

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

BEFORE:

THE HON'BLE JUSTICE M. V. MURALIDARAN

W.P.A.No. 11252 of 2018
Uday Goswami & Anr.
Vs
Eastern Coalfields Ltd. & Ors.

Mr. Siddhartha Banerjee,
Mrs. S. Sinha,
Mrs. S. Laha,

----- for the Petitioners

Mr. Bijoy Kumar

--- for ECL

Hearing Concluded On :

07.02.2024

Judgment On :

21.02.2024

M. V. Muralidaran, J.

Heard Mr.Siddhartha Banerjee, learned counsel for the petitioner.
None appears for the respondents.

2. This writ petition is filed by the petitioners to quash the impugned order dated 12.1.2018 passed by the third respondent and to direct the respondents to forthwith appoint petitioner no.2 in a suitable permanent post in lieu of the acquisition of the plot of land.

3. Brief facts are as follows:-

The father of the petitioners and one Santosh Gowsami and Pradyut Gowsami were owners of the land measuring an extent of 1.08 acres comprised in Plot Nos. 908, 909, 927, 987/1331, 987/1332, 987/1333 situated at Mouzas - Bonogram and Gogla, Burdwan District. They are the joint owners of the said plot of land. In or about 1974-1975, the said plot of land was acquired for the purpose of expansion of coal-mining activities upon dispossessing the lawful owners therefrom. At the time of acquisition, the Resettlement and Rehabilitation Policy framed by the respondents was in vogue that one employment of land losers or their nominee or nominees per acre of land in addition to the market value of the land or compensation, as the case may be. Under the said Policy which was operative till 31.12.1984, a specific promise was held out representing and/or assuming, *inter alia*, that for each acre of land acquired, the land losers and/or their nominee would be entitled to one employment in a suitable post apart from and in addition to monetary

compensation. A format of application was given by the respondent authorities to be submitted seeking employment under the scheme framed for the land losers and such application was also submitted to the respondent authorities. However, the respondent authorities chose to sit over the matter and did not take any steps to offer employment in a suitable post under the scheme framed.

3.1. After having framed the Policy and after having caused the owners of the said plot of land to give up possession thereof, it was no more left open to the respondents to afford the luxury of not performing their part of obligations indicated in the said Policy and the respondents were duty bound and required to employ the second petitioner in a suitable post, as assured. On one plea or the other, the respondents chose to avoid such responsibility cast upon them and have caused hardships to the land losers and the members of the family.

3.2. A good number of land losers or persons similarly placed like the petitioners have been favoured with employment, but for the undisclosed reasons, the petitioners were picked up and chosen to suffer. When petitioner no.1 visited the concerned authorities, he was informed that the operation of the Policy for compensating the land losers had

been temporarily suspended. Being statutory authorities, the respondents were obliged fairly and not to treat anyone with discrimination.

3.3. From time to time, several committees were formed and none of such committees formed by the respondents ever could deny the entitlement of the petitioners to be offered an employment in a suitable post. Though several Circulars were issued in clear admission and acknowledgment of the entitlement of the land losers to employment in lieu of the acquisition of land, the respondents showed no inclination to follow such Circulars and, thus, committed a deliberate breach of assurances, on the basis whereof, the land losers had been caused to give up possession of their valuable land. The communication dated 3.9.1975 issued also constitutes a clear admission on the part of the respondents to provide employment. The existence of a uniform guideline for offering employment to the land losers and/or their nominee in connection with the acquisition of land for expansion of coal mining was admitted by a communication dated 17.3.1986 by the Director, Department of Coal, Ministry of Energy, Government of India.

3.4. On 04.7.2006, a meeting was conducted under the Chairmanship of Hon'ble Minister of Coal, which was attended by the Chief Managing Directors of the respective collieries, wherein a decision was taken to redress the grievances of those land losers who had not been provided with the employment. Pursuant to the meeting dated 4.7.2006, the Director (Personnel), Eastern Coalfields Limited, in a communication dated 16.8.2006, identified several cases, wherein the land losers had wrongly been denied their entitlement.

3.5. On 21.11.2007, a meeting was held, wherein a specific decision was taken to expedite the process of providing employment to the land losers in lieu of acquisition of the land. All such decisions taken by the authorities concerned to redress the grievance of the land losers not implemented and no positive measure was taken by the respondents to provide an employment to petitioner no.2 in a suitable post. On 6.3.2010, a committee was constituted for interacting with the representatives of the land losers and for examining the cases under the Policy. Even the said committee showed no interest in justifying its formation or in discharging its duties. The subsequent meeting held on 25.5.2010 is an eye-wash and the same is mere pretention without any bona fide intention to redress the grievances of the land losers.

3.6. On 26.3.2012, a further meeting was held wherein a decision was taken and an assurance was made to provide employment to the land losers who had been dispossessed of their lands. In the said meeting, a course of action was chalked out to immediately mitigate the hardships of the land losers, but like before, no inclination was shown to implement the decision taken in the said meeting. The respondent authorities never had any bona fide intention to redress the grievances of the land losers or to mitigate their hardships. The assurances to provide employment in lieu of acquisition of land were made only to somehow grab the lands belonging to such land losers and to make financial gain therefrom.

3.7. According to the petitioners, in or about 2008, as many as 60 displaced persons had approached this Court by filing W.P.No.848 of 2008 and the said writ petition was disposed of on 8.5.2009 observing, *inter alia*, that the respondents are expected to act in a rational and progressive manner. It was also held that the assurances made by the respondents were nothing short of a concrete promise to those persons, who had given their land and had thereby placed themselves in the category of the wretched on the earth. Ultimately a direction was issued

to prepare a scheme after proper interaction with the representatives of the petitioners in W.P.No.848 of 2008 for providing them employment or alternatively, to explore ways as to how best the grievances of the petitioners can be redressed.

3.8. The said order passed in the writ petition was carried in an appeal by the respondents and the same was dismissed by a Division Bench of this Court on 27.8.2009. Thereafter, a scheme was prepared by the respondents on 14.11.2009, *inter alia*, for providing employment to the petitioners in W.P.No.848 of 2008. Despite direction by the Courts from time to time to provide employments in lieu of acquisition of land, the respondents cannot treat the petitioners with hostile discrimination nor can deny the entitlement of the petitioners to be offered an appointment in a suitable post in lieu of acquisition of land.

3.9. The first petitioner had filed W.P.No.26820 of 2015 for issuance of a mandamus directing the respondents therein to forthwith appoint him in a suitable permanent post in lieu of acquisition of land. The said writ petition was taken up along with other writ petitions and, by the order dated 1.9.2017, all the writ petitions were disposed of, *inter alia*, directing the writ petitioners, including the first petitioner herein to make

an application to the respondents in terms of the Policy existing on the date of acquisition by 20.9.2017. In compliance with the direction, petitioner no.1 submitted a detailed representation to the respondent authorities on 28.10.2017, wherein the petitioner no.1 elaborately demonstrated the undisputable entitlement of his nominee to be provided with an employment in lieu of use and/or acquisition of land. Despite receipt of the said representation, the respondent authorities sat over the matter for a period of two and half months and, on 12.1.2018, the purported order was passed by respondent No.3 refusing to provide employment to petitioner no.2 on flimsy grounds. Challenging the same, the petitioners have filed the present writ petition.

4. On 13.9.2018, when the writ petition was taken up, this Court passed an order that the writ petition should be decided on affidavits and, accordingly, granted time to the respondents to file their affidavit-in-opposition within four weeks and, reply affidavit thereto, if any, by 12.11.2018 and directed the matter to be appeared for hearing in the combined monthly list of December, 2018. The order sheets reveal that no such affidavit-in-opposition is filed by the respondents till date.

5. Assailing the impugned order, the learned counsel for the petitioners submitted that respondent No.3 refused to take into consideration the relevant facts of the case and had proceeded on the basis of absolutely irrelevant and extraneous considerations. The sole plea sought to be taken in the impugned order to justify refusal to provide employment is absolutely flimsy and frivolous. While passing such order, the third respondent ought not to have turned a blind eye to the relevant Circulars and/or Notifications issued from time to time. Under the impugned order, the third respondent refused to provide employment to the second petitioner on a spacious plea.

6. The learned counsel for the petitioners would submit that the observation of the third respondent in the impugned order to justify refusal to provide employment to the second petitioner is that since the relevant plots of land had allegedly been acquired in 1994, the petitioners were not entitled to claim employment 1:1 ratio on the basis of Policy that was in vogue till 31.12.1984. According to the learned counsel, such plea taken in the impugned order is absolutely frivolous and not sustainable in the eye of law. Thus, a prayer has been made to set aside the impugned order.

7. Despite several opportunities granted to the respondents, none appeared on behalf of the respondents. Upon hearing the arguments of learned counsel for the petitioner, this Court reserved the matter for orders.

8. The dispute in the instant writ petition pertains to grant of appointment under the land loser scheme.

9. Earlier, the first petitioner had filed W.P.No.26820 of 2015 before this Court for issuance of a mandamus directing the respondents therein to appoint him in a suitable permanent post in lieu of the acquisition of land. The said writ petition was heard along with the other connected matters. By the order dated 1.9.2017, this Court disposed of the writ petitions. The operative portion of the order reads thus:

"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 any compensation 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."

10. Subsequent to the passing of the said order, the first petitioner has submitted an application/representation to the respondent authorities, wherein he has stated that he has attained the age of 52 years and therefore, he is nominating his brother Utpal Goswami (second petitioner herein), who is aged 34 years to be offered an employment in lieu of acquisition of the plot of land. It is also stated that his brother is unemployed and he is also over aged and, in such circumstances, the first petitioner requested to offer an employment to his son in a suitable post without any further delay.

11. On 12.1.2018, the third respondent passed the impugned order holding that there is no scope for giving any relief to the petitioners by providing employment in 1:1 ratio which existed up to 31.12.1984. While holding so, the third respondent observed as under:

"1. Sri Uday Goswami, the petitioner made an application for employment of his son named Shubham Goswami aged 23 years in 1:1 ratio as per directives of the Hon'ble

Calcutta High Court to the respondents, which is received to this office on 30.10.2017.

2. Petitioner's father Amit Goswami and his uncle Santosh Goswami & Pradyut Goswami were the owners of 1.06 acres of land being part of Plot no- 908, 909, 927, 987/1331, 987/1332, 987/1333 at Mouza Banogram & Gogla.

3. The said plot/land was used by the company from the year 1982.

4. The date of acquisition or registration of the said Plots in the year of 1994.

5. The date of birth of Sri Uday Goswami is 1.05.1971 as mentioned in the application.

6. Sri Santosh Goswami & Pradyut Goswami are uncles of Sri Uday Goswami, which means that linear relation does not exist for whole property.

7. When the land was used by the company, the age of Sri Uday Goswami, the petitioner was 11 years & as on date of application petitioner is above 35 years i.e. on 30.10.2017, which is against the eligibility criteria existing during material time.

8. At present the petitioner i.e. Uday Goswami nominated his brother Utpal Goswami, aged about 34 years for employment in 1:1 ratio.

9. Till 31.12.1984 which is the ultimate date of the scheme of 1:1 ratio the petitioner that is Uday Gosswami was minor.

10. The writ petition was filed by Sri Uday Goswami. Now he nominated Sri Utpal Goswami, his brother aged about 34 years was new born at the material time.

11. Hon'ble High Court has given cognizance of the letter dated 31.03.2006 of Ministry of Coal, which is reproduced below:

12. In the instant case, date of acquisition of 1.08 acres of land in the year 1995, when the policy of providing employment in 1:1 ratio no longer existed, and 2 acre of land is required for one employment with effect from 01.01.1995 as per new scheme.

1.Application of any policy with retrospective effect is not justifiable.

2.Issue of employment is a sensitive issue linked with the right to livelihood. The realizing of some employment in subsequent year by the management of few land looser on 1:1 basis and denying to some others is clear cut case of discrimination leading to discontentment.

3.Management is free to follow existing policy of 2000 in all the cases in which acquisition was made from the date the policy was made effective. However, past cases should be decided on the basis of policy in force on date of acquisition.

4.From the record it is observed that criterion of one employment for every 2 acres of land was made applicable for land acquisition made after 01.01.1985. But prior to December, 1984 cases should be settled on the basis of 1:1 norms against acquired land.

5.Management was accepted that they had released employment in exceptional circumstances, the exception are not governed by any rule or policy, but once made set procedure for subsequent exception. In the instant case ECL should have given employment to pending cases vide their Memo No.ECL: CMD:LRE:VK:1:1:1023 dated 1st November, 2005 as per pre-1984 norms and necessary action may be taken.

From the point no.3 of the same, it is implied that land may be used prior to 01.01.1985 and if not acquired up to 31.12.1984 when the policy of providing employment in 1:1 ratio existed will not to be taken into consideration under the policy.

Under the above circumstances and facts, there is no scope of giving any relief to the petitioner by providing employment in 1:1 ratio which existed up to 31.12.1984.”

12. The learned counsel for the petitioner submitted that the sole plea taken in the impugned order to justify the refusal to provide employment to the second petitioner is that since the relevant plot of land had allegedly been acquired in 1995, the petitioners were not entitled to claim employment in 1:1 ratio on the basis of the Policy that existed till 31.12.1984. According to learned counsel, such plea taken in the impugned order is unsustainable.

13. Under the Policy providing for employment in lieu of acquisition of land for expansion of coal mining, it was stipulated, leaving no scope for the slightest confusion, that in lieu of use of any land prior to 31.12.1984, the concerned land loser or his nominee would be entitled to be offered an employment in 1:1 ratio, meaning thereby for every acre of land used, the concerned land loser or his nominee would be entitled to one employment.

14. A perusal of Policy which was in force at the relevant point time would show that formal acquisition of land was not a sine qua non or a mandatory requirement for an employment. Rather, the land loser was

held to be entitled to claim employment only on mere use of land despite there being no formal acquisition or sale or transfer thereof. Such a vital aspect was completely ignored by the third respondent while passing the impugned order.

15. According to the learned counsel for the petitioner, it was not the date of formal acquisition of the relevant plots nor the date of registration of deeds of sale in favour of the respondent authorities, but the date of use of such plots that was relevant to assess the entitlement of a land loser to employment. This Court finds some force in the said submission made by the learned counsel for the petitioner.

16. The plot of land in question was admittedly used by the respondent authorities in the year 1982. By reason of such admitted position of fact, the entitlement of the first petitioner or of his nominee or nominees to employment in lieu of use of land was undisputable. The said aspect was also, however, lost sight of by the third respondent and the said authority had completely misdirected his mind and proceeded mechanically to pass the impugned order. That apart, to deprive the petitioners to employment in lieu of use of land for expansion of coal

mining activities, the third respondent placed an unnecessary reliance on the date of birth of the first petitioner.

17. The argument of learned counsel for the petitioners is that in order to be entitled to claim employment, it was not necessary either for the first petitioner or for his nominee to attain majority at the time of use of the relevant land. It is also the submission of learned counsel for the petitioner that the second petitioner is otherwise well within the age limit prescribed under the relevant guidelines and belongs to the same family. In such circumstances, there was no cogent or reasonable plea available to the third respondent to refuse to offer employment. The aforesaid submissions canvassed by the learned counsel for the petitioner merit consideration.

18. By the communication dated 31.3.2006 referred to in the impugned order, the Ministry of Coal had deprecated and discouraged the practice of discrimination. Under the said communication, the authority was rather directed to treat the land losers equally and not to discriminate them. The said communication clearly spelt that all the past cases should be decided on the basis of policy in force at the relevant point of time. Such clear terms in the communication dated 31.3.2016

ought not to have been misinterpreted by the third respondent in ignorance of the Policy. The third respondent should have appreciated that, under the Policy, formal acquisition of a plot was not a mandatory pre-requisite for an employment to be offered. The aforesaid aspects have not been clearly considered by the third respondent in the impugned order.

19. The third respondent, in fact, sought to give retrospective effect to a Policy which came into force on and from 1.1.1985 after the plots of land having already been utilized. Such an attempt made by the third respondent to give retrospective effect to the land loser Policy cannot stand the test of justifiability as per the communication dated 31.3.2006.

20. To disprove the plea raised in the writ petition by the petitioners, there is no assistance from the respondents' side, as none appeared for the respondents when the matter was called twice on 07.02.2024. In the instant case, as stated supra, despite opportunity being given, no affidavit-in-opposition is filed by the respondents. In the absence of any rebuttal to the averments made in the writ petition, there is no option but to presume that the claim made by the petitioners

appears to be bona fide, as the petitioners have *prima facie* established their claim by way of supporting documents.

21. The argument of learned counsel for the petitioners is that after having acquired the plot of land in question for expansion of coal mining activities on a specific assurance to provide employment in addition to payment of market value of the land, it was no more left open to the respondent authorities to deviate from or commit a breach of such assurance made. This Court finds heavy force in the said submission made by the learned counsel for the petitioners. In fact, the Policy framed by the respondents themselves which was in force at the relevant of point specifically provides for an employment in lieu of every acre of land acquired. Such employment was assured to be provided not in substitution of monetary compensation, but in addition thereto. Therefore, the land loser or the family members of the land loser or nominee of the land loser are to be provided with an employment.

22. By reason of acquisition of the plot of land, the land owners have lost not only the property in question, but also their source of livelihood. As rightly argued by learned counsel for the petitioners, payment of monetary compensation can at best compensate the land

losers in so far as the market value of the land is concerned, but cannot make an alternative arrangement to ensure two square meals a day for the members of the families of the land losers. To ensure survival of the land losers, it is all the more necessary that the promise made by the respondent authorities to provide employment to the land losers is fulfilled.

23. On a perusal of the impugned order, before passing the same, the petitioner Uday Gowswami has not been heard by the third respondent and, therefore, the proceedings are hit by violation of principles of natural justice. On that score also, the impugned order is not sustainable in the eye of law. Therefore, this is a fit case for directing the respondent to provide employment to the 2nd petitioner without any further delay.

24. In the result,

(i) The writ petitioner is allowed.

(ii) Impugned order dated 12.01.2018 passed by the respondents is set aside.

(iii) The respondents are directed to appoint the petitioner no. 2 in a suitable permanent post in lieu of acquisition of the petitioner's land.

(iv) The said exercise shall be done within a period of eight weeks from the date of receipt of this order.

(M.V. Muralidaran, J.)