

November 28, 2023
Sl. No. 50
Court No.2
s.biswas

**In the Calcutta High Court
Circuit Bench at Jalpaiguri
Appellate Side**

WPA 1248 of 2022

Suraj Chhetri and others

vs.

The State of West Bengal and others

Mr. aijit Ghosh

Ms. Swarnali Ghosh

... for the petitioners

Mr. Subir Kumar Saha, AGP

Mr. Momenur Rahman

... for the State

The petitioners assail the order passed by the appellate authority, i.e., the Commissioner, Jalpaiguri Division, under Rule 51 of the West Bengal Minor Mineral Concession Rule, 2016. The Additional District Magistrate & District Land & Land Reforms Officer, Alipurduar as also the Commissioner found the petitioner guilty of the offences under Sections 21(1), 22(4) and 21(4A), 22, 23(A), 23(B) and 24 of the Mines and Minerals (Development and Regulation) Act, 1957.

Accordingly, fine for an amount of Rs.1 lakh, was imposed by the Additional District Magistrate and District Land & Land Reforms Officer, Alipurduar. The said order was upheld by the appellate authority.

The petitioners submit that although the Commissioner, Jalpaiguri Division came to a

finding, upon perusal of the photographs clicked and the video footages recorded at the time of the raid conducted by the respondents that the petitioners were guilty of the offences, such video footages and photographs were not handed over to the petitioner before the order was passed. In support of such contention, the petitioners draw the attention of the court to the last line of the order dated May 17, 2022.

This court is in agreement with the petitioner.

The order indicates that the appellate authority had directed that the said order, along with the video footages and photographs should be handed over to the petitioner. Such direction was issued after the order impugned was passed and it does not appear that an opportunity was given to the petitioner to deal with the said video footages, photographs and other evidence, which were produced by the authorities before the appellate authority.

In my opinion, such procedure was not only arbitrary and illegal, but in violation of the principles of natural justice. When the appellate authority relied upon the evidence produced by the respondents namely video footages, photographs and other documents, in support of

the detention of the vehicles, on the allegation of commission of offences under the Mines and Minerals (Development and Regulation) Act, 1957 read with rules, it was incumbent upon the appellate authority to supply such evidence to the offender, so that the offender would be in a position to deal with the same. Even at the time of hearing, the authority did not consider it necessary that such video footages and photographs should be supplied to the petitioners and the petitioners should be given an opportunity to deal with the same, before the appellate authority arrived at a finding of offence, and concurred with the finding of the Additional District Magistrate and District Land and Land Reforms Officer.

Under such circumstances, each and every document, photographs and video footages which were submitted before the appellate authority by the respondents, shall be supplied to the petitioners by the respondents and the Commissioner, Jalpaiguri Division, shall ensure whether all such evidence and documents which were produced during the hearing of the appeal, had been supplied to the petitioners or not.

Such documents and evidence shall be supplied to the petitioners, within two weeks from date. The petitioners will file a reply, dealing with such evidence within two weeks thereafter. The Commissioner, Jalpaiguri Division shall grant a hearing to the petitioners and allow the petitioners to deal with the evidence. The respondents will also be allowed to counter the contention of the petitioners and the final order shall be passed by the appellate authority, upon considering the submissions of both the parties and the evidence on record. Reasons shall be assigned by the authority.

The writ petition is accordingly disposed of.

The order impugned dated May 17, 2022 passed by the Commissioner, Jalpaiguri Division, Jalpaiguri under Rule 51 of the West Bengal Minor Mineral Concession Rule, 2016 is set aside.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)