

22.01.2024
Item no.1.
Court No.6.
AB

**F.M.A. 25 of 2024
With
IA CAN 1 of 2024**

**Niamat Sk.
Vs
The State of West Bengal & Others**

Mr. Anjan Bhattacharya,
Mr. Gora Chand Samantafor the Appellant.

Mr. Suman Sengupta,
Mr. Sanatan Panjafor the State.

A judgment and order dated August 17, 2023, whereby the appellant's writ petition, being WPA 710 of 2007, was dismissed by a learned Judge of this Court, is under challenge in this appeal, at the instance of the writ petitioner.

The writ petitioner wanted to extract sand from the concerned riverbed in the district of Birbhum. Accordingly, he filed an application, in May, 2004, under Rule 5(2) of the West Bengal Minor Minerals Rules, 2002, for grant of long term mining lease in his favour in respect of plot no.1560 (P) measuring an area of about 6 acres, for a period of five years. It appears that in the year 1999, a five-year lease in respect of the same plot had been granted in favour of the private respondent herein. Such lease was due to expire in August, 2004. The private respondent applied for

renewal of the lease in his favour in October, 2004, i.e., after the appellant herein made his application.

Both the appellant and the private respondent filed writ petitions in this Court for expeditious disposal of their respective applications for grant of mining lease. In the writ petition of the appellant herein, an order was passed for consideration of the appellant's application and for disposing of the same by a reasoned order. A reasoned order dated July 13, 2005, was passed by the Assistant Secretary, Commence & Industry Department, Government of West Bengal. No lease was granted in favour of the appellant herein.

The appellant challenged the aforesaid reasoned order in the present round of litigation before the learned Single Judge. The learned Judge, after noting the factual background of the case, dismissed the writ petition with the following observations:

“Be that it may, I am in agreement with the learned Advocate for the State respondent that as a result of efflux of time the instant writ becomes infructuous case even assuming that the lease was granted to the private respondent by the State respondent arbitrarily and illegally, the lease period has ended on efflux of time in view of the West Bengal Minor Minerals Rules, 2016, the procedure in granting mining lease has changed altogether. At present mining can be granted only on auction conducted by the District Magistrate of a District. For the purpose of participation of auction in mining lease, an applicant shall meet the requirement as specific in Rule 4(1) of the West Bengal Minor Minerals Concession Rule, 2016 and the terms and conditions prescribed in the mining lease deed as per format as provided in that Rule. Such

auction shall be conducted by electronic mode and the bid parameter and process are delineated in Rule 8 and 9 of the said Rule.”

Being aggrieved, the writ petitioner has come up by way of the present appeal.

We have heard Mr. Bhattacharya, learned Advocate for the appellant/writ petitioner and Mr. Sengupta, learned Advocate for the State. We find from the affidavit of service filed in Court today that the private respondent has been served but nobody appears on his behalf.

Mr. Bhattacharya submitted that his client's application, being prior in point of time, compared to the application of the private respondent, the appellant's application should have been allowed. The appellant is prepared to pay whatever the amount of royalty is. The State Exchequer will benefit if lease is granted in respect of the concerned plot. The State should not keep the plot idle. A direction be issued on the State for grant of mining lease in favour of the appellant.

Mr. Sengupta, learned Advocate appearing for the State, submitted that the Rules for grant of long term mining lease have undergone a total change. In 2016, the West Bengal Minor Minerals Concession Rules were introduced. Rule 4 of the said Rules stipulate the general conditions for grant of mining lease. An “e” auction has to be held for grant of a mining lease, guided by the New Sand Rules, 2021. No

mining lease in respect of any plot can be granted in favour of anybody without conducting the process of “e” auction.

We find that the writ petition of the appellant was pending for a long time. In the meantime, new Rules have been introduced. Hence, the learned Single Judge was right in concluding that no relief can be granted to the appellant/writ petitioner. The State is bound to conduct “e” auction for granting mining lease in respect of any plot of land.

The appellant argued that he cannot be blamed for his writ petition remaining pending for a long period of time. That may be or may not be so. Nothing has been brought on record to show that the appellant took any step for expeditious disposal of his writ petition. Be that as it may, the fact remains that after introduction of the new Rules, the same have to be followed. If the State decides to grant mining lease in respect of the plot in question, then naturally, the State will have to conduct an “e” tender process wherein the appellant would be at liberty to participate.

The appellant makes a grievance that although there is no subsisting mining lease in favour of the private respondent, in collusion with some Officers in the Administration, the private respondent is extracting sand from the plot in question. The appellant has lodged a written complaint with the

District Magistrate, Birbhum on June 26, 2023. We are sure that the District Magistrate will cause requisite enquiry to be conducted with regard to the aforesaid allegation and take necessary steps to stop illegal extraction of sand, if any.

Mr. Sengupta, learned Advocate for the State, however, vehemently denies and disputes the submission made on behalf of the appellant.

In view of the aforesaid, no order can be passed in this appeal, which is, accordingly, disposed of along with the connected application.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)