

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

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 11224 of 2018

Sukumar Pal & Anr.

-Vs.-

Eastern Coalfield Limited & Ors.

For the Petitioner : *Mr. Probal Mukherjee,*
Mr. Siddhartha Banerje,
Mr. S. Ahmed,
Mr. Anjan Bhandari.

For the Respondents : *Mr. Bijoy Kumar.*

Heard on : *23.04.2024*

Judgment on : *22.05.2024*

Partha Sarathi Chatterjee, J.:-

Prelude:

1. An intricate and drawn-out legal wrangle over an issue of entitlement to an employment in Eastern Coalfields Limited in lieu of acquisition of land in terms of its Resettlement and Rehabilitation Policy persists for decades in its quest of a definite resolution.

Petitioner's case:

2. Way back in 1981-82, the Eastern Coalfields Limited (in short, ECL) decided to acquire a large chunk of land in the District of Burdwan for expansion of its coal-mining activities. Further to that objective, a L.A. case no. 36R of 1981-82 came to be initiated in terms of the West Bengal Land (Requisition and Acquisition) Act-II of 1948 (in short, the Act-II of 1948).
3. An area of 1.07 acres of land appurtenant to plot no. 962 at Mouza-Bazari, Plot No.135 at Mouza- Kumar Khola and Plots no. 64, 29 & 147 at Mouza – Haripur (hereinafter referred to as the lands) belonged to one Chaina Mondal and one Baidya Nath Ghosh were also acquired and used by ECL.
4. At the relevant point of time, to address the plight of the land-losers, a Resettlement and Rehabilitation Policy, which was operative till 31st December, 1984, was adopted and for implementation of such policy, a scheme was framed. Under the aforesaid policy/scheme, a specific promise was held out by the ECL to provide one employment in any suitable position against one acre of land (i.e. at 1:1 ratio) to a land loser or his/her nominee in addition to monetary compensation for the land.

5. The petitioner who happens to be the nephew and nominee of the afore-mentioned land-losers submitted a duly filled in prescribed form for his employment in any suitable post in ECL under land loser category.
6. Despite receipt of such application, the respondents maintained deceptive silence. The petitioner incessantly knocked at their door seeking employment, yet his efforts were in vain. In their innumerable inter-departmental communications and circulars, the respondents themselves acknowledged and/or admitted their liability to provide such employment under land loser category but defying their own circulars, the respondents did not offer any employment to the petitioner. Upon inquiry, the petitioner uncovered the truth that some candidates in similar circumstances were granted employment opportunities through discriminatory practice.
7. The General Manager, Pandeveswar area, ECL in a communication dated 12.03.1997 requested the concerned authority to provide employment to the deprived land losers at 1:1 ratio but to no avail.
8. To address the grievances of the land losers, the Hon'ble Minister of Coal, Government of India himself intervened in the matter and chaired a meeting with the Chief Managing Directors of the respective collieries on 4th July, 2006. In terms of the resolution adopted in the meeting, the Director (Personnel), ECL in his letter dated 16.08.2006 addressed to Director of Ministry of Coal, Govt. of India, detailed the particulars of the cases where the assurance given to the land losers had not been honoured. The case of petitioner no. 1 was identified as one of such cases.

9. Facts remain that several meetings were convened at different levels and numerous inter-departmental communications were exchanged but till date the issue remains unresolved. In various communications, the respondents themselves admitted the facts that despite giving assurance to land losers, employments have not been provided to them at 1:1 ratio in many cases. Even on 6th March, 2010, a committee was constituted to interact with the representative of land losers but all these measures ultimately failed to yield any result.
10. Sometimes in 2008, 60 (sixty) numbers of identically circumstanced candidates moved a writ petition being W.P. no. 848 of 2008, which was disposed of by an order dated 8th May, 2009 directing the concerned authorities to frame a scheme after proper interaction with the representative of the petitioners in W.P. no. 848 of 2008 for providing them employments or alternatively, to explore the ways as to how best the grievances of those candidates could be redressed.
11. The order dated 8th May, 2009 was carried in an inter-court appeal but the appeal failed in the Hon'ble Division Bench on 27th August, 2009. Thereafter, a scheme was framed and in terms of the scheme, the respondents offered employments to similarly situated candidates but turned a blind eye to the petitioner.
12. Lastly, the petitioner no. 1 constrained to invoke the extra-ordinary jurisdiction of this Court by preferring a writ petition vide. W.P. no. 26708(W) of 2015 with a prayer for a writ of mandamus directing the respondents to appoint him in any suitable post of ECL under land loser category.

13. The above writ petition being W.P. no. 26708(W) of 2015 along with several other writ petitions preferred by the similarly circumstanced candidates were disposed of by a common order dated 1st September, 2017. The operative part of the order dated 01.09.2017 is as follows:

“In those circumstances, each of these writ applications is disposed of by directing each of the writ petitioners to make an application to the respondents strictly in terms of the policy of the first respondent existing on the date of the acquisition by September 20, 2017 with all relevant facts figures and documents in detail required by the policy.

I make it clear that the respondents will not ask for an explanation for any delay or any document, which is irrelevant for the purpose of the said policy on receipt of the applications and documents. The respondents will take a decision in the matter strictly in accordance with the observations made above within 3 months of receipt of the application.”

14. Some typographical errors crept in the order dated 1st September, 2017 which were rectified by an order dated 21.09.2017.
15. In terms of the above orders dated 01.10.2017 and 21.09.2017, the petitioner made an application detailing all the requisite facts and figures on 30.10.2017.
16. Upon receipt of his application dated 30.10.2017, the General Manager, ECL, Sonapur Bazari Area communicated the decision of the respondents to the petitioner under a covering letter dated 11/13.01.2018 in the following words:

“As per the order of Hon’ble Justice I.P. Mukherjee, High Court, Kolkata in compliance of the order dated 01.09.2017

and amended order dated 21.09.2017 passed by the Hon'ble Justice, High Court, Kolkata the undersigned i.e. General Manager, Sonapur Bazari Area of ECL examine the matter and there is no scope of giving any relief for providing employment in 1:1 ratio which was valid upto 31.12.1984."

17. In such conspectus, throwing a challenge to the decision communicated to the petitioner *vide.* a letter dated 11th/13th January, 2018 passed by the respondent no.3 in deference to the orders dated in WP No.26708 (W) of 2015 and praying for a direction to provide employment to the petitioner no.2 in any suitable permanent post in ECL in lieu of acquisition of the subject plot of land, the present writ petition has been instituted.

Case of the respondents:

18. The respondents filed affidavit-in-opposition, as directed but the petitioner opted not to use any affidavit-in-reply.
19. The crux of the defence taken by the respondents is that the lands were utilized by the ECL for mining activity. After 31.12.1984, the policy decision was changed and acquisition of 2 acre of irrigated land or 3 acres of non-irrigated land was made *sine qua non* for coming into the zone of consideration for employment and as such, the policy of providing employment in 1: 1 ratio was no longer in existence w.e.f. 01.01.1985.
20. As per the prevalent policy of ECL, the ownership of land for 5 years before use was a mandatory requirement for an employment. The petitioner did not fulfil such criterion.
21. Though the petitioner no.1 was nominated by the land losers but he was not in linear relationship with the land owners. As the petitioner no. 1 was

not linear dependent of the land losers, he is not entitled to employment in ECL. The petitioner no. 1 is not family member of the land losers.

22. The plot of land of Mouza-Bazari was used by the ECL in the year 1984-85 and at that time, the petitioner no.1 was of 11 years only and the plot of land of Mouza- Haripur was used after the year 1996. Presently, the petitioner no. 1 wants employment for his wife but there is no such provision in any policy decision of the ECL.

Submissions:

23. Mr Banerjee, learned advocate appearing in support of the writ petition contended that this Hon'ble Court by its orders passed in W.P. no. 26708(W) of 2015 directed the petitioner to submit application detailing the facts and figures in terms of the policy prevailing at the time of acquisition and the respondents were directed to take decision in the light of the observations made in the orders but by issuing a cryptic order, the respondent no. 3 has negated the petitioner's claim.
24. He cited a decision, reported at (1998)2 Cal LJ 87 (The Calcutta Municipal Corpn. & Ors. vs. Paresh R. Kampani & Ors.) for the proposition that assignment of reason in the order is one of the limbs of principles of natural justice and an unreasoned order is a nullity.
25. He strenuously contended that such non-speaking order suggests that the respondents have no regard to the law of the land nor have they any intention to honour their own policy or circulars. He argued that the ECL being a State within the meaning of Article 12 of the Constitution of India has refused to provide employments to the land losers or their nominee or nominees in deliberate breach of their own assurance given to the land

owners at the time of acquisition of land. He sought to contend that though the respondents have offered employments to the identically situated candidates but the petitioner no. 1 was singled out for adverse treatment.

26. Referring to an unreported decision rendered in WPA no. 11252 of 2018 (Uday Goswami & Anr. vs. Eastern Coalfields Ltd. & Ors.), Mr. Banerjee contended that in a similar matter, a coordinate Bench of this Court has passed an order directing the respondents to offer employment.
27. Despite receipt of notice, the respondents remained unrepresented.

Analysis:

28. It is well-ingrained proposition of law that even in administrative matter, the reason should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. I may usefully refer to the decision, reported at (1990) 4 SCC 594 (S.N. Mukherjee v. Union of India), the Hon'ble Supreme Court observed that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reason as it is now regarded as one of the principles of natural justice.
29. The order or decision of a statutory or public authority must be informed with reason and such reason will clearly indicate how the mind of the decision-maker was activated and/or actuated. In an administrative order, there must be a rational nexus with the facts considered and the conclusion reached else the order would be a nullity and the action would be arbitrary.

30. In a decision, reported at AIR 1991 SC 537 (Kumari Shrilekha Vidyarthi v. State of Uttar Pradesh), the Hon'ble Supreme Court ruled that an administrative order lacking in reasoned justification is considered arbitrary. The rule of law contemplates governance by law and not by humour, whim or caprice of the men to whom the governance is entrusted for the time being. It is trite law that 'be you ever so high, the laws are above you.' That is what a man in power must remember always.
31. A coordinate Bench of this Court in its order passed in W.P. no. 27608 (W) of 2015 directed the petitioners to make an application to the respondents strictly in terms of the policy of the first respondent existing on the date of acquisition and the respondents were directed to take a decision in the matter strictly in accordance with the observations made in the order. The respondent no. 3 undertook the burden to take decision on behalf of the respondents and in the guise of compliance with that order, he communicated the decision using the words that '*there is no scope of giving any relief for providing employment in 1:1 ratio which was valid upto 31.1.2.1984*'. The manner in which the respondent no. 3 decided the issue resembles a feudal lord making decrees with a flick of his imperial hand. For this reason only, the decision can be nullified.
32. However, as this court has taken judicial notice of the stand taken by the respondents in affidavit-in-opposition, it would be apposite to deal with the same.
33. The combined examination of the decision taken by the respondent no. 3 and the respondents' affidavit suggests that the respondents are under the impression that their obligation to provide employment at a 1:1 ratio

ceased after 31.12.1984 but the rights accrued to the land losers prior December 31, 1984 cannot be denied and/or wiped out by retroactively applying the order that discontinued the scheme.

34. The eligibility criteria outlined in the prevailing policy can serve as a beacon light to resolve the issue. According to period/time of acquisition of the land, four types of eligibility criteria categorised as A,B,C & D (as reflected from Annexure-P/1 to the writ petition) were prescribed, which are as follows:

“A. For the land purchased/acquired/used between the periods from 03.09.1975 to 12.08.1983, for eligibility:-

- i. Minimum one acre of land is required for one employment and in case of more than 3 acres maximum 2 employments for a family. If any person is employed earlier under L.L. Scheme that should be taken into account for determining eligibility of employment;*
- ii. The land should belong to the same family;*
- iii. The nominee should be near relation and be dependent to the land loser. Upper age limit is 35 yrs., and should be physically fit on medical examination;*
- iv. All land losers must belong to the same family and the land should be in possession of the Company;*

B. For the land purchased/acquired/used between the periods from 13.08. 83 to 31.12.84.

- i. In addition to the norms mentioned in ‘A’ the land owners must have at least 5 yrs. ownership over the land.*

C. For the land purchased from 01.01.1985 and thereafter.

- i. For eligibility there must be at least minimum 2 acres of irrigated, 3 acres of non-irrigated land taken from a family, in case the nominee is Matriculate or above the Area of land*

required may be reduced to 2 acres for non-irrigated land also and should agree to be appointed as Trainee.

- ii. *The nominee, should be linear dependent of the land loser, of upper age limit 35 yrs., and medically fit.*
- iii. *As per practice the instant cases eligibility may be considered with ratio 2: 1 irrespective of class of land.*

D. In case where different class of land is acquired at different times the eligibility should be determined on the basis of the provisions applicable on the date of land purchased.

No female should be selected for employment. In case of unavailable circumstances female may be selected if she is found suitable and eligible and agreeable in writing for training as Nurse or Mid-wife.

In case of necessity if a person is required to be selected deviating any of the above norms, special sanction of the authority is to be taken.”

- 35. As such, a bare perusal of afore-mentioned eligibility criteria, it would be explicit that the entitlement of employment shall be considered in terms of the policy on vogue on the date of acquisition/purchase/use of the land and in respect of land or lands acquired/purchased/used during the period from 03.09.1975 to 12.08.1983, it is incumbent duty of the respondents to provide employment at a 1:1 ratio.
- 36. For the land purchased/acquired/used between the periods from 13.08.83 to 31.12.84, a further eligibility criterion to the effect that in addition to norms mentioned in ‘A’ the land owners must have at least 5 years ownership over the land is to be fulfilled whereas in respect of land

or lands purchased after 1.1.85, minimum 2 acres irrigated land or 3 acres of non-irrigated land was required to get an employment.

37. The respondents in their affidavit have taken a stand that the plot of land of Mouza-Bazari was used in the year 1984-85 whereas the plot of land of Mouza-Haripur was used after the year 1996. In the language of the policy, in respect of the criteria mentioned in category A and B, the words acquired/purchased/used were used leaving no scope of doubt that either the date of acquisition or the date of purchase or the date of use would be taken into account to determine the eligibility. In respect of categories C and D, the date of purchase would be the date for determination of eligibility.
38. Therefore, it is not clear as to how the respondents can consider only the date of use of the land. Though in the affidavit itself, the respondents admitted that the lands were acquired. The respondents have, in a convoluted manner, withheld the notifications/notices issued under Section 4 of the Act-II of 1948 in respect of those acquisition cases.
39. The respondents have only brought the notifications under Section 7 of the Act-II of 1948 whereby the awards were published in respect of L.A. Case no. 36R(D), 36R(C) & 36R(B) of 1981-82. Needless to state that in terms of the scheme of the Act-II of 1948, the State acquired the lands, which were requisitioned as per the provision of Section 3, by publishing a notice/notification under Section 4 of Act-II of 1948 and on the date of issue of notice under Section 4 the lands vested in the State. As such, it is to be construed that the date of issue of notice under Section 4 would be the date of acquisition.

40. Further stand taken by the respondents is that at the time of acquisition of the land, the petitioner no. 1 was minor and after attaining the age of majority, he submitted his application for employment and now, he has crossed the upper age limit and as such, the petitioner no. 1 is seeking employment for the petitioner no. 2 who is a woman and there is no provision for providing employment to the female candidate. The respondents took another stand that the petitioners are not linear dependent of the land losers.
41. Indisputably, the lower age limit has not been prescribed in the policy nor has any time limit been fixed to nominate. Even, the expression 'near relation' has not been defined in the policy. Nothing has been produced to demonstrate that a nephew was kept outside the definition of the expression 'near relation'. Needless to observe that delay caused by the respondents in taking decision cannot be attributed to the petitioners. In the policy, it was stated that in the event of a lack of male candidate, a female candidate can be considered for the post of nurse or mid-wife and such provision stands separate from the categories mentioned in the policy.
42. In case of Uday Goswami (*supra*), the respondents took similar stand. In that case also, at the time of acquisition of the land, Mr. Goswami happened to be a minor and with the passage of time, he also crossed the upper age limit and then, he approached the respondents to provide employment to his son. Taking these facts in consideration, this Court directed to provide employment to the nominee of Mr. Goswami. I do not find any justification to disagree with the decision rendered in Uday

Goswami's case (*supra*). No judgment and/or order has been produced to show that the decision rendered in case of Uday Goswami (*supra*) has been disapproved by any superior Court. In this judgment, it was noticed that the respondents have resorted to discriminatory practice.

43. It is well settled principle that the State and its functionaries must act strictly adhering to the statutes, settled principles of law and constitutional philosophy. In a democracy governed by the rule of law, no government or authority has a right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically.
44. The doctrine of equality, which is the soul of our Constitution, is a guarantee against arbitrary State action. It prevents the State from discriminating between individuals. Indisputably, the principle of equality of law means not that the same law should apply to everyone but that a law should deal alike with all in one class and there should be an equality of treatment under equal circumstances else the citizens of our country shall feel themselves cheated by the action of the State.
45. In view of the foregoing analysis, it is quite vivid and luminescent that the respondents have not come in clean hands and in deliberate breach of their assurance, as observed in W.P. no. 848 of 2008 to be nothing short of concrete promise to the land losers, the respondents have been denying to provide employment to the land losers or their nominees. Basically, the respondents are now attempting to retract from their initial position but we cannot afford to have our State or its functionaries to backtrack from their previous stance.

46. Now, the next question which will inevitably come is whether or not it would be apposite to relegate the issue again to the respondents who have taken a decision merely as a token compliance with the order dated 01.09.2017 passed in W.P. no. 26708(W) of 2015. In the judgment, reported at AIR 1988 SC 686 (K.I. Shephard vs. Union of India), the Hon'ble Supreme Court observed that it is common experience that once a decision has been taken in the administrative level, there is tendency to uphold it.

47. In the case at hand, this Court asked both the parties to mention the date or dates on which the lands were acquired to ascertain under which category, the eligibility of the petitioner no. 2 would be determined but ultimately, such documents have not been brought on record.

Order:

48. In such conspectus, the order and/or decision communicated under the cover letter dated 11/13. 01.2018 is quashed. The respondent no. 2 is hereby directed to find out the date of initial acquisition of the land or the lands and consider the case of employment of the petitioner no.2 strictly adhering to the terms of the policy prevailing on that date and in the light of the observations made hereinabove. If the claim of the petitioner no. 2 deserves acceptance, the respondent no. 2 shall ensure that necessary follow-up actions are taken promptly. If it is determined that providing employment is not feasible, he must explore alternative avenues to redress the grievances of the petitioners. If the entire issue is decided against the petitioners, the respondent no. 2 must deliver a reasoned decision and communicate it to the petitioners. The entire process must be completed

within a period of two months from the date of receipt of a copy of this order.

49. With these observations and order, the present writ petition is, thus, disposed of, however, without any order as to the costs.
50. Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.
51. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)