
(2016) 12 CAL CK 0001
In the Calcutta High Court
Case No : Writ Petition No.2419(W) of 2016

Mithu Singha

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 19-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Mines And Minerals (Development And Regulation) Act, 1957 — Section 15, Section 20A
Mines and Minerals (Development and Regulation) Amendment Act, 2015 — Section 10-A(1)(2), Section 11(5)<

Citation : (2017) 7 FLT 177

Hon'ble Judges : Sahidullah Munshi, J.

Bench : Single Bench

Advocate : Mr. Tarun Kumar Das, Advocate, for the Petitioner; Mr. Amitesh Banerjee and Mr. Tarak Karan, Advocates, for the State

Final Decision : Dismissed

Judgement

Sahidullah Munshi, J.—This writ petition is directed against the reasoned order passed by the District Magistrate, Paschim Medinipur, on 16th January, 2015, rejecting the petitioner's prayer for mining lease for sand in respect of Plot No.850 (P) J.L. No.142 under Nayagram Police Station in the District of Paschim Medinipur. In the writ petition the petitioner has made out a case that -

(1) In order to start a business of extraction and sale of sand available on the surface of river Subarnarekha in Plot No.850 (P), J. L. No.142, P.S. - Nayagram, District - Paschim Medinipur measuring about 50.76 acres, hereinafter referred to as the said plot, he made an application under Rule 5(2) of the West Bengal Minor Minerals Rules, 2002 for long term mining lease. Such application was filed on 2nd September, 2010 before the Additional District Magistrate and District Land and Land Reforms Officer, Paschim Medinipur, who is the competent authority. The petitioner has also submitted all requisites, namely, the challan of Rs.500/- (Rupees Five Hundred) only, clearance certificate of mining dues,

income tax clearance certificate, sales tax clearance certificate and searching map of the proposed land and other relevant papers.

(2) The concerned authority received those documents along with the application for long term mining lease. The said application being not considered by the concerned authority the petitioner moved this Hon''ble Court in a writ petition being W.P. No.31888 (W) of 2014 and the Hon''ble Justice Ashoke Kumar Dasadhikari, as His Lordship then was, was pleased to dispose of the writ petition by an order dated 10th December, 2014 by directing the concerned authorities to consider and dispose of the application for long term mining lease within a period of six weeks from the date of communication of the said order after giving an opportunity of hearing to the petitioner.

(3) In terms of the said order the respondent no.2, the District Magistrate, Paschim Medinipur, heard the matter and considered the documents submitted by the petitioner for grant of long term mining lease but rejected the application of the petitioner by an order dated 16th January, 2015.

2. The said order dated 16th January, 2015, is under challenge in this writ petition.

3. While rejecting the petitioner''s application for grant of mining lease, the respondent no.2 has held that -

(a) The petitioner has failed to submit environmental clearance from the Department of Forest and Environment or Pollution Control Board, West Bengal, which is mandatory for obtaining mining lease for sand as per the guidelines laid down by the Hon''ble Apex Court.

(b) The petitioner applied for long term mining lease suo motu without any notification issued from the concerned authority and, therefore, the same contravened the proposition of the West Bengal Minor Minerals Rules, 2002 (as amended up to date).

4. Having regard to the same, the District Magistrate, Paschim Medinipur, respondent no.2, rejected the petitioner''s application for mining lease. However, in the order impugned the petitioner has been requested to apply for mining lease when the notification would be published for the said area/plot by the concerned authority for grant of long term mining lease of sand.

5. The question which emerges for decision in this writ petition is -

(i) Whether the petitioner can file an application suo motu before notification is issued by the concerned authority and if such application is filed, whether the authority is under obligation to consider the same in accordance with law operative in the field.

(ii) Even if such an application is accepted to be a valid submission whether the same can be considered without submitting the environmental clearance from the Department of Forest and Environment or Pollution Control Board, West

Bengal, which is mandatory for obtaining mining lease in terms of the guidelines laid down by the Hon''ble Apex Court.

6. In support of the impugned order Mr. Amitesh Banerjee, learned Senior Counsel appearing for the State, submitted that there is no impugnt in the order impugned and the grounds furnished by the respondent no.2 in rejecting the petitioner''s application for mining lease is based on law operative in the field. He has submitted that petitioner has no right to make an application suo motu and such application can only be made after the notification is issued from the concerned authority for a specified area. He has relied upon a judgment in the case of Deepak Kumar & Ors. v. State of Haryana & Ors., reported in (2012) 4 SCC 629 and refers to paragraph 29 thereof which says that the Hon''ble Apex Court held that leases of minor minerals including their renewal for an area of less than 5 hectares be granted by the State, Union Territories only after getting environmental clearance from MoEF (Ministry of Environment and Forest). He has further relied on a decision of the Hon''ble Apex Court in the case of Centre for Public Interest Litigation & Ors. v. Union of India & Ors., reported in (2012) 3 SCC 1. Relying on paragraph 95 of the said judgment Mr. Banerjee submitted that whenever a licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. He stated that State and its agencies or instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. It is held by the Hon''ble Supreme Court that it is the burden of the State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest.

7. Mr. Banerjee submitted that after the aforesaid judgments came out from the Hon''ble Apex Court a letter dated 17th August, 2015, was issued by the Ministry of Mines addressing it to the Chief Secretary, Government of West Bengal, and it was pointed out that Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, empowers the State Government to make rules for the grant of mineral concessions for minor minerals. The principles laid down by the Hon''ble Supreme Court by the judgments cited above, would apply equally to mineral concession in respect of minor minerals. States have been requested to discontinue arbitrary and discriminatory process of granting mineral leases wherever applicable and adopt procedures keeping in mind the directions given by the Hon''ble Supreme Court and in keeping with such directions of the Hon''ble Supreme Court, environmental clearance should be made compulsory pre-requisite for all leases irrespective of size. In the said letter it was further pointed out that in exercise of its power under Section 20A of the Minor Minerals (Development and Regulation) Act, 1957, the Central Government directs that the States should take necessary steps to ensure that the complete process relating to grant of mineral concessions of minor minerals is made fair, transparent and non-discriminatory. Therefore, the State Government has been requested to revisit the mechanism/procedure relating to grant of concession/

leases of minerals expeditiously and take steps to ensure compliance of the principles laid down by the Hon''ble Supreme Court. A copy of the said letter has been handed up by Mr. Banerjee which has been taken on record. He submitted that in view of the aforesaid guidelines and observations made by the Hon''ble Supreme Court, Legislature has enacted the Mines and Minerals (Development and Regulation) Amendment Act, 2015 and by virtue of such amendment, a competitive bidding process through auction has been introduced. Therefore, the first-come-first-serve on the basis of suo motu application made by the parties cannot be entertained. He has also pointed out that competent Legislature has also enacted Minor Minerals Concession Rules, 2016 and Rule 33 of the said Concession Rules provides that every successful bidder/holder of prospecting licence-cum-mining lease shall submit the Environmental Clearance (EC) from the Ministry of Environment, Forest and Climate Change (hereinafter MoEF & CC) or State Level Environment Impact Assessment Authority (hereinafter SEIAA) or District Environment Impact Assessment Authority (hereinafter DEIAA).

8. Mr. Banerjee lastly submitted that Legislature has enacted Mineral Auction Rules, 2015 and all aspiring applicants for mining lease have to undergo the process prescribed under the said Auction Rules.

9. In reply to such submissions made by Mr. Banerjee, Mr. Tarun Kumar Das, learned Counsel appearing for the petitioner, added that the application which has been filed by the petitioner in 2010 cannot be rejected and the order impugned by which such application has been rejected cannot stand in view of the fact that the application was made under Rule 4A of Minor Minerals Rules, 2002. He submitted that West Bengal Minor Minerals Concession Rules, 2016 has been framed by the Government of West Bengal.

10. Mr. Tarun Kumar Das, appearing for the petitioner, submitted that although, rules have been framed by the State Government but the said rule is beyond the competence of the State inasmuch as the rule-making power under Section 15 of the 1957 Act does not give any power to the State Government to frame any rule on the subject it has been framed. After going through the provisions of Section 15 of 1957 Act it appears that such submission is also not tenable because Section 15 prescribes for a power of the State Government to make rules in respect of minor minerals. The said Section says that the State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining lease or other mineral concessions in respect of minor minerals and for purpose connected therewith. Section 15(1-A) (a) says that rules can be framed by the State Government prescribing the manner in which application for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor. Therefore, there is no doubt that the State Government has been authorised to frame rule on the subject. He submitted that moreover, the rules have been framed in order to adopt nondiscriminatory method, in regard to distribution and alienation of public property and such rules are in tune with the verdict of the Hon''ble Apex Court in

the case of Centre for Public Interest Litigation & Ors. (supra). Paragraph 96 of the said decision is relevant for our purpose and is set out below :-

"96. In our view, a duly publicized auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods like first-come- first-served when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. In other words, while transferring or alienating the natural resources, the State is duty-bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process."

11. He further submitted that Rule 62 of the said Rules deal with repeal which says that the West Bengal Minor Minerals Rules, 2002 has been repealed but 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 the Concession Rules, 2016. The application of Rule 62 in this case is very limited with regard to savings. The petitioner made an application in 2010. The said application being not considered, the petitioner filed a writ petition before this Hon"ble Court and in 2014 an order was passed directing the authority to consider his application. Had the said order not been passed, the authority would not have considered the matter having regard to the fact that the application was filed before notification which is pre-requisite under the law. Mr. Das submitted that since the application was made as per an earlier rule, the amended provisions of the Minor Minerals Concession Rules, 2016, has no application on his prayer which was made in 2010. However, even if the same is applicable, but such prayer of the petitioner in his application filed on 2nd February, 2010, is saved by virtue of the provisions of Section 62 of the Concession Rules, 2016. By order of Court the said application was taken up for consideration only in 2014 after the delivery of the aforesaid judgments of the Hon"ble Supreme Court. The application which was filed having not been disposed of earlier than the judgments of the Hon"ble Supreme Court, the petitioner cannot escape from the mandatory requirements under those judgments and the authority cannot bypass the same. Savings clause could be made applicable only in respect of an action taken by the authority earlier. Had the application been disposed of earlier before the order of the Hon"ble Supreme Court, then one could have argued that the action taken by the authority has been saved but when the application itself was not decided subsequent Acts and Rules must have a direct application upon the petitioner"s prayer for grant of mining lease. However, the directions of the Hon"ble Supreme Court has been sought to be implemented through the Concession Rules, 2016 and Rule 33 has been introduced making it a mandatory for an aspiring applicant for prospecting licence-cum-mining lease to have an environmental clearance. The respondent no.2, while rejecting the petitioner"s prayer for mining lease, has held that the petitioner has failed to comply with the necessary requirements by providing environmental clearance certificate.

Therefore, submission made by the petitioner is without any substance and cannot be accepted. In his submission learned Counsel for the petitioner has made that at best the authority instead of rejecting his application should have kept the matter pending and it ought to have been considered along with others after the notification is made according to the Mines and Minerals (Development and Regulation) Amendment Act, 2015. A new Section, i.e., Section 10A has been introduced by the Amendment Act. Section 10A.(1) says that all applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall become ineligible. Sub-Section (2), however, says that some applications will remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015.

12. I have scrutinized the said provisions of sub-Section (2) of newly inserted Section 10A. The petitioner's application does not come within the purview of sub-Section (2). His application is an application for mining lease. Therefore, the said application becomes ineligible in view of Section 10A of the Amendment Act, 2015. This apart, the amended provision of Section 11, sub-Section (5) says that for the purpose of granting prospecting licence-cum-mining leases, the State Government shall select, through auction by method of competitive bidding, including e-Auction, an applicant who fulfils the eligibility conditions as specified in the Act. In view of such provision of Section 11, sub-Section (5) the petitioner's application, by no stretch of imagination, can be considered by the authority without undergoing the bidding process.

13. One more aspect in the Mining Auction Rules, 2015 cannot be lost sight of. Rule 5 of the said Rules under Chapter II provides pre-requisites for auction of mining lease. It says that the State Government may initiate an auction process for grant of a mining lease with respect to an area within the State, if the mineral content of such area has been established in accordance with the provisions of the Minerals (Evidence of Mineral Content) Rules, 2015. Therefore, Government has sought to introduce a fair process for grant of mining leases. If any individual is allowed to make any application to the authority, there will be a chance of favouritism as well as corruption because unless the Government is satisfied that a particular area is a mineral content area, question of notification does not arise and the satisfaction must be of the appropriate Government. Therefore, it cannot be presumed that the petitioner will have access to such state of affairs of the Government before notification is finally issued. All persons should get a fair chance to offer for an auction process. There cannot be any scope for any persons to have any information from a confidential source so long the same is not made public through notification, the process will be impaired by unfairness and that is why, sufficient safeguards have been introduced in the present rules and there is no reason to hold that such rules are not according to the parent Act. I have no hesitation to say that not only the rules have been framed in compliance of Section 15 of the parent Rules, but also these rules have been framed to give effect to the guidelines laid down by the Hon''ble Supreme Court

in the aforesaid two very important decisions.

14. There is no scope for entertaining any suo motu application before the authority in view of the above-noted amendments of the Minor Minerals (Development and Regulation) Act, 1957 and the subsequent Rules, i.e., West Bengal Minor Minerals Concession Rules, 2016 and West Bengal Minor Minerals (Auction) Rules, 2016.

15. Having regard to the discussions above, no relief can be granted to the petitioner in this writ petition.

16. Writ petition cannot be sustained and, accordingly, the same is dismissed.

17. Urgent Photostat certified copy of this judgment, if applied for, be delivered to the learned counsel for the respective parties upon compliance of all usual formalities.