

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

MAT 781 of 2024
+
IA No. CAN 1 of 2024

Jagannath Hansda
versus
The State of West Bengal and Ors.

For the Appellant : *Mr. Milan Chandra Bhattacharya, Sr. Adv.,
Ms. Sulagna Bhattacharya.*

*For the State
/ Respondents* : *Mr. SK. Md. Galib,
Ms. Jyotsna Ray Mukherjee.*

Hearing is concluded on : *3rd September, 2024.*

Judgment On : **25th September, 2024.**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred challenging the judgment dated 22.03.2024 passed in the writ petition being WPA 18954 of 2022.

2. Shorn of unnecessary details, the facts are that the appellant, who belongs to the Schedule Tribe, was granted long term mining lease (hereinafter

referred to as LTML) in respect of plot no. 554, Mouza Dhanyagram II, P.S. Suri, District Birbhum (hereinafter referred to as the said plot) in the year 2011 which expired in 2014. Thereafter, he was granted sand quarry permits for various periods from 2011 to 2014 under the West Bengal Minor Minerals Concession Rules 2012 (hereinafter referred to the 2012 Rules). With effect from 29th July 2016, the West Bengal Minor Minerals Concession Rules 2016 (hereinafter referred to the 2016 Rules) came into force and in terms of the 2016 Rules, the appellant applied before the authorities for short term mining licence (hereinafter referred to as STML) on 10.05.2018 upon deposit of Rs. 3000/- by challan but such prayer was refused by the respondent no.2 *vide* memo dated 24.05.2018 placing reliance upon a judgment dated 27.02.2012 delivered in the case of *Deepak Kumar and Others vs. State of Haryana and others*, reported in (2012) 4 SCC 629 and advising him to take part in the e-auction with regard to LTML in terms of the 2016 Rules. Aggrieved by the said order dated 24.05.2018, the appellant preferred a writ petition being WP no. 18410 (W) of 2018 and by an order dated 19.12.2018 a co-ordinate Bench of this Court disposed of the writ petition directing the respondent no.2 herein to revisit the recommendation of the Revenue Inspector dated 27.01.2014 on an *in situ* basis and to take a just decision upon permanently staying the operation of the order dated 24.05.2018. No appeal was preferred against the said order by the respondents and in terms of the said order the appellant's prayer for grant of STML was reconsidered and rejected by an order dated 12.02.2020. Challenging the said order, the appellant was constrained to prefer a further writ petition being WPA 6296 of 2020 but the same was also dismissed by a judgment dated 22.12.2021 but granting liberty to

the appellant to make an application for STML as per Rule 44 of the new 2016 Rules since no representation of the appellant was found to be pending when the 2016 Rules came into force and that as such the provisions of Rule 62 (2) of the new Rules were not attracted. Aggrieved by such dismissal of the writ petition, the appellant preferred a mandamus appeal being MAT 60 of 2022 which was disposed of by an order dated 28.02.2022 granting liberty to the appellant to approach the appellate authority (in short, AA) contemplated under the 2016 Rules, with an observation that the AA shall consider the same on merits uninfluenced by any observation made in the judgment dated 22.12.2021. Pursuant thereto, he preferred a statutory appeal but the same was also dismissed by an order dated 25.05.2021 passed by the AA being the respondent no. 4 herein. Aggrieved by the said order the appellant preferred the writ petition being WPA 18954 of 2022 and the judgment delivered in the same has been impugned in the present appeal.

3. Mr. Bhattacharya, learned senior advocate appearing for appellant/writ petitioner submits that it would be explicit from Rule 49 of the 2016 Rules that the provisions of Chapter-III and Chapter-V shall not apply to STML and that the rigors of the environmental law would not be applicable in case of grant of STML. The tenure of the STML is restricted to 90 days and over land/specified area of not above 3 hectares. In the instant case, the appellant's application for STML is in respect of a specified area/land of only 3 acres.

4. Drawing our attention to the order dated 12.02.2020 passed by the respondent no. 2, Mr. Bhattacharya argues that the said order is a totally misconceived one and has been passed being oblivious of the fact that he was

considering an application for STML and not for any '*License-cum-Mining Lease*' and that competitive bidding through *e*-auction process is not a prerequisite towards grant of STML. Such blatant infirmity was also overlooked by the AA being respondent no. 4 herein while passing the order dated 25.05.2021.

5. According to him there is no absolute bar under the 2016 Rules towards grant of STML and the procedure towards such grant has been detailed in Chapter IX of the 2016 Rules. There is also no condition to the effect that a STML can be acquired by an incumbent only upon emerging to be successful in an *e*-auction process. The observation of the learned single Judge that '*what can be more transparent than a procedure to participate in e-auction process for the same?*' is otiose inasmuch as the grant of STML is only subject to the circumstances indicated in Rule 43 of the 2016 Rules.

6. He contends that an exceptional circumstance did arise towards grant of STML in favour of the appellant since the Court while considering the sustainability of the order dated 24.05.2018 passed by the respondent no.2 intervened permanently staying the operation of the order dated 24.05.2018 and relegating the issue as regards grant of STML to the appellant for consideration afresh.

7. He argues that the provisions of Rule 43 of the 2016 Rules need to be considered together and not in isolation. In the said Rule, four exceptional circumstances towards grant of STML have been indicated as phrases '*(a), (b), (c) and (d)*'. The last circumstance in phrase '*(d) - any other reason to be stated in writing*' widens the scope of consideration towards grant of STML. While passing

the orders dated 24.05.2018 and 12.02.2018, the respondents acted mechanically and refused the appellant's prayer without appreciating the ambit of jurisdiction conferred upon them towards grant of STML. The AA while passing the order dated 25.05.2021 also did not grant any weightage to the specific findings, as arrived at by the Court while deciding the earlier writ petition being WP No. 18410 (W) of 2018 and being oblivious of the fact that such findings of the learned Court had attained finality as the said order was not questioned by the respondents.

8. According to Mr. Bhattacharya, the words '*judicial intervention*' had been misconstrued by the respondents as well as by the learned single Judge. In the order impugned the learned single Judge erroneously arrived at a finding that a judicial intervention '*would mean a positive order by a Court of law to grant of STML which is not the case here*'. According to him the words '*judicial intervention*' does not roam in the air. Pleadings, evidence, cause of action are required to initiate judicial intervention. It is post judicial proceedings and not pre-judicial proceedings. The respondents as well the learned single Judge have misinterpreted the said words and had arrived at an erroneous conclusion. As regards the meaning of the said words, reliance has been placed upon the *Oxford Reference Dictionary & Craies on Statute Law*.

9. Mr. Galib, learned advocate appearing for the respondents denies and disputes the submission of Mr. Bhattacharya and argues that the learned single Judge rightly dismissed the writ petition since the right to avail STML, under the provisions of the 2016 Rules, is not a vested right and the respondents have clearly indicated the reasons as to why they refused to exercise discretion in

favour of the appellant. No right stood conferred upon the appellant even on the rudiments of the order dated 19.12.2018 passed in earlier writ petition being WP No. 18410 (W) of 2018 since the appellant's claim was relegated to the authorities for consideration and for taking a decision purely on merits. The Court consciously did not scuttle the ambit of discretion conferred upon the respondents under the 2016 Rules and as such the said order cannot be construed as '*judicial intervention*' necessitating grant of STML in favour of the appellant in terms of the 2016 Rules.

10. He argues that a challenge to the exercise of discretion by the authorities should normally be eschewed and should not be countenanced by the Courts since the said authorities are only competent to access the niceties of administrative needs and the requirement of the situation concerned. The Court cannot substitute its own decision in such matters unless of course such action of the authorities has been challenged alleging *mala fide*.

11. He contends that there were no exceptional circumstances, as envisaged in Rule 43 of the 2016 Rules, towards grant of STML to the appellant and as such the AA did not interfere with the order passed by the respondent no. 2 on 12.02.2020. The reasons towards such refusal had also been detailed by the AA in the order dated 25.05.2021 and the same cannot be branded to be a cryptic order. There is also no allegation of violation of the principles of natural justice and there is neither any perversity nor any illegality or irrationality or procedural infirmity in the decision-making process and that as such the learned single Judge rightly refused to exercise discretion in favour of the appellant.

12. He argues that a civil action or a criminal action can proceed for a considerable time, even for years, before judicial intervention becomes necessary. Only once a case is heard by a Court and a final decision is taken by the Court either allowing or rejecting the claim it can be construed that the Court had intervened. Mere hearing of a dispute by a Court or mere relegation of such dispute to the competent authority for a final decision cannot be construed as judicial intervention. By the order passed in the earlier writ petition, the Court did not decide the issue on merit but relegated the same to be considered by the competent authority on merits and as such the said order dated 19.12.2008 cannot be construed to be an instance of judicial intervention.

13. He submits that all licenses and leases of minor minerals including their renewal can only be granted after an environmental impact assessment clearance is granted by the competent authority. In support of the argument, reliance has been placed upon the judgments delivered in the cases of *Deepak Kumar and Others versus State of Haryana and others*, reported in (2012) 4 SCC 629 and *Chintels India Limited versus Bhayana Builders Private Limited*, reported in (2021) 4 SCC 602.

14. We have heard the learned advocates appearing for the respective parties at length and we have given our anxious consideration to the facts and circumstances of the case.

15. Indisputably, by a memo dated 27.01.2014 the Revenue Inspector upon conducting a local enquiry intimated the Block Land and Land Reforms Officer (hereinafter referred to as the BL&LRO) *‘that there is plenty of sand and there is*

good road connectivity to the proposed site. Tilpara Barrage is also situated beyond 8KM from the proposed sand' and that in view thereof, sand quarry permit may be given in favour of the appellant observing all formalities. Such enquiry was conducted by the Revenue Inspector on the basis of an order dated 07.01.2014 passed by the BL&LRO. After receipt of the memo dated 27.01.2014 issued by the Revenue Inspector and upon considering the same, the BL&LRO issued an order dated 28.01.2014 categorically observing that necessary permit for extraction of 40,000 c.ft of sand from the said plot may be given. However, the respondent no.2 rejected the appellant's prayer by an order dated 24.05.2018.

16. In the writ petition being WP No. 18410 (W) of 2018 preferred challenging the said order dated 24.05.2018, the Court in its order dated 19.12.2018 categorically arrived at a finding that the memo dated 27.01.2014 retains its validity and testifies the suitability of the concerned plot for extraction of sand and that the recommendations in the said memo were not considered by the competent authority while rejecting the appellant's prayer for grant of STML post 2014. On the rudiments of such findings, the order dated 24.05.2018 passed by the respondent no. 2 was permanently stayed and the competent authority was directed '*to take a decision purely on merits*'. From the said sequence, it is explicit that the Court did intervene in the matter and as is customary in writ jurisdiction, the writ Court would at the first instance, ordinarily not do the thing or render the decision that the executive functionary ought to do in the circumstances, the Court relegated the matter for re-consideration. In the absence of the Court's mandate, the respondents would not have re-visited and

re-considered the issue. Thus, in our view the said order dated 19.12.2018 is clearly an instance of judicial intervention.

17. The words '*judicial intervention*' cannot be envisaged to be a positive order by the Court. If such meaning is conferred to the said words in Rule 43 of the 2016 Rules then there would have been no requirement for incorporation of the said words in Rule 43(1) as a circumstance towards grants of STML since the administrative authorities are duty bound to comply with any direct order of the Court passed upon intervening in the *lis*. The said words ought to have been given a purposive meaning bereft of any pedantic insistence to construe the said words to be a positive order of the Court.

18. A perusal of the order dated 12.02.2020 passed by the respondent no. 2 reveals that the said respondent had erroneously proceeded on the basis that the appellant had applied for '*License-cum-Mining Lease*' for exploitation of minor minerals and that without participating and emerging to be successful in a competitive bidding, the appellant cannot be granted STML. In the order dated 13.02.2020 the respondent no. 2 further observed that he is not a position to allow the application for short term lease for minor minerals which was submitted subsequent to the date of giving effect to the 2016 Rules. Such observation and direction in the order dated 12.02.2020 are not sustainable since the appellant applied for STML and not LTML.

19. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. In the

case of *Deepak Kumar (Supra)*, the Court was dealing with validation of auction notices pertaining to grant of quarry permit of minor minerals in the teeth of recommendations issued by the Ministry of Environment and Forests and the same is thus distinguishable on facts. The orders dated 24.05.1998, 12.02.2018 and 25.05.2021 do not disclose any guidelines framed. In the case of *Chintels India Limited (Supra)*, the Court was interpreting the phrase '*extent of judicial intervention*' as provided under Section 5 of the Arbitration and Conciliation Act, 1996 and the same has no manner of application in respect of grant of STML under the West Bengal Minor Minerals Concession Rules, 2016.

20. To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience. In the present case, the respondents were dealing with an application under Chapter IX of the 2016 Rules which provides for grant of STML, erroneously applying the provisions pertaining to LTML. There is no absolute bar under the 2016 Rules towards grant of STML and the provisions confer jurisdiction upon the competent authority to consider such application under the circumstances provided under Rule 43 of the 2016 Rules. There is no finding in the orders dated 24.05.2018 and 12.02.2020 as regards availability of the circumstances (b) and (c) in Rule 43. Leaving aside the first circumstance of (a) – '*judicial intervention*', the Rule also provides for a circumstance of (d) – '*any other reason to be stated in writing*'. In view of the directions contained in the Court's order dated 19.12.2018 coupled with the fact that there exists no violation of any environmental guidelines, the respondents could not have mechanically rejected the appellant's claim. Such infirmity appears to have been glossed over by the learned single Judge.

21. In the said conspectus, we are of the opinion that the judgment dated 22.03.2024 impugned in the appeal is not sustainable and the same is, accordingly, set aside. The orders dated 12.02.2020 passed by the respondent no.2 and the order dated 25.05.2021 passed by the AA are also set aside and quashed. The respondents are directed to grant STML pertaining to the plot no. 554, Mouza Dhanyagram II to the appellant, within a period of four weeks from the date of communication of this judgment.

22. It is, however, made clear that it would be open to the respondents to discontinue the STML granted in the event the appellant mis-utilises or acts contrary to any guideline referred to in Rule 43 of the 2016 Rules, subject to grant of an opportunity of hearing to the appellant and in accordance with law. It is also made clear that any application made for renewal of STML by the appellant in future would be considered by the competent authority independently on the basis of contemporaneous records.

23. With the above observations and directions, the appeal and the connected application are disposed of.

24. There shall, however, be no order as to costs.

25. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Tapabrata Chakraborty, J.)

Partha Sarathi Chatterjee, J.

1. I have had the advantage of reading the draft judgment prepared by respected brother Chakraborty, J. I express my respectful concurrence with the reasons assigned by His Lordship for the conclusions reached in such judgment. However, my concurrence notwithstanding, and with respect again, I wish to add a few words, mainly by way of emphasis.

2. The provisions of Rule 43 of the 2016 Rules indicate that the legislature intended that, normally, STML would not be granted and it would only be granted under exceptional circumstances, such as: (a) judicial intervention, (b) non-availability of a continuous stretch of the minimum area specified due to hydro-geological conditions of the rivers, (c) unsuitability of any stretch for sustaining the specified period due to potential changes in river flow patterns, and (d) any other reason stated in writing.

3. Mr. Bhattacharya argued that the phrase '*any other reason to be stated in writing*' has widened the scope of consideration for granting STML. The words should be construed according to the rule of ejusdem generis. It is a well-settled principle of statutory interpretation that when specific words pertaining to a class or category are followed by general words, the latter are limited to things of the same kind as those specified. This rule applies when: (i) the statute contains an enumeration of specific words; (ii) the subjects of enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general terms follow the enumeration; and (v) there is no indication of a different legislative intent (see *Uttar Pradesh S.E. Board v.*

Harishanker, reported in AIR 1979 SC 65). Therefore, this rule applies directly to the interpretation of the phrase '*any other reason to be stated in writing*'.

4. The parties emphasized the interpretation of the phrase '*judicial intervention*'. Mr. Bhattacharya drew our attention to relevant extracts from 'Craies on Statute Law' and 'The Compact Oxford Reference Dictionary,' arguing that words used in a statute should be given their normal meaning and that restrictive meanings should not be applied. In contrast, Mr. Galib asserted that the phrase '*judicial intervention*' should not be interpreted in its normal sense.

5. Therefore, the resolution of the issue at hand hinges on the interpretation of the phrase '*judicial intervention*' as used in Rule 43 of the 2016 Rules. Admittedly, the legislature did not attempt to define or explain these words by inserting a definition or explanation clause. Effectively, it has left the interpretation to the judicial institutions.

6. It is axiomatic that the words of a statute are first understood in their natural, ordinary, or popular sense, and phrases and sentences are construed according to their grammatical meaning, unless doing so leads to absurdity or there is something in the context or the object of the statute suggesting otherwise. The intention of the legislature must be gathered from the words it has used, giving those words their plain, normal, grammatical meaning. If a strict grammatical interpretation leads to absurdity or inconsistency, such interpretation should be discarded in favour of one that gives effect to the legislature's purpose.

7. The sense or intended meaning or purport which a word intends to convey is not always communicated to the mind of the receiver by its dictionary meaning but its arrangement in the sentence pattern also. The meaning of a word may vary with its setting or context and with the subject matter to which it is applied.

8. In the present case, since the phrase '*judicial intervention*' is identified as one of the exceptional circumstances, it cannot be given a normal or expansive meaning; instead, a restrictive interpretation must be applied.

9. An example can be cited to illustrate this point: a mere onlooker cannot be said to have intervened in an incident. Similarly, a person who simply passes on information or directs someone to make a decision on merit cannot be considered to have intervened either. In terms of judicial intervention, only when a judicial institution has actively applied its mind to the merits of a conflict can it be said to have intervened in that conflict.

10. Therefore, judicial intervention that creates circumstances qualifying as exceptional under Rule 43 can only be considered to meet the required criterion. However, we cannot endorse the view expressed by the learned single Judge that judicial intervention is only fulfilled when the Court issues a mandatory order.

11. In the present case, the order passed in W.P. No. 18410(W) of 2018 intended to give finality to the observations of the concerned RI that permission for sand extraction could be granted based on the reasons detailed in memo no. 5 dated 22.01.2014. It directed the ADM & DL & LRO to revisit the recommendations in that memo on an *in situ* basis and to make a just decision

purely on merit, whereas in WPA 6296 of 2020, the learned Single Judge refused to invoke the extraordinary jurisdiction of the Court due to the availability of an efficacious alternative remedy, namely, an appeal under Rule 51 to challenge the order of the ADM & DL & LRO. This order was subsequently affirmed in an intra-court appeal (MAT 60 of 2022).

12. To resolve the issue at hand, it is also necessary to examine the relegation of the matter to the appropriate authority by the learned Single Bench in W.P. No. 18410(W) of 2018. In many cases, the Courts exercising their power of judicial review relegate issues for final resolution to avoid unnecessary encroachment on administrative functions. The question then arises whether did the court relegate the issue without applying its mind to the issue at hand. If relegation occurs without exploring the details of the controversy, that judicial intervention may not be considered an exceptional circumstance within the meaning of Rule 43. However, if the court carefully considers the claims presented before it and then decides to relegate the issue, this judicial intervention can be viewed as falling within the purview of Rule 43.

13. In the present case, the learned Single Bench, while addressing the issue raised in W.P. No. 18410(W) of 2018, applied its mind to the contours of the controversy. The Bench considered the sand extraction potential related to plot no. 554, as recommended by the RI in his memo dated 27.01.2014, and permanently restrained the respondents from raising the grounds set forth by the ADM & DL & LRO in his memo dated 24.05.2018. The issue was then relegated for a just decision purely on merit. Therefore, given the exercise undertaken by the learned Single Bench, it cannot be said that the Bench

simply relegated the issue without applying its mind. Considering these aspects, we are of the opinion that the intervention of the learned Single Bench in W.P. No. 18410(W) of 2018 satisfies one of the criteria of Rule 43, specifically, '*judicial intervention*'.

14. Mr. Galib referred to the West Bengal Minor Minerals (Auction) Rules, 2016, but did not demonstrate any provision that overrides Rule 43 of the West Bengal Minor Minerals (Concession) Rules, 2016. Rule 49 of the Concession Rules excludes the application of Chapters III and V, which address the general conditions for granting a licence-cum-mining lease and mining lease, as well as environmental aspects concerning STML. Therefore, the provisions of these two chapters cannot hinder the grant of STML. Additionally, the appellant authority failed to recognize that the order dated 12.02.2020 was not issued in compliance with the learned Single Bench's order in W.P. No. 18410(W) of 2018, both in letter and spirit.

15. For the reasons discussed above, I concur with the judgment delivered by my respected brother.

(Partha Sarathi Chatterjee, J.)