

**Constitutional Writ**  
**Present: The Hon'ble Justice Jayanta Kumar Biswas**

**Judgment on: March 16, 2010.**

**W.P.No. 16691 (W) of 2009**

**Biswanath Maji & Anr.**

**v.**

**The Damodar Valley Corporation & Ors.**

**POINTS:**

Fundamental Rights ----Delay of 19 years-----Fundamental Rights if can be ascertained even after an inordinate delay -----Land losers, right of----Constitution of India, Article 14,226.

**FACTS:**

The first petitioner is the father of the second petitioner. For construction of Meijhia Thermal Power Project, a unit of Damodar Valley Corporation, a piece of agricultural land owned by the first petitioner's father was acquired by the State of West Bengal. The first petitioner's father nominated the first petitioner for an employment under the "Land Losers Scheme of the Damodar Valley Corporation." At present the first petitioner wants to nominate the second petitioner in his place for employment in the corporation.

It is evident from a letter of the Rehabilitation Officer, R.Cell, M.T.P.P., Bankura dated October 26, 1998, that the decision of the district magistrate was communicated to the first petitioner in October 1998 itself. After about eleven years the Petitioners decided to challenge the said decision by the instant Writ Petition.

**HELD:**

The petitioners have no right to move the high court under Article 226 at any time they wish. Since there was inordinate delay in approaching the court, they were required to explain it. Simply by making an allegation that their fundamental right under art.14 of the constitution has been violated, they do not acquire a right to move the high court under art.226 without explaining the delay of about 11(eleven) years.

PARA—6

Even on merits the petitioners have no case. The District Magistrate considered the report of the BLLRO, Meijhia, the L.R. Khatians and other relevant records which were made available by the land acquisition officer.

PARA—9

In both the cases, the first requirement of minimum 33 decimal land holding is met. However the petitioners are not able to fulfil the criteria of 75% and above land loss of their total land holding.

PARA--- 10

Nor have the petitioners been able to furnish any documents that would satisfy the requirements as per existing policy for candidates for consideration of employment by DVC.”

PARA --11

The District Magistrate was fully justified in holding that under provisions of the relevant scheme the first petitioner was not eligible to be included in the list of candidates for recommendation to the corporation for consideration for employment. No material has been produced to show that the finding of facts recorded by the district magistrate are factually incorrect.

PARA—12

**CASE CITED:**

K. Thimmappa & Ors. v. Chairman, Central Board of Directors, State Bank of India & Anr., (2001) 2 SCC 25

Mr Pralay Bhattacharjee for the petitioners.  
Mr Ashok Sarkar and Mr Subrata Banerjee, for the State.  
Mr Subir Pal, for D.V.C.

**The Court:**

1.The petitioners in this art. 226 petition dated September 11, 2009 are challenging a decision of the District Magistrate & Collector, Bankura dated October 9, 1998, Annexure P3 at p.21, that the first petitioner was not eligible for employment in Damodar Valley Corporation as a landloser.

2.The first petitioner is the father of the second petitioner. For construction of Meijhia Thermal Power Project, a unit of Damodar Valley Corporation, a piece of agricultural land owned by the first petitioner’s father was acquired by the State of West Bengal. The first petitioner’s father nominated the first petitioner for an employment under the “Land Losers Scheme of the Damodar Valley Corporation.” At present the first petitioner wants to nominate the second petitioner in his place for employment in the corporation.

3.The first petitioner and one Bhajan Maji moved W.P.No.934 of 1998 under art.226. By an order dated August 6,1998 the petition was disposed of directing the petitioners in that case to make a fresh representation to the District Magistrate, Bankura and the district magistrate to dispose of the representation. Accordingly the district magistrate gave the impugned decision dated October 9, 1998.

4.It is evident from a letter of the Rehabilitation Officer, R.Cell, M.T.P.P., Bankura dated October 26, 1998, Annexure P3 at p.20, that the decision of the district magistrate was communicated to the first petitioner in October 1998 itself. For about 11(eleven) years, i.e. from October 1998 till September 11, 2009 when this petition was brought, the petitioners remained

absolutely silent and did not take any step for any purpose whatsoever. Some undisclosed thing prompted them to file this petition all of a sudden on September 11, 2009.

5.As to the delay, the petitioners have not said a single word anywhere in the petition. The question has been raised by counsel for the state and the corporation. Counsel for the petitioners relies on K. Thimmappa & Ors. v. Chairman, Central Board of Directors, State Bank of India & Anr., (2001) 2 SCC 259 and submits that since the petitioners are alleging violation of their fundamental right guaranteed by art.14, on the ground of delay their petition cannot be dismissed by the high court.

6.I am unable to agree with him. The petitioners have no right to move the high court under art.226 at any time they wish. Since there was inordinate delay in approaching the court, they were required to explain it. Simply by making an allegation that their fundamental right under art.14 of the constitution has been violated, they do not acquire a right to move the high court under art.226 without explaining the delay of about 11(eleven) years.

7.What the petitioners are actually seeking is a judicial review of the decision of the district magistrate. Under the scheme the district magistrate is empowered to examine whether a person claiming to be a displaced person within the meaning of the expression given in the scheme is eligible for inclusion in the list to be forwarded to the corporation for its consideration for employment according to the provisions of the scheme.

8.The district magistrate held that the first petitioner was not eligible. Hence it is wrong to say that the impugned decision has infringed the petitioners' fundamental right guaranteed by art.14.

9.Even on merits the petitioners have no case. The district magistrate considered the report of the BLLRO, Meijhia dated September 23, 1998, the L.R. Khatians and other relevant records which were made available by the land acquisition officer. The admitted position is that the first petitioner's father was listed as a landloser.

The district magistrate found as follows:

"1 a) Petitioner Biswanath Majhi's father Shri Sasti Majhi held a total quantam of 1.19 acres of land at the relevant time.

b) The total land lost by the landloser to DVC for the power project was .6910 acre. Percentage of land loss 58%.

2a) Petitioner Bhajan Majhi's father Shri Fakir Majhi held a total quantam of 7.40 acres of land at the relevant time.

b) The total land lost by the land loser to DVC for the power project was .9650 acre. Percentage of land loss 13%.

10.In both the cases, the first requirement of minimum 33 decimal land holding is met. However the petitioners are not able to fulfil the criteria of 75% and above land loss of their total land holding.

11. Nor have the petitioners been able to furnish any documents that would satisfy the requirements as per existing policy for candidates for consideration of employment by DVC.”

12. In view of the above-quoted finding of facts recorded by the district magistrate, I am of the view that the district magistrate was fully justified in holding that under provisions of the relevant scheme the first petitioner was not eligible to be included in the list of candidates for recommendation to the corporation for consideration for employment. No material has been produced to show that the finding of facts recorded by the district magistrate are factually incorrect. The second petitioner has no cause of action. For these reasons, the petition is dismissed. No costs. Certified xerox.

sh (Jayanta Kumar Biswas, J