

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 26226 of 2023

Sabina Yesmin Begum

-Vs-

The State of West Bengal and others

For the Petitioner:

Mr. Piyush Chaturvedi, Sr. Adv.
Mr. Mir Anowar

For the State:

Mr. Soumitra Bandyopadhyay
Mr. Priyabrata Batabyal

For the respondent no.6:

Mr. Sanjay Saha
Mr. Raju Mondal

Hearing concluded on: 06.05.2025.

Judgment on: 06.05.2025.

PARTHA SARATHI SEN, J. : –

1. This court has heard Mr. Chaturvedi, learned Senior Advocate appearing on behalf of the writ petitioner, Mr. Batabyal, learned advocate for the State duly led by Mr. Soumitra Bandyopadhyay, learned Senior Government Advocate for the State respondents and Mr. Mondal, duly led by Mr. Saha, learned advocate appearing for the respondent no.6, at length and in full.
2. By filing the instant writ petition, the writ petitioner has prayed for issuance of appropriate writ/writs against the respondent no.4 authority for quashing and/or cancelling and/or withdrawing the

order dated 19.09.2023 whereby and whereunder the writ petitioner's application for grant of renewal of lease was not considered favourably by the said respondent no.4. However, liberty was given by the respondent no.4 to the writ petitioner to participate in the auction process for sand blocks as and when notified by the State authorities.

3. For effective adjudication of the instant *lis*, some undisputed facts are required to be dealt with which are discussed hereinbelow in *seriatim* :

- i. On 16.05.2008, a registered deed of lease was executed by and between the Governor of the State of West Bengal and the writ petitioner herein for extraction of sand from the area as has been mentioned in Part I of schedule of the said deed of lease.
- ii. The said lease was executed for a period of five years which was going to be expired on 10.11.2013.
- iii. The said lease deed also provides a clause for renewal.
- iv. On 01.10.2012, the writ petitioner made an application with the respondent no.3 for renewal of the said lease.
- v. On 02.11.2012, the respondent no.4 authority rejected the application for renewal of lease as submitted by the writ petitioner.
- vi. The writ petitioner carried the said order of rejection in a writ proceeding by filing WPA 24961 of 2012 before a Co-ordinate Bench of this court.

- vii. By a judgment and order dated 24.07.2023, the said Co-ordinate Bench while disposing of WPA 24961 of 2012, directed the respondent 4 herein to consider the writ petitioner's application for renewal of mining lease in accordance with Rule 12 of the West Bengal Minor Minerals Rules, 2002 (hereinafter referred to as the Rules of 2002 in short) within a stipulated period.
 - viii. Pursuant to such judgment and order dated 24.07.2023, the respondent no.4 authority passed the aforementioned order dated 19.09.2023 which is the subject matter of challenge in the instant writ petition.
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- 4. In course of hearing, Mr. Chaturvedi, learned senior advocate appearing on behalf of the writ petitioner, at the very outset draws attention of this court to Rule 12 of the said Rules of 2002. It is submitted by Mr. Chaturvedi that on perusal of Rule 12 of the said Rules of 2002, it would reveal that the said rule prescribes a time limit within which the application for renewal of lease is to be made.
 - 5. It is further submitted by Mr. Chaturvedi that the said Rule 12 provides that no such renewal would be granted in the event the performance of the lessee is considered unsatisfactory by the State Government i.e. the lessor. It is submitted by Mr. Chaturvedi, from the materials as placed before this court no where it reveals that the

performance of the writ petitioner lessee during the subsistence of the said five years lease was at all unsatisfactory.

6. At this juncture Mr. Chaturvedi draws attention of this court to page 85 of the instant writ petition being a copy of the notification dated 01.12.2011 which dealt with some amendments in West Bengal Minor Minerals Rules, 2002 which was gazetted on 05.12.2011.
7. It is submitted by Mr. Chaturvedi that from the amendments as have been notified it would reveal that the respondent State by virtue of the said notification made an attempt to make Rule 5 to Rule 16 of the said Rules of 2002 inapplicable.
8. It is further submitted by Mr. Chaturvedi that by the self-same notification, the respondent State further made an attempt to make necessary amendment for grant of mining lease only by way of auction. It is thus submitted by Mr. Chaturvedi that the cumulative effect of the said amendment is that in case of grant of mining lease in respect of river bed materials, lease would be granted through public notice inviting tenders for a period of not more than two years.
9. At this juncture, Mr. Chaturvedi draws attention of this court to the reported decision of a Division Bench of this court (***Swapan Sarkar vs. State of West Bengal & Ors.*** reported in ***2014 SCC OnLine Cal 13995***) whereby and whereunder the said notification dated 01.12.2011 was declared 'ultra vires'.
10. It is further submitted by Mr. Chaturvedi that in the earlier round of litigation, the said Co-ordinate Bench had considered the judgment

and order as passed in the reported decision of **Swapan Sarkar** (supra) and thus directed the respondent 4 authority to consider the writ petitioner's application for renewal of lease in terms of provision of Rule 12 of the unamended Rules of 2002.

11. At this juncture, Mr. Chaturvedi again took me to the order dated 19.09.2023 which is under challenge before this court. It is submitted by Mr. Chaturvedi that while passing the said reasoned order in terms of the judgment and order dated 24.07.2023 in WPA 24961 of 2012, the respondent no.4 authority has completely misdirected himself and thus acted contrary to the direction as passed in the said writ petition and further the respondent no.4 authority had most illegally and illogically resorted to the provision of the West Bengal Minor Minerals Concession Rules, 2016 (hereinafter referred to as 'the said Rules of 2016' in short) for rejecting the just claim of the writ petitioner.
12. At this juncture, Mr. Chaturvedi submits before this court that action of the respondent no.4 authority is violative of the provision of Articles 298 and 299 of the Constitution of India in view of the fact that under the terms of the lease deed dated 16.05.2008, the respondent no.4 authority is duty bound to perform its contractual obligation as embodied in such contract of lease and the respondent no.4 authority in absence of any contrary material with regard to unsatisfactory performance of the writ petitioner in performing the covenants of the said lease cannot straightway reject the application

for renewal of lease of the writ petitioner by wrongly taking recourse to the provision of the said Rules of 2016. It is thus submitted by Mr. Chaturvedi that such action on the part of the respondent no.4 authority is also violative under Article 14 of the Constitution of India and thus interference of this court is very much necessary.

13. It is further submitted by Mr. Chaturvedi that the order which is under challenge may be held as unreasonable inasmuch as the said order is contrary to the provision of the said Rules of 2002 and further the same has been passed in utter violation of the judgment and order dated 24.07.2023 as passed in WPA 24961 of 2012.
14. In course of his submission Mr. Chaturvedi while placing his reliance upon the reported decision of **Swapan Sarkar** (supra) has contended in the event the said reported decision of **Swapan Sarkar** (supra) is visualized in terms of the provision of notification dated 01.12.2011 and the said Rules of 2016, it would reveal that the said notification as well as the said Rules of 2016 were enacted basically for the same purpose that is for grant of mining lease through public notice inviting tender.
15. It is further submitted by Mr. Chaturvedi that while passing the said reasoned order which is under challenge before this court, the respondent no.4 authority has also failed to visualize the true spirit of law as has been discussed in the reported decision of **Swapan Sarkar** (supra) and thus also failed to visualize that with the execution of the said lease of deed dated 16.05.2008, a valuable right

has accrued in favour of the writ petitioner which cannot be taken away either by the publication of the said notification dated 01.12.2011 vis-à-vis by the enactment of the said Rules of 2016.

16. Placing his reliance upon the reported decision of ***ABL International Ltd. and another vs. Export Credit Guarantee Corporation of India Ltd. and others*** reported in **(2004) 3 SCC 553**, it is argued by Mr. Chaturvedi that in the said decision it has been held by the Hon'ble Supreme Court in no uncertain terms that once the State or an instrumentality of the State is a party to the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India.
17. It is thus argued by Mr. Chaturvedi that while passing such reasoned order dated 19.09.2023, the respondent no.4 authority has failed to visualize his own obligation to act fairly, justly and reasonably for which interference of this court in a judicial review is very much required.
18. Placing reliance upon the judgment and order dated 31.07.2024 as passed by this court in **WPA 10914 of 2013 (*Sayed Neajuddin vs. The State of West Bengal and others*)**, it is argued by Mr. Chaturvedi that in the case of ***Sayed Neajuddin*** (supra) this court has also occasion to go through the effect of subsequent promulgation of Rules of 2016 and even then this court in the said writ petition expressly held that with the promulgation of the subsequent Rules of 2016, the right of the writ petitioner to get his

renewal application considered in terms of the provision of the said Rules of 2002 cannot be taken away and therefore a direction was passed to the appropriate authority to consider his application under the provision of the said Rules of 2002. It is thus submitted by Mr. Chaturvedi that in view of the facts and circumstances, the instant writ petition may be allowed by granting relief/reliefs as prayed for by the writ petitioner.

19. In course of his submission, Mr. Chaturvedi also draws attention of this court to the provision of Section 11, Explanation IV of the Code of Civil Procedure. It is submitted that since in course of hearing of WPA 24961 of 2012, the respondent State and/or the respondent Corporation had not taken their defence regarding enactment of Rules 2016 by repealing the said Rules of 2002, the said two respondents may be debarred from raising the self-same issue in the instant writ petition.
20. Per contra, Mr. Batabyal, learned advocate appearing on behalf of the respondent State at the very outset draws attention of this court to the order which is under challenge before this court. It is submitted that under Rule 36 of the said Rules of 2002 and Rule 51 of the said Rules of 2016, there are provisions of appeal against the respondent no.4 authority and therefore on account of availability of alternative remedy and for not availing the same, the instant writ petition may be dismissed.

21. Mr. Mondal, learned advocate for the respondent no.6 while adopting the argument of Mr. Batabyal, also draws attention of this court to the judgment and order dated 24.07.2023 as passed in WPA 24961 of 2012. It is submitted that the said judgment was pronounced in absence of the respondent State as well as in absence of his client who is the respondent no.6 herein. It is further submitted by Mr. Mondal that in view of such absence the said Co-ordinate Bench has no occasion to consider the relevant provisions of the said Rules of 2016. It is thus submitted by Mr. Mondal that in view of the expressed provision of Rule 61 of the said Rules of 2016, there cannot be any justification to interfere that the order which is under challenge before this court.
22. This court has meticulously perused the entire materials as placed before this court. This court has given its anxious consideration over the submissions of learned advocates for the contending parties.
23. For effective adjudication of the instant writ petition, this court at the very outset proposes to look to the provision of Rule 12 of the said Rules of 2002, which is quoted hereunder in verbatim:
- “ 12. Renewal of mining lease - (1)** An application for renewal of a mining lease shall be made to the State Government or to an officer duly authorized by the State Government in this behalf in Form D at least six months before the date on which the lease is due to expire but not before nine months from such date of expiry through the Chief Mining Officer or the Mining Officer in charge of the concerned

area or such other officer or officers as may be authorized by the State Government in this behalf :

Provided that no such renewal shall be granted if the performance of the lessee is considered unsatisfactory by the State Government or by the officer so appointed in this behalf by the State Government:

Provided further that an application for renewal of a mining lease shall be accompanied by an up-to-date clearance certificate or mining dues in original in the form, duly signed by the District land and Land Reforms Officer, prescribed in clause (a) of sub-rule (4) of rule 5 of these rules.

(2) ***

(3) ***

(4) ***

(5) ***

(6) *** ”

24. This court further considers that Rules 61 and 62 of the said Rules 2016 are also required to be looked into and those are reproduced hereinbelow in verbatim :

“ 61. Declaration of ineligibility of the pending minor mineral applications for mining lease including the applications of reclassified major minerals.- *All applications for mining lease of minor minerals including the reclassified minor minerals vide SO No.- 423 (E) dated 12th February, 2015 received prior to the giving effect to this rules irrespective of its duration of pendency shall become ineligible.*

Provided that if the applicant has been issued a Grant Order or Letter of Intent (LoI) or any other Government Order requiring the alteration of applicant's position then his mining lease application may be considered after due compliance of all the necessary conditions.

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.”*

25. Section 11 of the Code of Civil Procedure is under:

“11. Res judicata – *No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

*Explanation I - ****

*Explanation II - ****

*Explanation III - ****

Explanation IV – Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

*Explanation V - ****

*Explanation VI - ****

*Explanation VII - ****

*Explanation VIII - *** ”*

26. Keeping in mind the aforementioned legislative provisions, if I look to the factual aspects of this case it appears to this court that it is undisputed that the lease deed dated 16.05.2008 as has been

executed by and between the respondent State and the writ petitioner, contents a renewal clause, which is as under:

*“ 3. **Renewal.** The mining lease shall be renewable for one period not exceeding the period specified in Sub-rule (2) of the Rule 12 of the said rules at the option of the Lessee.*

Previous, however, that the State Government may refuse to renew a Mining lease over the whole or part of the area covered by the original lease, for which renewal is prayed for.”

27. Undoubtedly, in the earlier round of litigation a Co-ordinate Bench of this court vide judgment and order dated 24.07.2023 while setting aside the order of rejection dated 02.11.2012 directed the respondent no.4 authority to consider and dispose of the writ petitioner's application for renewal of mining lease in accordance with the Rule 12 of the said Rules of 2002 within a stipulated period.
28. At this juncture, if I look to the order dated 19.09.2023 which is under challenge in the instant writ petition, it reveals that the respondent no.4 authority while passing the said reasoned order had taken recourse to the provision of Rule 61 of the said Rules of 2016 and thus did not consider the writ petitioner's application in accordance with the provision of Rule 12 of the said Rules of 2002 and thereby passed no favourable order in favour of the writ petitioner.
29. It appears to this court that undoubtedly when the Co-ordinate Bench passed the judgment and order dated 24.07.2023 it was not brought

to the notice of the said court that at that material time the said Rules of 2002 was repealed with the enactment of the said Rules of 2016. In course of his argument, Mr. Chaturvedi had taken a point that even after repealing of the said Rules of 2002 and after enactment of Rules of 2016, the right which has been accrued in favour of the writ petitioner on execution of the deed of lease dated 16.05.2008 remains unaltered. This court considers that in order to assess such argument in proper perspective Rule 61 of the said Rules of 2016 is required to be considered.

30. As quoted hereinabove, Rule 61 of the said Rules of 2016 clearly envisages that all applications for mining lease of minor minerals which have been received prior to giving effect of the earlier rules irrespective of its duration of pendency would become ineligible. However, in the event any applicant was issued with a grant order or LoI under the previous rules, in such case such grant order or LoI shall remain unaffected.
31. In course of the argument, learned advocate for the writ petitioner also made an attempt to draw a similarity between the notification dated 01.12.2011 regarding the amendment in respect of the said Rules of 2002 and the enactment of the Rules of 2016. It was argued on behalf of the writ petitioner that since the aforementioned notification and also since the said Rules of 2016 were brought into effect to modify the mode of grant of mining lease, there cannot be any hesitation to hold that the said Rules of 2016 similarly affected

the right of the writ petitioner as has been accrued in his favour on execution of the lease deed dated 16.05.2008 under the said Rules of 2002.

32. It has been further argued on behalf of the writ petitioner that considering the similarity an appropriate order may be passed in the tune of the judgment of *Swapan Sarkar* (supra).
33. This court has meticulously gone through the said notification dated 01.12.2011 as well as the relevant provision of the said Rules of 2016 including Rules 61 and 62.
34. In considered view of this court, the proposition of law as has been enunciated in the reported decision of ***Swapan Sarkar*** (supra) has got no manner of application in the instant writ petition in view of the fact that while passing the judgment of ***Swapan Sarkar*** (supra) the Hon'ble Division Bench declared the said notification dated 01.12.2011 as ultra vires and thus came to a finding that since the said amendment was given effect prospectively, the writ petitioner's right to get his lease renewed for a further period remains unaltered and cannot be taken away by a prospective amendment.
35. In considered view of this court, the provisions of the said Rules of 2016 is no way similar to the aforementioned notification dated 01.12.2011. In considered view of this court, the respondent State in its administrative domain thought it fit to repeal the said Rules of 2002 and thus brought into effect the said Rules of 2016.

36. This Court has meticulously gone through the provisions of Rules 61 and 62 of the said Rules of 2016. Rule 61 of the said Rules of 2016 clearly envisages that all applications for mining lease of minor minerals prior to coming into effect of the said Rules of 2016 shall become ineligible with the enactment of said Rules of 2016 except where the applicant was issued a grant order or LOI. Admittedly, in the case in hand the writ petitioner was not provided with either any grant order or LOI. In view of such provision in the said Rules of 2016, by no stretch of imagination it can be said that a valuable right which has been accrued in favour of the writ petitioner has been taken away with the enactment of the Rules of 2016.
37. On perusal of Rule 62 being the repealing provision of the said Rules of 2016, it further appears that the appropriate authority while bringing into effect the said Rules of 2016 made a provision that any action or any prosecution started under the previous rules that is prior to the enactment of the said Rules of 2016 shall remain unaffected. Keeping in mind the said legislative provision, if I again look to the factual aspects of the case, it appears to this Court that submission of an application by the writ petitioner cannot be construed as an action and/or any prosecution on the part of the State within the meaning of Rule 62 of the said Rules of 2016.
38. Though it has been contended on behalf of the writ petitioner that the respondents/authorities are debarred from raising the plea regarding the enactment of the said Rules of 2016 in view of the

provision of Explanation IV of Section 11 of the Code of Civil Procedure, however, in considered view of this Court, the proposition of law as enshrined in Section 11 of CPC is no way applicable in the instant writ petition in view of the fact learned advocates for the respondents have correctly shown the relevant provisions of law for arriving at a just conclusion of the instant *lis*.

39. It thus appears to this Court that while passing the order under challenge, the respondent no. 4/authority has correctly noticed the provisions of Rule 61 which incapacitated him to consider the application for renewal of the lease of the writ petitioner in terms of the provisions of Rule 12 of the said Rules of 2002.
40. It further appears to this Court that while passing the said reasoned order, the respondent no. 4/authority had not at all flouted the order as passed by a co-ordinate Bench in the earlier round of litigation inasmuch as the respondent no. 4/authority while passing the order under challenge has shown sufficient reason regarding applicability of Rule 61 of the said Rule of 2016. It further appears to this Court that the order which is under challenge before this Court is quite reasoned and speaking order and in absence of any perversity, this Court finds no cogent reason to interfere with the same in a judicial review.
41. This Court thus finds no merit in the instant writ petition.
42. Accordingly, the instant writ petition being WPA 26226 of 2023 is dismissed.

43. There shall, however, be no order as to costs.
44. 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.)