

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 23647 of 2023

**Sukantha Banik
Vs.
The State of West Bengal & Ors.**

For the petitioners : Mr. Arkadipta Sengupta
Mr. Anish Chakraborty

For the State : Mr. Chandi Charan De, Ld. AGP
Mr. Anirban Sarkar

Heard on : 17.04.2025

Judgement on : 17.04.2025

PARTHA SARATHI SEN, J.:

1. The affidavit-of-service as filed in Court today is taken on record.
2. In this instant writ petition, the writ petitioner challenges the order dated 21.08.2023 as passed by the respondent no. 1 whereby and whereunder the writ petitioner's prayer for refund of bid money was not considered favourably.
3. In course of hearing, Mr. Sengupta, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of

this Court to Page Nos. 78 to 81 of the instant writ petition being a server copy of the order dated 16.06.2023 as passed by a co-ordinate Bench of this Court in WPA 6648 of 2023. It is submitted by Mr. Sengupta that while disposing WPA 6648 of 2023, the said co-ordinate Bench directed the respondent no. 1 herein to take a decision upon the representation of the writ petitioner dated 22.04.2022 in the light of the joint survey report annexed to the said writ petition.

4. At this juncture, Mr. Sengupta draws attention of this Court to Page Nos. 84 and 85 of the instant writ petition being a copy of the order under challenge dated 21.08.2023. It is submitted by Mr. Sengupta that respondent no. 1/authority had passed a cryptic order without assigning any reason for rejection of the prayer of the writ petitioner for refund of bid money and that too without considering the joint survey report as was directed to be considered by a co-ordinate Bench of this Court in an earlier round of litigation.
5. Mr. Sengupta at this juncture draws attention of this Court to Page Nos. 76, 77 and 78 of the instant writ petition being copies of a letter dated 21.04.2022 as written by one GreenIndia Consulting Pvt. Ltd. addressed to the respondent no. 4 and one memo dated 22.04.2022 as written by the respondent no. 3 to the respondent no. 1. It is submitted by Mr. Sengupta that from the letter dated

21.04.2022 including its annexure, it would reveal that in course of joint inspection it was found that out of total area of the leased out sand block, 90 per cent of the said area was under water and 10 per cent of soil was available and thus, no sand was available for mining at the material time.

6. It is further submitted by Mr. Sengupta that from the copy of the memo dated 22.04.2022, it would reveal further that the said GreencIndia Consulting Pvt. Ltd. is an empanelled agency of the respondent no. 3/authority. It is further submitted by Mr. Sengupta that while passing the order under challenge, the respondent no. 1 has not only disobeyed the order dated 16.06.2023 as passed by a co-ordinate Bench of this Court but also failed to consider the report of the agency of the respondents/authorities and for non-considering such report, the decision making process of the respondent no. 1 has been vitiated for which appropriate relief may be granted to the writ petitioner in terms of the prayers made in the instant writ petition.
7. Per contra, Mr. De, learned AGP appearing on behalf of the respondents at the very outset draws attention of this Court to Rule 51 of the West Bengal Minor Minerals Concessions Rules, 2016 (hereinafter referred to as 'the said Rules of 2016'). It is submitted by Mr. De that the order under challenge is an appealable order under Rule 51 of the said Rules of 2016. It is further submitted by

Mr. De that no case has been made out by the writ petitioner for issuance of any writ as prayed for against the respondents/authorities.

8. This Court has meticulously gone through the entire materials as placed before this Court including the various provisions of the said Rules of 2016.
9. On perusal of Rule 51 of the said Rules of 2016, it reveals that the said Rule prescribes that in the event any person is aggrieved by an order made by the district authority or by any officer duly authorized by the district authority in exercise of the powers of the said Rules of 2016, the aggrieved person may prefer an appeal before the jurisdictional divisional commissioner within the stipulated period.
10. It appears to this Court that the order under challenge has been passed by the respondent no. 1 who is the Principal Secretary to the Department of Commerce, Industry and Enterprises of the Government of West Bengal and therefore, no appeal lies under Rule 51 of the said Rules of 2016. Since the very action and/or inaction on the part of the writ petitioner while passing the order under challenge is the subject matter of the instant writ petition, this Court holds that the instant writ petition is very much maintainable.

11. Coming to the factual matrix of this case, it reveals to this Court that admittedly while passing the order under challenge, the respondent no. 1/authority did not at all consider the joint survey report dated 21.04.2022 as submitted by GreenIndia Consulting Pvt. Ltd. as was directed to be considered by him as per order of the co-ordinate Bench vide the order and judgment dated 16.06.2023 in WPA 6648 of 2023.
12. On careful consideration of the order under challenge, it further appears to this Court that the finding of the respondent no. 1/authority with regard to the availability of the sand in the leased out plot located in plot No. 1290 (P) in Mouza – Kalikapur, J.L. No. 900, P.S. Garbeta is contrary to the joint field enquiry report dated 20.04.2022 as conducted by an empanelled agency of the respondent no. 3/authority. It further appears to this Court that while passing the order under challenge dated 21.08.2023, the respondent no. 1 had not assigned any reason whatsoever as to what prompted him for not considering the joint inspection report as directed to be considered by him by a co-ordinate Bench of this Court in an earlier round of litigation. The order under challenge is also silent as to why the respondent no. 1 took a contrary view to the joint survey report dated 20.04.2022.
13. Considering the entire aspects of the matter, this Court considers that the order dated 21.08.2023 as passed by the respondent no. 1

suffers from material irregularity inasmuch as the decision making process of the respondent no. 1 in considered view of this Court was vitiated for non-consideration of the joint survey report dated 20.04.2022 as mentioned hereinabove.

14. As a result, the instant writ petition succeeds.
15. Consequently, the order dated 21.08.2023 as passed by the respondent no. 1/authority is hereby set aside.
16. Consequently, the respondent no. 3 is hereby directed to refund the bid money as deposited by the writ petitioner for the purpose of grant of mining lease for sand block MGARB-2 located in Plot No. 1290 (P) in Mouza – Kalikapur, J. L. No. 900, P.S. Garbeta positively within a period of 30 working days from the date of communication of the server copy of this order.
17. The time limit as fixed by this Court is mandatory and preemptory.
18. Liberty is given to the learned advocate on record for the writ petitioner to communicate the server copy of this order to the respondent nos. 1 and 3 forthwith.
19. Both the respondent nos. 1 and 3 are directed to act on the server copy of this order.
20. With the aforementioned observations, the instant writ petition being **WPA 23647 of 2023** is disposed of.

21. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

Sourav
A.R. (Court)

(Partha Sarathi Sen, J.)