

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.6757 of 2014
Reserved on :01.11.2017
Date of decision:22.11.2017

Balwant Singh & others
Versus
....Petitioners

State of Haryana & others
...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Mohit Garg, Advocate, for the petitioners.

Mr.P.S.Poonia, Advocate, for the respondents.

G.S. SANDHAWALIA, J.

The petitioners seek quashing of the decision of the Haryana Power Generation Corporation Ltd.-respondent No.2, whereby they have chosen to give employment to only those families whose entire land or land more than 2 acres has been acquired for setting up of the Rajiv Gandhi Thermal Power Plant at Khedar, District Hisar.

The plea is based on the ground that an announcement had been made by the respondents at the time of laying the foundation stone of the Power Plant that each and every affected families whose land had been acquired would be given employment and policy dated 19.05.2007 (Annexure P-2) had been formulated. In pursuance of the said policy, the subsequent decision, as such, to restrict the grant of employment only to those villagers whose complete land had been acquired or more than 2 acres had been acquired, was, thus, primarily challenged on the basis of promissory estoppel.

A perusal of the pleadings would go on to show that notification had been issued in the year 1998 under Section 4 of the Land Acquisition Act, 1894, for acquiring land situated in the revenue estate of

Village Khedar, Tehsil & District Hisar, for setting up the project by the respondent-Corporation. On account of the discontentment amongst the villagers for the acquisition of their land, promise had been held out to grant employment to one member of every family and a list had been drawn up for the said purpose (Annexure P-1). On account of the assurance, as such, the land of the village was acquired, without any opposition, as such, by the villagers, at that point of time. The promise had been gone back on by restricting the benefit of job only to those persons whose more than 2 acres of land or complete land had been acquired for the project. It is, accordingly, pleaded that the Prime Minister had visited the village and the stage was shared by the Chief Minister, wherein the policy had been announced of giving employment to one member of each of the families on 19.05.2007.

It was pleaded that vide letter dated 26.07.2011, appointment was given to one of the villagers on the post of Lower Division Clerk in the Corporation whose land of more than 2 acres was acquired. Resultantly, information was sought whether persons having less than 2 acres of land were eligible or not and as per information dated 15.02.2012 (Annexure P-4), Corporation had replied that applications had been received from every person whose land were acquired by the Corporation. Thus, there was no criteria for distinguishing and discriminating between persons whose entire land or more than 2 acres of land was acquired. One such representation moved was also placed on record as Annexure P-5 wherein with the acquisition of the land of a

person left him with no employment. Similar application moved with the Power Minister (Annexure P-6) was also placed on record.

The defence of the respondents in the written statement filed was that the land of the family of the petitioners was acquired in the year 1998 for setting up of a Thermal Plant by Haryana Vidyut Prasaran Nigam Ltd. and the foundation stone was laid by the Prime Minister on 19.05.2007 of 2x600 MW Thermal Power Project. An announcement had been made that employment would be provided to one member of each of the families whose land had been acquired as per the qualification and eligibility criteria of the scheme. 527 applications were received from the land oustees whose land had been acquired for setting up of the Thermal Power Plant and since the applications were large in number, consultation was made to sort out the matter. The Deputy Commissioner, Hisar had been asked to supply the details of the land acquired of each of the members of the families and the compensation paid, thereafter. After considering the large number of applicants the said Policy was formulated for the land oustees and it was decided to follow an extremely liberalized version of the Rehabilitation & Resettlement Policy of November, 2010 (Annexure P-7). In the said policy also, offer of employment had been restricted to land oustees who had contributed 2 acres of land or more. Resultantly, the names of 133 persons whose land was acquired, were recommended, in view of the decision by the Chief Minister, as per the letter of the Deputy Commissioner dated 24.05.2011. However, after the approval of the

Chief Minister, the offer of appointment to 119 land oustees was issued and letters of assurance were issued to 10 of the applicants who were under age and the names of the 4 applicants who were the paternal grandchildren were not considered for appointment.

The Special Secretary (Power) informed the Council of Ministers in its meeting held on 30.01.2012 that proposal of providing employment to families of land oustees whose more than or equal to 2 acres of land had been acquired, which was, accordingly, forwarded by the Special Secretary to the Managing Director of the Corporation on 14.02.2012 (Annexure R-3/4). The scheme of employment for the families whose land of 2 acres was acquired, was beneficial welfare scheme and the same did not give any vested right to the petitioners. They did not fulfill all the requisite conditions of the policy and therefore, employment had been provided to one member of the family whose land was acquired as per the final approved policy of the Council of Ministers. The land of the petitioners being less than 2 acres, their case was not considered and therefore, the representations which had been moved by them were not considered. It was further clarified that the policy decision dated 19.05.2007 was never placed before and approved by the Council of Ministers and this was only issued by the Administrative Department for initiating the implementation of the CM's announcement. On account of the large number of applications received, restriction was made to the persons whose land of 2 or more acres had been acquired.

Accordingly, on the basis of the said pleadings, counsel for the petitioners has argued that the Rehabilitation and Resettlement Policy issued on 09.11.2010 (Annexure P-7) itself talks about the effective date as 07.09.2010 vide which, under Clause 11(i), minimum 2 acres had been fixed for providing one dependent of the land owner's family to be provided a job with the Government or its Boards/Corporations. It is, accordingly, submitted that the said policy, as such, could not have a retrospective effect and the acquisition made wayback in the year 1998 would not be effected and therefore, the announcement made should be honoured. Similarly, it was submitted that the subsequent decision on 30.01.2012 (Annexure R3/3) could not overlook the earlier announcement and the petitioners were entitled for consideration for employment.

The argument which is, thus, raised on the basis of the judgment of the Apex Court in *S.V.A. Steel Re-Rolling Mills Ltd. Vs. State of Kerala & others (2014) 4 SCC 186*, by taking the aid of promissory estoppel.

Counsel for the respondents, Mr.Poonia, on the other hand, has submitted that the announcement was made at the initial stage. On account of the large number of persons owning small portions of the land, it was not possible to grant employment to one and all. Keeping in view the guiding principles of subsequent policy and on account of the policy dated 09.11.2010, the present decision was taken whereby 2 acres was taken as the cut-off for providing employment. No discrimination,

as such, had been made against the persons who had 2 acres or more and and therefore, the petitioners had no vested legal right, as such, to be given employment, since they had been paid compensation for the land acquired, as per the provisions of the then Act in the year 1998.

The legal issue which, thus, arises is whether the petitioners have any legal vested right on the basis of the announcement made which never had any formal sanction, at that point of time and whether the State could change or modify the decision made on 19.05.2007, to the detriment of the petitioners. Similarly, whether such action could be taken later and implemented and due to the change of policy, the petitioners could have no legal right.

The legal position stands decided by this Court in the litigation pertaining to one Peona Thermal Power Plant, in **Makhan Ram & others Vs. State of Punjab & others 2016 (4) RCR (Civil) 737** wherein also land owners who had small holdings were aggrieved on account of the fact that a cut-off of 2 acres had been fixed by the Punjab Government. In the said case, policy dated 08.11.2011 had been framed on similar conditions whereby the posts were taken out, from the purview of the Punjab Public Service Commission and the Subordinate Services Selection Board. On account of large number of applications coming forth, fresh guidelines were issued on 28.02.2014 and 03.03.2014. The said subsequent policy was, accordingly, challenged on the ground that persons owning smaller chunks of land had been given employment also and therefore, there was violation of Article 14 of the Constitution of

India. It was, accordingly, noticed that policy of providing employment was by way of concession and could be changed in public interest, keeping in view the public policy and larger interest. The decision of the Government to restrict the employment to the larger land owners had been held to be well justified and based on reasonable cogent criteria. It was further held that there was no legal vested right, as such, to seek employment on account of acquisition of land, since under the 1894 Act, there was no such provision whereby employment had to be granted. In the absence of any statutory provisions, appointment could not be claimed as a matter of right. If a policy had been changed, in the absence of any *mala fide* the earlier policy could not be enforced and there was only a right of consideration. Similarly, on the issue of Article 14, it was held that it could not be enforced by way of negative equality of compounding one thing and permitting and enforcing something illegal.

The following questions were framed:

“7. The two issues, thus, that arise for consideration before this Court are:-

- (i) That whether the State could change and modify the policy dated 08.11.2011 to the detriment of the petitioners and whether they were bound by the earlier policy to provide a job to one family member of persons whose land was acquired.
- (ii) Secondly, in case the State does have the power to change its policy, whether it would have the power to change it retrospectively in as much as that the petitioners' cases had been processed but not taken to the logical end and in the meantime, due to change of policy, they have not been granted the benefit of employment whereas other similarly situated persons, as noticed above, have been granted

appointment, even though they had land less than 4 kanals?”

The same was answered against the petitioners in the said case by referring to the judgments of the Apex Court, to hold that the Court's jurisdiction was limited in the absence of any illegality and scope for interference was limited. Reliance had been placed upon the judgment in *State of Punjab Vs. Ram Lubhaya Bagga 1998 (4) SCC 117, BALCO Employees' Union (Regd.) Vs. Union of India 2002 (2) SCC 333*, to hold that the policy could always be changed in the larger interest. In the absence of any legal vested right, as such, the petitioners have no absolute right of consideration on the acquisition of land. It is not disputed that the land was compulsorily acquired wayback in the year 1998 and the policy on which the concession was restricted, was much later and the announcement was made on 19.05.2007 and the formal letter was issued on 05.07.2007 and thereafter, approved on 30.01.2012 whereby it was modified to the extent that only persons having more than 2 acres of land had a right of employment.

In the case of **S.V.A. Steel Re-rolling Mills** (supra), a Government order had been issued wherein concession was to be given of continuous electricity supply at particular rate to certain new manufacturing units. The appellants had established manufacturing units in Kerala State. Thereafter, a further order had been passed that new units were exempted for 5 years from the payment of enhanced tiers on certain conditions which had not been adhered to. Resultantly, the plea of promissory estoppel was taken which was accepted by the Apex

Court and it was directed that the industry would be given the benefit by extending the benefit of period of incentive on the principle that the units had been set up in the State of Kerala in view of the policy with regard to uninterrupted power supply and on the same tariff for a period of 5 years from the date of commercial production. In the present case, the land was compulsorily acquired before the assurance was given out and therefore, there was no such positive step taken by the land owners on the assurance on the basis of which this issue of promissory estoppel, as such, can be applied. The said principle applies where the person alters his position on account of an assurance given and in the case of compulsory acquisition of land, same principle would not be applicable and therefore, the judgment would not apply, in the facts and circumstances of the present case.

Resultantly, keeping in view the above, this Court is of the opinion that there is no scope for interference in the present writ petition and the same is dismissed.

22.11.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes