

13.06.2025
Item No.07.
Court No.24.
S. De

W.P.A. 16344 of 2021

**Asit Prasad & Ors.
Vs
The State of West Bengal & Ors.**

Mr. Pinaki Dhole,
Mr. Rabindra Kr. Pathak,
Ms. Srijita Mondal, ...for the petitioners.

Mr. Chandi Charan Dey,
Mr. Anirban Sarkar, ...for the State.

Mr. D.P. Dutta,
Mr. Souvik Sen, ...for the private respondents.

The petitioners are at leave to correct the name of the respondent no.8(a) in the cause title of the instant writ petition within the course of the day.

The petitioners applied for conversion of a pond to bastu in terms of the provisions under Section 4C of the West Bengal Land Reforms Act, 1955. In terms of their prayer, the competent authority/collector concerned had passed an order for conversion of the pond to bastu. Thereafter, the order of conversion was made and in terms of their order, the record of right was also corrected and converted classification of land from pond to bastu.

One public interest litigation was filed before the Hon'ble Division Bench of this Court vide WPA 7476(W) of 2019 seeking necessary direction upon the competent authority and also against the act and

action of the petitioners herein for conversion of the pond to bastu, on the ground that there is a specific bar under the provisions of Section 17A of the West Bengal Inland Fisheries Act, 1984 regarding conversion of pond/water body to bantu. The Hon'ble Division Bench after hearing the parties has disposed of the writ petition vide its order dated 18th April, 2019, which is as follows :

“Considering the respective stand taken by the parties, we are of the view that the instant writ petition can be disposed of with a direction upon the Competent Authority under the West Bengal Inland Fisheries Act, 1984, to consider as to whether the bar to convert the pond-in-question under Section 17A of the said Act of 1984, will apply in the facts of the instant case or not. The Competent Authority shall decide this matter in accordance with law, preferably within a period of six weeks, but not later than eight weeks from the date of communication of a Photostat certified copy of this order. The decision of the Competent Authority,

*needless to say shall be supported
with cogent and justifiable reasons.”*

In terms of the direction of this Court, the competent authority that is the District Magistrate, Malda after perusing a detailed enquiry report of the concerned field officers has passed the impugned order on June 20, 2019. Being aggrieved by that order, the instant writ petition was preferred.

The learned counsel for the petitioners submits that before passing the impugned order, the petitioners were not heard. The concerned competent authority in passing the order has not followed the specific direction of the Division Bench and passed the order in a slipshod manner. He further argued that the grievances of the petitioners were not ventilated and the order itself is violative to the provisions of law. So he prayed for quashing of that order.

Mr. Chandi Charan De, learned counsel appearing on behalf of the State submits that the District Magistrate has passed the order in a cryptic manner. No reason has been assigned in passing the order, thus necessary order be passed.

Learned counsel appearing on behalf of the private respondents submits that the instant writ petition is not at all maintainable in its present form. There is a specific provision under Section 18 of West Bengal Inland Fisheries Act, 1984. Under the said

provision, the petitioners may file an appeal against any order passed by the competent authority under Section 17A of the said Act of 1984. He further pointed out that the huge water body was converted to bastu without following the specific provisions of law. Moreover, he pointed out that according to the provisions of Section 23 of the said Act, the West Bengal Inland Fisheries Act, 1984 has its overriding effect over any other laws. Accordingly, if any order was passed under the provisions of West Bengal Land Reforms Act 1985, and if it appears that the said order is in contravention to the provisions under Section 17A of the Act of 1984, the same order under Section 4 of WBLR Act would be nullified by the operation of the law under Section 23 of the Act of 1984.

He further submits that the District Magistrate after following the formalities and after perusing the detailed enquiry report of the field officers has passed the impugned order, there is no infirmity in law in the impugned order.

Having heard the learned counsel for the parties, I perused the impugned order dated June 20, 2019.

For proper appreciation of the issue, involved in this matter, the operative portion of the impugned order is set out as follows:

“In pursuance of the W.P. No. 7476(W) of 2019 and the verdict passed by the Hon’ble High Court,

Kolkata and subsequent field enquiry it has been found that you have violated provisions under Section 17A of the west Bengal Inland Fisheries (Amendment) Act, 1993 in regard to conversion of the following water body :

<i>Mouza</i>	<i>J.L. No.</i>	<i>Khatian No.</i>	<i>Plot No.</i>	<i>Area (in acre)</i>	<i>Present Classification</i>	<i>Previous Classification</i>
<i>Bandhail</i>	<i>82</i>	<i>1082, 1085, 1086</i>	<i>339</i>	<i>0.51 acre</i>	<i>Bastu</i>	<i>Water body (Pukur)</i>

In this connection notice is hereby issued to restore the said water body including embankment or naturally or artificially depressed land holding to its original condition on your own expenses within 15 days from the date of receipt of this notice.

If you fail to restore the said water body including embankment or naturally or artificially depressed land holding to its original condition within the period specified here above, undersigned may takeover the management and control of that water body including embankment or naturally or artificially depressed land holding as the case may be, restore it to its original conditions and recover the entire cost in this behalf or any part thereof from you.”

On a combined perusal of the order passed by the Division Bench of this Court in WPA 7476(W) of 2019, it appears that the Hon’ble Division Bench comprising of the Hon’ble Chief Judge of this Court

has directed the concerned competent authority to decide the matter in accordance with law. It has also been directed and observed by the Hon'ble Division Bench that there are previous orders by the competent authority under Section 4 of WBLR Act. The Hon'ble Division Bench has also directed the competent authority to pass a reasoned order which would be supported with cogent and justified reasons. In compliance thereof, the competent authority has passed the impugned order.

In a plain reading of the impugned order, it appears to me that the District Magistrate, Malda concerned has come to an opinion in perusal of the field enquiry report that the petitioners have violated the provisions in Section 17A of the West Bengal Inland Fisheries (Amendment) Act, 1933. It appears that how the petitioners have violated the order under Section 17A of West Bengal Inland Fisheries (Amendment) Act, 1993 was not assigned. Moreover, the petitioners appear to have acted on the basis of the previous order of the competent authority passed under Section 4 of the WBLR Act. So, the contradictions of order under Section 4 of the WBLR Act as well with order under Section 17A of the Amendment Act of 1993 by the same competent authority was placed before the District Magistrate. D.M. concerned is duty bound to assign reason as to

which of this order is justifiable. It further appears to me that the District Magistrate has only perused the field enquiry report and passed the order without passing a single reason. It appears that the District Magistrate has passed the order not in terms of the direction of the Hon'ble Division Bench, and also has not followed the order of the Division Bench in its true letter and spirit.

I make it clear that the authority concerned cannot itself pass the order without following the principle and provisions thereof. I also make it clear that the impugned order passed by the District Magistrate, Malda appears to me not on the basis of the cogent or justifiable reasons. Moreover, the petitioners or the interested parties were not heard before passing the impugned order. Thereby the order itself is violative to the principle of natural justice.

There may have some alternative remedy available to the petitioners in the form of statutory Appeal. But, such alternative remedy does not itself take away the jurisdiction of writ court when the impugned order itself alleged to have been passed in violating principle of natural justice.

Considering the entire aspects, I find that the petitioners have successfully demonstrated the matter before this Court and they deserve favourable order.

Under the above observations, the impugned order passed by the District Magistrate, Malda on June 20, 2019 is hereby quashed. The competent authority under Section 17A of the West Bengal Inland Fisheries (Amendment) Act, 1993 is directed to pass a reasoned order in terms of the direction of the Hon'ble Division Bench vide its order dated April 18, 2019 in WP 7476 (W) of 2019, most preferably within six weeks from the date of communication of this order after giving a reasonable opportunity of being heard to the petitioners and other interested parties concerned by issuing a public notice.

I make it clear that this Court has not entered into merits of this matter regarding justification of passing the order either by virtue of provisions of Section 4 of WBLR Act 1955, or by virtue of the provisions under Section 17A of the Amendment Act, 1993. The competent authority shall pass the order in accordance with law after assigning cogent reason by following the direction of the Hon'ble Division Bench without being influenced by any observation of this Court. The decision of the authority must be communicated to the petitioners within two weeks from the date of passing of this order.

Under the above observations, the writ petition being WPA 16344 of 2021 is, accordingly, disposed of.

(Subhendu Samanta, J.)