

21.03.2024

Ct. no.654

Sl. Nos.117

Sn/ss

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)**

WPA 4017 of 2003

**Smt. Kabita Mukherjee & Ors.
Vs.
State of West Bengal & Ors.**

Mr. Indranath Mitra

..for the petitioner

Mr. Pradip Tarafdar

Mr. Subir Pal

..for the respondents 2, 3 and 5

Mr. Chandi Charan De

Mr. Anirban Sarkar

..for the State

By this writ petition, the petitioner has sought for directions not to give effect to the memo no.MT/PL/CC-JKM/6634 dated 24th December, 2002 of respondent no.3, Senior Personnel Manager, Mejia Thermal Power Station.

The petitioner by dint of deed of sale dated 16th April, 1986 purchased the land measuring about 1.02 acre within Mouza Benaguri, R.S. Khatian no.22 morefully described in paragraph 2 of the writ petition. The Land Acquisition Collector, Damodor Valley Corporation issued notice under Section 5 of Act II of 1948 stating that by Gazette notification no.1249 LA (II) dated 10th April, 1987, the Government acquired the land measuring about 148.31 acres within Mouza Benaguri. The petitioner was requested to appear before the Special Land Acquisition Collector, Damodar Valley Project for hearing and determination of his claim in respect of land-

in-question. The petitioner was in *khas* possession of the purchased land as the absolute owner. All of a sudden, the petitioner was further served with a notice and informed that the land within Mouza Benaguri has been requisitioned and an enquiry would be held under Section 8(b) of the Land Acquisition Act on 28th April, 1987 and was requested to appear along with relevant documents before the Special Land Acquisition Officer, Damodor Valley Project, Burdwan which was duly complied. On 1st January, 1996, the respondent no.3 issued a notice in the “*Ananda Bazar Patrika*” notifying therein that a list of candidates will be prepared for giving appointment to those persons who became displaced from their land due to acquisition of the land. Accordingly, applications were invited for appointment in “Group-C” post to the member of the family of displaced. The petitioner made an application on 15th March, 1995. Since no steps were taken for appointment of the petitioner he made a representation vide letter dated 20th January, 2001 before the concerned authorities. However, such representation being not considered the petitioner filed a writ petition being WP no.1049(W) of 2002. The said writ petition was disposed of on 4th March, 2002 directing the respondent authorities to consider the petitioner’s representation. Pursuant to such order, the respondent no.3, Senior Personnel Manager, Mejia Thermal Power Project, on 24th December, 2002 rejected the petitioner’s claim for

appointment under the scheme due to non-fulfilment of the criteria inasmuch as it could not be established that his minimum land holding was 0.33 acres as on 20th March, 1986 and the percentage of land loss was 75% or more. Challenging such order passed by the respondent no.3, the petitioner has preferred the present writ petition with a prayer not to give effect to such order.

During the pendency of the writ petition, the petitioner Jayanta Kumar Mukherjee expired and his legal heirs were substituted in his place by order dated 16th March, 2023.

Mr. Indranath Mitra, learned Advocate for the petitioners submits that by virtue of the sale deed executed on 16th April, 1986, the predecessor-in-interest of the petitioners became owner of the property-in-question. The notice of acquisition was issued to the predecessor-in-interest of the petitioners, namely, Jayanta Kumar Mukherjee, since deceased, however, the same was not concluded. The predecessor-in-interest of the petitioners submitted application before the authority concerned for consideration of his appointment under the scheme, however, since no steps were taken, he filed a writ petition and upon direction of this Court, the authority concerned considered his application and rejected the same. The order passed by the respondent no.3, Senior Personnel Manager, Mejia Thermal Power Project on 24th December, 2002 declining to consider the

employment of the predecessor-in-interest of the petitioners, namely, Jayanta Kumar Mukherjee, since deceased, under landloser category is based on conjecture and surmise. The deed of sale clearly shows that the predecessor-in-interest of the petitioner purchased land measuring about 1.02 acres and therefore, the finding of the respondent no.3 that the predecessor-in-interest of the petitioner could not establish that he was holding 0.33 acres and the percentage of land loss by him to be 75% or more is incorrect. The predecessor-in-interest of the petitioner could not mutate his name since at that point of time the process of mutation was stopped by the order of District Magistrate, Bankura in respect of land-in-question. During mutation in favour of Mejia Thermal Power Project, no notice was issued to the predecessor-in-interest of the petitioner. Further no document is annexed to the impugned order under challenge. Thus, the impugned order passed is perverse and accordingly, is liable to be set aside.

In reply to the contentions raised by the petitioner, Mr. Pradip Tarafdar, learned Advocate for the respondent nos. 2, 3 and 5 submits that the authority concerned after perusing the relevant documents have come to a specific finding that the predecessor-in-interest of the petitioner failed to fulfil the eligibility criteria of having land holding of 0.33 acres as on 20th March, 1986 and he lost 75% or more of his land. The deed of sale annexed to

the writ petition clearly shows that the predecessor-in-interest of the petitioner purchased the land on 16th April, 1986. There are no other documents annexed to the writ petition showing that the predecessor-in-interest of the petitioners was holding 0.33 acres of land on 20th March, 1986. Therefore, the pleading as well as documents annexed to the writ petition fails to suffice the eligibility criteria, as required. Relying on the decision of the Hon'ble Supreme Court passed in ***Bharat Singh & Ors. versus State of Haryana & Ors.*** reported in ***(1988)4SCC 534***, he submits that it is settled proposition of law that if the facts are not pleaded or evidence in support of such facts is not annexed to the writ petition or counter affidavit, as the case may be, the Court will not entertain the point. The recruitment authority for unskilled and manual post at MTPS for displaced persons were precisely made on rehabilitation ground for providing certain concessions which cannot be claimed as a right. To buttress his contentions, he relies on the decision of Hon'ble Supreme Court passed in ***Punjab State Electricity Board & Ors. versus Malkiat Singh*** reported in ***JT 2004(8) SC 526***. The scheme floated by MTPS is of a nature of guidelines or executive instructions which are not statutory in character, are not laws and compliance therewith cannot be enforced through courts. Even if there is certain breach or violation of such non-statutory guidelines, the same cannot be

interfered with. In support of his contention he relies on the decision of Hon'ble Supreme Court passed in ***Syndicate Bank versus Ramachandran Pillai & ors.*** reported in **2011(15) SCC 398**. In view of his aforesaid submissions, he prays for dismissal of the writ petition.

Mr. Chandi Charan De, learned Additional Government Pleader submits that the predecessor-in-interest of the petitioners failed to fulfil the eligibility criteria of the recruitment policy, since on 20th March, 1986 he was not holding 0.33 acres of land as required under the scheme. Therefore, the impugned order passed by respondent no.3 does not call for interference.

Having heard the learned Advocates for the respective parties, the only issue which has fallen for consideration before this Court is whether the order passed by respondent no.3, the Senior Personnel Manager, Mejia Thermal Power Station, is justified or not.

The MTPS floated a scheme for recruitment of unskilled and manual posts for displaced persons. The predecessor-in-interest of the petitioners applied under the scheme. The application of the predecessor-in-interest of the petitioners was rejected by the respondent no.3 on the ground that on 20th March, 1986 he was not holding 0.33 acres of land and also could not establish that he lost 75% or more of the land.

Admittedly, the predecessor-in-interest of the petitioners purchased the land on 16th April, 1986. In the

affidavit-in-opposition of respondent nos.2, 3 and 5 at paragraph 15 it is averred that on 1st March, 1999 the concerned Block Land and Land Reforms Officer issued notice for inviting application from the landlosers who held 0.33 decimals or above land as on 20th March, 1986 for determination of total holding of land and verification thereof, which is also evident from the copy of the notice annexed thereto marked as annexure R5. The aforesaid statement in the affidavit-in-opposition or the document in support of such assertion has not been challenged by the petitioner by way of any affidavit-in-reply. Therefore, the criteria for consideration of the candidature of landloser was that he should have 0.33 decimals or above land as on 20th March, 1986. The date of purchase of land on 16th April, 1986 by the predecessor-in-interest of the petitioner, falls beyond the cut-off date which required a minimum land holding on such date as an eligibility criteria. Thus, on such score, the predecessor-in-interest of the petitioner fails to qualify the eligibility criteria. There is no other document placed by the petitioners to primarily come to a conclusion that on 20th March, 1986 the predecessor-in-interest of the petitioners was holding land of 0.33 acres. It is also relevant to note that the petitioners have also not produced any documentary evidence showing their predecessor-in-interest that lost 75% or more land. This Court finds force in the submission of Mr. Tarafder, learned Advocate for

the respondent nos.2, 3 and 5 relying on *Bharat Singh (supra)* that in absence of pleading and proof the aspect as raised by the petitioners cannot be entertained.

Since the predecessor-in-interest of the petitioners failed to fulfil the eligibility criteria as provided under the scheme and there being no arbitrary or *malafide* or violation of any statutory provision in passing of the impugned order, such order cannot be interfered with as has been held by the Hon'ble Supreme Court in *Syndicate Bank (supra)*.

The proposition of law as advanced by Mr. Tarafder, learned Advocate for the respondent nos.2, 3 and 5 that the scheme giving appointment to landloser is in the nature of concession which cannot be claimed as a matter of right relying on *Malkiat Singh (supra)* is substantial.

In view of the above discussion, the writ petition being **W.P.A. 4017 of 2003** stands dismissed.

All connected applications, if any, stand dismissed.

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

Interim order, if any, stands vacated.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)