

**MAT 63 of 2025**

(Bijli Matshya Utpadan Group & Anr. Vs. The State of  
West Bengal & Ors.)

**Mr. Anjan Bhattacharya**  
**Ms. Anita Shaw**

**..... For the appellants**

**Mr. Chandi Charan De, Ld. Addl. Govt. Pldr.**  
**Mr. Anirban Sarkar**

**..... For the State respondents**

Affidavit-of-service, as filed, be kept on record.

The present appeal has been preferred challenging an order dated 7<sup>th</sup> January, 2025 passed the learned single Judge in the writ petition being WPA No. 13062 of 2023 preferred by the writ petitioners/appellants herein challenging, *inter alia*, the inaction on the part of the respondents to allow the appellants to start the pisciculture business at Dudhkunda Jalkar (hereinafter referred to as the said jalkar) with immediate effect upon allowing the appellants to pay the full amount of lease rent in favour of the respondents. Such prayer was turned down by the order impugned observing, *inter alia*, that Constitutional Court in exercise of its power under judicial review cannot alter or modify the tender terms which has otherwise been accepted and acted upon by and between the parties.

Shorn of unnecessary the facts are that a notice dated 6<sup>th</sup> September, 2021 was issued by the respondent no.3 inviting tender for grant of lease in respect of the jalkars/waterbodies, as mentioned in the said notice. The appellant no.1 competed in the tender process pertaining to Dudhkunda Jalkar and emerged to be successful and offered to deposit the 1/4<sup>th</sup> amount of lease rent by a demand draft and to pay the remaining amount within three months as stipulated under Clause 7 of the said notice dated 6<sup>th</sup> September, 2021 but in vain and as such, they were constrained to prefer a writ petition. Pursuant to an order passed in the same, the respondent no.2 passed an order on 30<sup>th</sup> March, 2022 and the said jalkar was leased out to the appellant no.1. Subsequent thereto, the State authorities received an amount of Rs.55,250/- from the appellant no. 1 on 26<sup>th</sup> April, 2022. As thereafter the appellants were not being allowed to catch fishes from the said jalkar which had been settled in their favour, they lodged a complaint and considering the same, the respondent no.3 *vide* memo dated 5<sup>th</sup> July, 2022 requested the respondent no.7 to render police protection to the lessee society. In the midst thereof, challenging the order dated 30<sup>th</sup> March, 2022 passed by the respondent no. 2, a writ petition was also preferred by one NEEB SSD. Upon hearing the same, the Hon'ble Court set aside the order dated 30<sup>th</sup> March,

2022. Challenging the said order, the appellants again preferred an appeal and by an order dated 30<sup>th</sup> September, 2022 the order impugned in the appeal was set aside and the writ petition was remanded for fresh hearing. The said writ petition being WPA 13062 of 2023 is still pending.

Mr. Bhattacharya, learned advocate appearing for the appellants submits the learned single Judge did not consider Clause 7 of the tender notice dated 6<sup>th</sup> September, 2021 in the light of the fact that the appellant no.1 was the successful tenderer but the 1/4<sup>th</sup> amount of lease rent being Rs.55,250/- though offered by the appellants in time, was received by the concerned respondent belatedly on 26<sup>th</sup> April, 2022. Thereafter the respondents, in spite of repeated representations, refused to accept the remaining lease rent though the said jalkar was leased out and the appellants' possession was also directed to be protected. For such inconsistent and unreasonable act of the respondents, the appellants cannot be made to suffer. Such argument, as advanced, was glossed over by the learned single Judge and no finding was returned on the same. Such infirmity warrants interference of this Court.

He argues that though the appellant no.1 emerged to be successful in the tender process, the State authorities, without any reason whatsoever, did not

comply with the terms and conditions of the tender notice. In view thereof, the observation in the order impugned that the Court '*cannot alter or modify the terms which has otherwise been accepted and acted by and between the parties*', is not sustainable in law and the respondents be directed to accept the remaining lease rent.

Mr. Bhattacharya in support of his arguments had also referred to an order dated 29<sup>th</sup> April, 2024 passed by the writ Court pertaining to the same tender process in respect of Bajitpur Colony Fisherman Co-operative Society directing the writ petitioners therein to deposit the remaining lease rent irrespective of the time period provided in Clause 7 of the notice dated 6<sup>th</sup> September, 2021. Such order was duly complied with by the State respondents and they cannot take a different stand in respect of the appellants.

Mr. De, learned Additional Government Pleader appearing for the State respondents submits that there is no infirmity in the order impugned inasmuch as the learned single Judge had rightly construed the provisions of Clause 7 of the said tender and had observed that the time period specified in the same had already expired and none of the parties nor the Court in exercise of its power of judicial review can extend or alter the terms and conditions of the said tender.

He further argues that no reliance can be placed on the order dated 29<sup>th</sup> April, 2024 since the same was passed on the basis of concession of the learned advocate, who entered appearance on behalf of the State respondents.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

There is no dispute as regards the proposition that the authority of the writ Court to interfere in the realm of contract is limited, however, a writ Court is entitled to judicially review the action and determine whether there was any illegality, unreasonableness or arbitrariness that would vitiate the action.

Indisputably, the appellant no.1 participated in the tender process as notified *vide* memo dated 6<sup>th</sup> September, 2021 and emerged to be successful. 1/4<sup>th</sup> amount of lease rent was belatedly accepted on 26<sup>th</sup> April, 2022. No explanation is forthcoming as to why the State respondents belatedly accepted the 1/4<sup>th</sup> amount of lease rent and thereafter refused to accept the remaining amount though the documents annexed at pages 78 and 79 would reveal that the said jalkar was settled in favour the appellant no.1 and police authorities were requested to protect the possession of the lessee being the appellant no.1. It is not a case that the State respondents had cancelled the tender due to

alleged non-submission of the lease rent in terms of the provisions of Clause 7 of the notice dated 6<sup>th</sup> September, 2021. Had such facts been considered by the learned single Judge, the order would have been otherwise.

In view thereof, we direct the appellants to deposit the remaining lease rent being Rs.1,65,750/- (Rs.2,21,000/- - Rs.55,250/-) to the respondent no. 3 within a period of two weeks. Upon accepting the said amount, the respondents shall allow the appellants to utilise the said jalkar for the purpose of carrying on pisciculture business, in accordance with law and upon payment of the other yearly dues, if any subject to the result of the pending writ petition being WPA 13062 of 2023.

With the above observations and directions, the appeal and the application for stay are disposed of setting aside the order impugned.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

**(Partha Sarathi Chatterjee, J.)    (Tapabrata Chakraborty, J.)**