

12.08.2024

Item No. 16

Ct. no.2

b.r.

WPA 13773 OF 2024

Saroj Kumar Roy @ Saroj Roy

-Vs.

The State of West Bengal & Ors.

Mr. Soumya Kanti Sinha

Ms. Suparna Das

Mr. Anindya Halder.

... For the Petitioner

Mr. T.M. Siddiqui, Ld. AGP

Mr. Supratim Dhar

.... For the State

Mr. Sanjay Saha

**.... For the Respondent
No. 5**

Affidavit-of-service, filed in Court today, is taken on record.

On the prayer of Mr. Soumya Kanti Sinha, learned counsel appearing for the petitioner, leave is granted to the petitioner to file a supplementary affidavit. The supplementary affidavit affirmed on August 7, 2024, filed in Court today, is taken on record. Copy has been served upon the respondents.

The petitioner claims to be a mining lease holder in respect of a piece of land for the purpose of excavation of sand blocks. The lease was executed on **November 9, 2017** for a period of **five years**. The lease expired on **November 8, 2022**. The entire royalty amount had been

paid by the petitioner and was accepted by the State authorities under the lease.

Referring to a communication dated **November 26, 2018, Annexure-P8 at page 129** to the writ petition issued by the respondent no.11, Mr. Sinha, learned counsel submits that, in view of an order dated **September 4, 2018** passed by the **National Green Tribunal** in **O.A. No. 173 of 2018 (In the matter of : Sudarshan Das –vs. State of West Bengal & Ors.)** the petitioner's excavation operation from the said subject land was suspended.

Learned counsel then submits that, by a judgment and order dated **September 4, 2018** the said proceeding was disposed of by the National Green Tribunal, Principal Bench with the following observation :

“29. Apart from above, in view of the grave and alarming situation and gross failure on the part of the authorities in the concerned district in both the State of Odisha and West Bengal and to prevent illegal and unscientific sand mining in the areas in question, we deem it essential to issue following directions :-

- (i) *The State of West Bengal and Odisha may demarcate the boundaries for regulating grant of sand mining lease within three months from today. No mining lease of minor minerals may be given in the area in question till demarcation is complete. All existing mining operations in those areas shall remain suspended till demarcation work is completed and attains finality. To carry out the demarcation, the Chief Secretaries of the two States may constitute a team of three suitable officers each within two weeks. The said teams may hold their first meeting within one month.”*

The order of the National Green Tribunal dated **September 4, 2018** is available at **Annexure-P-8 at page-117** to the writ petition.

Referring to an order dated **November 10, 2022** passed by the respondent no.8 at **page 225** to the writ petition learned senior counsel submits that, the suspension was lifted and the relevant observation is quoted below :

“ The petitioner submitted the affidavit dated 28.10.2022 who has proclaimed no bid money refund so deposited towards EMD, solvency money and interest accrued therein; which be made a part of the proceedings. It is pertinent that the said OA No.173 of 2018 before the Hon’ble NGT has already been disposed of and the demarcation work of inter-state boundary between Odisha and West Bengal over the river Subarnarekha has also been completed accordingly. To attain finality in the light of above observation, the District Magistrate & Chairperson, District Committee for Competitive Bidding, Paschim Medinipur, has already sought for necessary guidance in terms of departmental communication to the Secretary in the Government of West Bengal, Department of Industry, Commerce and Enterprises (IGE), W.B., dated 18.11.2022 in the light of refund/extension of lease deed period/commencement of mining operation so as to initiate further course of action.

Hence, the petitioner’s representation dated 11.05.2021 is intently considered so as to settle the issue subject to comply all the terms and conditions so envisaged in the Acts and Rules and thus the case is disposed of.”

In view of the lifting of the said suspension, the respondent no.2 had issued an order dated **February 21, 2024, Annexure-P15 at page 5** to the supplementary

affidavit whereunder the District authorities were authorized to execute sand mining lease agreement of sand mines with following observation:

“Now, therefore, district authorities are hereby authorized to execute sand mining lease agreement of sand mines previously auctioned by them with such highest bidders provided all statutory approvals and payment receipts are submitted and all the terms and conditions of the tender document and the LoI issued to them, are complied with as per the norms.”

In the light of the above, Mr. Sinha, learned counsel submits that, since no intimation has been received by the petitioner that, the suspension order issued to it on **November 26, 2018, Annexure-P7 at page 116** to the writ petition has been lifted insofar as the petitioner is concerned, the petitioner has filed this writ petition.

It is also contended on behalf of the petitioner that, the moment the order of suspension has been intervened during the subsistence of the lease of the petitioner, the petitioner could not carry out its mining work for the residual period of lease. This was beyond the control of the petitioner and this was not done due to any breach of lease covenant on the part of the petitioner. Hence, the petitioner claims for extension of the lease period and for lifting of the excavated sand for which challans were issued since royalty has been paid.

Learned counsel then submits that, the petitioner has submitted a representation dated **March 21, 2024,**

Annexure-P14 at page 227 to the writ petition, *inter alia*, before the respondent no.2 and the same has not yet been considered.

Mr. Supratim Dhar, learned State counsel led by Mr. T.M. Siddiqui, learned Additional Government Pleader, appears for the respondent nos. 1 to 4 and 6 to 12.

Mr. Sanjay Saha, learned counsel, appears for the respondent no.5.

After considering the submissions made on behalf of the parties and upon perusal of the materials on record it appears to this Court that, the suspension imposed by virtue of the order passed by the National Green Tribunal has been lifted. Such position is also admitted on the basis of the available record, since the said communication dated ***February 21, 2024*** issued by the respondent no.2 authorised the district authorities to execute the sand mining lease agreement.

In view of the above, the respondent no.2 is directed upon issuing a prior hearing notice of at least ***seven days*** to the petitioner to decide the said representation dated ***March 21, 2024***, as referred to above, after giving him an opportunity of hearing and then by passing a reasoned order in accordance with law.

The entire exercise as directed above, shall be carried out and completed by the respondent no.2 positively within a period of ***four weeks*** from the date of

communication of this order and the reasoned order shall then be communicated to the petitioner positively within a **further** period of **one week** from the date of the said reasoned order to be passed.

It is made clear that, the petitioner can participate in the hearing either by himself or through his duly authorized representative.

It is also made clear that, this Court has not gone into the merits of the submissions made on behalf of the petitioner and the petitioner shall be at liberty to urge whatever points he wishes to urge by relying upon whatever records and documents he wishes to rely upon before the respondent no.2.

In the event, the reasoned order goes in favour of the petitioner, all necessary and consequential steps shall be taken by the respondent no.2 positively within a period of **two weeks** from the date of the said reasoned order to be passed.

It is made clear that, this order shall not create any right or equity in favour of the petitioner, if the petitioner is otherwise not eligible to receive his claim strictly in accordance with law.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions this writ petition, **WPA 13773 of 2024** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)