

M/L 6  
07.04.2025  
Court. No. 236  
*Sourav*

**WPA 6620 of 2023**

**Kalam Sk**  
**Vs.**  
**The State of West Bengal & Ors.**

*Mr. Nirmalendu Bera*  
*Mr. Gora Chand Samanta*  
*Ms. Sunanda Samanta*

*...for the petitioner.*

*Mr. Santanu Kumar Mitra, Sr. Adv.*

*...for the State.*

1. The affidavit-of-service as filed in Court today is taken on record.
2. By filing the instant writ petition, the writ petitioner has prayed for issuance of appropriate writ/writs against the respondents/authorities, more specifically, the respondent no. 3 directing him to grant long term mining lease as well as sand query permit for extraction of sand in respect of the plot no. 1091 (P), J.L. No. 89, Mouza – Maliyara, Police Station – Mongalkate, District – Purba Burdwan, total area 25.80 acres.
3. In course of his submission, Mr. Bera, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to page no. 22 of the instant writ petition being a copy of the certified copy of the order dated 29.10.2009 as passed in WP No. 8523 (W) of 2009 as passed by a co-ordinate Bench. From the said order dated 29.10.2009, it would reveal that while disposing the said writ petition, the said co-ordinate Bench of this Court directed the District Magistrate to take a decision on the petitioner's

application in accordance with law and the existing rules within a period of six weeks from the date of communication of an authenticated copy of the said order.

4. In his next limb of submission, Mr. Bera draws my attention to page no. 24 of the writ petition being a copy of the letter dated 13.11.2009 as written by the learned advocate for the writ petitioner addressed to the respondents/ authorities enclosing therewith a copy of the said order dated 29.10.2009.
5. It is submitted by Mr. Bera that despite receipt of such letter, the respondent/authorities, more specifically, the respondent no. 3 sat tight over the matter and practically did nothing. It is thus submitted by Mr. Bera that appropriate relief/reliefs may be granted in terms of the prayers made in the writ petition.
6. In course of his submission, Mr. Mitra, learned senior advocate appearing on behalf of the respondent/State has handed over a copy of the brief case history as prepared by the respondent no. 3/authority. It is submitted by Mr. Mitra that from the said report, it would reveal that for the period 15.06.2012 to 14.06.2017, a long term mining lease in respect of land involved in the instant writ petition was sanctioned in the name of Ashok Guin. It is further submitted by Mr. Mitra that from the case history as submitted before this Court, it would reveal further that with the enactment of West Bengal Minor Minerals Concession

Rules, 2016 (hereinafter referred to as ‘the said Rules of 2016’) with effect from July 29, 2016, the previous Rules, i.e., WBMM Rules, 2002 (hereinafter referred to as ‘the said Rules of 2002’) was repealed.

7. It is further submitted by Mr. Mitra that under Rule 4(3) read with Rule 38(1)(a) of the said Rules of 2016 grant of prospective licence-cum-mining lease are given through the competitive bidding. It is thus submitted that on account of repeal of the said Rules of 2002 and with the coming into force of the said Rules of 2016, the State has got a predicament to act in terms of the aforementioned order dated 29.10.2009.
8. In his next limb of submission, Mr. Mitra draws attention of this Court to page no. 3 of the brief case history as submitted before this Court. It is submitted on behalf of the respondent/State that in the event, the writ petitioner participates in the auction process and in the event he bids for the highest amount and in the event, his quotation is found to be in accordance with law and rules, there cannot be any predicament in granting lease as prayed for subject to compliance of the formalities.
9. On careful consideration of the entire materials as placed before this Court, it reveals that for effective adjudication of the instant *lis*, some provisions of said Rules of 2016 are required to be looked into.
10. Rule 4 of the said Rules of 2016 is quoted hereinbelow in verbatim:

***“4. General conditions for grant of prospecting licence-cum mining lease and mining lease:***

*(1).....*

*(2).....*

*(3) A person shall undertake any prospecting and/or mining operation in any area in accordance with the terms and conditions of a prospective licence-cum-mining lease or mining lease or short term mining licence as the case may be.*

*Provided that if any public sector undertaking searches for or collects materials or minor minerals or undertakes any mining operation with a view to ascertaining commercial prospects of winning any minor minerals, no mining lease or short term mining licence under these rules shall be necessary subject to prior intimation indicating plan of such work to the concerned Mining Officer and Chief Mining Officer and also to the Executive Engineer or Revenue Officer for riverbed occurrences, if applicable before commencing such work.*

*Provided further that no mining lease or license for riverbed occurrences under these rules shall be required -*

*(a) for re-excavation or maintenance of rivers by the Irrigation & Waterways Department or any other authorities of the State Government where excavated riverbed materials are utilized or disposed of within the Government land.*

*(b) for depositing the excess riverbed materials obtained from excavation of foundation of structures within or across river, by any Works Department or organization of the State or Central Government, within Government land, subject to prior limitation*

*by the implementing department or organization to the concerned Executive Engineer or Revenue Officer.”*

11. Rule 38 of the said Rules of 2016 reads as under:

**“38. Grant of prospecting licence-cum-mining lease or mining lease for exploitation of minor minerals –**

*(1)(a) The grant of prospecting licence-cum-mining lease for exploitation of minor minerals shall be made through the competitive bidding and separate rules shall be framed by the State Government in Commerce and Industries Department for conducting competitive bidding through a notification:*

*(b) The grant of Mining Lease for exploitation of minor minerals shall be made through the competitive bidding and rules shall be framed by the State Government in Commerce and Industries Department for conducting competitive bidding through a notification.*

*Provided that exploitation of granite shall be conducted in the manner prescribed in the Granite Conservation and Development Rules, 1999, with the exceptions made in these rules.*

*(2) .....*

*(3) .....”*

12. Rule 43 of the said Rules of 2016 reads as under:

**“43. Grant of Short Term Mining Licence of riverbed occurrences. –** *(1) The District Authority or any authorized officer in case of riverbed occurrences, may grant short term mining licence as per guidelines to be issued by Commerce and Industries Department from time to time to extract or remove from any specified land within the limits of his jurisdiction on pre-payment royalty at the rate as specified from time to time under*

*exceptional circumstances arising due to (a) judicial intervention, (b) non availability of continuous stretch of the minimum area specified in these rules due to hydro-geological condition of the rivers, (c) unsuitability of any stretch of sustaining the period specified in these rules owing to possible change of river flow pattern and (d) any other reason to be stated in writing.*

*(2) Short term mining licence may also be granted to the successful bidder selected for the purpose of long term mining lease through competitive bidding, in the intervening period between issue of letter of intent for such long term lease to that bidder and execution of the formal lease deed after observing necessary formalities. Necessary modification of the mining plan to be submitted by the bidder may be made accordingly, taking into consideration the quantum likely to be extracted during short term licence period.”*

13. Rule 62 of the said Rules of 2016 reads as under:

**“62. Repeal.** – (1) *The West Bengal Minor Mineral Rules, 2002, is hereby repealed.*

*(2) Notwithstanding such repeal, anything done, any action taken, or any prosecution started under the said rules, shall be deemed to have been validly done or taken, or started as the case may be, under the corresponding provisions of these rules.”*

14. On careful perusal of the relevant Sub-Rules of the said Rules of 2016, this Court finds that with the enactment of the said Rules of 2016, the said Rules of 2002 was repealed and the provisions of Rule 4 read with Rule 38, read with Rule 43 of the said Rules of 2016 make it clear that at present, long term and/or short term lease for excavation of minor minerals and/or licence for

excavation from riverbed are being done through the competitive bidding and as per rules as framed by the State Government in commercial and industrial development for conducting such bidding through a notification.

15. In view of the discussion made hereinabove, this Court considers that on account of change of Rules, the prayers as made in the instant writ petition cannot be entertained. However, liberty is given to the writ petitioner to participate in the auction process as and when notified for the sand blocks by the lease granting authority.
16. With the aforementioned observations, the instant writ petition being **WPA 6620 of 2023** is disposed of.
17. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

**(Partha Sarathi Sen, J.)**