

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.3192 of 2008

Sunil Kumar Dash ***Petitioner***

-versus-

State of Odisha and others ***Opposite Parties***

Appeared in this case:

For Petitioner : Mr. C. Ananda Rao,
Senior Advocate

For Opposite Parties : Mr. A. P. Das,
Additional Standing Counsel and
Mr. K. Pattanaik, Advocate for
Opposite Party No.2

**CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK**

**JUDGMENT
04.03.2022**

Dr. S. Muralidhar, CJ.

1. Aggrieved by the denial of a job under the Rehabilitation Scheme applicable to land oustees, the Petitioner has filed the present petition seeking directions to the Mahanadi Coalfields Limited (MCL), to rehabilitate him with a suitable appointment within a specific time limit.

2. The background facts are that the Petitioner is the grandson of late Shri Balmukund Dash of Brajarajnagar, whose land

measuring Ac.0.918 decimal was acquired by the Government of Orissa for MCL in terms of a notice issued on 29th March, 1988 by the then Special Land Acquisition Officer (SLAO), Sambalpur.

3. A representation was submitted on 25th March, 1995 by the Petitioner's grandfather to the SLAO protesting against their not providing a job to his grandson whereas, the grandsons of two other persons i.e. Sribatsa Dash and Manibhusan Dash had been provided jobs although the lands acquired in their cases was of a lesser extent than his own.

4. Thereafter, on 2nd January, 1996, a meeting was held under the Chairmanship of Sub-Collector, Jharsuguda. The said Sub-Committee recommended the case of the Petitioner by making the following observations:

"The land oustee is losing only Ac.0.92 dec. of land out of his total landed properties of Ac.7.94. This case was examined. Already two employments have been provided to the land oustees of same locality although they have not lost more than 1/3rd of their total land. This case is identical to those selected cases. Hence this is recommended as special case. However, this should not be treated as precedent for further case."

5. The above recommendation was signed by the Zone Officer, MCL, the Manager, MCL IV A, the Sub-Collector, Jharsuguda, who was the Chairman of the Rehabilitation Sub-Committee of MCL as well as the Additional Tahasildar, Jharsuguda. In other words, two representatives of the MCL were part of the Sub-

Committee, which made the above recommendation. When the Petitioner was not offered employment, despite the above recommendation, he submitted a further representation to the Chief Vigilance Officer (CVO), MCL in which he pointed out that the rule that oustees losing less than 1/3rd of their holding would not be entitled to rehabilitation was made in 1989 whereas the Petitioner's grandfather's land was taken in 1987. It was accordingly pointed out that the "1/3rd formula was not prevalent at the time when our lands were acquired by the MCL." Again, it was pointed out that while the grandsons of Sribatsa Dash and Manibhusan Dash, the extent of whose acquired lands were Ac.0.67 and Ac.0.71 dec respectively (i.e. less than the Petitioner's grandfather's land, which was Ac.0.92 dec) were given jobs, it was only the Petitioner who had been refused employment.

6. Following the above representation, there was another meeting of the Rehabilitation Committee of MCL held on 22nd June, 2004. This time, the Rehabilitation Committee was chaired by the Collector and District Magistrate, Jharsuguda. The case of the Petitioner was reviewed as part of the 'old cases'. This Committee again recommended the Petitioner's case with the following reasoning:

"xxx. The Committee took up review of the cases of land oustees and found the following land oustees fit for employment by MCL.

- i) An area of Ac.0.920 out of a total area of Ac.7.940 appertaining to Khata No.205 of Brajrajnagar T.U. No.II

(Khaliakani) recorded in the name of Balamukunda Das has been acquired under L.A. Act. Though the proposal for providing employment to Sri Sunil Ku. Das, Grandson of the record land holder of ROR Late Balamukund Das was specially recommended by the Rehabilitation Sub-Committee dt. 2.1.1996, the MCL did not accede to the recommendation on the ground that the extent of land acquired is less than 1/3rd of his total land holding, which is the guideline.

It is observed that heirs of land owners, who parted with less quantum of land (Sri Sribastsa Das and Sri Monibhusan Das) have been given service but the heir of land owner (Sri Balmukund Das) who parted more quantum of land, has not been given the same benefit though heir merits consideration for rehabilitation. It is observed to be irrational.

The Committee held that since the above guideline came into force in 1989 and land was acquired in the year 1987, it is fit for employment and therefore recommended."

7. Therefore, this was a case where initially a Sub-Committee, chaired by the Sub-Collector had recommended the Petitioner's case way back on 2nd January, 1996 and again more than 8 years thereafter, at the meeting held on 22nd June, 2004, the Rehabilitation Committee of MCL again recommended his case. More than 2 years later, on 3rd November, 2006, the Revenue Divisional Commissioner (RDC), Sambalpur also recommended the case of the Petitioner by writing to the CVO, MCL. After narrating the entire background of the case, the RDC opined that "the case of the Petitioner may be considered in its proper perspective to sort out a long pending issue."

8. It is only after all the above attempts failed, the present petition was filed by the Petitioner in which notice was issued by this Court on 19th August, 2009.

9. A reply was filed by the LAO, Brajrajnagar supporting the case of the Petitioner, admitting to all the above facts. However, MCL referred to the guidelines of 1988 and 1989, which classify land oustees in five categories i.e. A, B, C, D and E. MCL contended that the case of late Shri Balmukund Dash falls within category 'E' and, therefore, the Petitioner cannot be provided employment. MCL further contended that the extent of acquired land was Ac.0.92 dec which was less than 1/3rd of total extent of the Petitioner's grandfather lands of Ac.7.940 dec in village Khaliakani, Brajrajnagar Town, Unit-II. As regards the job given to the other two persons, MCL maintained that violation of the guidelines "does not confer any right for the Petitioner to seek employment citing violation".

10. In sum, MCL's contention was that since the Petitioner's grandfather did not lose 1/3rd of his total land holdings, his grandson was not eligible for appointment by way of rehabilitation. It was however not denied that the Notification under Section 4 (1) of the Land Acquisition Act, 1894 for the acquisition of the Petitioner's grandfather's land was dated 25th June, 1987 and the land vested with MCL on 28th April, 1988, prior to the guidelines issued on 2nd January, 1989.

11. MCL contends that the Petitioner's claim is based on the concept of 'negative equality' and therefore, not tenable. Reliance is placed on the decisions of the Supreme Court in ***South-Eastern Coalfields Limited v. Prem Kumar Sharma (2007) 14 SCC 508*** and ***Maharaj Krishan Bhatt v. State of Jammu & Kashmir (2008) 2 SCC (L&S) 783***. On the side of the Petitioner, reliance is placed on the decision of this Court in ***Subodh Chandra Debanath v. Union of India, 2006 (1) OLR-812***.

12. Both decisions cited by MCL i.e. ***Maharaj Krishan Bhatt (supra)*** and ***Subodh Chandra Debanath (supra)*** are in the context of service law and in the particular context of service conditions: one in the context of promotion and the other in the context of regularization. The said decisions are therefore not comparable instances with the facts on hand. The Court, therefore, proceeds to examine in some detail the first-mentioned decision in ***Prem Kumar Sharma (supra)***. The facts of the said case were that uniform guidelines for providing employment to land losers were formulated by the Department of Energy. The standard norm was "one employment for 3 acres of non-irrigated land and 2 acres of irrigated land." The guidelines were issued on 22nd December, 1984 itself. A perusal of the decisions does not indicate whether the acquisition of the land of the Respondent in that case was prior to the issuance of the guidelines or thereafter. This is a critical fact because in the present case admittedly the acquisition of the

Petitioner's grandfather's land was on 25th June, 1987 i.e. prior to the issuance of the guidelines. Here the guidelines mandated that in order to get employment by way of rehabilitation, the land oustee must have lost not less than 1/3rd of his total land.

13. The second fact, which distinguishes the present case from the decision in ***Prem Kumar Sharma*** (*supra*) is that there have been consistent recommendations, first by the Sub-Committee on 2nd January, 1996 and thereafter the Rehabilitation Committee on 22nd June, 2004. In both these Committees, the representatives of MCL were present. Clearly, despite the guidelines being in force by then, both Committees considered it appropriate to recommend the case of the Petitioner for employment. On both occasions, it was noted that two other persons whose grandfathers had lost less than 1/3rd of their total land, had been provided employment. It was noted that the extent of the Petitioner's grandfather's land that was acquired was more than the land acquired in the other two instances. All these facts are not denied by the MCL. In view of the above facts, the decision in ***Prem Kumar Sharma*** (*supra*) is not of assistance to the MCL.

14. In the considered view of the Court, the MCL could not have applied a guideline that came into force subsequent to the date of acquisition of the land as far as the Petitioner was concerned. These were 'old cases' and were treated as such both by the Sub-committee in January, 1996 and later by Rehabilitation Committee in June, 2004. With representatives of MCL being part

of the Sub-Committee and Rehabilitation Committee, MCL was estopped from denying the relief of appointment by way of rehabilitation to the Petitioner.

15. The Court is satisfied that the Petitioner has made out a case for grant of relief. The Petitioner has waited since 1996 for such relief. He is almost 52 years as of date but still has around 8 years of service to render. Consequently, the Court issues a direction to the MCL to provide employment to the Petitioner under the Rehabilitation Scheme on par with the relief granted to the grandsons of Sribatsa Dash and Manibhusan Dash, not later than six weeks from today by issuing appropriate orders.

16. The writ petition is allowed in the above terms, but in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda