

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 10914 of 2013

**Sayed Neajuddin
Vs.
The State of West Bengal & Ors.**

For the petitioner : Mr. Mir Anowar
Ms. Alisha Kar

For the State/respondents : Mr. Soumitra Bandyopadhyay
Mr. Priyabrata Batabyal

Heard on : 31.07.2024

Judgement on : 31.07.2024

PARTHA SARATHI SEN, J.:

1. In this writ petition, the writ petitioner has impugned the Memo No. 309/10/MM/116/2013 dated 30.01.2013 as issued by the respondent no. 3, i.e., the Additional District Magistrate and District Land & Land Reforms Officer, Burdwan whereby and whereunder, the prayer of the writ petitioner for renewal of his mining lease as filed on 15.01.2013 has been turned down. By

filing the instant writ petition, the writ petitioner has prayed for issuance of writ of mandamus for quashing the memo dated 30.01.02013.

2. In course of his argument, learned advocate for the writ petitioner at the very outset draws attention of this Court to the impugned memo dated 30.01.2013. It is submitted that by the impugned memo, the respondent no. 3/authority rejected the renewal application of mining lease of the writ petitioner quoting the amended provisions of the West Bengal Minor Minerals Rules, 2002 (hereinafter referred to as the 'said Rules'). It is submitted that from the impugned memo dated 30.01.2013, it would reveal that the amended provision of the said Rules came into effect with 05.12.2011.
3. In course of his argument, learned advocate for the writ petitioner has handed over a server copy of the judgment dated 04.07.2014 as passed by a Division Bench of this Court in WP 16526 (W) of 2013 [**Swapan Sarkar Vs. State of West Bengal & Ors.**]. It is submitted that by the said judgment dated 04.07.2014, the said Division Bench of this Court had declared the aforesaid amended Rules as ultra vires.
4. It is thus submitted that in view of such declaration as ultra vires, the respondent no. 3/authority may be directed to consider the

renewal application of the mining lease of the writ petitioner afresh on the basis of the unamended provision of West Bengal Minor Minerals Rules, 2002.

5. Drawing attention to the report in the form of affidavit as filed on behalf of the respondent nos. 2, 3 and 4, it is further argued that though in such report, a defence has been taken by the respondent authorities that since the said unamended Rules of 2002 has been repealed by the subsequent implementation of Rules of 2016 and 2021 but such Rules have got no retrospective effect and, therefore, there cannot be any embargo to consider the application for renewal of the writ petitioner on the basis of the unamended Rules of 2002.
6. In support of his contention, learned advocate for the writ petitioner again places his reliance upon a judgment dated 25.07.2023 as passed by a co-ordinate Bench in WPA 14193 of 2013 **[Khandakar Samsuddin Vs. State of West Bengal & Ors.]**. It is argued that in the said judgment dated 25.07.2023, the co-ordinate Bench came to a finding that an amendment of substantive law is not at all retrospective unless expressly laid down or by necessary implication inferred.
7. Learned advocate for the writ petitioner thus submits that it is a fit case for allowing the instant writ petition by directing the

respondent no. 3/the Additional District Magistrate and District Land & Land Reforms Officer, Burdwan to reconsider the renewal application of the mining lease as filed by the writ petitioner on 15.01.2013 by quashing the impugned memo dated 30.01.2013.

8. Per contra, learned advocate for the State in course of his argument also draws attention of this Court to the report as submitted by the respondent nos. 2 to 4. It is submitted that since the repealing of unamended Rules of 2002, two more Rules have been brought into effect i.e., Rules of 2016 and at present the Rules of 2021 is prevailing. It is thus submitted that no relief ought to be granted to the writ petitioner keeping in mind the effect of the present Rules of 2021. It is further submitted that under the new Rules of 2021, renewal is not permissible and on the contrary, a desirous candidate has to apply afresh with the appropriate authority.
9. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it appears that it is nobody's case that the amended provisions of Rules 2002 has not been declared ultra vires. Admittedly, as pointed out by the learned advocate for the respondent/State that the unamended Rules of 2002 has been repealed and, thereafter, Rules of 2016 have been brought into effect which is also repealed

subsequently and at present, West Bengal Mining Transportation Storage and Sale Rule, 2021 has brought into effect which prohibits renewal of existing mining lease and on the contrary, it provides that a desirous candidate shall have to make an application before the WBMDTCL for e-auction.

10. At this juncture, this Court considers to look into the relevant portion of the aforesaid unreported decision in ***Khandakar Samsuddin (supra)*** and the same is reproduced hereunder in verbatim.

“An amendment of substantive law is not retrospective unless expressly laid down or by necessary implication inferred. So, in the instant case there is no whisper and or clear intention of the legislature to give retrospective effect to the amendment by Notification dated 5.12.2011 and as such the renewal application of the petitioner cannot be frustrated by the operation of said amended Rules, 2011 and the implementation of Rule 16B will not be a positive approach towards the law of the land.”

11. In considered view of the Court, the view taken by the learned Single Judge is absolute correct proposition of law. Admittedly, while rejecting the prayer of the writ petitioner by its memo dated

30.01.2013 on the basis of the amended Rules of 2002, the subsequent Rules of 2016 and 2021 were not in existence.

12. Materials have been placed before this Court that the said unamended Rules of 2002 has been declared ultra vires. Since it is settled principle of law and as discussed in the decision of ***Khandakar Samsuddin (Supra)*** that an amendment of substantive law is not retrospective one and since there is saving clause in the subsequent Rules of 2016 and 2021, this Court considers that justice would be sub-served if the respondent authorities are directed to reconsider the renewal application of the mining lease of the writ petitioner as filed on 15.01.2013 on the basis of unamended provision of West Bengal Minor Minerals Rules, 2002.
13. In other words, this Court holds that subsequent promulgation of Rules 2016 and 2021, cannot take away the right of the writ petitioner to get his renewal application dated 15.01.2013 by the appropriate authority i.e., the respondent no. 3 under the West Bengal Minor Minerals Rules, 2002.
14. In view of such, the instant writ petition is allowed.

15. The impugned memo dated 30.01.2013 as issued by the respondent no. 3/the Additional District Magistrate and District Land & Land Reforms Officer, Burdwan is hereby quashed.
16. The respondent no.3/the Additional District Magistrate and District Land & Land Reforms Officer, Burdwan is directed to revisit the renewal application of the mining lease of the writ petitioner as filed on 15.01.2013 on the basis of unamended West Bengal Minor Minerals Rules, 2002 within a month from the date of communication of this order after giving an opportunity of hearing either to the writ petitioner or to his learned advocate.
17. The respondent no. 3/the Additional District Magistrate and District Land & Land Reforms Officer, Burdwan is further directed to pass a reasoned order within a month from the conclusion of hearing and such order shall have to be communicated to the writ petitioner soon thereafter either by Speed Post or through e-mail if the petitioner provides his e-mail account details to the respondent no. 3 on or before the hearing.
18. Accordingly, the instant writ petition being WPA 10914 of 2013 along with all connected application, if therebe any, stands hereby disposed of.

19. All the parties including the respondent no. 3/the Additional District Magistrate and District Land & Land Reforms Officer, Burdwan are directed to act on the server copy of this order.
20. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(PARTHA SARATHI SEN, J.)

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A.R. (Court)