
(2010) 08 CAL CK 0033
In the Calcutta High Court

Case No : Writ Petition No. 19788 (W) of 2008 and C.A.N. 7686 of 2009

Selim Saha

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Constitution of India, 1950 — Article 14

West Bengal Minor Minerals Rules, 2002 — Rule 11, 12, 12(1), 12(2), 12(5)

Citation : (2011) 1 CALLT 8 : (2011) 2 CHN 868

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : Usha Maity, for the Appellant; Prasenjit Basu and K.N. Nabi, for the Respondent

Judgement

Indira Banerjee, J.—This writ application is directed against the failure and/or refusal of the District Magistrate, Paschim Midnapore, to consider the application of the Petitioner for extension of lease of the plots specified in the petition, for a further term of five years. The Petitioner has sought orders directing the District Magistrate, Paschim Midnapore to renew the lease and other consequential reliefs.

2. The Petitioner was granted a mining lease for extraction of sand at the said plots at the bed of the River Kangsabati, for a period of five years with effect from 19th September, 2003.

3. A registered Deed of Lease was duly executed on 19th September, 2003. However, possession of the said plots was made over to the Petitioner on or about 17th January, 2005, almost 1 year and 4 months after the date of execution of the Deed of Lease. The Writ of Possession was executed on 17th January, 2005.

4. The mining lease expired by efflux of time on 19th September, 2008. However, on 26th May, 2008 that is, about 4 months before expiry of the lease, the Petitioner applied for renewal thereof, along with the requisite renewal

application fee of Rs. 500/-.

5. The facts narrated above are not in dispute. The Petitioner is aggrieved by the failure and/or refusal of the District Magistrate, Paschim Midnapore to renew the mining lease.

6. Opposing the writ application, Mr. Prasenjit Basu, appearing on behalf of the State Respondents, submitted that the West Bengal Minor Minerals Rules, 2002, hereinafter referred to as the Minor Minerals Rules, was amended by Notification No. 09-CI/O/MM/-MISC-07/03/M2 (Pt.)-9th January, 2006. After the incorporation of Rule 4A, by amendment of the Minor Minerals Rules, no quarry permit can be granted without issuance of public notifications, inviting applications for quarry permits.

7. Mr. Basu argued that the Petitioner could apply for permit, along with Ors. once a notification inviting applications for quarry permits in respect of the said plots, was issued. The application of the Petitioner would duly be considered in accordance with law along with other applications.

8. Mr. Basu submitted that even if it was assumed that the Petitioner could still apply for renewal of the mining lease, after the amendment, the application for renewal was required to be made at least six months prior to the date of expiry of the lease. The Petitioner's application for renewal, which had duly been made about 4 months before the date of expiry of the lease was barred by delay.

9. Mrs. Usha Maity, appearing on behalf of the Petitioner, submitted that an application for renewal of a mining lease had to be accompanied with the original Royalty Clearance Certificate in statutory Form BI, duly signed by the District Land and Land Reforms Officer, in view of the 2nd proviso to Rule 12, read with Rule 5(4)(a) of the Minor Minerals Rules.

10. Mrs. Maity argued that the application for renewal of the mining lease, could not be made earlier since the appropriate authority, that is, the District Land and Land Reforms Officer, delayed the issuance of the Royalty Clearance Certificate. Mrs. Maity emphatically argued that the Petitioner was entitled to renewal of the lease for a further term of five years.

11. The renewal of a mining lease is governed by Rule 12 of the Minor Minerals Rules. Rule 12 of the Minor Mineral Rules, as it stood prior to the amendment by the Notification dated 9th January, 2006, referred to hereinabove is set out herein below for convenience:

12. Renewal of mining lease.--(1) An application for renewal of 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 than 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) No such renewal shall be granted for a period exceeding the period of original lease and the State Government or the officer so authorized in this behalf may refuse after giving reasons to be recorded in writing to renew a mining lease over the whole or part of the area covered by the original lease for which the renewal is applied for.

(3) Every application for renewal of mining lease shall be accompanied by a non-refundable fee of Rs. 500 deposited in the manner prescribed in Sub-rule (3) of Rule 5.

(4) Every application for renewal of mining lease, other than an application from the West Bengal Mineral Development and Trading Corporation, State Trading Corporation, Central Government or any other department of the Central Government or the State Government shall also be accompanied by a valid and up-to-date (I) Income Tax Clearance Certificate, (ii) a Sales Tax Clearance Certificate, if the applicant is a dealer under the West Bengal Sales Tax Act, 1994.

(5) An application for renewal of mining lease shall be disposed of within nine months from the date of its receipt.

(6) If an application for the renewal of mining lease submitted to the receiving authority within the time as referred to in Sub-rule (1) is not disposed of before the date of expiry of the lease, the period of that lease shall be deemed to have been extended for a further period of six months or period ending with the date of receipt of orders of the State Government there on, whichever is shorter.

Sub-rule (2) and Sub-rule (6) of Rule 12 have also been amended by paragraph 7 of the notification dated 9th January. 2006. Paragraph 7 of the notification is set out herein below.

(7) in Rule 12,--

(a) in Sub-rule (2), after the words "No such renewal shall be granted, insert the words "more than once:

(b) in Sub-rule (6), for the words, "whichever is shorter", substitute the words "whichever is earlier,"

12. On a careful reading of the various sub-rules of Rule 12 of the Minor Minerals Rules, it is patently clear that the requirement to submit an application for renewal of a mining lease at least six months before the date of expiry of the

lease, but not before nine months from such date, is directory and not mandatory. There is no consequence stipulated anywhere in the Minor Minerals Rules, for delay in making an application for renewal of lease.

13. The view that Rule 12 (1) is directory, finds support from Rule 12(6), which provides that if an application, for renewal of a mining lease, submitted to the receiving authority within the time stipulated in Sub-rule (1), is not disposed of before the date of expiry of the lease, the period of that lease shall be deemed to have been extended for a further period of six months or period ending with the date of receipt of orders of the State Government thereon, whichever is earlier.

14. When an application for renewal of the lease, made within the time stipulated in Rule 12(1), is not disposed of before the date of expiry of the lease, the lessee would be entitled to automatic extension of the lease for a maximum period of six months or till decision on the renewal application, by reason of the provision for deemed extension in Rule 12(1). This benefit would not be available if the application was not made within time.

15. Under Rule 12(5) of the Minor Minerals Rules, the State Government is required to take a decision on an application for renewal of lease, within a period of nine months from the date of receipt of the same. Implicit in Rule 12(6) is an obligation on the part of the State and/or its officials to dispose of an application for renewal, filed in time, within six months from the date of expiry of the lease, if for any reason the application remains pending beyond nine months.

16. As pointed out by Mrs. Maity, an application for renewal of mining lease is required to be made in the manner prescribed in Rule 12, accompanied by an up-to-date Royalty Clearance Certificate, signed by the District Land and Land Reforms Officer.

17. If the time stipulation in Rule 12(1) of the Minor Minerals Rules, for making an application for renewal of lease were to be interpreted as mandatory, and inflexible, as contended by Mr. Prasenjit Basu, notwithstanding the requirement to file the application exactly in the manner prescribed in the said Rule, accompanied with the Original Royalty Clearance Certificate in the statutory form, duly signed by the competent authority, the said Rule would be liable to be struck down as arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

18. If the requirement to submit an application for renewal of a mining lease at least six months before the date of expiry thereof were held to be peremptory, irrespective of any laches or negligence or default on the part of the lessee seeking renewal, it would be open to the State and/or its concerned officers to selectively pick and choose lessees and frustrate their application for renewal of lease by delaying the issuance of Royalty Clearance Certificates. There would be ample scope for discrimination between similarly circumstance lessees. An interpretation of a statutory rule which renders the same unconstitutional is to be avoided. The time stipulation in Rule 12(1) of the Minor Minerals Rules must be

held directory and condonable.

19. Rule 4A as inserted by the amendment of the Minor Minerals Rules, provides as follows:

4A. Grant of lease or quarry permits.--(1) The State Government may from time to time by public notice invite application for grant of mining lease or quarry permit in a particular area.

(2) Every such public notice shall be published through an advertisement and also by affixing at the office of the concerned District Land and Land Reforms Officer, Sub-Divisional Land and Land Reforms Officer and Block Land and Land Reforms Officer.

(3) Notwithstanding anything contained in Sub-rule (1) and Sub-rule (2), if an application is received before coming into force of this notification or before publication of the public notice under Sub-rule (1) after coming into force of this notification, the State Government shall, subject to the fulfillment of the conditions under Rule 5 by the applicant, consider such applications along with other applications received in pursuant to publication of such public notice.

(4) No public notice is required in case of persons applying for mining lease in respect of the land, in which he is a raiyat.

20. The language and tenor of Rule 4A and a comparison of the said Rule 4A with Rule 12 makes it absolutely clear that Rule 4A as inserted by the notification dated 9th January, 2006 referred to above, applies only to applications for grant of fresh lease and not to applications for renewal of lease. Rules 4A, 5,7,8 and 11 apply to applications for grant of mining lease whereas Rule 12 applies to renewal of mining lease.

21. It is significant that the Government also amended Sub-rules (2) and (6) by its Notification dated 9th January, 2006, referred to above. The Government was thus fully conscious of the renewal clause to which amendments were effected. Sub-rule (2) of Rule 12 has consciously been amended to provide that no renewal shall be granted more than once. Renewal might, therefore, be granted once.

22. Moreover, prior to amendment by the notification dated 9th January, 2006, Rule 4(I)(c) provided as follows:

4(I)(c) No person shall undertake mining operation in any area prohibited by the State Government in the public interest by notification in the Official Gazette:

Provided that nothing in this Sub-rule shall affect any mining operation undertaken in any area in accordance with the terms and conditions of a mining lease or mineral concession already granted.

The notification dated 9th January. 2006 inserted the second proviso to the said rule, which is set out herein below.

Provided further that no renewal of such mining lease or mineral concession shall be granted on expiry of the terms of such mining or minerals lease already granted.

23. The notification dated 9th January, 2006 has introduced a restriction on the grant of renewal, after expiry of the terms of the mining lease. Had renewal of mining leases altogether been discontinued, the words "on expiry of the terms of such mining or mineral lease already granted in the second proviso to Rule 4(I) (c) of the Minor Minerals Rules, would have been unnecessary.

24. On a harmonious reading of the second proviso to Rule 11(c), Rule 4A and Rule 12 as amended by the notification dated 9th January, 2006, it may reasonably be construed that a mining lease might be renewed, but only once. An application for renewal would ordinarily have to be made at least six months but not earlier than 9 months prior to the date of expiry of the lease. The delay in making an application for renewal might be condoned, if sufficient cause is shown.

25. The application for renewal would, however, have to be made within the period of validity of the lease. An application for renewal made after expiry of the lease, cannot be allowed except in cases where the application for renewal of lease could not be made prior to expiry of the lease for reasons attributable to the authorities concerned.

26. An application for renewal of lease, submitted before expiry of the lease cannot be refused on the sole ground of expiry of lease during the pendency of the application for renewal, upon recourse to the second proviso to Rule 4(I)(c) as inserted by the Notification dated 9th January, 2006, if the application is otherwise liable to be allowed.

27. The District Magistrate is obliged to take a decision on the application of the Petitioner for renewal of the mining lease, upon consideration of inter alia the grounds urged by the Petitioner for condonation of the delay in making the application. If, as contended by Mrs. Maity, Royalty Clearance Certificate had been delayed, the delay in filing the application for renewal of the lease would have to be condoned.

28. This Court exercising its extraordinary writ jurisdiction cannot adjudicate factual issues to determine whether the concerned authority delayed release of Royalty Clearance Certificate or whether there was, otherwise, sufficient cause for the delay in making the renewal application.

29. The District Magistrate is directed to dispose of the application of the Petitioner for renewal of the mining lease for a further term of five years, in accordance with law and in the light of the observations made above, positively within thirty working days from the date of communication of this order, after giving the Petitioner an opportunity of representation.

30. The writ petition and the connected application being CAN 7686 of 2009 are

disposed of.

31. Let Photostat copies of this order, duly countersigned by the Assistant Registrar (Court), be supplied to the learned Counsel for the appearing parties on an undertaking to apply for and obtain the certified copy of this order.