

19.09.2024
Sl. No. 22
g.b.
Court No.02

W.P.A. 28744 of 2023

Arup Mondal
-Vs-
The State of W. B. & Ors.

Mr. Sharanya Chatterjee
Mr. Ayaskanta Ghosh
.....For the Petitioner
Mr. Soumitra Bandyopadhyay
Ms. Suchana Banerjee
.....For the State

Mr. Sharanya Chatterjee, learned counsel appears for the petitioner.

Mr. Ashim Kr. Ganguly, learned Additional Government Pleader appears for the respondents.

The petitioner claims for extension of mining lease for excavation of black stones. The lease was executed on August 29, 2017. During Covid period the petitioner could not carry out the mining activity according to the requirement under the mining agreement. The lease expired on August 29, 2022. The petitioner invoked “**Force Majeure Clause (FMC)**” under the agreement for extension of the mining lease.

The issue travelled before the Coordinate Bench in WPA 18758 of 2022. The Co-ordinate Bench by its order dated August 26, 2022, Annexure 'P-9' at page 89 to the writ petition, directed the respondent no.3 to consider the representation submitted by the petitioner dated March 4, 2022 after taking into consideration the aforesaid "**Force Majeure Clause**".

Pursuant to the direction of the Co-ordinate Bench the respondent no.3 passed its impugned order dated September 22, 2022.

After considering the submissions made on behalf of the parties and upon a careful scrutiny of the said impugned order dated September 22, 2022 at page 93 to the writ petition it appears to this court while deciding the representation submitted by the petitioner, the aforesaid "**Force Majeure Clause**" was taken note of but there was no finding as to the scope and applicability of the said Force Majeure Clause in the said impugned order, according to the direction of the Co-ordinate Bench.

For the fore-going reasons and discussions, this court is of the firm view that the impugned order suffers from infirmity in the decision making process. Accordingly, the impugned order dated **September 22, 2022** stands **set aside and quashed**.

Following the directions of the Co-ordinate Bench dated August 26, 2024 the respondent no.3 shall revisit the issue in strict compliance of the directions of the Co-ordinate Bench within a period of **two months** from the date of communication of this order. The reasoned decision shall be communicated to the petitioner **within a week** from the date of said reasoned order to be passed.

Drawing attention to a letter dated September 21, 2023, Annexure 'P-11 at page 95 to the writ petition, learned counsel for the petitioner submits that for obtaining a short term mining licence, the petitioner has also submitted application before the respondent no.3 and the same is still pending.

The respondent no.3 shall upon issuing a prior hearing notice of at least seven days to the petitioner and after granting him an opportunity of hearing dispose of the said application dated September 21, 2023 by passing a reasoned order within a period of two months from the date of communication of this order.

The reasoned order shall also be communicated to the petitioner within a period of one week from the date of the said reasoned order to be passed on the said representation dated September 21, 2023.

It is made clear that this court has not gone into the merits of the claim of the petitioner in so far as the said application for short term mining lease is considered and the petitioner shall be at liberty to raise whatever points he wishes to urge by relying upon whatever records and documents he wishes to rely upon before the respondent no.3 but the same shall not travel beyond the scope of the said representation dated September 21, 2023, Annexure 'P-11' at page 95 to the writ petition.

In the event, both the reasoned decisions to be passed by the respondent no.3 while revisiting the issue for extension of mining lease and considering the said representation dated September 21, 2023 go in favour of the petitioner, then the respondent no. 3 and/or any other appropriate State authority shall take all further, necessary and consequential steps to give them an immediate effect but positively within a period of further four weeks from the date of the respective reasoned orders to be passed.

It is made clear that this order shall not create any right or equity in favour of the petitioner in either of the two cases, if the petitioner does not succeed to his respective claims strictly in accordance with law.

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

With the above observations and directions, the writ petition **WPA 28744 of 2023** stands disposed of, without any order as to costs.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties on urgent basis after compliance of all necessary formalities.

(Aniruddha Roy, J.)