

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1778 of 2015

- Prabhat Kumar Mishra S/o. Satya Narayan Mishra, Aged About 30 Years Occupation Student R/o. Quarter No. 342/2, Near Sub Station Shivaji Nagar, District Korba P. S. Korba (Chhattisgarh).

---- Petitioner

Versus

1. South Eastern Coalfields Ltd. Through The Chairman - Cum- Managing Director, Basant Vihar, Seepat Road, Bilaspur (Chhattisgarh).
2. The Collector, District Korba (Chhattisgarh)
3. The Chief General Manager, S. E. C. L. District Korba (Chhattisgarh).
4. The Deputy Chief Personnel Manager, S. E. C. L. District Korba (Chhattisgarh).

---- Respondent

And

WPC No. 1780 Of 2015

1. South Eastern Coalfields Limited Through The Chairman-Cum-Managing Director, Basant Vihar, Seepat Road, Bilaspur, (Chhattisgarh)
2. Chief General Manager S.E.C.L., District Korba, (Chhattisgarh)
3. The Deputy Chief Personnel Manager, S.E.C.L., District Korba, (Chhattisgarh)

---- Petitioner

Vs

1. Prabhat Kumar Mishra S/o Satya Narayan Mishra, Aged About 26 Years Occupation Student, R/o Quarter No. 342/2, Near Sub Section Shivaji Nagar, P.S. Balco, District Korba, (Chhattisgarh)
2. The Collector Korba, District Korba, (Chhattisgarh)

---- Respondent

For Petitioner : Shri A.K. Shukla, Advocate.
For Respondent/State : Shri P.K. Bhaduri, Govt. Advocate.
For Respondent/SECL : Shri H.B. Agrawal, Sr. Advocate with Ms.
Nandkumari Kashyap, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

03/08/2016

1. Both the writ petitions arise out of the order passed by the Collector, Korba on 24.9.2013, which was rendered pursuant to the order dated 24.2.2013 passed by this Court in WPC No.5187/2010, therefore, both the petitions are being decided by this common order.
2. In WPC No.1778/2015, the land holder is seeking direction to the respondent/South Eastern Coalfields Limited (henceforth 'SECL') to consider his claim for appointment/employment in accordance with the Rehabilitation Policy of 1991 and provide appointment/employment in lieu of acquisition of his land together with all monetary benefits and amenities pursuant to the order in WPC No.5187/2010 dated 4.2.2013 and the order passed by the Collector on 24.9.2013.
3. WPC No.1780/2015 has been preferred by the SECL assailing the legality and validity of the enquiry report/order passed by the Collector, Korba on 24.9.2013.
4. Facts of the case, briefly stated, are that the petitioner purchased the subject land from one Jethuram on 18.8.1993. It is claimed by the

petitioner that possession of the land was taken over by the SECL in the year 1994 for establishment of Pawan Incline at Village Rajgamar, Korba Area. A proposal was sent by the SECL, Korba on 12.5.1994 for acquisition of 2.769 hectares of land, however, compensation was determined only in respect of 2.669 hectares belonging to 12 land holders, who have already been paid the amount. On account of mistake in not acquiring the land belonging to 5 land holders namely, Kanhaiya Singh Yadav, Prabhat Kumar Mishra (petitioner), Sarswati, Harihar Singh and Rishikant Roy, the SECL sent a communication to the Deputy Collector, Korba on 20/21.4.2003 wherein referring to its previous letter dated 16.1.2003, the said Deputy Collector was requested to acquire the land and determine the compensation in respect of the above named 5 persons. It was specifically stated in the letter that the land be acquired as per 1994 acquisition when the original proposal was sent so that compensation could be paid to the affected persons.

5. It appears, the SECL sent a formal proposal for acquisition of the land belonging to the above-stated 5 persons on 6/8th May, 2003 whereupon the Collector, Korba issued notice to the affected persons on 17.2.2004. This fact is mentioned in the Land Acquisition Officer's order dated 25.3.2006 (Annexure-P/3). Special Gram Sabha was convened in the concerned village on 17.8.2004 for which notice to the affected persons was sent on 3.8.2004. Gram Sabha approved the acquisition and

resolution of the Gram Sabha was sent to the Collector on 18.8.2004. Notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') was published in the official gazette on 8.12.2004 and in the newspapers on 28.9.2004 and 1.10.2004. Section 6 notification was published in the official gazette on 20.5.2005 and in 2 newspapers on 7.5.2005 and 8.5.2005. Notice under Section 9 was issued to the land holders and thereafter award was passed on 25.3.2006 granting interest from the date of possession i.e. 16.6.1996. The petitioner thereafter moved a representation for seeking benefit of the employment.

6. It is argued by the petitioner that one Manoga Thakur, who had also purchased the land from the petitioner's vendor Jethuram by a sale deed dated 18.8.1993 (Annexure-P/6) has been provided employment on 17.1.2004 (Annexure-P/5) and that in the case of Manoga Thakur, it has been admitted by the SECL in the document (Annexure-P/7) that proposal for acquisition being sent on 13.1.1994, it is governed by the old policy.
7. Shri Ashok Shukla, learned counsel for the petitioner would further argue that the petitioner is running from pillar to post for the last 22 years and this is his 3rd Writ Petition, therefore, it is apparent that the SECL is acting in an arbitrary and illegal manner by not complying with the order passed by the Collector, Korba on 24.9.1993. Referring to the document (Annexure-R-1/7) dated 31.5.2014 filed in WPC preferred by

the SECL viz. WPC No.1780/2015, it is argued that the petitioner has been informed by the authorities of SECL in the year 1994 itself that his land has been occupied by the SECL, therefore, all the land oustees are requested not to create any disturbance to the Contractors/workers who are working at the site. Therefore, there is not an iota of doubt that the petitioner's case would be governed by the policy as on the date of obtaining possession and the facility of employment as has been extended to Manoga Thakur should be extended to the petitioner also.

8. Per contra, learned counsel for the SECL would resist the petition preferred by the land outsee and press the petition filed by the SECL on submission that the petitioner's land was acquired only in the year 2004/2006, therefore, 1991 policy as amended on 21.12.1995 would apply and the petitioner having not in possession for a period of 20 years prior to the date of acquisition, he is not entitled for employment and his case is distinguishable from the case of Manoga Thakur.
9. Shri PK Bhaduri, learned Govt. Advocate would defend the order passed by the Collector which is assailed by the SECL and thus, the State is supporting the case of petitioner Prabhat Kumar Mishra. It is argued by the State Counsel that in his report the Collector has recorded a conclusive finding that possession was obtained from the petitioner in the year 1994 like the case of Manoga Thakur, therefore, the policy of 1991 as it stood in the year 1994 would apply and the petitioner is entitled for employment. Learned State Counsel has also extensively

referred to the various documents originating from different offices of SECL to demonstrate that possession was taken from the petitioner in the year 1994.

10. The issue to be determined in the present case is whether in the given set of documents/evidence, 1991 policy as amended on 21.12.1995 requiring continuous possession for the last 20 years from the date of acquisition would apply in the case of the petitioner or he would be governed by the policy as it stood prior to 21.12.1995 and, therefore, he would be entitled for consideration of his case for employment under pre-amended policy as has been extended to one Manoga Thakur.

11. The petitioner's first petition viz WPC No.4273/2009 seeking benefit of employment in lieu of acquisition was disposed of on the statement made by counsel for the SECL that his representation shall be considered in accordance with law. When the representation was decided and the petitioner's claim was rejected on 29.3.2010, he preferred WPC No.5187/2010. The said writ petition was disposed of on 4.2.2013 directing the Collector, Korba to find out the date of taking over possession of the land of the petitioner and consider his application as to which Rehabilitation Policy would be applicable and whether the petitioner is entitled for employment. In the said order, the following has been observed in paragraphs-3, 4, 6, 11, 12, & 13:-

“3. The further case of the petitioner is that one similarly situated person namely; Nagendra Thakur,

dependent of one Manoga Thakur, who is the purchaser of the land on the same date with that of the petitioner, has been provided employment in the S.E.C.L. by order dated 15/16.01.2004 (Annexure – P/4). The petitioner had filed a copy of sale deed executed between Jethu Ram and Manoga Thakur as Annexure -P/5. The petitioner sought certain information, under the provisions of the Right to Information Act, 2005, which was provided to the petitioner by communication dated 16.06.2008 (Annexure -P/6). From the said documents, it is manifest that in case of the petitioner, the amended rehabilitation policy 1995 has been applied whereas the case of the petitioner was dealt with under the rehabilitation policy, 1991.

4. According to the petitioner, the claims of all the land oustees prior to 1994 has been considered and they have been provided with the employment, but the case of the petitioner has not been considered only on the ground that his case has been forwarded to the appropriate authority in the year 1998. In fact, there is no fault on the part of the petitioner in making the claim. Even, the petitioner made a representation before Chairman-cum-Managing Director, S.E.C.L. on 10.01.2009 (Annexure -P/8) and when the same was not considered, the petitioner preferred a writ petition before this Court, being W.P.(C) No.4273 of 2009, which was disposed of by this Court on 12.08.2009 with the observation to consider and decide the representation of the petitioner within a period of four weeks from the date of receipt of a copy of the order. Thereafter, the respondent authorities rejected the claim of the petitioner and communicated the same to the petitioner by impugned letter dated 29.03.2010 (Annexure – P/10). When the representation of the petitioner was not considered properly, the petitioner preferred a contempt petition, being Contempt Case (C) No.74 of 2010, which was disposed of by this Court as withdrawn by order dated 12.04.2010 (Annexure -P/11) with liberty to file a writ petition against the order passed by the concerned authority on 29.03.2010 and also for redressal of the other grievances. Hence, this petition.

6. Shri Shukla would next submit that the stand of the S.E.C.L. in stating that unless there is continuous ownership for last two decades, the candidate would

not be entitled for appointment is absolutely baseless, because in case of Nagendra Thakur, the appointment had been granted on the basis of sale deed of the year 1993. The representation of the petitioner has been rejected in a cavalier manner, without application of mind and without considering the facts and circumstances of the case in its later and spirit.

11.In case of the petitioner, as per the return filed by the State, land of the petitioner was acquired in the year 1995 and compensation was paid and, as such, the provisions of the Rehabilitation Policy, 1991 would be applicable.

12. In view of the above, there is a dispute with regard to the date of the acquisition of land asto when the land of the petitioner was acquired. However, in the representation dated 10.1.2009 (Annexure – P/8), the petitioner has taken a stand that though the land was acquired in the year 1995, however, while passing the award of compensation by mistake the name of the petitioner was left out. Though, copy of the award, despite granting sufficient opportunities, has not been filed in this petition.

13. Having regard to the facts situation of the case, the Collector, Korba, is directed to find out the date of taking over the possession of the land of the petitioner and consider the application of the petitioner after affording opportunity of hearing to the SECL as well as the petitioner, and decide the issue asto which rehabilitation policy would be applicable. The Collector is further directed to consider asto whether the petitioner is entitled to employment also under the, then, prevailing rehabilitation policy at the time of acquisition of the land of the petitioner and pass an appropriate order, in accordance with law and on its own merits, as early as possible, preferably within a period of six weeks.”

This order was assailed by the SECL by filing Writ Appeal, therefore, it has attained finality.

12.In compliance of the order passed by this Court in WPC No.5187/2010, as quoted above, the Collector, Korba heard the parties, obtained

relevant documents from the SECL and having considered the matter in detail concluded that in the land acquisition case, there are documents in form of application of the SECL to indicate that possession of the land was obtained by the SECL in the year 1994 like in the case of Manoga Thakur, therefore, the petitioner's case would also be governed under the pre-amended 1991 policy and he is entitled for employment.

13. It is mentioned in the Collector's report that initially proposal was sent by the SECL on 12.5.1994 but by mistake 5 land holders were not covered in the acquisition proceeding which was completed for 12 land holders. In the subsequent acquisition proceeding for the petitioner and 4 other persons, they have been granted interest from 16.6.1996. In the case of Manoga Thakur, award was passed on 16.6.1996 mentioning the date of acquisition application as 12.5.1994. The Collector has perused the record of acquisition case No.02-A-1982/1995-96 as well as the land acquisition case of the petitioner. Referring to other documents, the Collector concluded that the SECL obtained possession of the petitioner's land as well as the land of Manoga Thakur on the same date and Manoga Thakur has been granted employment on the ground that the SECL has obtained possession of his land from 12.5.1994, therefore, in his case, 1991 policy would be applicable.

14. This Court had summoned the Collector's record to appreciate as to whether the finding emanates from the record or it is perverse being not supported with any document. The record contains the SECL's letter

dated 12.5.1994 requesting for acquisition of 2.769 hectares of land. The said proceeding was under Section 246/247 of the MP Land Revenue Code, 1959 (now CG Land Revenue Code, 1959). As against the application for acquiring 2.769 hectares, the order was passed by the Sub Divisional Officer (Revenue), Korba on 16.6.1996 for 2.669 hectares. Another letter originating from the office of Sub Area Manager, Rajgamar Colliery on 31.5.1994 is pertinent. The contents of the document are reproduced hereunder:-

“South Eastern Coalfields Limited
O/o the Sub Area Manager, Rajgamar Colliery,
P.O. Rajgamar Colliery Dist. Bilaspur (M.P.)

Ref.:SECL:RAJ:SAM;94:354

Date: 31.05:1994

To,

All Land Hostees of Rajgamar Village
Khasra No.119/4 to 119/9 (0.75 Area)
Ompur, Rajgamar.

Sub.: - Occupation land at Rajmagar Village, Khasra No.119/4 to 119/9 by S.E.C.L.

Dear Sir,

Your land sitauted at Village Rajgamar, Khasra No.119/4 to 119/9, Area 0.75 Acre has been occupied by S.E.C.L. on 16/4/1994 for opening of PAWAN INCLINE (1&2) and the legal process for compensation and other benefits is under process.

Therefore all the above Land hostees are requested to please do not create any disturbance to the Contractor/workers who are working at the site.
Thanking you,

Yours faithfully

Sd/-
(S.P. Shukla)
Dy. CME Sub Area Manager,
Rajgamar Colliery.

Copy to :
All Land Hostees

1. Prabhat Kumar Mishra, Khasra No.119/4 Area 0.05 acre
2. Kanhaiya Singh Yadav " 119/5 " 0.05 "
3. Umesh/Goma " 119/6 " 0.05 "
4. Harihar Singh Yadav " 119/7 " 0.05 "
5. Ku. Sarswati D/o Dharnidhar " 119/8 " 0.05 "
6. Manoga Thakur/Jagbali Thakur " 119/9 " 0.50 "

15. In another document filed in the petition preferred by the SECL as Annexure-R-1/8, one Man Sai Rathiya, the then Sarpanch of Gram Panchayat Rajgamar has complained before the SECL that employees and security guard of SECL have entered the land belonging to several cultivators on 16.4.1994 and recovered possession by dumping soil. The letter includes the names of cultivators Shri S.N. Mishra for Prabhat Kumar Mishra and Shri Manoga Thakur. Another document (Annexure-R-1/10) is obtained under the Right to Information wherein contractor M/s Surendra Singh Chhatwal has been granted contract for construction of pit office at Pawan Incline of Rajgamar Colliery for open excavation, walling, roofing and Incline drifting for Incline 1 & 2 of Rajgamar Colliery for which work order was issued on 16.4.1994. In the subsequent application pertaining to acquisition of the petitioner's land moved by the SECL on 20/21.4.2003 also, request was made to acquire the land as it was in the year 1994. There is one demarcation report of RI Circle Korba wherein it is mentioned that the subject land

is possessed by the SECL.

16. On perusal of the documents, as referred above, it is apparent that the Collector's report dated 24.9.2013 is unexceptionable. It has dealt with all the documents in its true perspective and has recorded a finding which is fully borne out from the record. Thus, it is clearly established that the petitioner's land was possessed by the SECL along with the land of Manoga Thakur on 16.4.1994. However, when the application for acquisition of land was moved on 12.5.1994, there was apparent mistake of not passing an award in favour of 5 persons who were subsequently granted compensation after initiating fresh acquisition proceeding. In the said award also, they have been granted interest from the date when the award was passed in the case of Manoga Thakur.

17. It is settled that a party to the litigation cannot be permitted to take benefit of its own wrong. Similarly, Article 14 of the Constitution clearly prescribes that when two similarly placed persons are treated differently, the aggrieved person can invoke writ jurisdiction to claim similar benefit which has been extended to similarly placed persons.

18. In the documents of the year 1994-95, it is mentioned that the lands belonging to the petitioner as well as that of Manoga Thakur were possessed by the SECL on the same date i.e. 16.4.1994 and Manoga Thakur has been granted employment in lieu of acquisition of land by

applying pre-amended 1991 policy.

19. In the matter of **E.P. Royappa v. State of Tamil Nadu and another**¹, it has been held that:-

“85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is

¹ (1974) 4 SCC 3

therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.”

(Emphasis supplied)

20. In the matter of **Subramanian Swamy Vs. Director, Central Bureau of Investigation and Another**², the Supreme Court has held in paragraph-39 & 40 thus:-

“39. Article 14 of the Constitution incorporates concept of equality and equal protection of laws. The provisions of Article 14 have engaged the attention of this Court from time to time. The plethora of cases dealing with Article 14 has culled out principles applicable to aspects which commonly arise under this article. Among those, may be mentioned, the decisions of this Court in **Charanjit Lal Chowdhury Vs. Union of India**³, **State of Bombay Vs. F.N. Balsara**⁴, **State of W.B. Vs. Anwar Ali Sarkar**⁵, **Kathi Raning Rawat Vs. State of Saurashtra**⁶, **Lachmandas Kewalram Ahuja Vs. State of Bombay**⁷, **Syed Qasim Razvi Vs.**

² (2014) 8 SCC 682

³ AIR 1951 SC 41

⁴ AIR 1951 SC 318

⁵ AIR 1952 SC 75

⁶ AIR 1952 SC 123

⁷ AIR 1952 SC 235

State of Hyderabad⁸, Habeeb Mohamed Vs. State of Hyderabad⁹, Kedar Nath Bajoria Vs. State of W.B.¹⁰ and innovated to even associate the members of this Court to contribute their **V.M. Syed Mohammad & Co. Vs. State of Andhra¹¹**. Most of the above decisions were considered in **Budhan Choudhry Vs. State of Bihar¹²**.

40. This Court exposted the ambit and scope of Article 14 in Budhan Choudhry (Supra) as follows: (SCC p.193, para 5)

“5.....It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.”

(Emphasis supplied)

21. In **Tukaram Kana Joshi and Others through power-of-attorney holder Vs. Maharashtra Industrial Development Corporation and Others¹³**, it has been held that doctrine of equality is the soul of our Constitution.

⁸ AIR 1953 SC 156

⁹ AIR 1953 SC 287

¹⁰ AIR 1953 SC 404

¹¹ AIR 1954 SC 314

¹² AIR 1955 SC 191

¹³ (2013) 1 SCC 353

22. Similarly, in **Smt. Indira Nehru Gandhi (In C.A. No.887 of 1975) Shri Raj Narain (In C.A. No.909 of 1975) Vs. Shri Raj Narain and Another (In C.A. No.887 of 1975) Smt. Indira Nehru Gandhi (In C.A. No.909 of 1975)**¹⁴, it has been held in para-677 that equality is the faith and creed of our democratic republic and without it, neither the Constitution nor the laws made under it could reflect the common conscience of those who owe allegiance to them. And if they did not, they would fail to command respect and obedience without which any Constitution would be doomed to founder on the rocks of revolution. A Constitution which, without a true nexus, denies equality before the law to its citizens may in a form thinly disguised, contain reprisals directed against private individuals in matters of private rights and wrongs.

23. Applying the well settled principles to the facts of the case, it would manifest that there has not only been wrong with the petitioner but he was discriminated in the matter of application of pre-amended 1991 policy of rehabilitation. For such denial, the respondent/SECL is taking shelter of its own wrong by continuing to remain in occupation of the petitioner's land from 1994 without paying compensation till 2006 when repeated efforts of the petitioner compelled the respondents to initiate land acquisition proceeding and determine compensation. If the policy has suffered any change or amendment in the interregnum, blame squarely lies on the SECL or the State in not taking prompt action in the year 1994 itself. The petitioner is not to be blamed at any point of time,

¹⁴ 1975 (Supp.) Supreme Court Cases 1

therefore, he cannot be made to suffer and application of Article 14 cannot be denied to him in the obtaining factual matrix.

24. In the result, WPC No.1778/2015 preferred by Prabhat Kumar Mishra is allowed and WPC No.1780/2015 preferred by the SECL is dismissed. The SECL shall provide employment to the petitioner by applying pre-amended 1991 policy within a period of 3 months from today.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve