

S/L 6
18.09.2025
Court. No. 19
Suvayan

WPA 19268 of 2025

**Sudheswar Kumar
Vs.
The State of West Bengal & Ors.**

*Mr. Piyush Chaturbedi, Sr. Adv.
Mr. Mir Anowar*

...for the petitioners.

*Mr. Supratim Dhar, Sr. Adv.
Mr. Prasanta Behari Mahata*

...for the State.

*Mr. Sanjay Saha
Mr. Raju Mondal*

...for the respondent no. 6.

1. The subject matter of the instant writ petition is the order dated 15.05.2025 as passed by the respondent no. 2/authority in Appeal no. 51 of 2023 (Sudheswsar Kumar vs. State of West Bengal & Ors.) in a proceeding under Rule 51 of the West Bengal Minor Mineral Concession Rules, 2016 (hereinafter referred to as the 'said Rules' in short). By the order under challenge dated 15.05.2025 the respondent no. 2/authority while dismissing the appeal as preferred by the appellant who is the writ petitioner herein was pleased to affirm the order dated 06.12.2022 as passed by the respondent no. 4/authority, a copy of which has been annexed at page nos. 187 to 188 of the instant writ petition.
2. For effective adjudication of the instant *lis* some admitted facts are required to be dealt with and those are stated hereinbelow in seriatim.

- (i) A registered deed of lease dated 12.10.2017 and registered on 09.11.2017

was executed by the respondents/State (lessor) in favour of the present writ petitioner (lessee) for a period of five years for excavation of sand from the land particulars of which has been mentioned in internal page no. 6 of the said deed of lease as well as in paragraph no. 3 of the instant writ petition.

- (ii) The said lease deed contains various clauses including a clause of *force majeure*.
- (iii) During the subsistence of the period of lease, in view of the order of Green Tribunal the writ petitioner was served with a notice dated 07.07.2021 by the respondent no. 3/authority whereby and whereunder mining activity of the writ petitioner was directed to be stopped
- (iv) The mining activity was resumed by an order dated 10.06.2022 as issued by the respondent no. 4/authority, a copy of which has been annexed at page nos. 169 to 170 of the instant writ petition.

3. Placing reliance upon the aforementioned facts Mr. Chaturbedi, learned Senior Advocate appearing on behalf of the writ petitioner submits before this Court that it is the specific case of the writ petitioner that apart from the said period of suspension the writ petitioner could not carry out sand mining activity on account of

serge of Covid on and from 21.03.2020 to 31.05.2020, from 16.05.2021 to 30.06.2021 and lastly from 07.07.2021 to 10.06.2021. It is further submitted by Mr. Chaturbedi that during those periods no road challans were also issued to the writ petitioner. It is argued by Mr. Chaturbedi that on account of suspension of mining activity the writ petitioner approached the respondent no. 4/authority on 23.02.2022 with a request to extend the time limit of the period of lease and thereafter again on 04.03.2022 which were, however, not taken care of.

4. It is further submitted by Mr. Chaturbedi that finding no other alternative the writ petitioner approach this Court by filing WPA 11392 of 2022 which came to be disposed of by a co-ordinate Bench of this Court on 21.09.2022 whereby and whereunder the said co-ordinate Bench directed the respondent no. 3/authority therein to consider and dispose of the representations dated 23.02.2022 and 04.03.2022 in accordance with law within a specified period.
5. It is further argued by Mr. Chaturbedi that before the respondent no. 4/authority the writ petitioner appeared and filed his written notes of argument on 06.12.2022. It is submitted by Mr. Chaturbedi that the respondent no. 4/authority while passing the order dated 06.12.2022 has completely misinterpreted the terms and conditions of the deed of lease as has been executed in favour of the writ petitioner and thus declined to allow the prayer for extension of the term of lease as prayed for.

6. At this juncture, Mr. Chaturbedi took me to page nos. 194 to 198 of the instant writ petition being a copy of the impugned order dated 15.05.2025 as passed by the respondent no. 2/authority. It is submitted by Mr. Chaturbedi that on perusal of the said order under challenge dated 15.05.2025 it would reveal that the respondent no. 2/authority also completely misguided himself in interpreting the *force majeure* clause as available in the aforementioned registered deed of lease dated 12.10.2017 and most mechanically endorse the view of the respondent no. 3/authority without visualizing the fact that for no fault of the writ petitioner the mining operation at the lease hold plot of land was stopped and, therefore, as per the settled principle of administrative law the writ petitioner is entitled to get extension of the period of lease in order to compensate the loss as suffered by him for no fault of him.
7. It is further submitted by Mr. Chaturbedi that the plea of expiry of the term of lease as has been wrongly interpreted by the respondent no. 2 ought to be set aside in view of the fact that the respondent no. 2/authority was persuaded by some extraneous materials while arriving at his decision by holding that the writ petitioner who is the appellant before him has extracted 63,000 cft. of sand from the leased out plot of land.
8. It is argued by Mr. Chaturbedi that internal page no. 22 of the deed of lease clearly indicates that the lessee being the writ petitioner shall have to extract minimum 60,000 cft. of sand from the lease hold plot of land

failing which the lessee being the writ petitioner had to suffer penalty. It is thus submitted by Mr. Chaturbedi that it is a fit case for allowing the instant writ petition and appropriate relief/reliefs may be granted to the writ petitioner commanding the respondent nos. 3 and 4/authorities to extend the period of lease for 1 year 4 months as prayed for.

9. *Per contra*, Mr. Dhar, learned Senior Advocate for the respondents/State in course of his submission draws attention of this Court to the affidavit-in-opposition as filed today and is taken on record.
10. Drawing attention to paragraph no. 5 of the instant writ petition it is contended by Mr. Dhar that materials have been placed before this Court to substantiate that as per approved mining plan the writ petitioner was permitted to excavate 1,90,17,127.5 cft. of sand for the entire period of lease and further during the entire period of lease the writ petitioner had actually excavated 1,73,59,411 cft. and thus prayer of grant extension of the lease was rightly refused by the respondents/authorities.
11. On careful perusal of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties, it appears to this Court that the respondent no. 4/authority while disposing the two representations of the writ petitioner and the respondent no. 2/authority while disposing the appeal as preferred against the order of the respondent no. 4/authority have failed to visualize the true spirit of *force majeure* clause as available in internal page no. 45

of the registered deed of lease dated 12.10.2017 inasmuch as the said two authorities have not considered that on account of surge of Covid as well as on account of administrative order as issued by the respondent no. 3/authority the writ petitioner could not excavate sand for a substantial period of time which is evident from paragraph no. 5 of the affidavit-in-opposition wherefrom it reveals that in the leased out period of five years the writ petitioner could not excavate balance amount of sand to the tune of 16,57,716.5 cft. from the leased out plot.

12. In view of such, this Court while disposing the instant writ petition directs the respondent no. 3/authority to allow the writ petitioner to excavate sand to the tune of 16,57,716.5 cft. from the self-same lease hold area with effect from 1st day of November, 2025 subject to compliance of all legal formalities on the part of the writ petitioner, if there be any, and the respondent nos. 3 and 4/authorities are directed to issue requisite numbers of road challans for carrying out excavated sand measuring about 16,57,716.5 cft. It is made clear that apart from the aforementioned amount of sand the writ petitioner is prohibited from excavating any quantum of sand either from the leased out area or beyond the leased out area.
13. With the aforementioned observation the order dated 06.12.2022 as passed by the respondent no. 4/authority and the order dated 15.05.2025 as passed by the

respondent no. 2/authority are modified to the extent indicated hereinabove.

14. Before parting with, it is made clear that the entire mining activity for excavation of sand to the tune of 16,57,716.5 cft. shall have to be completed by the writ petitioner positively on or before last day of March, 2026.
15. Liberty is given to the learned Advocate-on-Record to communicate the server copy of this order to the respondent nos. 3 and 4/authorities forthwith.
16. The respondent nos. 3 and 4/authorities are hereby directed to act on the server copies of this order.
17. With the aforementioned observation, the instant writ petition being WPA 19268 of 2025 is disposed of.
18. 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.)