

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1809 of 2011**

1. Naushad Ali S/o Abdul Rahman Aged About 22 Years R/o Ward No. 3, West Chirmiri, Distt. Koriya (C. G.)

---- Petitioner**Versus**

1. The State Of Chhattisgarh Through its Secretary, Ministry Of Rehabilitation Department, D. K. S. Bhawan Raipur
2. South Eastern Coalfield Ltd. Through Chairman Cum Managing Director, Seepat Road, Bilaspur.
3. Chief General Manager, South Eastern Coalfield Ltd. Bhatgaon Area, Bhatgaon, C. G.
4. Collector, Sarguja (Ambikapur)

---- Respondent

For Petitioner	Shri Parag Kotecha, Advocate
For Respondent/State	Shri P.K. Bhaduri, Govt. Advocate
For Respondent/SECL	Shri H.B. Agrawal, Sr. Adv. with Ms. Itu Rani Mukherjee, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order****26/07/2016**

1. In this petition under Article 226/227 of the Constitution of India the petitioner has prayed for quashment of the order dated 16/19-10-2009 (Annexure – P/3) whereby the respondent SECL has informed the petitioner that only such Project Affects Persons (for short 'PAPs') are entitled for

employment in lieu of acquisition of land, who were in possession of the land and were title holder for a period of 20 years prior to the date of acquisition. The petitioner has also prayed for a direction to the respondents to grant him appointment as per the provisions of the Chhattisgarh State Rehabilitation Policy of 2005.

2. Material available in the record would indicate that the petitioner's land was acquired for the benefit of SECL by issuing a notification dated 30-9-2004 under Section 4 (1) of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (for short 'the Act, 1957'). Another notification was issued on 30-9-2005 to finally acquire the land belonging to the petitioner, amongst other lands situated at village Chaura, Tahsil Rajpur, District Sarguja for Mahan II Open Cast Project Bhatgaon Area, SECL, District Sarguja. On 16/27-11-2008 the petitioner was informed to receive compensation of Rs.1,07,128/- in lieu of acquisition of khasra No.671/26 and 671/46 area of 0.484 hectares.
3. Upon receipt of the letter for receiving the compensation the petitioner represented the matter before the SECL seeking employment as well as compensation. Responding to the said representation of the petitioner, the impugned order (Annexure – P/3) has been issued by the SECL informing the petitioner that only such persons are entitled for

employment under the Rehabilitation Policy of the year 1991 as amended in the year 1995 who were title holder and possessing the land for a period of 20 years just prior to the date of acquisition.

4. Referring to the Rehabilitation Policy of the State of Chhattisgarh issued in the year 2005, it has been argued by the learned counsel appearing for the petitioner that the said policy would apply to all such cases wherein the award has not yet been passed. He would also refer to the definition of disabled persons provided in the Rehabilitation Policy of 2005 to argue that all those persons who were residing/possessing the acquired land for a period of three years prior to Section 4 notification would be treated as disabled persons and such disabled persons are to be provided employment by the project proponent.
5. Per contra, learned senior counsel appearing for the respondent/SECL as well as learned counsel appearing for the respondent/State would argue that the relevant date for applying the Rehabilitation Policy of the State Government is the date of issuance of Section 4 notification, therefore, in the case in hand, such notification having been issued on 30-9-2004 (Annexure – R/2), the Policy of 1991 as amended in 1995 would be applicable and the Policy of 2005 would not apply.

6. There is no dispute about the relevant date of notification for acquisition of land and the date of commencement of the amended policy in the year 1995 and the fresh policy in the year 2005. The rehabilitation policy of the year 1991 suffered amendment on 21-12-1995 requiring that the benefit of rehabilitation of employment in lieu of acquisition would be available to the land holder who is the title holder in continuous possession of the land for the last 20 years from the date of acquisition. The 2005 Rehabilitation policy of the State Government came into effect on 10-11-2005.
7. While the petitioner would contend that on the said date i.e. 10-11-2005 the acquisition was not complete because the intimation for receiving compensation was issued to the petitioner on 16/27-11-2008, the respondents have argued that the Section 4 notification having published on 30-9-2004 the case will be governed under the 1991 policy as amended on 21-12-1995.
8. The subject land was purchased by the petitioner's father in the year 2002 which was subsequently allotted to the petitioner in partition, therefore, the petitioner was not in possession of the subject land for a period of 20 years from the date of Section 4 notification or the date of award.
9. The applicability of the 1991 policy as amended on 21-12-1995 has been considered by this Court in **Sanjeev**

Kumar Singh and Others v. Union of India and Others¹,

wherein this Court has elaborately considered the fact of the acquisition proceedings *vis-a-vis* applicability of the amended policy or the previous policy. In the said case also, the claimants purchased the land few months prior to the issuance of amended rehabilitation policy. This Court held thus in paragraphs 9 & 13 :

“9. Proceedings for acquisition of the petitioners' lands were initiated by issuing the notification under Section 4 (1) of the Act, 1957 on 13-1-1996 and the final notification for acquisition under Section 9 (1) of the Act, 1957 was issued on 30-5-1998. Thus, it appears each of the petitioners, except the petitioner namely Raj Narayan Yadav, have purchased the land just prior to issuance of notification under Section 4 (1) of the Act, 1957. It would also appear that the notification under Section 4 (1) of the Act, 1957 was issued on 26-6-1995 although the same was published in the Gazette of India on 13-1-1996. Thus, all the petitioners, except the petitioner Raj Narayan Yadav, have purchased the lands after the notification was issued by the Government of India and the same was in the process of being published in the Gazette of India.

13. The petitioners have not assailed the legality and validity of the terms and conditions governing right of employment under the amended rehabilitation policy issued in December, 1995. While deciding WP No.131 of 2001, this Court directed the SECL to decide the petitioners' cases in accordance with law. Since provisions governing rehabilitation upon acquisition of land is to be decided under the amended rehabilitation policy, which was in force on the date of acquisition of land and under the

1 WPS No.6701 of 2007 (decided on 28-10-2014)

said policy one of the requirement is that the holder of the land should be in continuous possession of 20 years preceding the date of acquisition, the respondent SECL has not committed any illegality in rejecting the petitioners' applications for employment in lieu of acquisition of their respective lands under the rehabilitation policy."
(Emphasis added)

10. The aforesaid order has been affirmed by the Division Bench of this Court in **Sanjeev Kumar Singh and another v. Union of India and others**² holding thus in paragraphs 3 to 9 :

3. Learned counsel for the Respondents opposing the appeal submits that the Appellants have purchased the lands in question on different dates commencing from 04.01.1995 to 15.12.1995. They have thus not been owners of the lands in question for 20 years prior on the date of the notification for acquisition. The notification for acquisition takes effect only on the date that it is published in the gazette. The amendment in the policy was made before it on 21.12.1995. There was no challenge to the policy.

4. We have considered the submission on behalf of the parties. The primary and statutory right of a person whose lands are acquired is to receive compensation. There is no right for rehabilitation per se enforceable in a Court of law. If there is a policy for rehabilitation, individual claimants shall have to be considered strictly in terms of the policy only.

5. The land acquisition proceedings commenced only after publication in the gazette up to which time the Respondents could have withdrawn from the acquisition itself. The amendment in the policy was carried out on 21.12.1995. It contained three conditions:

² AIR 2015 Chhattisgarh 139

- (A) The person must have been born in the area,
- (B) He must have acquired education within the area, and
- (C) He must have been owner of the land for at least 20 years.

There is no challenge to the policy. There is no pleading on behalf of the Appellants that they fulfill the other two conditions.

6. The right to be considered was under the policy as it stood amended on 21.12.1995 before the gazette publication. We, therefore, find no infirmity in the order under appeal calling for interference.

7. The arguments of hostile discrimination has also been adequately considered by the Learned single Judge holding that if the benefit had wrongly been given to an ineligible person, Article 14 could not be invoked to perpetuate illegality.

8. Section 4 of the Act provides for publication of a preliminary notification. Objections are to be filed under Section 8 after which the final notification is issued under section 9 and possession may be taken under section 10 of the Act. It is not the case of the Appellants in their pleadings that the land was acquired under the emergency provisions of section 9A much less have they disclosed the date on which actual possession has been taken under Section 12.

9. We, therefore, find no reason to interfere with the order under appeal. The writ appeals are dismissed.”

11. This Court has, thus, held that when a policy has suffered amendment or a new policy has been framed, it will apply to the pending acquisitions. In **Sanjeev Kumar Singh** (supra)

the question was about applicability of the requirement of being in possession of the acquired land for the last 20 years. Since on the date of amendment i.e. on 21-12-1995 the said petitioners (**Sanjeev Kumar Singh and Others**) were not found to be in possession of the land for more than 20 years, they were held not entitled to employment. However, the converse is true in the case in hand where notification under Section 4 (1) was initially issued on 30-9-2004 and the notification under Section 7 of the Act, 1957 was issued on 30-9-2005, the acquisition was ultimately completed by notification dated 7-12-2007 published in the Gazette of India on 17-2-2007, which is part of the return filed by the SECL. In para 1 of this notification the following is stated :

S.O. 493.---Whereas by the notification of the Government of India in the Ministry of Coal, Number S.O. 3592 dated the 30th September, 2005 issued under sub-section (1) of section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) published in Part-II, section 3, sub-section (ii) of the Gazette of India dated the 8th October, 2005, the Central Government gave notice of its intention to acquire land and rights in the land measuring 297.656 hectares (approximately) or 735.50 acres (approximately) in the locality as

specified in the Schedule appended to that notification.

And, whereas the competent authority, in pursuance of section 8 of the said Act, has made his report to the Central Government;

And whereas the Central Government, after considering the aforesaid report and consulting the Government of Chhattisgarh, is satisfied that the lands measuring the 297.656 hectares (approximately) or 735.50 acres (approximately) as described in the said Schedule appended hereto should be acquired.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 9 of the said Act, the Central Government hereby declares that the land, measuring 297.656 hectares (approximately) or 735.50 acres (approximately) as described in the said Schedule are hereby acquired.

12. This notification was in respect of lands of village Chaura area of 181.552 hectares including the land belonging to the petitioner. Thus, the acquisition was completed only on 7-12-2007 when the 2005 policy was already in force. Even otherwise, para 1.2.1 of 2005 policy clearly prescribes that the policy shall be applicable for all such projects wherein the proceedings for passing an award is pending on the date of publication of the policy.

13. The petitioner would, thus, be governed under the 2005 policy wherein there is no requirement of remaining in possession of land for the last 20 years from the date of issuance of Section 4 notification.
14. For the foregoing, the impugned order dated 16/19-10-2009 (Annexure – P/3) is quashed. Accordingly, the writ petition is allowed. The respondents are directed to consider the petitioner's case for rehabilitation for grant of employment under the 2005 policy. Let the consideration be made within a period of three months from today by passing a reasoned order. No order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri