

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 27785 of 2025

Dinabandhu Das Bairagya

VS.

The State of West Bengal & Ors.

For the Petitioner : Mr. Piush Chaturvedi, Sr. Advocate
Mr. Pallav Chatterjee
Mr. Monajit Chakraborti
Mr. Vinayak Chaturvedi
..... advocates

For the State : Mr. Soumitra Bandyopadhyay,
Sr. Advocate
Mr. Priyabrata Batabyal
.... advocates

Reserved on : 21.04.2026

Judgment on : 28.04.2026

Hiranmay Bhattacharyya, J.:-

1. Petitioner has prayed for setting aside the order dated September, 12, 2025 passed by the Divisional Commissioner, Paschim Medinipur and for a direction upon the respondent authorities for grant of the Long Term Mining Lease to the petitioner in terms of the application dated March 5, 2013.
2. The petitioner claims to have submitted applications on March 5, 2013 for grant of a Long Term Mining Lease for sand over Mouzas Deulpara, Tashuli and Khapara. The said applications were rejected by the Additional District Magistrate and the District Land and Land Reforms Officer being the fourth respondent by an order vide memo dated 08.05.2013. Petitioner claims that on November 10, 2020 he came to learn that Long Term Mining Lease had been issued in favour of the private respondent and immediately thereafter

petitioner submitted a representation dated January 05, 2021 before the concerned District Magistrate.

3. Alleging inaction on the part of the respondent authorities' in not considering the prayer of the petitioner for grant of Long Term Mining Lease, petitioner filed a writ petition being WPA 15114 of 2021 inter alia praying for cancellation of the mining lease granted in favour of the private respondent. Pursuant to an order dated February 18, 2022 passed in WPA 15114 of 2021, the concerned District Magistrate passed an order dated 21.04.2022 thereby rejecting the prayer of the petitioners contained in the representation dated January 5, 2021. Petitioner challenged the order of the District Magistrate dated 21.04.2022 before the Divisional Commissioner Medinipur Division which was registered as Appeal Case no. 25 of 2024. The said appeal was dismissed by the Divisional Commissioner by an order dated 12th of September, 2025.
4. Being aggrieved by the aforesaid order dated September 12, 2025 passed by the Divisional Commissioner, Medinipur Division, petitioner has approached this court.
5. Mr. Chaturvedi Learned Senior Advocate appearing in support of the writ petition contended that the applications of the petitioner for grant of Long Term Mining Lease of sand were rejected by the concerned Additional District Magistrate by invoking the amended provisions of the 2002 Rules which became effective from December 05, 2011. He contended that the amended provision of the West Bengal Minor Mineral Rules 2002 which were introduced in the year 2011 were declared as ultra vires by the Hon'ble Division Bench in the case of **Swapan Sarkar Vs. State of West Bengal and others** reported in **2014 SCC online CAL 13995** and, therefore, the order of rejection of the petitioner's applications cannot be sustained.
6. Mr. Chatruvedi further contended that Rule 61 of the West Bengal Minor Mineral Concessions Rules 2016 enables the authority to consider and take a fresh decision on the application filed by the petitioner on 5th March, 2013 for grant of Long Term Mining Lease for sand. He contended that the District Magistrate failed to consider the effect of Rule 61 of the 2016 Rules and rejected the prayer made by the petitioner for grant of Long Term Mining

Lease by applying the provisions of Rule 62 of the 2016 Rules which deals with the repeal of the West Bengal Minor Mineral Rules 2002. Mr. Chaturvedi further contended that the petitioner approached Divisional Commissioner under Rule 51 of the 2016 Rules under a misconception of the provision regarding appeal remedy. He submitted that since the order of the District Magistrate which was impugned before the Divisional Commissioner was not passed in exercise of the powers conferred upon the District Magistrate under the 2016 Rules, no appeal would lie under Rule 51 of the 2016 Rules. Mr. Chaturvedi thus, contended that the order of the Divisional Commissioner is a nullity in the eyes of law.

7. Mr. Chaturvedi, learned Senior Advocate places reliance upon a judgment passed by the Hon'ble Division Bench on September 24, 2025 in **FMA No. 1230 of 2025** and **CAN 1 of 2025** in the case of **Sabina Yasmin Begum vs. State of West Bengal and ors.** in support of his contention that the Rule 61, 62(1) or Rule 38 of 2016 Rules cannot stand in the way of the petitioner for consideration of his prayer for grant of Long Term Mining Lease for sand.
8. Mr. Chaturvedi concluded by submitting that since the order dated 8th May, 2013 rejecting the prayer of the petitioner is not sustainable in the eyes of law, the authority should be directed to grant Long Term Mining Lease for sand in favour of the petitioner pursuant to the application dated 5th March, 2013.
9. The Learned Advocate appearing for the State seriously disputed the submissions of Mr. Chaturvedi. He submitted that the order dated 8th May, 2013 already attained finality, and, therefore, the prayer of the petitioner for grant of Long Term Mining Lease for sand could not have been considered under the West Bengal Minor Mineral Rules 2002. He further contended that Rule 61 of the 2016 Rules provides that all applications for mining lease for minor minerals shall become ineligible on and from the date of coming into force of the 2016 Rules. He thus, submitted that any grant of mining lease for sand after the coming into force of the 2016 Rules shall, have to be considered, in the light of provision contained in the 2016 Rules. He further submitted that the District Magistrate and the Divisional

Commissioner after considering the relevant provisions of the 2016 Rules have rejected the claim of the petitioner.

10. Heard, the Learned Advocates for the parties and perused the materials placed.
11. Petitioner submitted applications for grant of Long Term Mining Lease for sand in respect of three Mouzas namely Deulpara, Tashuli and Khapara. The said applications were rejected by the Additional District Magistrate by an order dated May 8, 2013.
12. Petitioner has not challenged the order dated May 8, 2013 in this writ petition. The said order already attained finality.
13. After a long time, petitioner submitted a representation dated 5th January, 2021 before the District Magistrate Bankura. The cause of action for submission of the said representation is that the petitioner has come to know from a reliable source that the private respondent herein was granted the Long Term Mining Lease in respect of Tashuli Mouza.
14. Petitioner accordingly prayed for grant of mining lease in his favour. Petitioner filed a writ petition being WPA 15114 of 2021 inter alia, praying for cancellation of the mining lease granted to the private respondents. In connection with the said writ petition a report was filed by the Additional District Magistrate and District Land and Land Reforms Officer Bankura dated October 1, 2021 which has been annexed at page 21 at the writ petition.
15. After going through the said report this court finds that it has been stated therein that the grant order in favour of the private respondent herein had been issued on August 30, 2013 and therefore, the proviso to Rule 61 was applicable to the case of the private respondent.
16. However, pursuant to an order passed by a coordinate Bench on 18.02.2022 in WPA 15114 of 2021, the concerned District Magistrate afforded an opportunity of hearing to the petitioner and after considering the representation of the petitioner dated January 5, 2021, rejected the said representation. The District Magistrate noted that the application of the petitioner for grant of Long Term Mining Lease was rejected on 08.05.2013 and in view of the repeal of the 2002 Rules by Rule 62 (1) of the 2016 Rules,

the petitioner's prayer for considering his case for grant of mining lease cannot be entertained.

17. Mr. Chaturvedi would contend that the respondent authorities granted Long Term Mining Lease for sand in favour of the private respondent on one hand and discriminated against the petitioner by not allowing the prayer of the petitioner for grant of long term mining lease inspite of the fact that the petitioner and the private respondent are similarly situated persons.
18. It is evident from the report of the Additional District Magistrate dated 01.10.2021 filed in WPA 15114 of 2021 which forms part of this writ petition that the grant order in favour of the private respondent was issued on August 30, 2013 i.e., long prior to the coming into force of the West Bengal Minor Minerals Concession Rules, 2016.
19. Rule 61 of the 2016 Rules states that all applications for mining lease of minor minerals including the reclassified minor minerals vide S.O. No. 423(E) dated 12th February, 2015 received prior to the giving effect to the rules irrespective of its duration of pendency shall become ineligible. Proviso thereto states 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.
20. Rule 61 of the 2016 Rules mandates that any application for grant of mining lease, irrespective of its duration of pendency shall become ineligible after the 2016 Rules have come into force.
21. Petitioner has prayed for grant of mining lease in terms of the application dated 05.03.2013. This Court, therefore, holds that the case of the petitioner squarely falls within the four corners of Rule 61 of the 2016 Rules.
22. Petitioner's application stood rejected by an order dated 08.05.2013. Mr. Chaturvedi would contend that the said order of rejection cannot be sustained in view of the decision of the Hon'ble Division Bench in **Swapan Sarkar** (supra).
23. The decision in **Swapan Sarkar** (supra) was delivered on July 4, 2014. Petitioner sat tight over the order of rejection and in the meantime the 2016 Rules have already come into force to the disadvantage of the petitioner.

Petitioner also cannot avail of the benefits of the proviso to Rule 61 of the 2016 Rules.

24. By virtue of Rule 62 of the 2016 Rules, the 2002 Rules stood repealed.
25. In view of Rule 61 of the 2016 Rules, no applicant for grant of mining lease has a right to have the application considered on the basis of the rules in force at the time of making of the application.
26. This Court accordingly holds that the petitioner would not have any vested right to have his application considered and disposed of beyond the scope of 2016 Rules for grant of mining lease. The provisions of Rule 62(2) also cannot come to the aid of the petitioner in the case on hand.
27. To the mind of this Court, the order of the District Magistrate, Bankura dated 18.02.2022 thereby rejecting the claim of the petitioner for consideration of his prayer for grant of mining lease calls for no interference by this Court.
28. Insofar as the allegation of discrimination highlighted by Mr. Chaturvedi in the course of his argument is concerned, it would be relevant to take note of the report of the Additional District Magistrate dated 01.08.2021 filed in WPA 15114 of 2021. The said report specifically states that the grant order was issued in favour of the private respondent on August 30, 2013. In view thereof, the proviso to Rule 61 of the 2016 Rules stood attracted to the case of the private respondent.
29. Proviso to Rule 61 enables the authorities to consider mining lease applications of such an applicant in whose favour a grant order has been issued after due compliance of all necessary conditions.
30. It is not the case of the petitioner that any grant order or Letter of Intent (LOI) or any government order requiring the alteration of the petitioner's position as contemplated under proviso to Rule 61 of the 2016 Rules had been issued in favour of the petitioner. Thus, the petitioner cannot be said to be a person similarly situated as the private respondent. Thus, the allegation of discrimination is without any basis.
31. Record reveals that challenging the order of the District Magistrate dated February 18, 2022 which was communicated to the petitioner under Memo dated 08.06.2022, petitioner filed a writ petition being WPA 14446 of 2022.

When the said writ petition came up for hearing before a co-ordinate bench on January 31, 2023, the learned advocate appearing for the petitioner submitted that she had received instructions to withdraw the writ petition with liberty to approach the appropriate forum for redressal of the grievance of the petitioner. On the basis of such submission the said writ petition was dismissed for non-prosecution and liberty was granted to the petitioner to approach the appropriate forum for redressal of his grievance.

32. Thereafter, the petitioner preferred an appeal under Rule 51 of the 2016 Rules before the concerned Divisional Commissioner and challenged the order passed by the District Magistrate. The petitioner appeared before the Divisional Commissioner and made submissions on the merits of the matter. After the appeal was dismissed by the concerned Divisional Commissioner, the petitioner has approached this Court challenging the order of the Divisional Commissioner.
33. However, in course of argument, Mr. Chaturvedi contended that the appellate authority lacked jurisdiction to entertain an appeal under Rule 51 of the 2016 Rules as the order of the District Magistrate which was challenged before the concerned Divisional Commissioner was not passed by the District Magistrate in exercise of powers conferred upon him under the 2016 Rules.
34. The petitioner cannot be allowed to blow hot and cold at the same time. The petitioner initially challenged the order of the District Magistrate before the writ court and before the co-ordinate bench sought for leave to approach the appellate forum and when the appellate forum i.e., Divisional Commissioner dismissed the appeal on merits, the petitioner has now taken a stand that the order of the Divisional Commissioner is without jurisdiction and, therefore, a nullity. Such conduct of the petitioner is not appreciated by this Court. That apart, this Court has already observed that the order of the District Magistrate does not call for any interference by this Court.
35. In **Swapan Sarkar (supra)** the application for renewal of mining lease was rejected by the concerned authority by referring to the amendments of the provision of West Bengal Mining Minerals Rules, 2002 which was introduced in the year 2011, either during continuance of the leases of the petitioners

or pending consideration of the petitioner's application for renewal. The Hon'ble Division Bench held that the rules that were introduced by way of amendment are not only ultra vires Section 15 of the Mines and Minerals (Development and Regulation) Act 1957, but also, those amended rules are ultra vires the Constitution of India. In the light of the aforesaid findings the Hon'ble Division Bench held that the impugned decision which was taken by the concerned authority in refusing to grant the renewal of lease was illegal and the same was accordingly set aside and the authority was directed to consider application for renewal in the light of the provisions contained in Rule 12 of the West Bengal Mining Mineral Rules, 2002 without applying the provisions of the amended rules which have been declared as ultra vires.

36. In the case on hand this Court is not concerned with the issue whether the 2002 Rules or the amendments to such rules that was made effective from 05.12.2011 would apply for renewal of the mining lease. This Court has already observed that the application of the petitioner which stood rejected under the 2002 Act could not be reconsidered under the 2002 Rules after the coming into force of the 2016 Rules. Thus, the decision in the case of **Swapan Sarkar (supra)** cannot come to the aid of the petitioner.
37. In **Sabina Yasmin Begum (supra)** the question that fell for consideration before the Hon'ble Division Bench was whether the writ petitioner therein was entitled to renewal of a mining lease, granted under the 2002 Rules, in view of the advent of the new competitive bidding regime under the 2016 Rules. The Hon'ble Division Bench after noting the language of Rule 12 of the 2002 Rules and Clause 3 of the lease deed held that irrespective of the applicability of Rule 12 of the 2002 Rules, there is a vested contractual right in favour of the writ petitioner by dint of renewal clause contained in the lease deed enabling the lessee to apply for renewal once, not exceeding the period of the original lease.
38. Such an issue is not germane for consideration in the case on hand. The said decision being distinguishable on facts cannot be applicable to the case on hand.
39. The application of the petitioner for grant of Long Term Mining Lease for sand under the 2002 Rules stood rejected by an order dated 08.05.2013.

Petitioner did not challenge the said order contemporaneously. Accordingly, the said order attained finality. In view of the advent of the new competitive bidding regime under the 2016 Rules, and Rule 61 of the 2016 Rules there is no scope for consideration of the prayer of the petitioner for grant of long term mining lease for sand on the basis of an application submitted by the petitioner under the 2002 Rules which has since been repealed.

40. For all the reasons as aforesaid, this Court is not inclined to grant any relief to the petitioner. Accordingly the writ petition stands dismissed. There shall be, however, no order as to costs.
41. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)