

WPA 22839 of 2022
M/s. Mondal Traders
Vs.
The State of West Bengal & Ors.

Mr. Mir Anowar

....for the petitioner

Mr. Chandi Charan De, Id. AGP

Mr. Anirban Sarkar

....for the State

Mr. Sanjay Saha

Mr. Raju Mondal

....for the respondent No. 5

Affidavit of service filed in Court today is taken on record.

The petitioner was granted mining lease for sand in pursuance to e-tender initiated by the concerned department in respect of sand block auction Jamalpur, located in Plot No.2800 in Mouza – Chalkhanjadi, P.S. – Jamalpur within District Purba Bardhaman over an area of 9.74 Acres at the river bed of Damodar.

The petitioner was declared as highest bidder. Therefore, a Deed of lease was executed between the Government of West Bengal with the petitioner for granting the petitioner mining lease for sand with effect from April 26, 2018 for a period of five years. The petitioner was conducting the mining as per Rules and Regulations of the Government.

It is the contention of the petitioner that due to COVID pandemic, the Government imposed several restrictions during the lockdown for which the sand extraction/ mining operation was stopped for considerable period. In this period the business of the petitioner could not be conducted, thus the petitioner has suffered huge loss.

It is the contention of the petitioner that the lease was expired in April, 2023 prior to that the petitioner approached the authority so that the lease period may be extended for further period.

The representation was made to the department on August 4, 2022. The respondent authority did not consider the representation, hence the writ.

Learned counsel for the petitioner submits that there is a provision in the Clause 5 of the said Lease Agreement regarding "Force Majeure". The COVID pandemic was one of the instances of the "Force Majeure", so in that respect the concerned authority must consider the representation of the petitioner.

Learned counsel appearing on behalf of the State-respondents submits that the petitioner was declares as highest bidder, accordingly a lease agreement was executed between the State with the petitioner for mining lease for sand. The department has already taken note of the "Force Majeure" clause in respect of several other matters. So this matter may be relegated to the concerned authority to decide the issue afresh.

Considering the fair submission on the part of the State-respondents it appears to me that the matter should be relegated to the concerned Additional District Magistrate and District Land and Land Reform Officer, Purba Bardhaman being the respondent No. 4 to decide the issue.

Under the above observation the instant writ petition is disposed of with a direction to the respondent No. 4 to dispose of the representation of the petitioner dated August 4, 2022 (Annexure – P 10 of the writ petition) by taking note of Notification of the Government of India, Ministry of Finance dated May 13, 2020 (Force Majeure clause). The respondent No. 4 shall dispose of the representation within six weeks from the date of communication of this order after giving a reasonable opportunity of being heard the petitioner.

The decision of the authority shall be communicated to the petitioner within two weeks thereafter.

I make it clear that this Court has not entered into the merit of this matter.

The respondent No. 4 shall dispose of the representation according to law without being influence by any observations made by this Court.

Accordingly, WPA 22839 of 2022 stands disposed of.

Since affidavit has not been exchanged between the parties, the allegations made in the writ petition shall not be deemed to have been admitted.

(Subhendu Samanta, J.)