

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.7235 OF 2018

Mr. Dhanraj Anandraoji Panchbudhe
and others

... Petitioners

- Versus -

Coal India Limited and another

... Respondents

Shri R.M. Bhangde, Advocate for Petitioners.

Shri S.P. Dharmadhikari, Senior Advocate, assisted by Shri A.M. Ghare, Advocate and Smt. M.R. Chandurkar, Advocate for Respondents.

CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.

DATE : 11 MARCH 2021

P.C. :

The Petitioners have challenged the communication dated 7 July 2018 issued by Respondent No.2 Western Coalfields Ltd. rejecting the request of the Petitioner No.1 to appoint his daughter in the employment of the Respondents. The Petitioners have also challenged the Respondents' employment policy as discriminatory and violative of Articles 14 and 16 of the Constitution of India.

2) The facts are not in dispute. Petitioner No.1 was the owner of land bearing Survey No.98/4 admeasuring 1 hectare at Mouza Bopeshwar, Taluq Umrer, District Nagpur. Petitioner No.2 is the son of Petitioner No.1, and Petitioner No.3 is the daughter of Petitioner No.1. The Respondent Western Coalfields Ltd. acquired the land of Petitioner No.1 under Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957. As regards acquisition, an agreement was entered into between Petitioner No.1 and Respondents. Compensation was determined by way of agreement. It is not in dispute that the compensation is disbursed.

3) Respondent No.1 framed a Rehabilitation and Re-settlement Policy in the year 2008, which was replaced in 2012. Petitioner No.1 nominated his son in terms of the policy, i.e. Petitioner No.2, for employment. A communication was issued by Respondent No.2 to Petitioner No.2 on 29 July 2017, offering him employment. Petitioner No.2 accepted the offer. Petitioner No.2 requested a job in the Umrer area instead of the Wani area. Petitioner No.2 did not join. In the meanwhile, husband of Petitioner No.3 expired on 30 April 2018. Petitioner No.1 applied to Respondent No.2 on 4 May 2018 for employment in favour of his daughter, i.e. Petitioner No.3. The request of the Petitioner No.1 was rejected by Respondent No.2

by the order dated 7 July 2018. This order is challenged by the Petitioners.

4) Reply-affidavits have been filed by the Respondents. The Respondents' stand in the impugned order that the Petitioners' request is not tenable in terms of the policy is substantiated. It is stated that Petitioner No.3 does not fall within the eligibility criteria as she was not residing with Petitioner No.1 on the date of notification. Second, a change of nomination, once granted, cannot be permitted. Petitioners have moved an application for amendment in the middle of the arguments. For the sake of completeness, we granted the same and considered the challenge therein.

5) We have heard Shri Bhangde, learned Counsel for the Petitioners and Shri Dharmadhikari, learned Senior Advocate for the Respondents.

6) Shri Bhangde, learned Counsel for the Petitioners, submitted that the Petitioner No.1 has a right to nominate a member of his family for employment under the policy of 2012 and the impugned order, which states that daughter on marriage cannot be considered for appointment under the policy is violative of Article 14 of the Constitution of India. The learned

Counsel further submitted that such a stand taken by the Respondents is gender discrimination and violative of Article 14 of the Constitution of India. The learned Counsel has relied upon decisions in the cases of *Smt. Sadhna Bai, D/o Itwar Singh, W/o Suresh Kumar vs. State of Chhattisgarh and others*¹, *Charu Khurana and others vs. Union of India and others*² and *Savita Samvedi (Ms) and another vs. Union of India and others*³ in support of his contentions. The learned Counsel for the Petitioners further submitted that the definition of “affected family” indicates that any person dependent on the acquired land for livelihood would be entitled to the benefit. It is also submitted that the stand of the Respondents that change of nomination is impermissible is incorrect. The learned Counsel further submitted that change is always permitted if there is no prejudice and the policy itself permits change, which is demonstrated by the very fact that Petitioner No.2 was allowed to change his venue and if the place can be changed, the nomination also can be changed.

7) Shri Dharmadhikari, learned Senior Advocate for the Respondents, submitted that the Petitioners are creating various issues, which do not arise in this petition. The learned Senior Advocate stated that the main stand of the Respondents is that

1 2016 SCC Online Chh 299

2 (2015) 1 SCC 192

3 (1996) 2 SCC 380

the Petitioner No.3 was not residing with Petitioner No.1 on the date of notification and, therefore, does not fall in the definition of "family" under Clause 4(b) of the policy and if that is the position, as per eligibility criteria, resettlement benefits are not available to the Petitioners. The learned Senior Advocate also submitted that if the categories of persons specified in Clause 4(b), irrespective of gender, are not residing with the person whose land is acquired, they will not be considered as entitled to the benefits. He further submitted that this interpretation applies uniformly, and there is no question of challenge on the ground of violation of Article 14 of the Constitution of India or gender discrimination.

8) The Rehabilitation and Resettlement Policy of Coal India Limited, 2012 in its preamble, refers to the need to acquire lands to exploit the coal reserves. The preamble states that subsidiaries found it relatively easy to acquire land in the past if they offered employment. Partly because of this practice, subsidiaries have built up a mostly unskilled labour force beyond their needs. This has contributed to the heavy losses, and many mines are incurring and have also affected their efficiency and viability. The subsidiaries may still need to hire people in selected locations and continue to prefer those whose livelihood will be affected by coal mining operations. However, increasingly

subsidiaries will need to develop other ways to compensate land-owners and others adversely affected by their projects and give them the option to choose which method of compensation best suits their needs.

9) Under this policy, certain economic rehabilitation benefits are given. Clause 6(B) deals with eligibility criteria for resettlement benefits. Clause 6(B) reads thus :

“B) Eligibility Criteria for Resettlement Benefits :

1. Only a ‘Displaced’ family/person shall be eligible for resettlement benefits.

2. A family/person shall be termed ‘displaced’ and hence eligible for resettlement benefits if such family/person has been a permanent resident and ordinarily residing in the project area on the date of publication of notification U/S 9 of CBA (A&D) 1957/U/S 11 of LA Act, 1894/Or both/on the date of the land vested with the State/Central Government as the case may be,

and

(a) on account of acquisition of his/her homestead land/structure is displaced from such areas

or

(b) He/she is a homesteadless or landless family/person who has been/is required to be displaced.”

Clause 6(B) makes a displaced family or person eligible for resettlement benefits, if such family/person has been a permanent resident and ordinarily residing in the project area on the date of publication of notification under Section 9 of the Coal Bearing

Areas (Acquisition and Development) Act, 1957 and Section 11 of the Land Acquisition Act, 1894. This definition will have to be read with Clause 4(b) which defines family. Clause 4(b) reads thus :

“(b) “family” includes a person, his/her spouse, son including minor sons, dependent daughters, minor brothers, unmarried sisters, father, mother residing with him or her and dependent on him/her for their livelihood; and includes “nuclear family” consisting of a person, his/her spouse and minor children. Provided that where there are no male dependents, the benefit due to a land loser may devolve on dependent daughter nominated by the land loser.”

Even this definition refers to “residing with him or her” or “dependent on him or her” for livelihood. It is, therefore, clear that the main criterion for eligibility to be entitled to resettlement benefit of employment is that a person must be ordinarily residing in the project area on the date of notification. Also, be dependent. The conjoint reading of Clauses 6(B) and 4(b) means that on the date of notification those family members ordinarily residing with him/her and dependent for their livelihood on him/her whose land was acquired, will be entitled to employment.

10) The premise of the Petitioners’ argument that Petitioner No.3 is singled out because she is a married daughter is based on a misconstruction of the Respondents stand. By filing an affidavit, Respondent Coal India has submitted that the main

ground is not of gender, but that Petitioner No.3 was not residing with Petitioner No.1 on the date of notification. That Petitioner No.3 was not ordinarily residing with Petitioner No.1 on the date of notification is not disputed. This may have occurred by virtue of the marriage of Petitioner No.3. However, it is not the factum of marriage that is stressed by the Respondents, but the factum of ordinary residence and dependency as contemplated under the policy.

11) The requirement of ordinary residence is gender-neutral and not specific to “married” or “daughter.” Various factual contingencies could arise. It is not necessary for us to lay down any wider proposition of law more than necessary than the facts of the present case. The challenge on the ground of discrimination does not arise at all for consideration. Petitioner No.3 is not being discriminated against either because of her marriage or for her gender. That being the position, the decisions cited by the Petitioners in the cases of *Smt. Sadhna Bai, D/o Itwar Singh, W/o Suresh Kumar, Charu Khurana and others and Savita Samvedi (Ms) and another (supra)* do not apply to the facts of the present case. The oral contention across the bar that a daughter upon marriage has to move out is far too general and casually advanced for us to accept as a legal proposition.

12) The facts of the present case are plain. The stand of the Respondents is that the family member as defined in Clause 4(b) read with Clause 6(B) of the policy of 2012 should be ordinarily residing in the project area on the date of publication of notification with the person whose land is acquired to be eligible for claiming the benefit. The learned Senior Advocate for the Respondents has submitted that the Respondents are not examining the petitioners' case based on gender or marital status. The Petitioners attribute various arguments to the Respondents and then challenging them as incorrect and discriminatory based on marriage and gender. The Petitioners by way of amendment have sought to contend that there have been instances where married sons, not being residents in the project area and not residing with the persons whose lands were acquired, were granted appointments. However, because of the Respondents' stand, at the most, these appointments would be considered incorrect appointments. From such erroneous appointments, the interpretation of Rule cannot change.

13) The plain reading of the policy of 2012, when it stresses the requirement of ordinarily resident on the relevant date, does not refer to any gender. The Respondents on affidavit and through their arguments have emphasized this aspect. It is not argued before us by the Respondents that a daughter will be treated

differently from the son, even if she falls within the eligibility criteria either on the basis of her gender or marital status. That being the interpretation, which we accept and that Respondents will have to implement their policy as per their interpretation, gender neutrality is achieved. Therefore, it is not necessary to strike down the provisions or definition Clauses of the policy of 2012. According to us, the Petitioners are needlessly complicating the policy based on the ordinary residence and dependence by introducing various challenges, which do not arise in the first place.

14) Thus, admittedly, Petitioner No.3 was not residing with Petitioner No.1 and was not dependent on the date of the notification and, therefore, was not entitled to be appointed by virtue of Clauses 4(b) and 6(B) of the policy of 2012. The writ petition, therefore, cannot be entertained. Writ Petition is rejected. The Respondents will implement the policy of 2012 in the light of the interpretation placed before us, which we have accepted.

(ANIL S. KILOR, J.)

(NITIN JAMDAR, J.)

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