
(2009) 04 CAL CK 0013
In the Calcutta High Court
Case No : Writ Petition No. 19331 (W) of 2007

Miraj Sk.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

West Bengal Minor Minerals Rules, 2002 — Rule 5(4)(g)

Citation : 113 CWN 783

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Dipankar Pal, for the Appellant; Saktipada Jana, for the Respondent

Final Decision : Dismissed

Judgement

Jayanta Kumar Biswas, J.—By order dated September 10, 2008 opportunity was given to the respondents to file opposition making it clear that if no opposition was filed, then this writ petition would be heard without any opposition. Mr. Jana appears for the seventh respondent, Abdul Abed, and says that he has not filed any opposition. Mr. Pal, counsel for the petitioner, submits that the interim order made on September 10, 2008 expired on March 31, 2009. He prays for extension of the interim order. It is to be noted that by order dated December 22, 2008 the interim order was directed to continue only till the end of February, 2009. Therefore, the interim order initially made in the case expired long ago. This being the situation, I invited counsel for the parties to argue the writ petition for final disposal, and they have advanced arguments for the purpose.

2. The petitioner in this writ petition dated September 3, 2007 is questioning the order of the Deputy Secretary, Government of West Bengal, Commerce and Industries Department dated January 31, 2007, Annexure P9 at p.45.

3. The order of the deputy secretary IS set out below:

Whereas, Miraj Sk., S/o Siddique Sk. Residing at Village-Mirbandh, P.O. Dwarka, P.S. Labpur, Dist. Birbhum had applied for long term mining lease for sand in

Mouza Dwarka, Plot No. 11231, 11662, 11915, 11973, 11632, 11249 and 11230(P), P.S. Labpur, Dist. Birbhum for an area of 15.00 acres for the period of five (5) Years on 02.09.2005.

And, whereas the said mining lease application received by Mining Officer-in-Charge, Suri Zone on 02.09.05 and a feasibility report on it has been furnished by him and it reveals from the report that there are some prior applications in the abovementioned plots viz. (1) Abdul Hai (Date of application: 13.09.03), (2) Abdul Sukur (Date of application 20.07.2000), (3) Abdul Abed (Date of application 25.05.99), (4) Abdul Abed (Date of application 24.09.03), (5) Firoz Alam (Date of application 22.11.2004).

Thus the present applied area is covered by the subsisting mining lease and the above prior mining lease applications. As such no area is available for further grant of mining lease in favour of Miraj Sk.

And, whereas D.L. & L.R.O., Birbhum has submitted his report and he has mentioned that the applied area is on the riverbed for which no availability report may be needed as per Rule 5 (4)(g) of W.B.M.M. Rules, 2002.

And, whereas the D.M.M.-W.B. has also endorsed the views of M.O.I.C., Suri Zone, and recommended for rejection as the instant applied area is covered by the areas granted/recommended in favour of the prior applicants.

In view of what has been stated above, since the reporting officers viz. M.O.I.C., Suri Zone, and D.M.M.-W.B. have reported that instant applied area is granted/recommended in favour of prior applicants, the instant mining lease application of Miraj Sk. in the plot nos. 11231, 11662, 11951, 11973, 11632, 11249 and 11230(P), under Mouza-Dwarka, P. S. Labpur, Dist. Birbhum is hereby rejected as per Rule 8(1) and 9(1) of W.B.M.M. Rules, 2002 due to non-availability of land.

4. According to Mr. Pal the deputy secretary acted mala fide. In support of his submission he says that though the petitioner obtained an interim order, the deputy secretary quite illegally leased certain portion of the land mentioned in the petitioner's application for long term mining lease to other people. I do not see how this allegation can be related to the case that the deputy secretary has acted mala fide. It seems to me that the contention is directionless and misconceived.

5. The deputy secretary has mentioned in his" order that when the petitioner applied for long term mining lease only on September 2, 2005, there were as many as four previous pending applications filed by others seeking lease of the same lands. According to the West Bengal Minor Minerals Rules, 2002, Rule 9, if more than one application for a mining lease regarding the same area is received, preference shall ordinarily be given to the application received first, unless the state government or the officer so authorised by it, for special reasons to be recorded in writing, decides to grant mining lease to an applicant whose application was received later in preference to an applicant whose application

was received earlier.

6. The fact that for the same area as many as four earlier applications were pending decision has not been disputed in the writ petition. What Mr. Pal submits is that as will appear from the order of the deputy secretary dated November 17, 2007, Annexure P8 at p.44, the application for long term mining lease submitted by Abdul Abed on March 24, 2003 was rejected by the authority, and hence no lease could be granted to him. This submission is factually wrong. The petitioner moved a writ petition in 2005 and obtained an order dated October 31, 2005 that no quarry permit or mining lease should be granted to anyone in respect of the area for which he submitted his application for long term mining lease. Under the circumstances, the deputy secretary made the order dated November 17, 2007 directing that mining lease previously granted to Abdul Abed on the basis of his application dated September 24, 2003 should be kept in abeyance. The deputy secretary directed the authority concerned not to give possession of the land to Abdul Abed.

7. The question of considering the petitioner's application dated September 2, 2005 could arise only after the earlier four applications were disposed of. It is nobody's case that all the earlier four applications were disposed of, and that after their disposal some portion of the lands included in the petitioner's application dated September 2, 2005 remained for leasing, and hence the deputy secretary was under an obligation to consider his application. It is apparent that after filing an application after four prior applicants, the petitioner started agitating that his application should be considered in preference to all the prior applications. This is contrary to law, for he had no right to say that he was entitled to get a preferential treatment, though the authority concerned possessed requisite power to consider any subsequent application giving a preferential treatment to the applicant concerned. In the instant case, the petitioner's turn just did not come. Hence I do not see any reason to hold that the deputy secretary was wrong in saying that in view of the four earlier applications there was no question of considering the petitioner's application. His application remains pending and his turn for consideration will come only after the four earlier applications lose their utility.

8. For these reasons, I find no merit in the writ petition. It is accordingly dismissed. There shall be no order for costs.

9. Urgent certified Xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the section concerned.