

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 1391/2020

Bhojraj Liladhar Vaidya and anr.

..VS..

Union of India and ors.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P.J. Mehta, Advocate for petitioners

Shri C.J. Dumane, Advocate with Ms. Sushma, Advocate for respondent nos.1 and 2

Shri O.A. Ghare, Advocate for respondent nos. 3 and 4

Shri D.P. Thakare, Additional Government Pleader for respondent nos. 5 and 6

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, J.J.

DATED : 18/08/2022

Heard.

The challenge raised in this writ petition is to the communications dated 14.03.2016, 10.06.2016, 30.11.2017 and 30.04.2019. By the said communications issued to the petitioner no. 2, he has been informed that his brother cannot be provided employment pursuant to the acquisition of his land. The petitioners seek a direction to provide employment to the petitioner no. 1 as project affected person.

The petitioner no. 2 who is the elder brother of the petitioner no. 1 was owner of the land bearing Khasra No. 29/3 admeasuring 0.81 Are situated at Mauza Pirawa, Tah. Bhiwapur, District - Nagpur. The said land came to be acquired under the provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957 by the Special Land Acquisition Officer for the respondent no. 3 – Western Coal Fields Limited. In the light of such acquisition the petitioner no. 2 nominated the name of the petitioner no. 1 for grant of employment. The respondent no. 3 by

the impugned communications refused to grant such appointment to the petitioner no. 1 on the ground that under the Rehabilitation and Resettlement Policy of Coal India Limited, 2012 (for short the “Policy of 2012”), a major brother could not be treated as a member of the family for grant of employment. Being aggrieved, the petitioners have challenged the aforesaid communications.

The learned Counsel for the petitioners submitted that though the land in question was owned by the petitioner no. 2 who is the elder brother of the petitioner no. 1, the younger brother was dependent upon the petitioner no. 2 and he was taking care of the petitioner no. 1. Under the Policy of 2012 the definition of the term “Family” was inclusive in nature and though there was reference to a minor brother the other contingency was that such brother was dependent upon the land owner for livelihood. The respondent no. 3 was not justified in refusing to grant employment to the petitioner no. 1 by observing that the petitioner no. 1 was not a linear dependent of the petitioner no. 2. Since the requisite conditions were fulfilled by the petitioner no. 1 and he was dependent upon the petitioner no. 2, he was entitled to be granted such employment under the Policy of 2012. The learned Counsel placed reliance on the decisions in Writ Petition No. 5802/2012 (*Pradip s/o Vithoba Bhoyar Vs. Union of India and ors.*) decided on 23.01.2014 and in Writ Petition No. 1373/2017 (*Rama s/o. Vithoba Bipte and anr. Vs. Western Coal Fields Limited and ors.*) decided on 03.05.2019. It was thus submitted that relief prayed for in the writ petition ought to be granted.

The learned Counsel for the respondent nos. 3 and 4 opposed the aforesaid submissions. It was pointed out that since

the petitioner no. 1 was a major brother of the petitioner no. 2, he was not included in the definition of the term “Family” under the Policy of 2012. Merely because the petitioner no. 1 claimed that he was dependent upon the petitioner no. 2 the same would not entitle him to seek employment. Even if the Authorities had referred to the expression “Linear Dependent” that would not make a difference as the petitioner no. 1 was not included in the definition of expression “Family”. The learned Counsel placed reliance on the decisions in Writ Petition No. 6156/2012 (*Rajesh Kantilal Thakkar and anr. Vs. Union of India and ors.*) decided on 18.04.2013 and in Writ Petition No. 8206/2018 (*Shankar Bodhe and anr. Vs. Western Coal Fields Ltd. and anr.*) decided on 25.05.2022. He also submitted that though the petitioners were informed about the ineligibility for granting employment in the year 2016 itself, they had made repeated representations which did not create a fresh cause of action thereafter. It was thus submitted that the writ petition was liable to be dismissed.

We have heard the learned Counsel for the parties and we have perused the Policy of 2012. It is not in dispute that the petitioner no. 2 was the owner of the land admeasuring 0.81 Are. The petitioner no. 1 is the younger brother of petitioner no. 2 and is major. The expression “Family” makes reference to a minor brother and a major brother is not included in that definition. Though the said definition is inclusive in nature since reference has been made only to a minor brother, it is implicit that a major brother is not included in the said definition. Merely for the reason that the petitioner no. 1 was dependent on the petitioner no. 2 – the land owner is not sufficient to qualify for grant of benefit of employment under the Policy of 2012. For

the same reason, the reference to the term “linear dependent” in the impugned communications would not make a difference since the petitioner no. 1 even otherwise does not fall within the expression of “Family”.

In *Rajesh Kantilal Thakkar and anr. (supra)* claim of a major brother for seeking employment was considered and it was observed that such claim was not in consonance with the claim of the Rehabilitation and Settlement Scheme. Though, the Policy in question was an earlier policy the same would not make much difference considering the definition of the term “Family”. Similar is the case with regard the decision in *Shankar Bodhe and anr. (supra)*. The decisions relied upon by the learned Counsel for the petitioners are required to be considered in the light of the facts therein. In *Pradip s/o Vithoba Bhoyar (supra)* the grandson of the land owner who was the son of the daughter of the land owner had sought employment. In those circumstances, it was observed that since the definition of the term “Family” was not exhaustive, the benefit ought to be given to the claimant therein. As stated above, since reference has been made to a minor brother in the expression “Family”, it is implied that an elder major brother is not included therein. For the same reason the decision in *Rama s/o. Vithoba Bipte (supra)* cannot be applied to the case in hand. We thus find that the claim of the petitioner no. 1 is not liable to be accepted under the Policy of 2012. The respondent nos. 3 and 4 have not committed any illegality in refusing to grant employment to the petitioner no. 1.

The writ petition thus stands dismissed. No costs.

However, it is open for the petitioner no. 2 to nominate any other member of the family in accordance with Rehabilitation and Resettlement Policy of Coal India Limited, 2012 for seeking employment. In the alternative, he is entitled to seek monetary compensation for the land acquired in accordance with the Policy of 2012.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

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