

ORDER SHEET

WPO/389/2016

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BARANASI MUKHOPADHYAY
VS
COAL INDIA LTD & ORS

BEFORE:

The Hon'ble JUSTICE RAJA BASU CHOWDHURY

Date : 15th November, 2022

Appearance:

Mr. Anujit Mookherji, Adv.

Mr. Amit Ghosh, Adv.

...for the petitioner

Mr Tilak Bose. Sr. Adv.

Mr. S.M Obaidullha, Adv.

Mr. Nikhil Kumar Roy, Adv.

...for respondent nos. 2 to 6

The Court: The instant writ application has been filed, *inter alia*, praying for a direction upon the respondents to provide the petitioner's son, Sri Palash Mukhopadhyay, with an employment against purchased of land, in terms of the circular dated 21st December, 1991. Mr. Mookherji, learned advocate, appearing in support of the aforesaid application submits that the petitioner was an absolute owner of a property comprising of 1.0 acres of land, lying, and situated in the District of Burdwan, Mouza Damra, (hereinafter referred to as the said property).

By referring to a registered deed of sale executed on 31st December, 1992, it is submitted that the respondent no.2 had purchased the said property,

comprising all that 1.0 acres of land from the petitioner, for and at a consideration as set-forth therein. Mr. Mookherji submits that at the relevant point of time Eastern Coalfields Limited had adopted a policy of offering employment to all such persons, whose lands, were either acquired or purchased by the Eastern Coalfields Limited. In this context he relies on a noting sheet 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 either used, acquired or purchased by the respondent no.2. In the year 1992, a proposal, based on the above discussion was given to the petitioner in terms whereof the respondent no.2 offered to purchase the said property. The petitioner says based on the above promise meted out by the respondents had transferred the said property in the year 1992, by executing the aforesaid registered deed of sale.

The petitioner, had since, approached the respondents with a request to provide his son, Sri Palash Mukhopadhyay, who is unemployed, with an employment as promised. Since such request was not adhered to, the instant writ application has been filed.

The petitioner says when the writ application was entertained, by an order dated 3rd May, 2016, a coordinate bench of this Court directed the respondents to consider the petitioner's representation dated 4th April, 2016 and to communicate a reasoned decision to the petitioner. Pursuant to the aforesaid order dated 3rd May, 2016 the respondent no.5 herein, after giving an opportunity of hearing to the petitioner had passed a reasoned order dated 28th May, 2016, whereby he 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 20th June, 2016, the petitioner has challenged the aforesaid order dated 28th May, 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 had been offered. It is submitted that the respondent no 2 having purchased the said property, comprising of 1.0 acres of land from the petitioner and the petitioner thus, having fulfilled the criteria for grant of one employment, in terms of the aforesaid guideline, the same cannot be denied.

Mr. Mookherji, by drawing attention of the Court to the order dated 28th May, 2016, submits that the respondent no.5 had erred in rejecting the petitioner's claim. 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 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 an employment, the same no longer remained a mere representation but assumed the character of promise and the principles of promissory estoppel would apply. He says 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. Mookherji, relies on a 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 had acted upon the promise made by the respondents and had transferred 1.0 acres of land unto and in favour of the respondent no.2 and had thereby altered his position. The petitioner is 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 28th May, 2016 should be set-aside and the writ application should be allowed, by directing the respondents to employ 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 purchase of 49 acres of land at village Damra, out of which only 1.0 acres of land was purchased from the petitioner, vide a registered deed of sale executed on 31st December, 1992. By drawing attention of this Hon'ble Court to a copy of a certified copy of the

aforesaid registered sale deed, annexed to the affidavit in opposition filed by the respondents, it is submitted that the petitioner had acquired ownership in respect of the said property, forming subject matter of sale, only in the year 1982 whereas, underground mining work in respect of the aforesaid property had been carried out between 19th September, 1971 and 1st April, 1981. He says that the copy of the sale deed annexed to the application has over writings and should be ignored. He says by the time the petitioner had acquired interest in the said property, the same had already been used by respondent no.2. 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 for grant of employment was not applicable in cases where ownership or use of land by the land loser was not prior to the actual user of the land by the respondents. It is submitted that by the time the petitioner had acquired interest in the said property, the same had already been used for underground mining operations. The petitioner does not have any legal right to claim employment. Based on the guideline prepared by Eastern Coalfields Limited, the petitioner cannot be entitled to grant of an employment in his son's favour. The aforesaid application has been filed belatedly, no explanation for such delay has been provided by the petitioner. In the given facts, he prays for dismissal of the 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 filed by the respondents. The document dated 21st December, 1991, however, only appears to be an internal communication and does not appear to be a promise to provide employment. The policy/guideline for grant of employment disclosed in affidavit-in-opposition filed by the respondents appears to be detailed and contemporaneous. The petitioner by filing a supplementary affidavit affirmed on 5th February, 2020 has disclosed the self-same guideline relied on by the respondents. In such affidavit the petitioner has claimed that he has also sought for enforcement of the aforesaid detailed guideline and has claimed therein that the respondents after obtaining permission from the petitioner for the last eight to ten years had been using the said land and that the petitioner was the owner of the property prior to use and purchase by the respondents. As such the respondent no 5 erred in rejecting the petitioners claim. At the time of arguments Mr. Mokherjee, learned advocate accepted that the copy of the registered deed disclosed by the respondents as an authentic copy, as such the claim of the petitioners that it had prior ownership of land, prior to use by the respondents cannot be accepted. Although the petitioner in paragraph 5 of his affidavit in reply, has claimed that the guideline dated 12th August 1994, is not applicable since the said property was purchased prior thereto, the same does not appear to be probable or convincing. In any event the petitioner in this case has disclosed a guideline which is identical to the guideline disclosed by the respondents. The said policy/guideline for grant of

employment annexed to the affidavit filed by the respondents appears to be contemporaneous. There is no real challenge to the same.

In any event, from the sequence of events narrated above, it is not difficult to ascertain 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 aforesaid guideline. Once it is established that a policy for grant of employment subsisted and the petitioner 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 28th May, 2016 passed by the respondent no.5, loses much of its significance and requires no further consideration.

The only question which now requires consideration is whether the petitioner qualifies for grant of an employment as per the aforesaid guideline.

It appears from the statements made in the application and the reply filed by the petitioner, that the petitioner apart from faintly challenging its applicability, has not challenged the conditions as set forth in the guideline. On the contrary has sought for enforcement of the self-same guideline by disclosing the same in his supplementary affidavit. I find that the guideline provides that employment shall be offered to the nominee of the land loser, for each acre of land used by the respondents up to 31st December, 1984, subject to minimum of 5 years of ownership on the date of use of the land. From a perusal of the sale deed 31st December 1992, as rightly pointed out by Mr. Bose, it would be apparent that the petitioner had acquired interest in the said property, forming subject matter of sale, only in the year, 1982.

In paragraph 4 sub-paragraph (ix) of the affidavit-in-opposition filed by the respondents, it has been claimed that the plots of land in question which form subject matter of the writ application had been utilized between 19th September, 1971 and 1st April, 1981. It has also been claimed by the respondents that the petitioner 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. The copy of the sale deed annexed to the affidavit in opposition corroborates the same. The above demolishes the case as regards ownership of the said property by the petitioner prior to use thereof by the respondents.

I find that the writ application is in fact for enforcement of a guideline/policy decision taken by Eastern Coalfields Limited for grant of employment, which has been annexed to the affidavit in opposition filed by the respondents. The same guideline has also been disclosed by the petitioner in his supplementary affidavit relevant clause thereof is reproduced hereinbelow.

Clause 10 “ 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 had received the value of the said property from the respondents as would appear from the registered deed of sale. The petitioner in terms of the guideline is not entitled to an employment. As such

the petitioner has no legal right to claim 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. 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 photostat certified copy of this order, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(RAJA BASU CHOWDHURY, J.)

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