

S/L 7
16.01.2025
Court. No. 551
Sourav

WPA 25401 of 2012

Niamat Sk
Vs.
The State of West Bengal & Ors.

Mr. Nirmalendu Bera
Mr. Anjan Bhattachariya
Mr. Gora Chand Samanta

...for the petitioner.

Mr. T. M. Siddiqui, Sr. Adv.
Mr. Supriya Majumdar

...for the State.

1. In this writ petition as filed under Article 226 of the Constitution of India, the writ petitioner has prayed for issuance of appropriate writ against the respondents/authorities commanding them to rescind/cancel and/or withdraw the Notice Inviting Tender Bearing no. 4794/DL&LRO (BIR)/2012 Suri dated 24.09.2012 as issued by the respondent no.3/authority.
2. At the very outset, Mr. Bera, learned advocate appearing on behalf of the writ petitioner draws attention of this Court to the order dated 09.11.2004 as passed by a co-ordinate Bench in WP 20451 of 2004 whereby and whereunder while disposing the said writ petition the said co-ordinate Bench directed the respondents/authorities to consider and dispose of the writ petitioner's application for grant of long term mining lease in respect of the plot in question as involved in the said writ petition within a period of three months from date.

3. The said co-ordinate Bench also granted interim liberty to the petitioner to extract sand from the river bank on payment of royalty and other dues to the State/respondent till disposal of the writ petitioner's representation with a rider that in the event any permit is granted to a third party, the liberty given to the writ petitioner as indicated in the said order would not take into effect.
4. Mr. Bera, in course of his submission also draws attention of this Court to an order dated 17.07.2012 as passed by another co-ordinate Bench of this High Court in WP 14011 (W) of 2012 wherein the said co-ordinate Bench also granted an interim order to the writ petitioner of the said writ petition. Drawing attention to the Notice Inviting Tender dated 24.09.2012 which is under challenge in the instant writ petition, it is contended by Mr. Bera that the respondent no. 3/authority without disposing the writ petitioner's representation had published the said Notice Inviting Tender which is in violation of the order of the co-ordinate Bench as passed on 09.11.2004. Mr. Bera thus submits that for the reason stated hereinabove, the said notice dated 24.09.2012 may be quashed by issuing appropriate writ.
5. Per contra, Mr. Siddiqui, learned Senior Advocate appearing on behalf of the State at the very outset submits before this Court that the respondents/authorities are at present not proceeding

with the said notice under challenge dated 24.09.2012 in view of abolition of the West Bengal Minor Minerals Rules, 2002 (hereinafter referred to as ‘the said Rules of 2002’) and in view of the enactment of West Bengal Minor Minerals Concession Rules, 2016 (hereinafter referred to as ‘the said Rules of 2016’).

6. It is, however, submitted by Mr. Siddiqui that equally the writ petitioner’s representation which is directed to be considered by a co-ordinate Bench on 09.11.2002 in WP 20451 of 2004 has become ineligible in view of the provision of Rule 61 of the said Rules of 2016. It is contended by Mr. Siddiqui, learned Senior Advocate that Rule 61 of the said Rules of 2016 clearly postulates that all applications for mining lease of minor minerals received prior to giving effect of the Rules of 2016 irrespective of duration of its pendency shall become ineligible.
7. In course of his submission, Mr. Siddiqui draws attention of this Court to the copy of the judgment dated 24.08.2022 as passed by a Division Bench in FMA 616 of 2018 which has been annexed with the affidavit-in-opposition as Annexure D from Page Nos. 27 to 40. It is submitted by Mr. Siddiqui that in the said decision as passed in FMA 616 of 2016 (***Niamat Sk. Vs. District Magistrate, Birbhum & Ors.***) dated 24.08.2022, the present petitioner was the appellant and the said Division Bench while passing the said judgment had duly considered the fate of the

application as filed by the writ petitioner with the respondents/authorities which is the subject matter of WP 20451 of 2004.

8. It is argued by Mr. Siddiqui that while passing the said judgment dated 24.08.2022 in FMA 616 of 2018, it has been categorically held by the said Division Bench that the present writ petitioner's application which is also the subject matter of WP 20451 of 2004 has lost its force with the enactment of the Rules of 2016.
9. It is thus submitted by Mr. Siddiqui that since the fate of the application of the writ petitioner has been decided in the said FMA 616 of 2018, the writ petitioner is not entitled to any relief on the plea that the said application of the writ petitioner has not yet been considered by passing a reasoned order by the respondents/authorities as has been directed by a co-ordinate Bench in WP 20451 of 2004.
10. Having considered the entire materials as placed before this Court and after hearing the learned advocates for the contending parties at length, it appears to this Court that the writ petitioner in the instant writ petition, the writ petitioner in WP 20451 of 2004 and the appellant in FMA 616 of 2018 are same and identical person.
11. Admittedly, on 09.11.2004, a co-ordinate Bench while disposing WP 20451 of 2004 directed the respondents/authorities to consider the writ petitioner's application for grant of long term mining lease by passing a reasoned order. Undoubtedly, no

such reasoned order has been passed by the respondents/authorities though the specified time has elapsed. However, on perusal of the judgment as passed in FMA 616 of 2018, it appears to this Court that the Hon'ble Division Bench has taken into consideration about the fate of the said application for grant of long term mining lease and came to a finding that after coming into force the Rules of 2016, the writ petitioner's said application for grant of long term mining lease has lost its effect pursuant to Rule 61 of the said Rules of 2016.

12. For effective adjudication of the instant writ petition, this Court further considers that Rule 61 of the said Rules of 2016 is required to be looked into and the same is quoted hereinbelow in verbatim:

“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 of 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.”

13. On close scrutiny of Rule 61 of the said Rules of 2016, it also appears to this Court that it is the intension of the legislature that with the enactment of the said Rules of 2016, all pending applications for mining lease of minor minerals as received prior to giving effect of the Rules of 2016 irrespective of its duration of pendency shall become ineligible.
14. In view of such and in view of settled decision as passed by a Division Bench in FMA 616 of 2018, this Court thus considers that the writ petitioner's application for grant of long term mining lease which is the subject matter of WP 20451 of 2004 has lost its force and thus, the writ petitioner is not entitled to any relief as prayed for.
15. Accordingly, the instant writ petition being **WPA 25401 of 2012** is devoid of any merit and is thus, dismissed.
16. There shall, however, be no order as to costs.
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.)