

**CONSTITUTIONAL WRIT
W. P. 3299 (W) of 2008
Sri Kamal Mardi & Ors.**

Vs

The State of West Bengal & Ors.

Present:

The Hon'ble Mr. Justice Syamal Kanti Chakrabarti

Judgement on: 14.01.2010

Point:

POLICY DECISION: Scheme of the Government – Whether Court can interfere for implementation - Constitution of India, Art. 226.

Fact: The writ application has been filed seeking a direction for execution of Shallow Tube Well electrification which has been sanctioned by the Government but not implemented for years although priority was given to subsequent schemes.

Held: Where the implementing agency have failed to materialize the object of the state and their conduct is quite inconsistent with the policy decision of the state government, it is duty of the Court to interfere for implementation of the scheme within the frame work stipulated by the State Government without further delay. Paragraph – 20

Case:

(2007) 8 SCC 549

For the Petitioner : Mr. Saktinath Mukherjee,
Mr. Ashok De,
Mr. Saptangsu Basu,
Mr. Arjun Kumar Samanta.

For the Respondent Nos. 1 & 2 : Mr. S. P. Ghose, Sr. Govt. Advocate
Ms. Mitali Bhattacharyya.

For the Respondent No. 3, 4 & 5: Mr. Samarjit Roychowdhury.

For Malda Zilla Parishad : Mr. Biswarup Bhattacharyya.

The Court:

1. The present four writ petitioners have approached this Writ Court for execution of 431 Shallow Tube Well electrification which has been sanctioned by the Government but not implemented for reasons not known to them for years together giving priority to subsequent schemes. They have claimed, inter alia, that the petitioners being farmers of Habibpur and Bamongola area under Malda Zilla Parishad in the District of Malda are mostly belonging to schedule caste and schedule tribe and other backward classes and their livelihood completely depends upon cultivation by Shallow Tube Wells. In the Habibpur, Bamongola, Gajol and Chanchol area there are 431 farmers who have Shallow Tube Wells of their own for the purpose of irrigation in their land. They got clearance certificate from the State Water Investigation Directorate of Government of West Bengal for installation of submersible pumps for lifting water for agricultural purposes. They have further claimed that the respondent no. 4, the West Bengal Rural Energy Development Corporation Limited, was established for the purpose of taking steps so that all the villagers of the State of West Bengal can have the benefit of electricity either for residential purpose or for agricultural purposes. The respondent no. 4 formulated a scheme for electrification in the District of Malda under the said scheme so that the intending consumers may apply through the local Panchayat authority for obtaining electricity in their respective plots, houses and blocks. Accordingly, the 431 intending consumers of the aforesaid four areas applied for electrification of STW connection through Malda Zilla Parishad. After a scrutiny of their applications the Sahakari Sabhadhipati, Malda Zilla Parishad submitted a list of 431 intending consumers including the statements of physical and financial involvement in West Bengal Rural Energy Development Corporation Limited Rural Electrification Programme, 2002-2003. The respondent no. 4 accordingly in his letter being O.M. No. 1373/MZP/03 dated 04.03.2003 sanctioned the electrification proposal of 431 STW.

2. It is their further case that by a letter dated 16.08.2005 the Managing Director, West Bengal Rural Energy Development Corporation Limited requested the Additional Executive Officer, Malda Zilla Parishad to prepare a new scheme for the said electrification of 431 STW. By a letter dated 11.05.2007 the Managing Director of respondent no. 4 further requested the Additional Executive Officer, Malda Zilla Parishad for some information in connection with those 431 STWs. The respondent no. 4 by letter dated 21.05.2007 further informed the respondent no. 9, Additional Executive Officer, Malda Zilla Parishad that the scheme for electrification of 431 STW was approved on 24.04.2003 but the scheme was not executed as the field realities have been changed as per latest guidelines of STW. It was further made clear in the said letter under reference that there is financial constraint for the approved scheme. Accordingly, the respondent no. 7 submitted a detailed recast report with an estimated cost of Rs. 5,29,54,756/- for the said 431 numbers STW scheme. Thereafter the respondent nos. 9 and 10 by letter dated 26.12.2007 requested the respondent no. 5 to move for necessary approval for 431 STW and the respondent no. 10 has also submitted a detailed calculation of number of beneficiaries, name of Mouzas, JLO, Plot Nos. of STW, number of poles and cost for the scheme. One of the beneficiaries namely, Asish Sarkar also made a representation to the Hon'ble Minister in Charge, Power Department, Government of West Bengal for electrification of the said 431 STWs. The Managing Director of the West Bengal State Electricity Distribution Company Limited by a letter dated 19.09.2007 informed that the said matter has been referred to the Malda Zilla Parishad. By another letter dated 27.12.2007 the Hon'ble Minister in Charge, Department of Parliamentary Affairs and Environment, Government of West Bengal addressed to the respondent no. 3 requested him to sanction additional amount of Rs. 1,79,00,000/- for the execution of the said 431 STW scheme. By another letter dated 08.11.2008 Mr. Sambhu Tudu, MLA requested the Hon'ble Minister in Charge, Power Department,

Government of West Bengal to implement the said scheme for the benefit of SC/ ST cultivators and agricultural development of the District of Malda. The respondent no. 7 also by letter dated 05.02.2008 requested the Principal Secretary, Power Department, Government of West Bengal, the respondent no. 2 herein, for release of an amount of Rs. 5,83,97,049/- for execution of the said scheme.

3. To their utter surprise the respondent no. 6 by a letter dated 15.02.2008 has informed that the said electrification of 431 STWs work cannot be started on the grounds that 366 STWs are still pending.

4. The further case of the petitioners is that a subsequent scheme of 260 STWs was sanctioned on 24.03.2004 and the same has been executed giving undue priority whereas the petitioners' scheme which was sanctioned on 24.04.2003 has not been executed or implemented without any reasonable cause. The West Bengal Rural Development Corporation Limited, the respondent no. 4 herein, can not withhold the scheme which was sanctioned on 24.04.2003 and so they have approached this Writ Court to issue a Writ in the nature of Mandamus commanding the respondents and each of them to implement the said approved scheme of 24.04.2003 with prayer for ad interim order of direction upon the respondents, particularly the Managing Director being the respondent no. 5, to execute the said scheme without any further delay with consequential reliefs.

5. The respondent nos. 3, 4 and 5 have opposed the move and claimed that this scheme was provisionally sanctioned but not approved. The fund is placed at the disposal of the respondent nos. 1 and 2 and respondent nos. 3, 4 and 5 are the approving authority. In fact for the purpose of

implementation of the scheme the primary responsibility lies upon the West Bengal Rural Energy Development Corporation Limited.

6. In their affidavit-in-opposition the respondent no. 5 has explained the modus operandi of such scheme and claimed that as per order dated 24.02.2000 of the Department of Power, Government of West Bengal, identification/ prioritisation of rural electrification scheme will be done by Zilla Parishad/ District Rural Electrification Committee in consultation with West Bengal State Electric Board officials so that due regard is given to such technical factors as system capacity for additional connection. The detailed scheme and cost estimate duly vetted by concerned official of WESEDCL will be presented to the Zilla Parishad which will formally accord approval to each of individual scheme and issue formal sanction with copies to the SE and concerned DE of WBSEDCL. In such sanction order the Zilla Parishad will formally authorise the concerned DE of WBSEDCL to issue the necessary erection order. One copy of each of the approved scheme and the estimate will be forwarded to the corporate office of West Bengal Rural Energy Development Corporation Limited and to the Secretary, WBSEB. The items of local purchase are to be procured by Zilla Parishad and for items of central purchase the district may procure them directly or through WBREDC. The WBREDC takes step to release fund for purchase of local materials and erection cost for RE scheme will be provided from the Zilla Parishad's local fund accounts. The Zilla Parishad will be competent to make payment for procurement of materials and erection cost on the basis of necessary certification from the concerned DE, WBSEB. The district and block RE committee, Zilla Parishad and WBSEB will closely monitor the execution of the work. Therefore, the role of WBREDC is limited to release fund into the Zilla Parishad's local fund accounts out of the funds received from time to time from the Department of Power, Government of West Bengal. It is their further contention that in 2003, i.e., during the 10th plan period Malda Zilla Parishad had

many schemes to be implemented including 808 STW schemes. The Managing Director while giving approval specifically mentioned that these schemes will be taken up only after completion of pending scheme and submission of utilisation certificate. Thereafter the Zilla Parishad remained silent and only in 2007, i.e., during the 11th plan period they have approached for release of necessary fund. In the meantime, because of change in the technical specification of WBSEB the cost estimate needed revision and revised cost per scheme came to Rs. 1,34,866/- instead of initial estimate of Rs. 93,798/-. The Corporation received fund under Plan Loan from the Department of Power, Government of West Bengal up to the year 2005-2006. Therefore, the Corporation at present have no means to fund those schemes. After enactment of Electricity Act, 2003 the Directors of the Corporation have decided not to take up any scheme further and to complete the on going scheme within 31st March, 2008. It is their further contention that the 431 number of STW scheme were provisionally sanctioned on 24th March, 2003 with a condition that huge amount of fund is already lying unutilised with the Zilla Parishad for execution of other rural electrification scheme and placing of additional funds for new scheme would be taken up on receipt of utilisation certificate. And they also advised to take immediate action for implementation of STW scheme and prepare estimate for the materials to be procured including suitable transformers. But the concerned Zilla Parishad did not mention anything about the scheme in question in any of their correspondences or in the reconciliation meeting at West Bengal Rural Energy Development Corporation Headquarter on 25.06.2004 or in any of the meetings taken up by the Hon'ble Minister in Charge of Power Department excepting in their letter no. 412/MZP/07 dated 28.02.2007 for the first time they raised the issue almost after four years from provisional sanction.

7. In paragraph no. 11 of their affidavit-in-opposition it has been mentioned that there were 808 number of STW schemes pending in the hands of Zilla Parishad and dates of completion of

those schemes was also fixed on 30.06.2007 for 548 schemes and on 30.09.2007 for 260 schemes. Regarding the scheme of 431 numbers of STW of the present petitioner it was stated that the scheme cannot be executed in the old fashion because in the meantime the field realities have changed which will require complete recasting of the scheme as per latest guideline of WBSEDC. Moreover, in letter no. 1688/MZP/07 dated 31.08.2007 the Additional Executive Officer, Malda Zilla Parishad enclosed proposal signed by the Sabhadhipati and Karmadhashya, Bidyut, but not signed by any technical person of WBSEDCL. They have further claimed that the respondent no. 9, the AEO, Malda Zilla Parishad, forwarded revised scheme for 433 pumps in respect of 431 STW. The letter no. 2415/MZP/07 dated 26.12.2007 was inconsistent with his earlier proposal dated 31.08.2007 in respect of the following:

- a) The numbers of STW increased from 431 to 433;
- b) The numbers of transformer increased from 260 to 324;
- c) HT line increased from 100.148 to 1027.06 K.M.;
- d) Cost increased from 404.269 of original sanction to 529.55 and then to 583.97 lacks as per letter no. 2415/MZP/01 dated 26.12.2007.

8. It is also observed by them that the cluster formation of two numbers STWs per 10 KVA transformer has not been followed for which number of transformers has been increased and the HT line has also become very high with increased cost estimate. Ultimately, they have concluded that at this closing stage, West Bengal Rural Energy Development Corporation is unable to take up any new work, either approved long back or proposed now, and the same can

not be started. Accordingly, the petitioners are not entitled to have such relief as prayed for in their petition which is liable to be dismissed in limine.

9. The respondent no. 3, The West Bengal State Electricity Distribution Company Limited, in their affidavit-in-opposition has equally claimed that there was a scheme of WBREDCL for 548 numbers of STW in the district of Malda district comprising of two parts, one part for 310 numbers and the other for 238 numbers. Out of 310 STW, 296 numbers are energized and the rest are yet to be energized. Again out of 238 numbers of STW erection order has been issued for 227 numbers and only 123 numbers has been energized. There is another scheme of WBREDCL for 260 numbers of STW against this scheme erection orders could not be issued for 249 numbers. They have admitted that though the scheme for 548 numbers of STW was sanctioned by them on 28th March, 2001 even after seven years erection order for 11 numbers could not be issued and the scheme is yet to be completed. The scheme for 260 numbers was sanctioned by them on 24.03.2004 and after a passage of nearly four years only 138 numbers have been energized and even the erection orders could not be issued for the full scheme. The scheme of the petitioners for 431 STW was approved on 24.04.2003 but no action as to issue of work order from the WBREDCL wing of Malda Zilla Parishad has taken so that subsequent erection orders can be issued by WBSEB/ WBSEDCL. Now after lapse of nearly five years cost have also been increased from Rs. 4,04,26,888/- to Rs. 5,83,97,049/- which may also increase from the financial year starting from April, 2008. Meanwhile the representative of various wings inspected sites for the physical and financial enquiry and they are in receipt of a request from the Hon'ble Minister in Charge, Department of Parliamentary Affairs and Environment, Government of West Bengal for sanction of additional amount of Rs. 1,69,00,000/-. They have also cited a letter dated 5th November, 2007 of the Managing Director informing that the OSD

and Executive Officer, Deputy Secretary, Department of Power has informed that the scheme for 431 STW was sanctioned on 24.04.2003 but the execution has not started yet as the other sanctioned schemes of WBREDCL are still pending. It was a policy decision of WBREDCL for identification of work to be completed on 31st December, 2007. But within the target date the previous schemes were not completed. Hence, at the closing stage no new work, either approved long back or proposed now, can be started. They have further contended in their affidavit-in-opposition that the West Bengal State Electricity Distribution Company Limited is the implementing agency of this rural scheme as all related materials for such work are purchased and delivered by their wing of Malda Zilla Parishad and WBSEB/ WBSEDCL is related with the supervision job after issuing erection orders which will be done without any further delay if the work order is issued by WBREDC wing of Malda Zilla Parishad and as such they have no direct involvement in the matter.

10. Learned lawyer for the respondent no. 7, Malda Zilla Parishad, has contended that in the instant case the Zilla Parishad has performed its duties but the respondent no. 3, i.e., The West Bengal State Electricity Distribution Company Limited and the respondent no. 4, i.e., The West Bengal Rural Energy Development Corporation Limited are responsible for non-execution of the scheme. The respondent no. 5 on the contrary in their affidavit in opposition has claimed that their role is limited to release of fund into the Zilla Parishad's local fund accounts out of the funds received from time to time from Department of Power, Government of West Bengal. It is also their case that in giving approval they have specifically mentioned that these schemes will be taken up only after completion of the pending scheme and submission of utilisation certificate. After that the Zilla Parishad remained silent and only in 2007, i.e., during the 11th plan period they have approached for release of necessary fund. In the

meantime because of change in the technical specification of SEB, the cost estimate required revision. The Corporation also received fund under plan loan from the Department of Power, Government of West Bengal up to the year 2005-2006. Therefore, they have at present no means to fund those schemes.

11. From the letter dated 24.04.2003 of the Managing Director, WBREDCL addressed to the Malda Zilla Parishad it is evident that they have approved the additional scheme of the present petitioners in the interest of farmers of Habibpur, Bamongola, Gajol and Chanchol areas as a special case approving the total cost of Rs. 4,04,26,888/- proposed in the estimate submitted along with the scheme. The concerned Superintendent Engineer of WBSEB in the Malda Distribution Circle was also advised to take action immediately for implementation of the STW schemes and prepare an estimate for the materials to be procured including suitable transformers. It is also stipulated in the letter that since huge amount of fund is already lying unutilised with the Zilla Parishad for execution other RE schemes placing of the additional funds for the new schemes would be taken up on receipt of the utilisation certificate. In the said letter there is no mention that the approval was conditional or subject to availability of any fund. In clear and unambiguous terms the above proposal was sanctioned as additional scheme for the interest of the farmers of Habibpur, Bamongola, Gajol and Chanchol as a special case. The object of extension of such facilities will be further reflected in the letter dated 16.08.2005 of the Managing Director, addressed to the Additional Executive Officer, Malda, the respondent no. 9 herein, which is quoted below:-

“..... the matter of formulation of new schemes for intensification of villages of our state has been discussed in WBREDL Board meeting on 09.08.2005. Considering the importance of the

project, the Board has desired that the intensification schemes for the district should be so formed that not a single village/ Hamlet in the District remains out of scope of the project. This has been felt necessary by the Board to avoid preparation of intensification schemes for the districts in bits and pieces that it should be a complete master plan for the district, which is to be executed positively before 2012.

In view of above I am to request to kindly prepare schemes for your district in totality leaving out nothing for the future.” (Annexure P – 3)

12. Another letter dated 26.12.2007 of the respondent no. 7 addressed to the Managing Director of WBREDCL (Annexure P-7) further ratifies the scheme. In the said letter he has resubmitted the proposal for 431 STW after necessary resurvey and recasting as desired by them and the total amount of the scheme was estimated under such revised scheme at Rs. 5,83,97,049/- for the physical involvements of 433 number STWs in respect of 431, HT-127.06 KM, L.T. (3Ph - 35356 KM and S/Station 10 KVA X 324 numbers). In the said letter it has been further clarified to the following effect:

“In this connection it is stated that an amount of Rs. 4,04,26,888/- was sanctioned through your memo no. WBREDC/Tech-12/745 dated 24.04.2003. So balance amount of Rs. 1,79,70,161/- is required to complete the said STW works. In this perspective this is to inform you that necessary resurvey has been made keeping the beneficiaries unchanged as per present field realities.

Further it may kindly be noted that huge number of STW works are kept pending for want of 10 KVA transformer, all other materials already issued to the erection contractors.

So you are requested to kindly consider necessary approval for 430 number STW with allotment of at least 60 number 10 KVA transformers for early completion of the pending works.”

13. In another letter of the Managing Director dated 21.05.2007 addressed to the respondent no. 9 it was admitted by the respondent no. 5 to the following effect:

“The schemes for 431 STWs was approved vide letter no. WBREDC/Tech-12/745 dated 24.04.2003 but it is seen that no action as to issue of work order followed by erection order has been taken in the meantime. Now after lapse of four years confirmation about fund availability has been sought for though fund was not a constraint for approved schemes. After such admission in 2007 I hold that WBREDCL cannot raise any question of non-availability of fund for implementation of this approved scheme which was pending from 2003.”

14. It is palpably clear from the above letter (Annexure P-5) that the explained delay in issuing work order cannot stand in the way of implementation of the scheme on the background of giving priority to other schemes which are said to have been approved earlier on grounds of field realities. It is claimed in the said letter:

“Regarding the subject scheme of 431 numbers STW, it may be noted that the scheme cannot be executed as it stands because in the meantime the field realities have changed necessitating complete recasting of the scheme considering latest guidelines for STW schemes of erstwhile WBSEB and now the WBSADC keeping the beneficiaries unchanged.

You are requested to kindly ensure completion and closure of first STW schemes of 548 nos. by 30.06.07 and the second STW schemes for 260 nos. by September, 2007.”

15. I have already pointed out that after this letter dated 21.05.2007 the respondent no. 9 in his letter dated 26.12.2007 has submitted the revised estimate keeping the beneficiaries unchanged as per present field realities. Therefore, what was apprehended by the WBREDC in May, 2007 was not proved to be true in December, 2007 because due to delay and change of circumstances only

there was increase of cost to the tune of Rs. 1,79,70,161/- since there was no constraint of fund in 2007 I fail to understand why the respondent no. 5 gave priorities to the completion of first STW scheme for 548 numbers by 30.06.2007 and the second STW scheme for 260 numbers by September, 2007 on the ground that those schemes were approved earlier in total disregard of the present scheme since identified as special case and ought to have been dealt with special care on priority basis. Yet such a time bound programme is a healthy sign of the bona fide intention of the respondent no. 5 in execution of their policy decision to provide electricity to each and every person of the locality which is the ultimate goal of the project. Therefore, the desire of these 431 STWs cannot be ignored due to lapse of time and procedural delay as claimed by the units on whom task of implementation of the scheme was assigned.

16. With all fairness I conceive that the ultimate policy decision rests with the Government in their electricity department and this special scheme was approved following a decision with Shri Sailen Sarkar, Hon'ble Minister in Charge of Food Processing and Horticulture Department with Dr. Sujan Chakrabarti, The Chairman of WBREDC, which is reflected in memo no. WBREDC/Tech-12/745 dated 24.04.2003. Where the state government has accepted in principle the present proposal as an additional scheme on special grounds as a special case for farmers of Habibpur, Bamongola, Gajol and Chanchol all the implementing agencies cannot evade their responsibilities on grounds of delay, particularly where the total project can be implemented by 2012 as admitted by respondent no. 5 in his letter dated 16.08.2005.

17. Where major fund as per initial cost estimate has been provided, the scheme ought to have been undertaken much earlier by the implementing agencies without blaming each other for frivolous technical grounds which is reflected in their conduct. I also find from the materials

available in the aforesaid letters and the affidavit filed by the parties that much interest has been shown to implement other schemes which are also not completed. There is also no mention of the total fund availability for implementing the schemes for the district during the entire project period up to 2012. Since respondent no. 5 has already admitted that fund constraints will not stand in the way of implementing the same it is their bounded duty to implement the project by providing additional fund.

18. It is also not explained by them how the sum of Rs. 4,04,26,888/- sanctioned through their memo no. WBREDC/Tech-12/745 dated 24.04.2003 was utilised. Once the fund has been sanctioned by them either that will be held in reserve for non-utilisation on technical grounds or the same shall have to be spent for the purpose for which it is sanctioned. Therefore, the respondent no. 5 cannot evade their responsibility in implementing this project with right earnestness.

19. Learned lawyer for the petitioners has rightly pointed out that in the matter of executing the scheme the different units have exercised their discretionary power in such a way that in the entire process priority has been given in some schemes in total ignorance of the special scheme of the Government and thus the discretionary power has been exercised in a very discriminatory way which should be prevented for the welfare of the local poor farmers in a democratic socialistic country like us. He has drawn my attention to paragraph 17 of the judgement of the Hon'ble Apex Court reported in (2007) 8 SCC 549 where in the Hon'ble Apex Court observed inter alia, "*We expect a public sector undertaking which is 'State' within the meaning of Article 12 of the Constitution of India not only to act fairly but also reasonably and bond fide.*" In the above case appointment on compassionate ground was denied in a circumlocutory manner which was condemned by the Hon'ble Apex Court and His Lordship, therefore, set aside the impugned

judgment and the respondent was directed to offer appointment on a suitable post within certain time. The ratio in the above case obviously indicates that the public sector undertakings should not only act fairly but also reasonably and bona fide. In the instant case the respondent nos. 3 and 4 have not acted reasonably and bona fide for which the scheme was unnecessarily delayed involving further additional cost estimates to the utter frustration of the poor farmers for whom the scheme was initially approved as a special case by the state government.

20. Considering all these aspects I hold that where the implementing agency have failed to materialise the object of the state and their conduct is quite inconsistent with the policy decision of the state government, it is duty of the Court to interfere for implementation of the scheme within the frame work stipulated by the State Government without further delay and from this point of view the instant writ petition is maintainable. What I conceive is that the respondent nos. 3, 4 and 5 should act in a cohesive manner to give effect to the special scheme within stipulated time and for this purpose the fund at their disposal should be first earmarked for implementing this scheme with revival of the earlier sanction order, if needed. Therefore, I hold that there is merit in this writ petition which should be allowed to prevent abuse of the discretionary power vested in respondent nos. 3, 4 and 5. In the result the writ petitioners succeed.

21. The respondent nos. 4 and 5 are directed to set apart a total sum of Rs. 5,83,97,049/- out of the fund at their disposal under the head Plan Loan for implementation of the 431 number of STWs as per letter dated 26.12.2007 of the respondent no. 10 (Annexure – P 7) and after making such provision they may utilise their excess fund for implementation of the remaining on going projects which are to be completed within 2012. So the respondent no. 3 is also directed to provide necessary infrastructural facilities for erection of poles and supply of electricity as per revised

scheme which was sanctioned in part by the respondent nos. 4 and 5 earlier within a period of six months from the date of this order by making further addition or alterations of the scheme, if required, under any revised comprehensive project for the entire district as discussed earlier. By all means the present scheme for 431 STW or 433 STWs, as the case may be, shall have to be completed within six months from the date of this order and all the parties are directed to discharge their responsibilities and to cooperate each other in such manner so that this special project is completed by the stipulated time and the same does not suffer any more on account of their inaction, reluctance or negligent in performing their respective duties regard being had to the principle that special case should always be dealt with especially to avoid future individual responsibility and accountable to discharge the duty to take care of faithfully. The writ petition is thus disposed of.

22. Certified photostat copy of this order, if applied for, be supplied to all the parties upon compliance of requisite formalities.

(S. K. Chakrabarti, J.)