

OD-1

WPO/221/2016
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

JITENDRA NATH DUTTA
VS
COAL INDIA LIMITED & ORS

BEFORE:

The Hon'ble JUSTICE RAJA BASU CHOWDHURY

Date: 9th November, 2022.

Appearance:
Mr. Anujit Mukherjee, Adv.
Mr. Amit Kr. Ghosh, Adv.
...for petitioner.

Mr. Tilak Kr. Bose, Sr. Adv.
Mr. S.M. Obaidullha, Adv.
Mr. Nikkhil Kumar Roy, Adv.
...for respondent.

The Court: The present writ application has been filed, *inter alia*, praying for a direction upon the respondents to provide the petitioner's son, Sri Chandan Dutta with an employment in terms of the circular dated 21st December 1991. Mr. Mukherjee learned advocate, appearing in support of the aforesaid application submits that the petitioner's late father Natabar Dutta, was an absolute owner of a property comprising of 0.78 acres of land, lying, and situated in the District of Burdwan, Mouza Damra.

By referring to a registered deed of sale executed on 8th January, 1993, it is submitted that the respondent no. 2 had purchased all that 0.78 acres of land

from the petitioner's father for and at a consideration as set-forth therein. Mr. Mukherjee submits that at the relevant point of time Eastern Coalfields Limited had adopted a policy of offering an employment to such persons, whose lands were either acquired or purchased by the Eastern Coalfields Limited. In this context he refers to a noting sheet/circular dated 21st December, 1991, countersigned by the officials of the respondent no. 2.

It is submitted that in the year 1991, discussions were held between the landowners/ land losers of Damra village and the management of the respondent no. 2, concerning use of 49 acres of land by the respondent no 2, and based on such discussions a decision was taken by the management of the respondent no 2 to offer employment to all such persons, whose lands were used/acquired or purchased by the respondent no.2. In the year 1993, a proposal, based on the above discussions was given to the petitioner's father in terms whereof the respondent no. 2 had offered to purchase the aforesaid plots of land. The petitioner's father based on the above promise meted out by the respondents had transferred his land in the year 1993, by executing the aforesaid registered deed of sale.

The petitioner, had since, approached the respondents with a request to provide his son, Mr. Chandan Dutta, who is unemployed, with an employment. Since, such request was not adhered to the present writ application has been filed.

It is submitted that when the present writ application was entertained, by an order dated 22nd March, 2016, this Hon'ble Court directed the respondents to consider the petitioner's request and to communicate a reasoned decision to the

petitioner. Pursuant to the aforesaid order dated 22nd March, 2016 the General Manager, Sripur area who is the respondent no. 5 herein, after giving an opportunity of hearing to the petitioner had passed a reasoned order dated 25th April, 2016, and has declined to grant any relief to the petitioner.

By filing a supplementary affidavit, in terms of the liberty granted by this Hon'ble Court on 17th May, 2016 the petitioner has challenged the aforesaid order dated 25th April, 2016 and has brought the same on record. It is submitted that similar circumstanced persons have been offered with employment, although in the petitioner's case, no such employment has been offered. By relying on an information slip issued by the land acquisition department, annexed to a supplementary affidavit affirmed by the petitioner on 9th March, 2016, it is submitted that that the respondents had acquired a total of 1.01 acres of land from the petitioner's father and as such the petitioner's father having fulfilled the criteria for grant of one employment, in terms of the guideline, the same cannot be denied.

Mr. Mukherjee by drawing attention of the court to the order dated 25th April, 2016, submits that the respondent no.5 had erred in rejecting the petitioner's claim based on a change in policy. He says that the respondents also erred in rejecting the petitioner's claim as time barred. He says that the respondents having promised to offer an employment and the petitioner's father having acted on the basis thereof, the respondents cannot be permitted to wriggle out of such promise by citing change in policy. Once the respondents represented to offer to an employment, the same no longer remained a mere representation

but assumed the character of promise and the principal of promissory estoppel would apply. He submits that promissory estoppel applies whenever a representation is made whether of fact or law, present or future which is intended to be binding, intended to induce a person to act upon it and when he does act upon the same and thereby alters his position. In support of the aforesaid proposition Mr. Mukherjee relies on the judgment delivered in the case of **Goutam Kundu & Ors. versus Eastern Coalfields Limited & Ors.**, reported in **2009 SCC online Cal 1083**. He says that in the present case, the petitioner's father had acted upon the promise made by the respondents and had transferred 0.78 acres of land unto in favour of the respondent no. 2 and had thereby altered his position. The petitioner's father was otherwise qualified as per the guideline for being entitled to an employment. In the backdrop as aforesaid the order passed by the respondent no 5, on 25th April, 2016 should be set-aside and the present writ application should be allowed, by directing the respondents to grant an employment in favour of his son.

Per contra Mr. Bose, learned senior advocate, representing the respondent nos. 2 to 6 submits that in the year 1992-93 Eastern Coalfields Limited had got an approval for purchased 49 acres of land at village Damra, out of which only 0.78 acres of land was purchased from the petitioner's father vide a registered deed of sale executed on 8th January, 1993 and another 0.23 acres of land was acquired vide land acquisition case no. 54R of 1976-77. Thus, the total land possessed from the petitioner's father, ad-measures 1.01 acres. By drawing attention of this Hon'ble Court to the aforesaid registered sale deed, it is

submitted that the petitioner's father had acquired ownership in respect of the plots forming subject matter of sale only on 6th December, 1983, whereas, underground mining work in respect of the aforesaid plots had been carried out between 19th December, 1974 and 1st April, 1981. As such, by the time the petitioner's father had acquired interest in the aforesaid plots of land, the same had already been used by the Eastern Coalfields Limited. Mr. Bose learned senior advocate by placing reliance on a guideline issued by Eastern Coalfields Limited, for determining eligibility of the candidates to be appointed from the land losers, submits that as per the guideline the offer of employment was not applicable in cases, where ownership or use of land by the land loser was not prior to the actual user by the respondents. It is submitted that by the time the petitioner's father had acquired interest in the land, the same was already in use. The petitioner's father did not have any legal right to claim employment. Since the petitioner's father did not acquire any legal right, the petitioner cannot assert any such right, which his father did not have. Based on the guideline prepared by Eastern Coalfields Limited, the petitioner cannot be entitled to an employment. The aforesaid application has been filed belatedly, no explanation for such delay has been provided by the petitioner and as such he prays for dismissal of the present writ application.

I have considered the submission made by the advocates appearing for the respective parties and the materials on record. I find that a policy for grant of employment was in fact in force, as would appear from the guideline, disclosed in the affidavit of the respondents. The said policy/guideline for grant of

employment appears to be contemporaneous and has been annexed to the affidavit in opposition filed by the contesting respondents.

It is, therefore, clear that a promise was meted out by the respondents to offer employment to the land losers, however, subject to the conditions set forth in the guideline. Once it is established that a policy for grant of employment subsisted and the petitioner's father had acted on the basis thereof, it consequentially follows that such a right is enforceable in law. In light of the above the order dated 25th April, 2016 passed by the respondent no 5, loses much of its force and requires no further consideration.

The only issue which now requires consideration is whether the petitioner's father qualified for grant an employment as per the guideline.

It appears from the statements made in the application that the petitioner has not challenged the conditions as set forth in the guideline of which he seeks enforcement. I find that the guideline provides that employment shall be offered to the nominee of the land looser for each acre of land, when the land is used up to 31st December, 1984, subject to minimum of 5 years of ownership from the date of use of the land. From a perusal of the sale deed dated 8th January, 1993, as rightly pointed out by Mr. Bose, it would be apparent that the petitioner's father late Natabar Dutta, during his life time, had acquired interest in the plots of land forming subject matter of sale, only in the year 1983. In paragraph 4 subparagraph (viii) of the affidavit-in-opposition filed by the respondents, it has been claimed that the plots of land in question which from subject matter of the writ application had been utilized between 19th December, 1974 and 1st April, 1981. It

has also been claimed by the respondents that the petitioner's father was not the owner of the land at the relevant point of time, as such, was not entitled to claim employment. The aforesaid paragraph has been affirmed as information derived from records. This fact has not been denied by the petitioner by filing any affidavit-in-reply.

I find that the writ petitioner seeks enforcement of a guideline/policy decision taken by Eastern Coalfields Limited for grant of employment.

Clause 10 of the very same guideline provides that employment will not be considered for ownership of used land, i.e., land purchased/acquired after the use of the land for the purpose of employment. They will get the value of the land.

I find that the petitioner's father had received the value of the land from the respondents as would appear from the deed of sale. The petitioner's father in terms of the guideline, which the petitioner seeks enforcement, was thus not entitled to an employment. Since the petitioner's father did not acquire any right for obtaining an employment, the petitioner also cannot claim any right for grant of an employment, in favour of his son. The persons who have got employment in terms of the aforesaid guideline cannot be treated to be similarly placed or equal with that of the petitioner or his father. For the aforesaid reason the petitioner cannot claim benefit of the judgment delivered in the case of **Goutam Kundu & Ors., (Supra)**. The aforesaid judgment does not assist the petitioner.

The writ application fails. The same is, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(RAJA BASU CHOWDHURY, J.)

SK./A.Dey