



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

WRIT PETITION NO. 7026/2023

1. Prashant Dhanraj Bode,
Age 28 yrs., Occ. Nil,
2. Pawan Chaitram Bode,
Age 20 yrs., Occ. Nil,

Both R/o. Kotodi, Tah. Saoner,
Dist. Nagpur.

...PETITIONERS

VERSUS

1. Western Coal Fields Limited
through its Chairman and Managing
Director, Having its office at Seminary
Hill Road, Nagpur
**(Amended as per Registrar's order
dated 08.04.2024)**
2. Area General Manager, Nagpur
area, Western Coal Fields Ltd.,
Nagpur, having its office at Jaripatka,
Nagpur.
3. Sub Area Manager, Saoner Sub-area,
Nagpur Area, Western Coal Fields Ltd.,
Nagpur.
4. The Collector, Nagpur,
Ravindra Nath Tagore Marg,
Civil Lines, Nagpur-440001.

....RESPONDENTS

Mr. Rajnish Vyas, Advocate for petitioners.
Mr. C.S. Samudra, Advocate for respondent Nos. 1 to 3.
Ms. T.H. Khan, Assistant Government Pleader for respondent No.4

CORAM : VINAY JOSHI AND
SMT. M. S. JAWALKAR, JJ..

JUDGMENT RESERVED ON : 18.06.2024
JUDGMENT PRONOUNCED ON : 28.06.2024

JUDGMENT : (VINAY JOSHI, J.)

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.

2. The petitioners have challenged the impugned communication dated 10.09.2020, by which respondent No.3, Sub-area Manager, Saoner Sub-area, Wester Coal Fields Ltd. (WCL), Nagpur has declined to grant two employments on account of acquisition of land by the WCL. Rather the respondent vide impugned communication, expressed that only one employment can be provided on account of land acquisition of two different units of the land. The said decision was not approvable to the

petitioners, hence for seeking necessary direction, the writ has been sought.

3. A piece of land bearing Survey No. 5 admeasuring 0.81 HR and Survey No. 233 admeasuring 0.71 HR was owned by the petitioners' grandfather Dayanand Bode. Likewise land bearing Survey Ho. 3/2, admeasuring 0.80 HR situated in Mouza – Kotodi, Tahsil Saoner was owned by the petitioners' grandmother Shengabai Bode. Both the lands were acquired by the respondent for its Adasa Underground Mining Project by issuing Section 9 Notification dated 10.07.2014 under the provisions of Coal Bearing Area (Acquisition & Development) Act, 1957 ('the Act of 1957'). In pursuance of publication of notification under Section 9(i) of the Act of 1957, all rights, interest, title in the said land has been vested in the Central Government.

4. It is petitioners' contention that at the time of publication of Notification under Section 9 of the Act of 1957, the land Survey No. 5 and Survey No. 233 were owned by their grandfather Dayaram who died latter on 25.12.2018. As regards to the land owned by Dayaram, award was passed by the Special Tribunal

constituted under Section 14(2) of the Act of 1957. Likewise for acquisition of land Survey No. 3/2 owned by Shengabai, by virtue of agreement entered by the legal heirs of Shengabai, compensation was disbursed to them as Shengabai died much earlier in the year 2005.

5. It is petitioners' contention that land bearing Survey Nos. 5 and 233 was self-acquired property of Dayaram, as well as land bearing Survey No. 3/2 was also self-acquired property of Shengabai which were two separate units. According to the petitioners, they are entitled for two employments as per R&R Policy 2012 on account of acquisition of two separate units, but it was declined.

6. Respondent WCL resisted the claim by filing reply-affidavit. So far as the separate ownership of Dayaram pertaining to land Survey Nos. 5 and 233 is concerned, it is not denied. Likewise, separate ownership of Shengabai pertaining to Survey No.3/2 was also not denied. It is respondents' stand that on the date of Section 9 Notification of the Act of 1957 (dated 10.07.2014), land bearing Survey No. 3/2 originally owned by

Shengabai stands in the name of her five sons as Shengabai died much earlier in the year 2005. It is contended that though Dayaram died in the year 2018 i.e. after Section 9 Notification the ownership of Survey Nos. 5 and 233 vests in his legal heirs who are also the legal heirs of Shengabai. In other words, Shengabai was survived by five sons namely Nemaji, Hemraj, Dhanraj, Sitaram and Chaitram whose names were recorded to the land of Shengabai on the of cut-off date of Section 9 Notification. It is respondents' contention that after demise of Dayaram in the year 2018, the ownership of Survey Nos. 5 and 233 vests in the same legal heirs of Shengabai. In the result, there was a common ownership of five sons of Dayaram as well as Shengabai of both units i.e. Survey Nos. 5 and 233 of Dayaram and Survey No. 3/2 of Shengabai.

7. It is the respondents' stand that due to common ownership of both units it is to be treated as singular holding of all three surveys and therefore, they are entitled for only one employment. It is contended that while passing award relating to the land owned by Dayaram though Tribunal directed to provide employment, however the said order is without jurisdiction. With

this contention, the respondents have justified the impugned order by which the petitioners were directed to nominate only one name against the acquisition of land consisting of all three Survey numbers.

8. The learned counsel appearing for petitioners would submit that Dayaram was separately holding land bearing Survey Nos. 5 and 233 which was his self-acquired property. Likewise, Survey No. 3/2 was self-acquired property of Shengabai. It is contended that both were separate units, therefore subsequent event of vesting of land in the same legal heirs, would not deprive them from claiming two employments. Position which stands on the date of issuance of Section 9 Notification (dated 10.07.2014) is a decisive factor. On said cut-off date, Dayaram was alive and thus, there were two separate units i.e. one unit of Dayaram and other unit of legal heirs of Shengabai. Though Dayaram died latter in effect same legal heirs acquiring ownership of both lands, it is inconsequential, therefore, impugned communication is unsustainable.

9. To narrow down the controversy, it is essential to set out some admitted fact. Dayaram separately owns Survey Nos. 5 and 233 whilst Shengabai separately owns land Survey No.3/2. Both lands were simultaneously acquired by the WCL for Underground Mining Project. Admittedly, preliminary Notification under Section 4(i) of the Act of 1957 was issued on 09.07.2011, whilst Section 9 Notification vesting the land in the Government was issued on 10.07.2014. Undisputedly Shengabai died long back on 16.05.2005 and on the date of Section 9 Notification, the land was owned by her five sons. It is not in dispute that on the date of Section 9 Notification, grandfather Dayaram was alive who later on died on 25.12.2018. It is also not in dispute that after demise of Dayaram, his land was vested in his five sons by way of succession. A Special Tribunal constituted under Section 14(2) of the Act 1957 has passed award on 28.10.2021, by which directed to pay compensation amount to all five sons equally. Likewise, by way of agreement, compensation for the land owned by Shengabai was determined in favour of the legal heirs of Shengabai. The petitioners who are grandson of both Dayaram and Shengabai

applied for two separate employment with consent of other legal heirs on account of two separate holdings which has been declined.

10. In above scenario, a short question involves, whether the petitioners are entitled for two separate employment or due to vesting of both units to the same set of legal heirs, they are eligible for only one employment by holding it to be one unit. The learned counsel appearing for respondents relying on the decision of this Court in case of **Ranjana Madhaorao Thaware Vs. Madhaorao Mahadeo Thaware & ors.** (First Appeal No. 524/2021 decided on 03.07.2023) would submit that the Tribunal while passing award relating to land of Dayaram though directed one employment for said land, however the said order was without jurisdiction. In-fact, the said ground for claiming separate employment was not canvassed by the petitioners, hence we need not delve upon the said issue.

11. The learned counsel appearing for respondent in resistance relied on several decisions of this Court to contend that in case of joint ownership, the parties are entitled for only one employment. In this regard, first reliance is on the decision of this

Court in case of **Area GM, WCL Vs. Surekha B. Medhule & anr**, (Writ Petition No.5449/2019 decided on 07.08.2019). In said case, the issue was about the claim of monetary compensation. This Court has merely clarified that a party cannot take advantage of the order of the Special Tribunal to claim employment which shall be decided as per the policy. Then reliance is placed on the decision of this Court in case of **Dinkar Ragho Pidurkar & ors. Vs. Western Coalfields Ltd., & ors**, (Writ Petition No. 1672/2014 decided On 30.01.2015) which does not apply to the facts of this case. It was a case of joint ownership of two survey numbers on the date of Notification. In said context, it has been held that they are entitled for one employment only.

12. Further reliance is placed on the decision of this Court in case of **Shri Nilkanth s/o Namdeo Mandavkar Vs. Union of India & ors**. (Writ petition No. 4253/2022 decided on 18.01.2023). In the said case, the facts are such that after issuance of Notification under Section 9(i), partition took place among the brothers which has bifurcated the land. However, on the date of Notification, the land was jointly owned and, in the said context, it is observed that

change in ownership of the land after vesting on Notification under Section 9(i) of the Act of 1957 is of no consequence.

13. Though the respondents relied on the decisions of this Court in cases of **Mr. Dhanraj Anandraoji Panchbudhe & ors. Vs. Coal India Limitd & anr.** (Writ Petition No. 7235/2018, decided on 11.03.2021) and **Rama s/o Vithoba Bipte & anr. Vs. Wester Coal Fields Limited & ors.** (Writ Petition No. 1373/2017, decided on 03.05.2019), the issue was regarding eligibility criteria on account of joint residence and dependency, hence these decisions would not assist the respondents. The last cited decision of this Court in case of **Sunanda wd/o. Shamrao Badki & anr. Vs. Chief Managing Director, Western Coal Fields Ltd. Nagpur & ors.** (Writ Petition No. 735/2022 decided on 12.04.2023) is also on different issue which would not apply.

14. Reverting to the facts of this case, there is no dispute that the relevant date for considering for seeking employment under the uniform guidelines is the date of the acquisition and particularly the date on which the notification under Section 9(i) of the Act of 1957 has been issued resulting into vesting of the land.

It is not in dispute that Section 9 Notification was issued on the 10.07.2014. The position on the said date was that Dayaram owner of land Survey Nos. 5 and 233 was alive and thus it being separate unit Dayaram was entitled for one employment. On the other hand, on the date of Notification, Shengabai was not alive and thus, her five legal heirs were entitled for one employment on account of acquisition of separate land of Shengabai. The said position was not denied by the respondents as it is evident from the impugned communication itself. In said communication, it has been stated that at the time of Section 9 Notification as per Revenue Record and R&R Policy, eligibility list for employment was prepared, wherein both units were held separately for giving two employments.

15. The controversy arose after death of Dayaram in the year 2018, as after his demise the legal heirs of Shengabai also become owner of land of Dayaram by way of succession and thus, according to the respondents now it is one unit. The said proposition cannot be accepted for the very reason that the decisive date for determining the rights is date of Notification which is 10.07.2014. Admittedly, on the date of Section 9 Notification one

unit was owned by Dayaram making him entitled for one employment and another unit of Shengabai was owned by her five sons enabling them to get one employment. Merely because due to death of Dayaram, the property was vested in the common heirs the right vested in Dayaram on the date of Notification cannot be taken away. We may reiterate that we have to give salutary effect to the date of Notification and the position stands on that date. The respondents cannot take disadvantage of the death Dayaram. Had it been the fact that Dayaram survived for few more years then there was no difficulty for respondents in giving two employment as admittedly there were two separate units. Therefore, the reason accorded by respondents for denying two employments would not sustain.

16. So far as the other criteria of eligibility are concerned, the respondents have not disputed the same. The impugned communication discloses that denial of two employments was only for the reason of vesting two units into same ownership after demise Dayaram in the year 2018. We have already held above that the said reason is unsustainable.

17. In view of above, petition is allowed. We hereby quash and set aside the impugned communication dated 10.09.2020 denying two employments to the petitioners. We hold that the petitioners are entitled for two separate employments on account of acquisition of land (two units) initially owned by Dayaram and Shengabai subject to fulfilment of rest of the policy conditions.

18. Petition stands disposed of in above terms.

(SMT. M. S. JAWALKAR,, J.)

(VINAY JOSHI, J.)