
(1993) 06 KL CK 0002
In the High Court Of Kerala
Case No : O.P. 10583/87

Balachandran

APPELLANT

Vs

F.A.C.T. and Others

RESPONDENT

Date of Decision : 17-06-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 06 KL CK 0002

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : T.M. Abdul Latiff, for the Appellant; Antony Dominic, for Respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

G.H. Cuttal, J.—In this petition under Article 226 of the Constitution of India the Petitioner seeks a writ of mandamus directing the Respondent No. 1, the Fertiliser and Chemicals Travancore Limited, a corporation owned by the Union of India "to appoint the Petitioner in the existing vacancy of loading helper giving preferential right on the basis of the assurance given by the Respondents before this Hon"ble Court in O.P. 6043/1984" and "to reserve a certain number of posts of loading helper" for which applications were invited by Vacancy Advertisement No. 16/87 dated 1st December 1987 from members of the families who were evicted as a result of the acquisition of land for the Respondent No. 1.

2. The land comprised in Survey No. 801/8A2 and 801/8B2 of Chemmanad Village owned by the Petitioner's mother was acquired in 1964 along with several other pieces of land for the establishment of Respondent No. 1. The Petitioner born in 1962, the only son of his late mother, passed the S.S.L.C. examination in 1979.

3. By its letter No. 30783/G3/66/ID, dated 3rd November 1966 addressed to a member of the Parliament (Ext. P-1 to the petition), the State of Kerala conveyed

that the Respondent No. 1 had taken certain steps "towards ameliorating the difficulties of the persons" displaced due to the acquisition of land for the Respondent No. 1. According to the Petitioner, this letter embodies a promise made to all persons whose lands were acquired. The letter says "all persons who have passed S.S.L.C. or studied upto S.S.L.C: standard from among the persons to be evicted, are being specially selected for a training programme lasting for a period of 3 years to equip them to take useful and remunerative jobs in the Cochin Fertiliser Project".

4. After this "promise", the Petitioner filed O.P. No. 6043 of 1984 in which he sought a direction that the Respondent No. 1 shall appoint him as loading helper. During the course of his arguments, Counsel for the Respondent No. 1 submitted that "eventhough there is no obligation to give preference to any person like the Petitioner, the company is considering the claims of all applicants and has prepared a list of candidates eligible for appointment...for any future appointment to the category in relation to which the waiting list is prepared the claims of the Petitioner will be considered according to the terms of eligiblity at the time which vacancy arises...." (emphasis supplied).

5. In Anr. O.P. 3275 of 1985 to which the Petitioner was not a party, the Respondent No. 1 said this in their counter affidavit:

This Respondent is not bound to give them appointment, but however assures that as far as possible persons who are, qualified to be appointed and who are evictees or their direct dependants would be given preference for appointment.

6. On the basis of the assurance embodied in the letter dated 3rd November 1966 (Exf. P-1) and the statements in answer to O.P. Nos. 6043/1984 and 3275/1985 referred to above, the Petitioner urged that the Respondent No. 1 is estopped from denying to the Petitioner "preference" in the matter of employment as a loading worker.

7. The doctrine of promissory estoppel invoked by the Petitioner, has been recognised and applied in India. The substance of the doctrine explained by the Supreme Court in Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), , is this:

Where a promise is made with the intention that the other party should act upon it, the promisor can be compelled to keep his word, if the promisee has acted upon the promise. The promisee need not prove that, acting on the promise, he suffered prejudice, detriment or damage. The indispensable requirement of the rule of estoppel is that the promisee altered his position. Therefore once the promise is proved all that the promisee need prove is that, acting on the promise, he altered his position.

8. In order to attract the doctrine of estoppel the promise which estops the promisor must have been made to the Petitioner. If the circumstances show that the promise was not meant for the Petitioner, he cannot claim that the promisor

cannot retract his steps. It is only the person to whom the promise is made that can invoke the rule of estoppel. Consider this principle in relation to the facts. The promise contained in the letter of the Kerala Government (Ext. P-1 to the petition) was made on 3rd November 1966 when the Petitioner was not even eligible for appointment in any capacity. The Petitioner was born in 1962 and completed 18 years of age only in 1980. Therefore, the promise could not have been addressed to the Petitioner. The "promise" contained in the letter dated 3rd November 1966 was made to those persons who were, on the date of the "promise", eligible to apply for the jobs. The Petitioner could not have been intended as one of the persons whom the Respondents had in mind. As a boy of 4 years of age he did not qualify to be an applicant entitled to the benefit of the promise. Therefore, the rule of estoppel is not attracted in the Petitioner's case.

9. The promises contained in the answers to the O.P. No. 6043/1984 and O.P. No. 3275/1985, which have been quoted by me earlier are marked by two features. Firstly, they were qualified by significant words. The qualifying phrases are, "as far as possible" "qualified to be appointed" and "preference for appointment." The words "as far as possible" mean that the appointment may be made if it is practicable to do so. When the Respondents used the word "qualification" they did not mean the academic qualification of S.S.L.C. examination. They meant that the candidate should be found eligible and suitable on the basis of the qualifying test when vacancy arose. The second qualification was that, any appointment would be subject to the criterion of eligibility. The promise, therefore, was not a promise to appoint anyone to any posit. It was an assurance that qualified persons would be given preference in the matter of appointment. The essence in the promise was, qualification and practicability.

10. I am unable to read in any of these documents a promise that the Petitioner or any other person shall be employed in any position. The promise was to consider the Petitioner and Ors. if they are qualified and if it is practicable to appoint them.

11. But the Respondent No. 1 has employed the words "preference for appointment". Learned Counsel for the Petitioner emphasised the word "preference". According to him, the Petitioner, even if he is not in the list of merit based on test and interview, is entitled to be appointed on the sole basis that he had passed the S.S.L.C. examination. It must be noted that the word "preference" does not mean "reservation". The statement by the Respondent No. 1 does not mean that the Petitioner would be appointed irrespective of whether he is eligible on the basis of the merit list based on test and interview.

12. The affidavits filed by Respondent No. 1 make it abundantly clear that the Respondents did follow the policy of scrutinising the applications, testing the applicants, interviewing them and finally preparing the list of candidates in order of merit. The Petitioner's serial number was 222. Vacancies did not arise to accommodate candidates beyond serial number 175. That is why the petititner was not appointed. Since there was no promise to appoint the persons displaced

by the acquisition of land irrespective of qualification or practicability, the Petitioner has no right to be appointed.

13. There is no merit in this petition. It is therefore dismissed.