



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

WRIT PETITION NO.7047 OF 2019

PETITIONERS : 1 Shri Dilip Pandurang Bipte, (Dead)
thr LR's
Aged about 57 Years, Occ.-Service
LR's of petitioner No.1 (1-a & 1-b) is brought on record vide Court's order dated 06.04.2023.

- 1-a Sandip S/o Dilip Bipte,
Age 37 Years, Occ. Service
- 1-b Muktabai W/o Dilip Bipte,
Aged about 62 years, Occu.
Housewife

Both R/o. Gurudeo Nagar, Near
Matte Collage, Kosara, Dist. & Tah.
Chandrapur.

- 2 Sujit Dilip Bipte,
Aged about 28 years, Occ.- Nil

Both R/o Matte Colony, At Post
Podoli, Tah. & Dist.- Chandrapur.

..VERSUS..

- RESPONDENTS** : 1 Western Coalfields Limited, through
Chairman cum Managing Director,
Coal Estate, Civil Lines, Nagpur.
- 2 The Chief General Manager, Western
Coalfields Ltd., Majri area Post
Kuchana, Tah. Bhadravati, Dist.
Chandrapur.
- 3 Area Planning Officer, Western
Coalfields Ltd Majri Area, Post
Kuchana, Tah. Bhadravati, Dist.
Chandrapur.

Mr P. D. Meghe, Advocate for Petitioners.

Mr C. S. Kaptan, Senior Advocate with Mr R. H. Chandurkar, Advocate for Respondent
Nos.1 to 3.

CORAM : VINAY JOSHI AND M. W. CHANDWANI, JJ.

DATE : 26th JULY, 2024.

ORAL JUDGMENT : (PER : VINAY JOSHI, J.)

. Rule. Rule made returnable forthwith. Heard finally
with consent of both the learned counsels.

2. Petitioner No.1 Dilip Pandurang Bipte (deceased) was
the owner of land admeasuring 1.05 HR in survey No.79,
whilst his father Pandurang Bipte was the owner of land
admeasuring 0.42 HR in survey No.23 situated at Mouza –
Kunada, Tahasil Bhadrawati, District Chandrapur. The said
land was acquired for WCL Project for which, Notification
under Section 9(i) of the Coal Bearing Areas (Acquisition and
Development) Act, 1957 (For short, “the Act of 1957”), has
been issued in the year 2004. The WCL found that the project
was not viable, hence, instead of offering employment, they
have granted compensation to the land losers. Some of the land

losers came to know that the employment was given to other similarly situated persons, hence they have approached to this Court in Writ Petition No.3583 of 2012 seeking employment, in terms of Policy framed by WCL in the year 2000. In said petition, this Court held that the act of respondent/Company (WCL) in denying employment to the then petitioners would be violative to the Article 14 of the Constitution of India and accordingly, directed WCL to provide an employment to the then petitioners. The said order was with a rider that the then petitioners shall redeposit the compensation with interest @ 9% per annum. The order passed in said petition reads as below :

“1) The impugned/communication order is quashed and set aside.

2) The respondent/Company is directed to provide employment to the petitioners in pursuance with Resettlement and Rehabilitation policy of respondent as per eligibility of the petitioners and their nominees. Same shall be done within a period of one month from today.

3) On receipt of appointment orders, the petitioners shall refund the amount along with interest @ 9% p.a to the respondents within a period of one month from the date of receipt of appointment order.”

3. The petitioner No.1, who did not approach to this Court earlier, had come across the said decision and thus, he has

applied on 01.11.2016 to respondent Nos.1 and 2 for grant of employment by clubbing two pieces of land i.e. land of petitioner No.1 Dilip and his father Pandurang, which would come to the extent of 3.63 acres. Undisputedly, as per R and R Policy of 2000, the minimum holding shall be 3 acres and thus, to meet the said criteria, petitioner No.1 Dilip had applied for grant of employment by clubbing both the lands so also he has filed consent of other legal heirs of his father in support of his claim. Since petitioner No.1 did not receive any reply, he has issued a legal notice dated 28.02.2019 reiterating his claim for grant of employment to his son. In the meantime, some other land losers from the same project have approached to this Court in Writ Petition No.59 of 2017 seeking employment by way of clubbing two separate holdings. This Court by permitting the clubbing of two holdings has directed respondents to provide employment to the then petitioners, in terms of the Policy of 2000.

4. It is petitioner's contention that though he has applied in the year 2016 and issued a legal notice in the year

2019, there was no response from respondents, hence, in the year 2019 itself, he has approached writ jurisdiction of this Court seeking necessary directions.

5. The prime contention is that initially respondent/Company as per its Policy declined to grant employment to everyone by way of paying compensation and thus, there was no reason for petitioner No.1 to apply for employment in proximity. Secondly, it is contended that this Court, in Writ Petition No.3583 of 2012 after noticing the grant of employment in the same project to some land losers, has directed the respondents to provide an employment. Therefore, grant of employment to petitioner would be inconsonance with the constitutional right of equality. Further, it is contended that the issue of clubbing of two lands for considering employment has also been dealt by this Court in Writ Petition No.59 of 2017 that too in respect of same project whereby directed to club the lands and provide the employment. In substance, it is petitioners' contention that in view of these two decisions, they are entitled for employment as

per R and R Policy.

6. The respondents have resisted the petition firstly on the ground of inordinate delay. It has been submitted that Notification under Section 9 of the Act of 1957 was issued in 2004 and compensation was paid. Secondly, though this Court in the year 2012 has directed the respondents to provide employment to some similarly situated persons, however, from 2012 till 2019, there was total inaction meaning thereby the petitioners were slept over their rights. In the circumstances, it has been contended that the petitioners urge after a prolonged delay cannot be entertained. To substantiate the said contention, learned Senior counsel Shri Kaptan appearing for WCL have relied on the decision of the Hon'ble Supreme Court in the case of Chairman/Managing Director and Ors. vs. Ram Gopal, (2021) 13 SCC 225, with special emphasis on the observations made in para 11, which reads as below:

“11. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and the writ courts naturally ought to be reluctant in

exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In S. S. Balu v. State of Kerala, (2009) 2 SCC 479, this Court observed thus :

17. It is also well-settled principle of law that “delay defeats equity”.... It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.”

7. On the same line, further reliance is placed on the decision of the Hon’ble Supreme Court in the case of **Mrinmoy Maity vs. Chhanda Koley and Ors., 2024 SCC OnLine SC 551.**

Our attention has been specifically invited to para 9 of the decision, which reads as below :

“9. Having heard rival contentions raised and on perusal of the fact obtained in the present case, we are of the considered view that writ petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay and laches itself. An applicant who approaches the court belatedly or in other words his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed

the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.”

8. In sum and substance, it has been expressed by the Hon'ble Supreme Court that though the period of limitation does not strictly apply to the writ jurisdiction of this Court, however, such right cannot be enforced after an unreasonable lapse of time. The writ court shall not exercise the jurisdiction after several years for persons, who have slept over their rights. Certainly, the law would help the vigilant and not the persons, who have carelessly neglected or remained silent for years together. The principle that delay defeats equity is well cherished, however, it is a matter of fact to be decided on case to case basis whether there happens to be inordinate delay in invoking writ jurisdiction of this Court.

9. Undisputedly, petitioner and other similarly situated land losers were initially given impression that the project is not viable and thus in lieu of employment, compensation was given. This Court, in Writ Petition No.3583 of 2012, adjudicated the urge of similarly situated persons for grant of employment *vide*

judgment and order dated 18.12.2012. The issue for consideration is whether the time gap from 18.12.2012 till the date of filing of this petition i.e. 30.09.2019 can be construed as an inordinate unexplained delay to oust the petitioners from knocking the doors of writ court.

10. The petitioners' learned counsel would submit that there is no deliberate delay on the part of the petitioners since time and again they have approached to the Authority for grant of employment, but it was not respondents. The petitioners' learned counsel relied on the decision of this Court in the case of Smt Vimal W/o Anandrao Matte and Ors. vs. Western Coal Fields Ltd. and Ors., (Writ Petition No.2573 of 2021 decided on 27.10.2023) to contend that considering the steps taken by the land losers and the stand of WCL, the delay would not defeat the rights of the land losers. Apart from that after decision in Writ Petition No.3583 of 2012, the first step taken by petitioners is in the shape of applying to respondent WCL by filing representation dated 01.11.2016. The said communication was in response to the letter of respondent Board dated

09.11.2015 calling the willingness of eligible persons for the employment. Communication dated 09.11.2015 assumes significance since it was a Policy adopted by WCL in consonance with decision of this Court in Writ Petition No.3583 of 2012. After said decision, WCL has invited applications of other eligible land losers for opting either for employment or for compensation. Since petitioner No.1 did not meet the Policy criteria of holding 3 acres of land, it was not communicated to petitioner No.1. However, as the WCL in the month of November - 2015 has taken a decision to provide the employment, petitioner No.1 made a representation on 01.11.2016 for according the same benefit. Since there was no response, it was followed by a legal notice dated 28.02.2019 and then within six months, petition is filed.

11. In the circumstances, by no stretch of imagination we can say that there was inordinate delay on the part of the petitioners to non-suit them, who have already lost their land. It requires to be noted that in the month of November - 2015, WCL took a decision to provide an employment as per decision

rendered by this Court in Writ Petition No.3583 of 2012 and then from within one year, petitioner No.1 has made a representation to avail the benefit. It reveals that petitioners were vigilant about their rights, hence respondents submission on the aspect of delay is unacceptable.

12. The second ground for resistance is that the Policy of the year 2000 does not permit to provide an employment to land losers, whose land is less than 3 acres of area. There is no dispute that at relevant time, Policy of the year 2000 was prevailing, which has condition of minimum holding of 3 acres of area. In this regard, the petitioners relied on the decision of this Court rendered in Writ Petition No.59 of 2017 dated 09.10.2018, wherein the said contention of respondent WCL has been repealed. It is not in dispute that the said petition equally pertains to the same project. Para 6 of the said decision conveys that some other similarly situated persons have availed the benefit of clubbing of lands, which perhaps swayed this Court to accede the submissions of petitioners in clubbing of the lands. Be that as it may, this Court has permitted to club the

lands. Respondents' learned Senior counsel would submit that though SLP filed against said decision was dismissed, however, the Hon'ble Supreme Court has clarified that this will not be treated as a precedent. The fact remains that the view taken by this Court has not been disturbed by the Hon'ble Supreme Court. It emerges that the land losers of same project have been permitted to club the lands, which was followed by this Court. We see no reason to deviate from the view taken by this Court in Writ Petition No.59 of 2017. Inasmuch as, we are inclined to add that the new Policy of the year 2012 has extinguish the rider of minimum holding and now, as per availability of employment, chronologically employment would be provided to the eligible land losers irrespective of their holding. Thus, in our view, the clubbing of two lands of the same family by consent of all family members would be rational and logical one.

13. In the light of above discussion, we hold that the petitioners are entitled for employment on account of acquisition of two pieces of land bearing survey Nos.79 and 23

on the same terms and conditions as incorporated by this Court in Writ Petition No.3583 of 2012.

14. The learned Senior counsel for respondents by way of additional affidavit would submit that the said project was closed and become non-operative on 20.07.2018. The employees have been shifted to other projects of WCL. We have no hesitation to adopt the same course by directing WCL to similarly accommodate the petitioner No.2 in another project. The additional affidavit tendered across the bar is taken on record.

15. In view of above by allowing the petition, we direct respondent/Company to provide an employment to the petitioner No.2 in pursuance of R and R Policy within three months from today.

16. On receipt of appointment order, the petitioner No.2 shall refund the compensation amount alongwith interest @ 9% per annum to the respondent/Company within a period of one month from the date of receipt of appointment order.

17. Respondent/Company shall accommodate petitioner No.2 in any other project. The petitioner No.2 shall submit all necessary documents before the respondent/Company within one month from today.

18. Rule is made absolute in above terms.

(M. W. CHANDWANI, J.)

(VINAY JOSHI, J.)

TAMBE