



J-WP-2573-21

1/14

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2573 OF 2021

1. Smt Vimal W/o Anandrao Matte,
Aged about 70 years, Occ: Household
2. Jyoti W/o Arvind Khangar,
Aged 46 years, Occupation: Household
3. Shubham S/o Arvind Khangar,
Aged about 26 years, Occ. Student

All R/o Deulwada, Tah. Bhadrawati,
Dist. Chandrapur

... Petitioners

-vs-

1. Western Coal Fields Ltd.
Coal Estate, Civil Lines, Nagpur
Through its Managing Director
2. Chief General Manager, Western
Coal Fields Ltd. Majri Area, Kuchna,
Tah. Bhadravati, Dist. Chandrapur
3. Area Planning Officer
O/o Chief General Manager,
Western Coal Fields Ltd. Majri Area,
Kuchna, Tah. Bhadravati, Dist. Chandrapur

... Respondents

Shri Prakash Meghe, Advocate for petitioners.

Shri S. P. Dharmadhikari, Senior Advocate with Shri Kartik Shukul, Advocate
for respondents.

CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, JJ.

Arguments were heard on : 29th August, 2023

Judgment is pronounced on : 27th October, 2023

Oral Judgment : (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the

learned counsel for the parties.

The issue that arises for consideration in this writ petition filed under Article 226 of the Constitution of India is entitlement of the petitioner No.3 to be provided employment by the respondents pursuant to acquisition of land owned by the predecessor of the petitioner No.3. This right is sought to be asserted in view of the Rehabilitation and Resettlement Policy of 2000 (hereinafter “the Policy of 2000”) that has been framed by Coal India Ltd.

2. It is the case of the petitioners that land admeasuring 0.76R from Gat No.396 and 0.44R from Gat No.397/1 at Mouza Deulwada, Tah. Bhadrawati, District Chandrapur was the subject matter of acquisition pursuant to issuance of notification under Section 9 of the Coal Bearing (Acquisition and Development) Act, 1957 (for short, the Act of 1957) that was issued on 05/08/1998. This acquisition was for the Navin Kunada Open Cast Project. On the premise that the total land acquired was 1H 20R, employment was not being provided in lieu of acquisition of said land on the ground that the acquired land was falling short by 0.02. It was only against acquisition of land admeasuring 1H 22R that employment could be provided under the Policy of 2000. The husband and the son of petitioner No.1 entered into correspondence with the 1st respondent-Western Coalfields Ltd.

through its Managing Director in that regard. It was their say that other land holders whose lands to the extent of 1H had been acquired, had been provided employment pursuant to acquisition under the same notification. On 17/12/2009, the 3rd respondent-Area Planning Officer, Majri Area informed the husband of petitioner No.1 that as during re-measurement Gat No.396 was shown to be admeasuring 0.78R which was 0.02 in excess of what was initially indicated to be its measurement, it was necessary to seek the permission of the higher Authority on the proposal for grant of employment towards such acquisition. Before any further steps were taken in the matter, the husband of petitioner No.1 and father of petitioner No.2 expired on 08/10/2010. The matter was then pursued by the son of petitioner No.1 and the brother of petitioner No.2. Representation to that effect was made on 25/03/2011. However, the son of petitioner No.1 and brother of petitioner No.2 expired on 17/05/2013. Thereafter the petitioner No.1 as widow and petitioner No.2 as her daughter pursued the proceedings. Since the daughter was residing with her mother and was willing to take up the responsibility of maintaining her, the claim for grant of employment to the petitioner No.3-her son was pursued. On 24/04/2015 a communication was issued by the Regional Manager to the petitioner No.2 stating therein that in lieu of employment, compensation of Rs.5 lakhs per acre would be admissible to the

petitioner. On being required to submit legal heir certificate, the same was also submitted by the petitioner No.2. Since the petitioner No.2 crossed the age of 40 years, the claim of her son was pursued. There being no further progress in the matter despite making various representations, this writ petition has been filed on 22/06/2021 seeking grant of employment in favour of petitioner No.3.

3. Shri Prakash Meghe, learned counsel for the petitioners referred to various documents on record and especially the representation dated 25/03/2011 that was submitted by the son of petitioner No.1 wherein reference was made to seven instances where employment was offered by Western Coal Fields Ltd. (WCL) on acquisition of land ranging between 1H and 1.20 H. It was submitted that the insistence for the acquired land to be 1H 22 R to enable employment to be provided was unjustified on the part of WCL which was clear from the details furnished in the representation. The said lands had been acquired under the same notification. Infact, on re-measurement of the lands acquired, it was revealed that Gat No.396 was admeasuring 0.78R and when considered along with Gat No.397/1 admeasuring 0.44, the total land acquired was 1H 22R. The learned counsel for the petitioners referred to the judgment of learned Single Judge in Writ Petition No.3583/2021 (*Western Coalfields Limited vs. Tahsildar, Kamptee*,

Dist. Nagpur and ors. with connected writ petitions) decided on 16/09/2022 to urge that correction of revenue record under Section 155 of the Maharashtra Land Revenue Code, 1966 was permitted even after issuance of notification under Section 9 of the Act of 1957. This decision of learned Single Judge was not interfered with by the Honourable Supreme Court in Special Leave to Appeal (C)Nos.24243-24273/2022 (*Western Coal Fields Ltd. vs. Tahsildar, Kamptee and ors.*) decided on 05/07/2023. Though measurement of the said land was carried out in the year 2009 which was after issuance of notification under Section 9 of the Act of 1957, its cognizance was taken by the 3rd respondent by forwarding the proposal for grant of employment to the family of the petitioners to the higher Authority. It was therefore not permissible for the WCL to deny employment to the family of the petitioners on the ground that the land acquired was only 1H 20R. Placing reliance on the decision in Writ Petition No.5802/2012 (*Pradip s/o Vithoba Bhoyar vs. Union of India, through the Secretary, Dept. of Mines. GOI and ors.*) decided on 23/01/2014, it was urged that the Policy of 2000 being in a nature of beneficial subordinate legislation, it ought to be considered in a manner that would serve the object behind it. There was no denial to the various instances referred to by the petitioners in representation dated 25/03/2011 indicating grant of employment to seven land owners

even when the lands acquired were less than 1H 22R. On the aspect of delay in seeking redressal of the grievance, the learned counsel submitted that the petitioners were pursuing the matter since long and sought to rely upon the decisions in *Mahanadi Coalfields Limited and anr. vs. Mathias Oram and ors. (2010) 11 SCC 269* and *Mahanadi Coalfields Limited and anr. vs. Mathias Oram and ors. 2022 SCC Online SC 1508*. Since the lands of the petitioners had been acquired and the petitioner No.3 was interested in seeking employment, the claim was not liable to be defeated on the ground of delay. It was thus submitted that appropriate directions be issued to the respondents to provide employment to the petitioner No.3.

4. Shri S. P. Dharmadhikari, learned Senior Advocate for the respondents opposed aforesaid submissions. It was submitted that in the award that was passed pursuant to issuance of notification under Section 9 of the Act of 1957, the area of the land acquired from the petitioners was shown to be 1H 20R. Since the Policy of 2000 required the total land to admeasure 1H 22 R for being eligible for grant of employment, there was no right in favour of the petitioners under the said Policy to seek such employment. It was stated that it was only if the land acquired admeasured 1H 21R that was equivalent to 3 acres or more, the benefit of employment could be granted. On the basis of

re-measurement carried out after eleven years of the notification, the petitioners could not seek such benefit. On issuance of notification under Section 9 of the Act of 1957, the lands vested with the WCL and any measurement or change in the area of the land acquired was not permissible more so in absence of any consent from the WCL. It was then submitted that there was considerable delay on the part of the petitioners in seeking benefit under the Policy of 2000. Though the offer of monetary compensation in lieu of employment was made to the petitioner No.2 on 24/04/2015, there was delay for a period of almost six years thereafter. There was no satisfactory explanation as regards the delay that had occurred in approaching the Court.

It was then submitted that even if employment was offered to some land owners after acquisition of land ranging from 1H to 1H 20R, the petitioners could not seek similar treatment by invoking the provisions of Article 14 of the Constitution of India. The claim for grant of employment could not be enforced in a negative manner as sought to be urged by the petitioners. In that context, reliance was placed on the decisions in *South-Eastern Coalfields Ltd. vs. Prem Kumar Sharma and ors.* (2007) 14 SCC 508 and *R. Muthukumar and ors. vs. Chairman and Managing Director TANGEDCO and ors.* 2022 SCC OnLine SC 151. Thus on both counts namely, the acquired land fell short of the minimum required for grant of benefit of employment

and delay in seeking relief of employment, the petitioners were not entitled for any relief whatsoever. It was thus prayed that the writ petition be dismissed.

5. We have heard the learned counsel for the parties at length and with their assistance we have perused the documents on record. It is not in dispute that pursuant to notification dated 05/08/1998 that was issued under Section 9 of the Act of 1957, land to the extent of 0.76R from Gat No.396 and 0.44R from Gat No.397/1 came to be acquired. Thus total land owned by Anandrao Matte to the extent of 1H 20R came to be acquired. Under the policy then prevailing, the WCL offered employment to one member of the family on acquisition of land to the extent of 1H 21R that is 3 acres or more. On the ground that the lands acquired admeasured 1H 20R, the name of Anandrao Matte for grant of employment was not being considered. It is in that context that on 25/03/2005 a communication was issued by the son of Anandrao Matte giving various instances where employment was offered to seven land owners even when the lands acquired were ranging from 1.1H to 1H 20R. There has been no response to this representation and it is asserted on behalf of the petitioners that since the contents of the said representation were factually correct, there was no reply given to the same so as to deny its contents. It is thus

clear from the record that the assertion as made on behalf of the petitioners that employment was offered to various land holders whose land below 1H 22R came to acquired were provided employment was never denied.

6. Another reason indicated by WCL for non-consideration of the claim of the petitioners is that the correction in the area of the lands acquired was permitted after issuance of notification under Section 9 of the Act of 1957. In this regard it is seen that on 02/02/2009, the Sub-Divisional Officer passed an order directing correction of revenue records with regard to lands from Gat Nos.396 and 397. By invoking power conferred under Sections 106, 135 and 155 of the Maharashtra Land Revenue Code, 1966, the area of Gat No.396 that was shown as 0.76R came to be corrected as admeasuring 0.78R. As a result the holding of Anandrao Matte with regard to these two lands has been shown as 1H 22R. It is to be noted that this fact and passing of the order by the Sub-Divisional Officer on 02/02/2009 was brought to the notice of the third respondent vide communication dated 15/12/2009. In response, the third respondent informed Anandrao Matte on 17/12/2009 that in view of the aforesaid correction, the proposal for grant of employment in lieu of acquisition of land was forwarded to the Head Office of WCL for further action. The respondents have not

indicated any reason whatsoever for non-acceptance of the proposal sent to the Head Office in that regard. Notwithstanding aforesaid, a reminder was also submitted by the son of Anandrao Matte to the Head Office on 24/03/2011 in that regard.

7. In our view, both the reasons referred to herein above that have been put forth by WCL to deny the claim of the petitioners do not warrant acceptance. Since the contents of the representation/communication dated 25/03/2005 have not been denied by WCL, the contents thereof would be deemed to be accepted by it. In the said representation it has been stated in clear terms that pursuant to the notification dated 05/08/1998 that was issued under Section 9 of the Act of 1957, the lands of seven land owners mentioned therein came to be acquired. Though the area of their lands acquired was ranging from 1H to 1H 20R, the said land owners had been provided employment under the prevailing policy of WCL. It is thus clear that though the petitioners' land to the extent of 1H 20R which area was subsequently corrected to be 1H 22R came to be acquired under the same notification and the original owner Shri Anandrao Matte had sought grant of employment, that request was not considered. In absence of any such denial of the factual aspects stated in the representation dated 25/03/2005 by WCL, there would be no

reason to hold that this contention of the petitioners does not warrant consideration.

It was urged by Shri S. P. Dharmadhikari, learned Senior Advocate for WCL that enforcement of any right/claim under Article 14 of the Constitution of India based on any negative or incorrect grant of benefit to others cannot enure to the advantage of the person seeking such benefit. This stand of WCL which is sought to be supported by placing reliance on the decisions in *Premkumar Sharma and others* and *R. Muthukumar and ors.* (supra) cannot be accepted. This is for the reason that WCL had not come up with a plea that employment to the persons referred to in the representation/communication dated 25/03/2005 was incorrectly or improperly granted. On the contrary, it is asserted that such employments were consciously granted since the same were exceptional cases. The specific stand taken by WCL is in paragraph 8 of its written submission and the same reads thus :

“ 8..... The averments as regard the Respondents having granted employment to persons whose lands were less than 1.21 H.R., it is submitted, that the Respondents have indeed granted such employments, however, such cases were exceptional cases and had absolutely difference facts and circumstances. Thus, the cases where such employments were granted, being not at par with the present case, cannot be treated as precedents for determination for determination of the present controversy.”

8. It is thus clear from the aforesaid averments that WCL does not seek to contend that such employments were wrongly or incorrectly granted to those land owners. What was exceptional in the said seven cases has also not been indicated. It thus becomes clear that the petitioners have been discriminated against without furnishing any justifiable reason. Merely by stating that the cases of the land owners who were granted employment were exceptional, the same cannot justify the denial of employment to the petitioner No.3.

9. As regards the aspect regarding correction of revenue records after issuance of notification under Section 9 of the Act of 1957 is concerned, the same would not make much difference in the facts of the present case. This is for the reason that WCL consciously granted employment to various land owners whose lands were acquired under the same notification even though their lands were less than 1H 22R as required under the relevant policy. Hence, even assuming that the correction of the revenue records was not binding on WCL on the ground that it was effected after issuance of notification under Section 9 of the Act of 1957, the same cannot be put forth as a reason to deny any benefit to the petitioners.

10. In the light of these facts on record as well as the conscious

stand taken by WCL, we do not find that the petitioners are liable to be non-suited on the ground of delay. The original land owner and thereafter his successor has been pursuing the claim for grant of employment. The specific assertions in the representation dated 25/03/2005 were not specifically denied. The subsequent steps taken by the petitioners who had lost their lands in acquisition also indicate that they were desirous of seeking the benefit of employment. The petitioners were offered monetary compensation by WCL itself on 24/04/2015 which indicates that the WCL itself was considering a live claim of the petitioners. Notice issued by the petitioners on 24/09/2018 is also clear in that regard. Since we find that the petitioners have been discriminated against and they did not gain anything by not taking prompt steps after issuance of notice dated 24/09/2018, they cannot be denied the relief of employment.

11. For aforesaid reasons, we are satisfied that the petitioners have been discriminated against in the matter of providing them employment pursuant to acquisition of land admeasuring 1H 20R which area has been subsequently corrected to be 1H 22R. The petitioner No.3 shall be granted employment in accordance with the Rehabilitation and Resettlement Policy of 2000 within a period of six weeks from today. In case the petitioners have received any amount of

monetary compensation towards acquisition of land from Gat Nos.396 and 397/A at Mouza Deulwada, Tah. Bhadrawati, District Chandrapur, the same shall be refunded to the respondent No.1 with interest at the rate of 6% per annum before accepting employment.

12. Rule is made absolute in aforesaid terms with no order as to costs.

(Mrs Vrushali V. Joshi, J.)

(A. S. Chandurkar, J.)