

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO 272 of 2020

Ashes Kumar Roy

Vs.

Coal India Limited and others

For the petitioner : Mr. Partha Ghosh

For the respondent : Mr. Manik Das

Hearing concluded on : 09.12.2020

Judgment on : 16.12.2020

The Court:

1. The petitioner was the owner of a land which was acquired/purchased by the respondent-authorities. Thus, the petitioner became entitled to employment under the Land Loser Scheme of the Coal India Limited and duly applied for such employment. Upon an interview being held and the petitioner being found eligible, the petitioner appeared for the initial medical examination at Kunustoria Area Hospital, Bansra, as fixed by the respondent-authorities on two dates.
2. Subsequently, by a communication dated December 11, 2019, the Eastern Coalfields Limited intimated the petitioner that the latter was unfit for employment, since the petitioner has Colour Blindness and Amblyopia in the left eye. By a subsequent communication dated July

21, 2020, the Eastern Coalfields Limited (respondent no. 3), intimated the petitioner that an appeal by the petitioner to reconsider the previous decision had been turned down, confirming the decision of rejecting the petitioner's application for employment. Being thus aggrieved, the petitioner has moved the present writ petition, challenging the decisions dated December 11, 2019 and July 21, 2020 respectively.

3. Learned counsel for the petitioner submits that the relevant conditions are reflected in Form P-I, framed under Rules 29-F(1) and 29-L of the Mines Rules, 1955. Clause 4(a) of Form P-I stipulates that workers employed on surface and in opencast workings should have a vision of 6/12 for the better eye and 6/18 for the worse eye. The requisite vision for workers employed below the ground are, respectively, 6/6 and 6/9.
4. Clause C provides that a person having only one eye which functions normally should not be employed below ground. For employment on surface, the vision of such a person in the other eye should be 6/12 with or without glasses.
5. Clause 4(d) provides that Colour Blindness will be tested only in special cases where the job requires good colour discrimination. Only low grade colour perceptions will be tested with Edridge Green's Lantern.
6. It is argued that the petitioner has vision of 6/12 in the worse eye and 6/6 in the better eye, thereby qualifying him for employment above the

surface. In support of such submission, the petitioner relies on reports by certain private medical institutions, which indicate that the petitioner has vision of 6/6 in the right (normal) eye and 6/24 in the left eye. The petitioner, as reflected from the documents annexed with the affidavit-in-reply of the petitioner, also indicate that the petitioner suffers from Amblyopia in the left eye and colour blindness.

7. Next referring to the Medical Attendance Rules of the Coal India Limited, with particular reference to Chapter-VIII (Rules relating to Medical Examination), the petitioner submits that two sets of physical standards have been stipulated therein for employees in mining and allied jobs.
8. Group 'A' relates to the minimum physical standard for all classes of employees directly connected with Coal Mining. Group 'B' relates to such standard required for recruitment to posts other than Group 'A'. Clause (xiii) under Group A specifies that the vision in the naked eye should be 6/12 and 6/6 respectively for the naked eye and, as corrected with glasses, for the better eye. For the worse eye, the standard is 6/24 for naked eye and 6/9, taking into account correction with glasses.
9. Clause 13(d) refers to Colour Blindness and the only stipulation therein is that tests also should be done for Colour Blindness.

- 10.** Learned counsel for the petitioner argues that although the eligibility for a job directly connected with Coal mining requires 6/24 vision for the worse eye as per the CIL guidelines, the Mining Rules stipulate 6/18 as the range of vision for workers employed on surface. In view of the petitioner having a vision of 6/24 in the worse eye, it is argued that the petitioner is eligible, in any event, for being employed above the ground level as per the CIL guidelines.
- 11.** Since the medical standards stipulated by the CIL govern its subsidiaries, including the Eastern Coalfields Limited, where the petitioner seeks employment, it is argued that the yardsticks set therein ought to be considered in the matter.
- 12.** As far as Colour Blindness is concerned, the petitioner argues that the CIL Rules provide only for tests to be done for the said ailment and does not stipulate that a candidate will be ineligible for employment even in jobs directly connected with coal mining.
- 13.** As far as Group B employment is concerned, no bar is stipulated regarding any of the ailments suffered by the petitioner.
- 14.** It is further argued that nomination of the petitioner for employment under the Land Loser Scheme is a statutory right, as admitted by the Eastern Coalfields Limited. In support of the said arguments, the petitioner relies on the approval given by the ECL regarding the proposal for employment of the petitioner under the Land Loser Scheme

in 2:1 ratio. Annexure P-5 at page-61 of the writ petition is a copy of such document dated December 2, 2019.

- 15.** In such view of the matter, learned counsel for the petitioner submits that the refusal to consider the petitioner for the employment with the ECL (respondent no.3) is in patent contravention of the law and the standards set by the Coal India Limited itself.
- 16.** Learned counsel for the respondent-authorities places reliance on paragraphs 8 to 13 of the respondents' affidavit-in-opposition to elucidate the meaning of 'Amblyopia'. It is submitted that the said malady causes reduced contrast sensitivity over certain spatial frequency ranges and leads to distorted or confused vision in the affected eye. With monocular visual deprivation during visual development, there is competition between the neural networks of the two eyes for impact on cortical neurons. Different aspects of neuronal selectivity are affected by such vision deprivation. A recent UK study has been relied on to indicate in the affidavit-in-opposition that there is an increased lifetime risk of vision loss in individuals with Amblyopia, sometimes following in vision loss in the non-Amblyopic eye.
- 17.** It is further argued that although the medical standard for persons employed in mines under Group A stipulates that the range vision in the worse eye of the candidate can be up to 6/24, the chart provided in

clause 4(a) in Form P-I of the 1955 Rules provide that the worse eye vision cannot be less than 6/18.

- 18.** Moreover, the respondents argue, sub-clause (f) of Clause 4 provides that there should not be any organic disease of the eyes which is likely to affect the distant vision within a period of five years.
- 19.** Rule 29-B(a)(ii) of the 1955 Rules provides also for the initial medical examination of every person seeking employment in a mine and, as such, applies to new appointments as well. Rule 29F(1) of the 1955 Rules refers to Form P-I.
- 20.** It is argued by the respondents that the 1955 Rules, being omnibus in its scope as regards employment in the mining sector, ought to prevail over the Regulations of the Coal India Limited.
- 21.** The petitioner, it is argued, admittedly has a worse eye vision of 6/24, that is, less than 6/18 as stipulated in the 1955 Rules, as indicated in paragraph no. 7 of the affidavit-in-reply. Such allegation has also been made at page-24 of the affidavit-in-opposition.
- 22.** Thus, it is submitted that the respondent no. 3 acted in consonance with the law in rejecting the application of the petitioner for employment under the Land Loser Scheme.
- 23.** As evidenced from the arguments of both sides and the materials on record, the petitioner is not hit by any bar for employment on the

surface, not directly related to mining activities, either as per the 1955 Rules or the Coal India Regulations.

- 24.** As far as jobs directly related to mining, that is, covered by Group 'A' of the CIL Regulations, only a test has been mentioned in case of Colour Blindness, apparently to classify the types of job which can be allocated to a candidate. However, as rightly argued by the petitioner, no disqualification has been attributed to such Colour Blindness.
- 25.** As far as the vision bar is concerned, the minimum permission standard as per the 1955 Rules is a 6/18 vision range. However, contrary to the arguments of the respondents, since the employment sought by the petitioner is with the respondent no. 3-ECL, which is a subsidiary of the Coal India Limited, the conditions of appointment of the petitioner shall be governed by the specific Medical Examination Rules framed for such employees. As such, the Medical Attendance Rules of the CIL prevail over the 1955 Rules, formulated under the Mines Act, 1952 so far such employments are concerned. The 1955 Rules are general provisions in respect of mines, whereas the CIL Regulations specifically govern employment with regard to the CIL and its subsidiaries.
- 26.** Thus, even if it is taken that the petitioner's worse eye vision is 6/24, the same falls within the permissible limit as stipulated in the chart provided in clause (xiii) of the CIL Rules. Hence, there is no bar to the

petitioner being appointed for a job even directly connected with mining, be it under or over the surface. As far as the specification in clause 4(f) in Form P-I of the 1955 Rules is concerned, there is no direct proof that the Amblyopia of the petitioner is likely to affect distant vision within a period of five years from employment. In fact, the overwhelming evidence of the petitioner's vision having remained within the bounds of 6/24 for the worse eye since childhood till date (the petitioner is 30 years of age at present), as indicated by the documents produced by the petitioner with his affidavit-in-reply, a vague observation in a report of a study in the UK cannot override such immediate evidence. The UK report, referred to in the affidavit-in-opposition of the respondents, is only a stray piece of circumstantial evidence in general terms and has to give way to the specific evidence available in the case of the petitioner as regards non-deterioration of the vision of the petitioner for a substantially long period. Thus, clause 4(f) of Form P-I cannot be applied to the petitioner on the materials on record.

- 27.** Since the petitioner's vision does not suffer from any other ailment than Amblyopia and Colour Blindness, the refusal to give appointment to the petitioner despite having considered him under the Land Loser Scheme was patently *de hors* the Law and the Rules of the CIL itself.

- 28.** In such view of the matter, WPO 272 of 2020 is allowed, thereby setting aside the decision to reject the application of the petitioner to be appointed with the respondent no. 3 under the Land Loser Scheme, as borne out by the communications dated December 11, 2019 and July 21, 2020. Respondent no. 3 shall immediately take steps for appointing the petitioner in an appropriate category, taking into account his Colour Blindness and Amblyopia, either under Group 'A' (directly connected with Coal Mining) or under Group 'B' as stipulated in the Medical Attendance Rules of the CIL (Annexure P-12 at page-73 of the writ petition).
- 29.** There will be no order as to costs.
- 30.** Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)