authority vide order dated 9th June, 2011.

6. In view of such circumstances, the instant writ petition is allowed.

7. The respondent No.2 and 3 are directed to dispose of the representation of the petitioner dated 19th June, 2012 within 60 days from the date of communication of the order in accordance with law.

(Bibek Chaudhuri, J.)