

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 18954 of 2022
Jagannath Hansda
Versus
The State of West Bengal & Ors.

For the petitioner : Mr. Milan Ch. Bhattacharjee
Mr. Sulagna Bhattacharjee

.....Advocates

For the State : Mr. Ashim Kumar Ganguly
Mr. Joytsna Roy

.....Advocates

Heard lastly on : 04.01.2024

Judgment on : 22.03.2024

Jay Sengupta, J:

1. This is an application under Article 226 of the Constitution of India praying for setting aside of the order dated 25.01.2021 being Annexure P-6 to the writ petition directing the respondent authorities not to give effect to

the said order and directing them to grant STML in favour of the petitioner in respect of plot no. 554-P under Mouza – Dhanyagram, District – Birbhum.

2. Learned senior counsel representing by the petitioner submitted as follows. The writ petitioner was granted quarry permit in respect of secluded plot No. 554(P) in Dhanyagram Mouza, Suri, Birbhum on payment of royalty against the specified quantity of sand. On each occasion, such permission was recommended by Revenue Inspector. This exercise used to be made under West Bengal Minor and Mineral Rules, 2002. The West Bengal Minor and Mineral Rules, 2002 stood repealed by West Bengal Minor Mineral Concession Rules, 2016 having come into effect from 29.07.2016 (hereinafter, referred to as 2016 Rules). In terms of Rule 44 of the 2016 Rules, the petitioner applied on 10.05.2018 for short term mining licence by paying Rs. 3000/- in Form E knowing fully well that plot no. 554(P) would not be more than 3 hectares for a period of 90 days with the rider that short term mining licence would not be renewed. The said application was rejected by District Land and Land Reforms Officer, Birbhum on 24.05.2018 on the ground that there was no explicit and a relevant order from any Competent Authority and/or from Hon'ble Court of law, but advised petitioner to take part in E-auction process for LTML. Under 2016 Rules, long Term Mining Lease (LTML) is governed by Rule 41 of Rules, 2016 read with Rule 5 (period of lease for river – bed occurrences upto 10 years) and Rule 6 (area of mining lease will be 5 hectares in case of river bad occurrence). Rule 47 of 2016 Rules provided that every short term mining licence for minor minerals granted under Rule 43, shall be subject to the condition as specified by the Commerce & Industries Department. Till date no conditions had been

specified other than Rules 43, 44, 48. LTML (Long Term Mining Lease) was governed by West Bengal Minor Minerals (Auction) Rules, 2016, but the Auction Rules did not apply to short term mining licence (for a period of 90 days). In LTML big businessman took part where bid money always became more than Rupees Eight crores. For LTML E-auction, separate machinery was provided. Rules 43 provided four guidelines (non-statutory requirements) – (a) Judicial Intervention, (b) Non-availability of continuous stretch of minimum area specified in these rules due to hydro geological conditions of rivers, (c) unsuitability of any stretch for sustaining the period specified in these Rules owing to possible change of river flow pattern, (d) for any other reason to be stated in writing, Plot 554(P) Dhanyagram had been specified for quarry permit. Now, the Judgement and Order in W.P. No. 18410 (W) of 2018) of permanent stay of order of DL & LRO dated 24.05.2018 constituted Judicial intervention. Plot 554(P) was never found unsuitable due to change of river flow. As there was no bar to grant STML for 90 days without any renewal, there would be no occasion of change of river flow since it was a secluded plot, not in array with other sand Blocks for which e-auction had been held by competent authority getting lease bid upto Rupees Eighteen Crores. In the said writ petition W.P. No. 1840 (W) of 2018, order of DL & LRO dated 24.05.2018 was under challenge. This Court passed a direction that impugned order dated 24.05.2018 stood permanently stayed. In terms of order to revisit, the DL & LRO passed an order on 12.02.2020 allegedly considering the merits, but not allowing STML (page 50 of the writ petition). No reasons whatsoever were given in the order. Against the said order dated 12.02.2020 passed by DL & LRO, the petitioner

moved W.P.A. 6296 of 2020, CAN No. 1 of 2020, which was dismissed by the Learned Trial Judge on 22.12.2021. Against the said judgement dated 22.12.2021 Mandamus Appeal was preferred and judgement was delivered by Hon'ble Division Bench on 28.02.2022 relegating writ petitioner to prefer appeal before the appellate authority under Rule 51 of Rules 2016. The Divisional Commissioner, the appellate authority rejected the appeal on 25.05.2021 giving no cogent reasons, but reiterated the grounds of the Trial Judge though Mandamus Appeal Court directed that appellate authority not to be influenced by any findings of the Trial Judge. The appellate authority reiterated the version of DL & LRO. He was influenced by DL & LRO who took part in the hearing. He categorized three points, which were practically non issue in as much as Judicial Intervention was made by this Court and there was no violation of other two parameters of Rule 43. No other reason had been considered by the appellate authority. The Appellate authority confused between lease and license wherein between both the words, there is gulf of difference as enunciated by the Hon'ble Supreme Court in AIR 1968 SC 175. In STML, for a particular plot 554(P), no environmental clearance is needed as per Pradip Kumar's Case. So, mandamus might be issued directing the Respondents to go with the process of allowing STML to the petitioner who was a lone applicant.

3. Learned counsel representing the State respondents submitted as follows. The petitioner was granted certain quarry permits under the West Bengal Minor Minerals Rules, 2002 (since repealed) and not any mining lease by the DL & LRO, Bribhum for different periods for extraction and

removal of sand mineral situated at/under an area of three acres on the subject land comprised in Plot No. 554(part) in Mouza – Dhanyagram under the Police Station – Suri, on pre-payment of royalty against the specified quantity of sand. Quarry Permit No. 15/Suri-I of 2013-14 was granted to the petitioner for extraction and removal of forty thousand cubic feet of sand from the subject land on pre-payment of royalty for a period of forty days with effect from 10.02.2014 to 21.03.2014. The said quarry permit expired on 21.03.2014 after elapse of its specified validity period of forty days. Subsequently, the petitioner made another application and was also granted another quarry permit for extraction of thirty thousand cubic feet of sand from the subject land on pre-payment of royalty for a period of thirty days with effect from 17.06.2014 to 16.07.2014 vide the Quarry Permit No. 02/Suri-I of 2014-15. The petitioner, after coming into force the West Bengal Minor Minerals Concession Rules, 2016 (hereinafter, called the “Concession Rules, 2016), submitted an application dated nil, received on 10.05.2018, in the prescribed Form-E before the District Magistrate, Birbhum for grant of short-term mining licence for extraction of thirty thousand cubic feet of sand from the subject land. The said application was accompanied by a challan depositing Rupees Three Thousand towards the requisite application fees. The DL&LRO, Birbhum, taking note of the solemn observation made by the Hon’ble Supreme Court in Deepak Kumar & Ors. Vs. State of Haryana & Ors., reported in (2012) 4 SCC 629 and the statutory provisions contained in Rule 43 of the Concession Rules, 2016, by his memorandum being No. 3551/(M&M)/DL&LRO(B)/2018 dated 24.05.2018, rejected the petitioner’s aforesaid application at the initial stage itself on the ground, inter alia, of

having no express order from any competent authority and/or from any Hon'ble Judicial Institution. Under Rule 3 (g) of the West Bengal Minor Minerals Rules, 2002 (hereinafter called the "Rules, 2002"), the term "Lease" was defined to mean a mining lease for a period not below one year. In contradistinction to the said term "Lease", the term "Quarry permit" was defined in Rule 3 (1) to mean a permit granted under Chapter IV of the Rules, 2002 to extract and remove any minor mineral in specified quantity from a specified area for a specified period. Thus, the aforesaid definition clauses vividly made a distinction between the terms "Lease" and "Quarry permit". Rule 27 (1) of the Rules, 2002 empowered the District authority or any other authorised officer of the State Government, to grant to a person, as per the procedure envisaged in Schedule V, quarry permits in the prescribed in the Form-F for extraction or removal of any minor mineral except for stone and granite, on pre-payment of royalty at the rate of specified in Schedule I. Sub- rule (2) specified that such quarry permit would be granted for an area not exceeding three acres and for a period not exceeding three months and for a quantity as per norms fixed by the State Government. It was also the mandate under sub-rule (2) of Rule 27 that no quarry permit could be renewed thereby making it amply clear that there was no provision for renewal of quarry permit under the said Rules, 2002. Rule 28 provided for the procedure for making application for such quarry permits and Rule 29 postulated the conditions for such quarry permits as laid down in Schedule V. In the present case, the petitioner was never granted any mining lease within the meaning of the terms under rule 3 (g) of the West Bengal Minor Mineral Rules, 2002 (since repealed). Rather, the

petitioner was granted certain quarry permits under the provisions of Rule 27 (1) read with Schedule V of the said Rules, 2002 for a specific area and for specified period and for specific quantum of minerals. Therefore, the questions of petitioner's holding any mining lease under the said Rules, 2002 and/or continuing the petitioner's mining lease under renewal, as averred by the petitioner, did arise at all. The West Bengal Minor Minerals Concession Rules, 2016 (hereafter the Concession Rules, 2016) came into force with effect from 29.07.2016. By the enactment of Concession Rules, 2016, the Rules, 2002 has been repealed. After the enactment of the Concession Rules, 2016, grant of mining lease for exploitation of riverbed occurrences like sand was to be made through competitive bidding upon having wide circulation, as mandated under Rule 41 thereof. In terms of the said Rule 41, the State Government framed a separate West Bengal Minor Minerals (Auction) Rules, 2016 (hereafter the Auction Rule, 2016) for conducting such competitive bidding. As per the aforesaid Rules, 2016, competitive bidding for grant of a mining lease of a minor mineral to an area was initiated by the District Magistrate through online auction process, after the mineral content in such area had been established and notified. However, Rule 43 of Concession Rules, 2016 provided for provisions for grant of Short-Term Mining Licence only in the exceptional circumstances like judicial intervention, non-availability of continuous stretch of the aforesaid specified minimum area for mining due to normal hydro-geological condition of river, unsuitability of any stretch for sustainable mining for the period of lease owing to possible change of river flow pattern and any other reasons and even in the intervening period between issuance of Letter of

Intent and the execution of the mining lease to the successful bidder. The Ministry of Environment, Forest and Climate Change (MoEFF&CC), Government of India, placed a report-recommendation before the Hon'ble Supreme Court of India in the matter of **Deepak Kumar & Ors. Vs. State of Haryana and Ors., reported in (2012) 4 SCC 629**. The Hon'ble Supreme Court, by its solemn order dated 27.02.2012, while accepting the aforesaid report-recommendation of the MoEFF&CC, was further pleased to observe and direct, inter alia, that:

“24. We are of the view that all State Government/Union Territories have to give due weight to the abovementioned recommendations of MoEF which are made in consultation with all the State Governments and Union Territories. The Model Rules of 2010 issued by the Ministry of Mines are very vital from the environmental, ecological, ecological and biodiversity point of view and therefore the State Governments have to frame proper rules in accordance with the recommendations, under Section 15 of the Mines and Minerals (Development and Regulation), Act, 1957.”

The Hon'ble Supreme Court has itself practically discouraged grant of short-term mining leases to preserve the scientific and sustainable mining practices, as recommended by the MoEFF&CC. In the instant case, there is prima-facie no such exceptional circumstances as envisaged in Rule 43(1) of

the said Concession Rules, 2016 to grant short-term mining licence to the petitioner to meet out the situation arising from such exceptional circumstances. It is well settled that administrative decisions are subject to judicial review under Article 226 of the Constitution, only on grounds of perversity, patent illegality, irrationality, want of power to take the decision and procedure irregularity. Except on these grounds administrative decisions were not interfered with, in exercise of the extra ordinary power of judicial review. It is further well settled that judicial review under Article 226 was directed, not against the decision, but the decision making process; however, a patent illegality and/or error apparent on the face of the decision, which went to the root of the decision, might vitiate the decision making process. **[Ref: Punjab State Coop. Milk Producers Federation Ltd. Vs. Balbir Kumar Walia, reported in (2021) 8 SCC 784: 2021 SCC OnLine SC 461]**. The claim of the petitioner as to his preference for grant of mining lease or licence on the status of his caste in parity with the branches of public employment and everywhere in terms of the Constitutional provisions did not deserve lawful consideration in view of the law declared by the Hon'ble Supreme Court of India in **Natural Resources Allocation, In Re Special Reference No.1 of 2012 reported as (2012) 10 SCC 1.**

4. I heard the learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions.

5. Admittedly, the petitioner was granted quarry permit for extraction of sand from river belts at the place in question in the years 2011-2014.

6. However, the Rules under which the petitioner had been granted quarry permission i.e., the West Bengal Minor Mineral Rules, 2002, was repealed subsequently and was replaced by West Bengal Minor Minerals Concession Rules, 2016. There is an e-auction provision for granting quarry permit as envisaged under the new Rules. Under the new Rules, ordinarily long term mining lease is to be granted upon application through e-auction process. However, as an exception, a short term mining licence (STML for short) can be granted under certain exceptional contingencies. Those exigency circumstances are non-availability of continuation stretch of specified minimum area for mining due to hydro-geological conditions of the river, unsuitability of any stretch for sustainable mining for the period of lease, due to possible change of river flow pattern and judicial intervention.

7. So far as judicial intervention is concerned, no Court had directed the respondent authorities to grant any such STML to the petitioner. Earlier, this Court had directed the DL & LRO to revisit the recommendation dated 27.01.2014. Lastly, a Division Bench of this Court directed the Appellate Authority to take an independent decision. This cannot be treated as “judicial intervention” within the meaning of the Rules of 2016. A proper reading of the particular Rule and the context would make it clear that a judicial intervention, as envisaged, would mean a positive order by a Court of law to grant an STML, which is not the case here.

8. Secondly, even if there is a non-availability of continuous stretch of minimum area for mining due to hydro-geological condition of the river, it will be for the respondent authorities to decide whether they would treat this as an exigent circumstance to grant STML or not.

9. Such alleged condition does not grant any vested right on an applicant to claim grant of STML as of right. This is not even so if the applicant had, for some time earlier, enjoyed temporary quarry permits under the 2002 Rules. No provision of law appears to be there importing, far less saving, a right to operate a temporary quarry permit for sand mining from the repealed Rules of 2002 to the new Rules of 2016.

10. Moreover, mere financial incapacity preventing the petitioner from participating in any e-auction for mining lease or a status of being a part of the tribal community cannot further support any such claim of the petitioner to obtaining STML.

11. It may be germane to mention that the Ministry of Environment, Forest and Climate Change, Government of India placed a report/recommendation before the Hon'ble Supreme Court in Dipak Kumar (supra). The Hon'ble Apex Court, while accepting the said report and the recommendation, held that the model Rules of 2010 were vital from the environmental, ecological and bio-diversity point of view. In fact, the Hon'ble Supreme Court has often discourage the grant of short term mining lease to preserve the scientific and sustainable mining practices as recommended by the Ministry. What can be more transparent than a procedure to participate in e-auction process for the same?

12. For the foregoing reasons, I do not find that the petitioner has any vested right for claiming STML for sand mining in the particular area.

13. Besides, the impugned order is a reasoned one and is based on relevant considerations.

14. Therefore, I do not find any merit in this application.

15. Accordingly, the writ petition is dismissed, however, without any order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Jay Sengupta, J.)