

30.3.2026
ct no. 10
Sl. 10
AGM

WPA 1767 of 2026

Chandan Maity
-Versus-
State of West Bengal & Ors.

Mr. Ujjal Roy.
Mr. Arijit Pradhan.
Mr. Sahajan Ali.

... For the petitioner.

Mr. Suman Sengupta, Sr. Govt. Adv.
Mr. Dwaipayan Basu Mallick.
Mr. Sanatan Panja.

... For the State.

- 1.** Affidavit of Service filed today is kept with the record.
- 2.** The petitioner in the instant case challenges inter alia, the decision taken by the respondents dated 05.01.2026 wherein a penalty has been imposed to the tune of Rs. 6,35,869/- as per Schedule C Part 1 of the Control Order of WBTPDS (M&C) Order 2024 (hereinafter referred to as the said Control Order 2024).
- 3.** At the outset, the state respondents raise an objection to the maintainability of the writ petition, contending that the impugned order is an appealable order and the petitioner has not exhausted the alternative statutory remedy of appeal provided under law.
- 4.** The state respondents also submits that the petitioner, having challenged the Order in part, must

exhaust the statutory remedy of appeal before seeking relief. However, the said contentions regarding the statutory mandate is not acceptable as the issue is not the subject matter of challenge in the present writ petition.

5. The State respondent relies upon paragraph 28 of the judgment in the case of **General Manager, Electrical Rengali, Hydro Electric Project, Orissa & Ors.-vs- Giridhari Sahu & Ors** reported in **(2019) 10 Supreme Court Cases 695**, which is reproduced below:

“On the conspectus of the decisions and material, we would hold as follows: the jurisdiction to issue writ of certiorari is supervisory and not appellate. The Court considering a writ application of certiorari will not don the cap of an appellate court. It will not reappreciate evidence. The writ of certiorari is intended to correct jurisdictional excesses. A writ of prohibition would issue when a tribunal or authority has not yet concluded its proceedings. Once a decision is rendered by a body amenable to certiorari jurisdiction, certiorari could be issued when a jurisdictional error is clearly established. The jurisdictional error may be from failure to observe the limits of its jurisdiction. It may arise from the procedure adopted by the body after validly assuming jurisdiction. It may act in violation of principles of natural justice. The body whose decision which comes under attack may decide a collateral fact which is also a jurisdictional fact and assume jurisdiction. Such a finding of fact is not immune from being interfered with by a writ of certiorari. As far as the finding of fact which is one within the jurisdiction of the court, it is ordinarily a matter “off bounds” for the writ court. This is for the reason that a body which has jurisdiction to decide the matter has the jurisdiction to decide it correctly or wrongly. It would become a mere error and that too an error of fact. However, gross it may amount to, it does not amount to an error of law. An error of law which becomes vulnerable to judicial scrutiny by way of certiorari must also be one which is apparent on the face of the record. As held by this Court in Hari Vishnu Kamath [Hari Vishnu Kamath v. Ahmad Ishaque, AIR 1955 SC 233] , as to what constitutes an error apparent on the face of the record, is a matter to be decided by the court on the facts of each case. A finding of fact which is not supported by any evidence would be perverse and in fact would constitute an error of law enabling the writ court to interfere. It is also to be noticed that if the overwhelming weight of the evidence does not support the finding, it would render the decision amenable to certiorari jurisdiction. This would be the same as a finding which is wholly unwarranted by the evidence which is what this Court has laid down (see Parry & Co. Ltd. [Parry & Co. Ltd. v. P.C. Pal, AIR 1970 SC 1334 : (1969) 2 SCR 976]).”

6. As it appears from the records that after affording opportunity of hearing the petitioner, the respondent No. 4 arrived at a finding which is reproduced below:

“Therefore, in exercise of the power conferred upon the undersigned in para 46(2) under clause 46 of WBTPDS (M&V) Order, 2024 a penalty of Rs. 6,35,869 as per schedule-C (Part I) of the said control order is hereby imposed upon Chandan Maity (134501000004) at Nandigram I Block which is to be deposited in the manner spelt in GO no. 3135-Fs Dated 22.12.2020 within 15 days of receipt of this order. Appeal against this order will lie before the DCF&S, (district) as per para 56 and 57 of the said Control Order.”

7. In this context, the petitioner submits that the writ petition is maintainable despite the existence of an alternative remedy as the impugned order has been passed without jurisdiction and is in violation of the principles of natural justice, whereby falling within the exceptions to the rule of alternative remedy. It is further submitted that the state respondents have acted contrary to the provisions of law as contained in the amended statute. The decision taken by the state respondents suffers from gross irregularity and is dehors the provisions of law in as much as the order has been passed in excess of jurisdiction without considering the reply filed on 04.12.2025 and notice of hearing has been issued on the ground of alleged contravention of the provisions mentioned in the show cause notice.

8. The petitioner submits that the respondent No. 4 imposed a penalty without considering the reply which runs contrary to the mandate of the statute.

9. In conspectus of the above, I find that the decision taken by the authority concerned does not suffer from

any irregularity and is sustainable in the eye of law. The petitioner has an adequate alternative statutory remedy available namely, the statutory appeal provided under the relevant legislation.

10. It is a settled principle that the writ petition is not maintainable where an alternative remedy exists unless exceptional circumstances are shown such as (violation of natural justice, jurisdictional error of a fundamental nature). In General Manager, Electrical rengali Hydro Electric project Orissa (supra) it has been held that the writ jurisdiction is supervisory and not appellate and that the statutory appeal must first be exhausted before invoking extraordinary writ remedy.

11. Having heard the parties and upon perusing the records made available I find that the writ petition is not maintainable as the impugned decision is appealable in nature and the petitioner has failed to exhaust the statutory remedy by pursuing the issue before the appropriate forum.

12. I direct the petitioner to present all relevant points before the appellate authority, being the respondent No. 3 within a period of four weeks. The same shall be considered by passing a reasoned order in accordance with law upon affording opportunity of hearing to the petitioner and other interested persons, if any and shall communicate such decision within a week thereafter.

13. Since the appeal has not been filed within the statutory period the delay is hereby condoned. The

respondent No. 3 is directed to consider the appeal on its merit and complete the entire exercise preferably within a period of two months from the date of filing the appeal.

14. In view of the above the Writ Petition is **disposed of**. However, it is made clear that since this court has not gone into the merits of the case the petitioner shall be at liberty to agitate all issues before the appellate authority.

(Smita Das De, J.)