

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

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

**WPA 300 of 2023
Nabin Sanyal
Vs.
The State of West Bengal & Ors.**

**For the Petitioner : Mr. Jagriti Mishra, Adv.,
Mr. Subham Gupta, Adv.,
Mr. Debayan Goswami, Adv.,
Mr. Reshab Kumar, Adv.**

**For the State : Mr. Bikramaditya Ghosh, Adv.,
Mr. Momenur Rahman, Adv.**

Heard & Judgment On : 6nd February, 2023.

(Bibek Chaudhuri, J.)

This is a second round litigation between the parties.

Petitioner previously approached this Court of filing a writ petition being WPA 2892 of 2022 alleging the same grievance as ventilated in the present writ application and by an order dated 28th November, 2022 a Co-ordinate Bench directed the respondent authority to consider the prayer of the petitioner within a period of six weeks from the date of communication of the order.

The respondent authority considered the representation filed by the petitioner by an order dated 15th December, 2022/28th December,

2022 rejected the representation of the petitioner. Being aggrieved the petitioner has filed the instant application under article 226 of the Constitution of India.

Factual aspect of the case is not disputed. The petitioner was granted a lease for mining of sand and boulder over an area of 4.41 hectares in the district of Jalpaiguri. Such mining lease was granted on the basis of e-auction on finding that the petitioner was the highest bidder. It is contended on behalf of the petitioner that during Covid pandemic, the court faced lockdown for prolonged periods. During such lockdown the petitioner could not quarry sand and boulders according to the permissible amount. Therefore, he suffered immense loss for such inability to quarry sand and minerals which was not under the control of the petitioner. He approached the authorities for permission to quarry a short fall amount of sand and boulder from the concerned riverbed in order to make good the losses. However, petitioner's prayer was turned down. The petitioner previously filed a writ petition which was disposed of by this Court on 28th November, 2022 directing the respondent No.4 to treat the writ petition as a representation and dispose of the same in accordance with law after giving opportunity to the petitioner or his authorized representative of being heard.

The said representation being rejected, the petitioner has approached this Court. It is submitted on behalf of the petitioner that the lease deed contains a particular clause No.5 giving provision to

failure to fulfill the terms of lease due to “force majeure”. Clause 5 of the lease deed runs thus:-

“failure on the part of the lessee/lessees to fulfil any of the terms and condition of this lease shall not give the State Government any claim against the Lessee/Lessees or be deemed a breach of this lease, in so far as such failure if considered by the said Government to arise from force majeure, and if through force majeure the fulfillment by the Lessee/Lessees of any of the terms and conditions of this lease be delayed, the period of such delay shall be added to the period fixed by this lease. In this clause the expression “force Majeure: means act of God, war, insurrection, riot, civil commotion, strike, earthquake, tide, storm, tidal wave, flood, lightning, explosion, fire and other happenings, which the Lessee/Lessees could not reasonably prevent or control.”

Mr. Mishra, learned Advocate for the petitioner submits that the term “force majeure” would, therefore, mean that all such things as mentioned above on which the lessee could not have any control would come within this clause. The words “any other happening which the lessee could not reasonably prevent or control” are to be read and understood ejusdem generis with the words preceding this expression. The clause should be construed that a close attention towards which precede or follow it, and that due regard to the nature and general terms of the contract. Therefore, the words “any other happening” must be given ejusdem generis construction so as to engulf within its fold only such happenings and eventualities which are of the nature and type illustrated in the clause itself with close attention to the nature and

terms of the lease, and would not reasonably be within the power and control of the lessee.

It is submitted by the learned Advocate for the petitioner that the eruption of covid-19 was not within the control of the lessee. The pandemic not only was limited to a particular area but also engulf whole of the world. Therefore, the lessee could not extract total amount of sand and boulder which he was authorized to extract under the lease. He was prevented by the pandemic which was not within his control for two years from extracting sand and boulder in terms of the lease. So he was entitled to have an extension of lease by two years. The petitioner's representation was rejected by the respondent authority on some extraneous consideration.

Mr. Bikramaditya Ghosh, learned Advocate for the respondents, on the other hand takes me to the impugned order passed by the Additional District Magistrate and District Land and Land Reforms Officer, Jalpaiguri on 28th December, 2022. It is submitted by Mr. Ghosh with reference to the said order that the lease was granted to the petitioner for a period of five years with effect from 28th February, 2018. The annual permissible limit of excavation granted to the petitioner was 79,380 m³ or 28,03,304.7 cft out of which 60% was in sand and 40% was in boulder. As per available records submitted by the petitioner he excavated 33,20,000 cft of sand in the year 2018-2019 which is much above the stipulated limit. Again in the year 2021-2022 55,000 cft

boulders has been excavated by the petitioner. In July 2021 a new sand mining policy was enacted by the State of West Bengal and since then all permissions regarding excavation of mining minerals are granted through the online portal of the WBMDTCL. As per the data obtained from the online portal of WBMDTCL, the petitioner excavated 21,03,919 cft sand and boulder during the period between 01.09.2021 and 31.03.2022. Thus, the petitioner excavated more amounts of sand and boulder than the stipulated amount of which he is entitled per year during the period when there was no Covid pandemic. Secondly, the West Bengal Sand Mining Policy, 2021 issued by the Department of Industry, Commerce and Enterprises does not permit the respondent authority to extend the period of mining lease. Therefore, the petitioner is not entitled to have extension of the lease period for further period of two years due to Covid pandemic.

Having heard the learned Counsels for the parties carefully and on examination of the entire record this Court finds that during the period when the lease was in force, the petitioner excavated higher amount of sand and boulders than the prescribed limit. Thus, he violated the conditions of lease. It is also not disputed that State of West Bengal has changed the mining policy introducing the West Bengal Sand Mining Policy, 2021. A careful look of Force Majeure clause contained in the lease deed it is ascertained that if the lessee fails to fulfill any of the terms and conditions of the lease due to force majeure, the government

shall not claim any premium during the said period of time against the lessee or such failure shall not be deemed as breach of lease. The alternative arrangement has been made in the lease deed stating, inter alia, that if through force majeure, the fulfillment by the lessee/lessees of any of the terms and conditions of this lease be delayed the period of such delay shall be added to the period fixed by this lease. It is to be noted that the State of West Bengal has changed the mining policy from 30th July, 2021 in order to protect the laudable principle enshrined in Article 39(B) of the Indian Constitution. In view of such circumstances, this Court cannot compel the state respondents directing them to enhance the period of lease of two years. Only relief the petitioner is entitled to get is that the petitioner shall not be obligated to pay the premium for two years within which he was prevented from the carrying on the mining work due to Covid pandemic.

With the above observation, the instant writ petition is disposed of.

The parties are at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J.)