
(2011) 07 OHC CK 0021

In the Orissa High Court

Case No : Writ Petition (C) No. 4388 of 2004

Augustine Kujur and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 3
Constitution of India, 1950 — Article 226, 32

Citation : (2011) 07 OHC CK 0021

Hon'ble Judges : V. Gopala Gowda, C.J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

B.N. Mahapatra, J.—This writ petition has been filed with a prayer for issuance of a writ in the nature of mandamus or any other appropriate writ(s), order(s), direction(s) to the opposite parties to hold a judicial enquiry or any other enquiry to find out whether the benefits of displacement are provided to the actual displaced persons or to the strangers within a time to be stipulated and for a further direction to the opposite parties to provide the benefit of displacement to the displaced persons as per the list prepared in the year 1979 and 1981 by the District Administration.

2. The Petitioners' case in a nutshell is that they have been displaced due to the construction of Mandira Dam Project in order to cater the need of water of Rourkela Steel Plant (for short, "RSP"). To provide benefit of displacement to the actually land affected persons, the District Administration conducted enquiry in the year 1979 and 1981. In the enquiry conducted by the District Administration, a list of 453 persons was prepared in the year 1979 and another list of 1327 persons was prepared in the year 1981. These two lists of the affected persons were supplied to the RSP with a copy to the Collector, Sundargarh and other subordinate officers. Without following the said lists, the benefits have been given to the persons whose names do not find place in the said list and who are not affected by the construction of Mandira Dam. Hence, the present writ petition.

3. Mr. U.K. Samal, learned Counsel appearing for the Petitioners submits that in order to cater the need of water of RSP the Mandira Dam project was constructed in the year 1959. The Land Acquisition Officer had acquired the land of different villages for construction of the Dam. The entire village of the Petitioners, namely, Samalai Munda has been acquired for the purpose of Mandira Dam but the benefit declared by RSP was not given to the actually displaced persons. To illustrate the learned Counsel drew our attention towards appointments given to the displaced persons under Sabik Khata Nos. 16 and 61. It was submitted that one Jhalu Oram was the owner of Sabik Khata No. 16 of Mouza Samaleimunda and his land was acquired for construction of Mandira Dam project. His successors are waiting for the benefit of employment in RSP. But one Krishna Badaik who is in no way connected with said Jhalu Oram in connivance with the opposite parties has managed to get employment as successor of Jhalu Oram. Petitioner No. 28 is the successor of Late Jhalu Oram. Similarly, Petitioner No. 2 is the successor of one Laikhan Kissan, who was the recorded owner of Sabik Khata No. 61. The said land was acquired for construction of Mandira Dam Project. One Nuas Kissan, S/o. Kalia Kissan claiming to be the successor-in-interest of Laikhan Kissan has got the employment. The said Nuas Kissan has changed his name to Sylbanus Kissan, S/o. Kede Siles and has got the benefit as against Khata No. 61 of Mouza: Samaleimunda though he is in no way related to the family of Laikhan Kissan. There are so many instances of third type of cases where the actual displaced persons are unable to maintain their livelihood but the strangers are enjoying the benefit of displaced persons with the active assistance of opposite party Nos. 3 to 7. Therefore, the displaced persons approached the State Government and RSP authorities to prepare a list of displaced persons and to provide the benefits to them.

4. Accordingly, the District Administration caused an enquiry and prepared two separate lists, the first of such list was prepared in the year 1979 where the names of 453 persons of different villages were mentioned and the second list was prepared in the year 1981 with the names of 1327 displaced persons of displaced villages. The said list was prepared and finalized with the supervision of the Collector, Sundargarh and Additional District Magistrate, Rourkela. The Officers of the RSP were also present during the course of enquiry. The copy of the said list was duly communicated to the RSP for their information and necessary action. While preparing the said list, name of one person was mentioned against each displaced family. As per the said list, the Tahasildar had issued displaced certificate in favour of one person out of one family although in one family there were more than one male members available for employment. The names found place in the said lists prepared by opposite parties have been ignored and benefits have been given to the persons, who have not been identified in the enquiry and are out of list prepared by the opposite parties. Though the displaced persons have appraised this fact to the opposite parties, they are not taking any action.

5. Mr. Samal emphatically argued that the displaced persons are unable to

maintain their livelihood as they are homeless and their landed properties have been submerged due to the construction of Mandira Dam. This issue having a great public importance regarding the benefit of scheduled tribe inhabitants of the locality and the opposite parties are refusing to hold any enquiry in order to provide justice to the actual displaced persons, necessary direction be issued to hold a judicial enquiry to provide justice to the persons who have been displaced due to the construction of Mandira Dam.

6. Learned Government Advocate appearing on behalf of the State submitted that the writ petition is liable to be dismissed on the ground of delay and laches. Referring to the affidavit filed by opposite party No. 2 it was submitted that pursuant to this Court's order dated 03.08.2010, the Commissioner-cum-Secretary, Revenue Department issued instructions to trace out the list directed to be produced before this Court. Effective and diligent efforts have been made at Collectorate, Sundargarh, and in the Additional District Magistrate's Office at Rourkela to trace out the relevant records. Searches were also made in Revenue and Disaster Management Department of Secretariat. Despite best efforts, the lists of displaced persons prepared on the basis of the joint verification by the District Administration and RSP in the year 1979 and 1981 could not be traced out. Records containing lands of displaced persons on account of construction of Mandira Dam, sponsored by the District Administration, Sundargarh to RSP from time to time numbering 453 for employment have been found from the Record-Room of Collectorate, Sundargarh. Due to non-cooperation of the villagers, information as to whether the ancestors of the Petitioners have lost their lands for the aforementioned project and any of their family members could not be given employment as the names of persons who had lost their lands could not be ascertained.

7. It was further argued that on verification of record with reference to averments made in the writ petition, it was found that out of 37 Petitioners, Petitioners bearing serial Nos. 34, 26 and 23 who have mentioned their acquired Khata numbers as 12, 15 and 54 respectively are found un-acquired Khata as per compensation register. The Petitioner Nos. 3 and 5 have used the same Khata bearing No. 64 which is a mere repetition hence one person should be counted. Against 33 acquired Khata, 54 persons have been employed as per the list submitted by RSP, SAIL. List prepared on the basis of the joint verification made by the District Administration, Rourkela and RSP during the year 1992-93 containing names of 1098 land displaced persons eligible for employment under RSP was filed.

8. The opposite party No. 3-Collector, Sundargarh and opposite party No. 6-Land Acquisition Officer, Sundargarh in their counter affidavit stated that the lists prepared during the year 1979 and 1981 comprising the names of 453 and 1327 persons respectively under the signature of District Administration are neither available in the Office of the Additional District Magistrate, Rourkela nor in the Office of the Land Acquisition Officer, Sundargarh. However, as per T.N. Singh

Formula in the year 1993 a list of un-provided families with Khata numbers and village has been prepared comprising of 851 displaced families in Mandira Dam Project and 247 displaced families in RSP. Only a partial area of Ac.168.09 decimals has been acquired in village Samalaimunda by Mandira Land Organisation.

9. During the year 1982-83, the Tahasildar has issued displaced certificate to each eligible person out of the affected holdings. The Sabik Khata No. 16 of village Samalaimunda was in the name of Jhalu Oram as reported by the Tahasildar, Rajgangpur and a displaced certificate has been issued in favour of Krishna Kujur vide Misc. case No. 9 of 1983 relating to said Sabik Khata. As regards employment in the RSP is concerned, no record is available in that office to that effect. The Additional District Magistrate, Rourkela reported that one Krishna Kujur has got employment in the RSP as the son of Dhanmati Oram against the said Sabik Khata No. 16. Relating to Sabik Khata No. 61, Silbanus Toppo has been issued with displaced certificate from the Tahasildar, Rajgangpur vide Misc. Case No. 57 of 1983, which was in the name of Laikhan Kisan. As per the report of the Additional District Magistrate, Silbanus Toppo is the grandson of Laikhan Kisan and he has been provided with employment in the RSP.

10. Mr. J. Patniak, learned Senior Advocate appearing on behalf of opposite party No. 7-RSP submitted that after 50 years of land acquisition and rehabilitation of displaced persons (for short, "LDP"), the present Petitioners claiming to be the LDPs in second or third generation of original tenants who were paid compensation against the land acquired and availed rehabilitation assistance with elaborate provision of the civic amenities in the re-settlement colony, have filed the present writ petition knowing fully well that similar prayers made by others in past concerning preferential employment under the LDP category have been negatived by this Court. Earlier, in a Writ Petition filed directly before the Hon"ble Supreme Court by persons coming thereunder land displaced persons category in representative capacity in which the Government of Orissa, the Steel Authority of India Limited (SAIL) and RSP were parties, the apex Court has not only held such claim as unconstitutional but also held that they were not entitled to claim for any preferential employment. Referring to the judgment of the apex Court in Butu Prasad Kumbhar and Others Vs. Steel Authority of India Ltd. and Others, , Mr. Patnaik submitted that the present writ petition is not maintainable. In support of his contention, he has also relied on the judgment dated 20.08.2004 of the Jharkhand High Court in L.P.A. No. 264 of 2004. It is further submitted that in RSP so far 6137 persons in LDP category have been provided employment against 4094 families displaced. Thus, employment to adequate number of persons is provided, which is far greater than the total number of families displaced from their lands. The present claim of further preferential employment in RSP is made by the Petitioners, who are not actually land displaced persons, but may be their family members in the second and third generation.

11. It was further argued that as per the practice followed in RSP, the District

Administration, after scrutiny of the applications at their end was time to time forwarding the same to local Employment Exchange treating them as special category like LDP and in turn the local Employment Exchange was forwarding the names of such persons to RSP for employment who have been employed in RSP in different departments. As and when complaint is received as to the genuineness of a person employed in RSP under LDP category, the same is referred to the District Administration for appropriate enquiry and in the event any fraud is detected or when it is revealed that employment has been secured adopting fraudulent means, appropriate action as prescribed in rule of law is taken by RSP. Elaborate arrangements had been made for rehabilitation of the displaced persons. Government of India by Notification of the Bureau of Public Enterprises, Department of Industry, issued instruction in the year 1986 to stop the practice of providing preferential employment to persons in LDP category and the same is the policy binding on the opposite party Company, a Public Sector Unit of the Central government. Moreover, the SAIL in general and RSP in particular for already having excess staff is consistently under pressure to reduce the manpower so as to make the Steel Plant commercially viable. Therefore, the opposite party Company is no more in a position to provide preferential employment to family members of local displaced persons in their second and third generation. In the past, the opposite party Company was pressurized to provide employment and due to agitation by various groups, it was compelled to provide preferential employment to persons in LDP category. Petitioners' case relates to 29 Khatas, out of which 3 Khatas, namely, Khata Nos. 54, 15 and 12 were not acquired. Employment has already been provided as per above procedure to the eligible family members of LDP category more than the number of Khatas acquired or families displaced in village Samalimunda.

12. The Petitioners have filed rejoinder in reply to the counter affidavit filed by opposite party Nos. 3 and 6 and the counter affidavit filed by opposite party No. 7. It is stated that the ratio of decision in Butu Prasad Kumbhar (supra) is not applicable to the case of the Petitioners when the actual displaced persons are moving in the street, a substantial number of outsiders have taken their place and enjoyed the benefit which are not meant for them. No specific procedure has been followed for preparation of the list as per the pleadings of opposite parties but the appointment has been given. Hence, judicial enquiry is necessary to provide justice to actual displaced persons. This Court vide orders dated 01.09.2005, 20.12.2005 and 24.01.2006 directed the opposite parties to produce the lists prepared during the year 1979 and 1981 comprising names of 453 and 1327 persons respectively. But the opposite parties failed to submit such list on the ground that the same is not available. It is stated that the list under the caption "list of local displaced persons employed in RSP" was filed in which names of employees, designation, department and year of appointment have been mentioned. The first appointment was made in the year 1995 whereas a list of 5713 persons is shown to have been appointed in the year 2004. The case of Butu Prasad Kumbhar (supra) was filed under Article 32 of the Constitution in the

year 1992 and disposed of on 30.03.1995. RSP authorities filed counter affidavit stating there in that the Company has provided employment to 4557 displaced persons as against 2901 families affected due to land acquisition. The Scheme was introduced by T.N. Singh Formula to provide employment to land displaced persons in RSP but the persons, who were appointed prior to the Scheme came into operation, have been shown as local displaced persons employed in the RSP. Therefore, fraud has been practised on the apex Court as well as this Court.

13. Petitioner No. 2 in his additional affidavit dated 11.07.2010 mentioned that the Revenue Divisional Commissioner, Northern Division, Orissa, Sambalpur vide D.O. Letter dated 09.06.2008 addressed to the Chairman, RSP with copies to the Minister, Steel, Government of India, Chief Secretary, Principal Secretary to Government in Home Department, Principal Secretary, Hon"ble Chief Minister, Government of Orissa and Commissioner-cum-Secretary to Government in Revenue and Disaster Management Department, Orissa and Collector, Sundargarh and has specifically stated that in first RPDS meeting held on 20.06.2007 the RSP claimed that they have given job to 6137 LDP. Review meeting was held on 09.07.2007, wherein RSP provided the list of 5766 names of employees engaged under LDP category under the Scheme. In the second review meeting, RSP had submitted list of 3,306 persons employed with them. In the 3rd review meeting dated 23.11.2007, the RSP had submitted a list of 2,211 employees of LDP category in all detail including Khata numbers. Thus, it was argued that the number of land displaced persons employed by RSP is reducing with each list. In the 3rd list of 3,306 LDPs submitted by RSP many were from outside our country. Authorities of the RSP could not explain the above anomalies.

14. Mr. Samal, further submitted that Section 3 of Commission of Enquiry Act has conferred the power to order for judicial enquiry when there is need to enquire into the matter of public importance. Since opposite parties grossly failed to provide the benefit of displacement to the actual displaced families, there were several agitations by the displaced persons which also affected the production of the factory. The Petitioner time and again requested for judicial enquiry into the matter to unveil the truth. In support of his contention, he relied on the decisions of the apex Court and some High Courts reported in P. Janardhana Reddy Vs. State of A.P. and Others, , Sanjiv Kumar v. State of Haryana; (2005) 5 SCC 517, The People's Union for Civil Liberties and Others Vs. State of Orissa and Others, , Janamohan Das and Others Vs. State of Orissa and Others, , Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, , Jankiram Jain Vs. State of Orissa and Others, , Temple of Thakurji Vs. State of Rajasthan and Others, and Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, .

15. On the rival contentions raised by the respective parties, the question that falls for adjudication before this Court is as to whether on the facts and in the circumstances of the case, this Court in exercise of power under Article 226 of the Constitution should direct for judicial enquiry or entrust the matter to the CBI for investigation?

16. Undisputedly, the land was acquired in the year 1959 for construction of Mandira Dam Project and after fifty years of acquisition of the land, the Petitioners claiming to be the land displaced persons have invoked the extraordinary jurisdiction of this Court for the relief claimed in the writ petition.

17. At this juncture, it is profitable to extract some of the findings /observations made by the apex Court in the case of Butu Prasad Kumbhar (supra).

3. What is described as T.N. Singh Formula shall be clear from the letter dated 25th July 1973 which is extracted below:

With reference to the letter cited above, I am to say that there is no specific scheme of Govt. to provide employment to the displaced persons of Rourkela in the H.S.L. Rourkela. However, Shri T.N. Singh the then Steel Minister of Govt. of India during course of discussion, advised that at least one person of each displaced family may be provided job in Rourkela

Steel Plant. Accordingly Rourkela Land Organisation Rourkela has prepared family history of displaced after spot inquiry. Such list has also been available to the local employment exchange as well as H.S.L. to consider their cases for appointment in H.S.L.

There was thus no scheme for employing every displaced person. But in view of the press statement of the State Government the then Union Minister considered it reasonable that the Respondents should employ in the Plant at least one member of each family. Whether such assurance or decision was legal and constitutional or not but it was certainly fair and in the larger interest of displaced persons. Its compliance as averred in the counter affidavit could not be seriously disputed.

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5. What stands admitted is that the land was acquired in 1953-54 and the steel plant was set up in 1959. Yet these Petitioners many of whom, we are informed, are already in employment of the Respondents and that was vehemently urged by the learned Solicitor General as a preliminary objection to the maintainability of the petition, approached this Court in 1992 for enforcement of their rights. That a petition on incorrect facts and after such an inordinate delay which has resulted in a generation gap normally is sufficient for refusal to exercise the extraordinary jurisdiction. However, considering the nature of the problem and Respondents' decision even in 1988 in relation to giving employment to displaced persons it did not appear expedient to dismiss the petition on ground of delay or the conduct of some of the Petitioners in joining those who have not been given employment. There is no satisfactory answer to the averment in the counter affidavit that the Respondent company having provided employment to 4557 displaced persons when only 2901 families were affected by the land acquisition and the assurance given was to employ only one person of each family there does not appear much substance in the grievance made by the

Petitioners. Further no details have been furnished by the Petitioners in respect of the persons whose list has been appended with the writ petition as to whether any member of their family was given appointment by the Steel Plant or not. There is no reason, therefore, to doubt that one person of every displaced family whose land was acquired has been given employment and, therefore, the letter and spirit of the scheme to accommodate the displaced persons stood satisfied.

(underlined for emphasis)

7. The learned Solicitor General however stated that even though the public sector undertaking because of being over-staffed is being put to great strain and even though the Government of India had taken a policy decision as far back as 1986 not to give employment to any one in future, yet the Respondent-Steel Plant after verification has found 247 persons eligible for being given employment. They are willing to abide by it. He has pointed out that in the meantime another dam has been constructed and the persons who had been displaced have also been required to be accommodated and, therefore, a scheme has been framed in which 80% displaced in consequence of Mandira Dam and 20% out of 247 are being given employment since 1993. He stated that nearly 50 persons out of 247 have already been absorbed. We are of the opinion that giving employment to 20% may take longer time and since the age bar has been put at 35 it would be appropriate if the SAIL expedited the absorption of these persons by increasing their number from 20% to 40% each year.

18. In view of the above findings/observation (under lined) of the Hon''ble Supreme Court, it is not open for this Court to give any further direction in the matter as prayed in this writ petition. However, the Petitioners'' have taken a stand that the opposite party No. 7 has played fraud on this Court as well as the Hon''ble Supreme Court. If it is so, then it is open for the Petitioners to bring the same to the notice of the Hon''ble Supreme Court for any appropriate relief.

19. For the reasons stated above, various judicial pronouncements relied upon by the Petitioners are of no help to them.

20. In the result, the writ petition is disposed of with the above observations.

21. No order as to cost.

V. Gopala Gowda, C.J.

22. I agree.