

(2009) 09 CAL CK 0026
In the Calcutta High Court

Case No : A.P.O. No. 472 of 2005, A.P.O.T. No. 87 of 2005 and W.P. No. 548 of 2003

Calcutta Port Trust and Others

APPELLANT

Vs

Sanku Maharaj Adhikari and Others

RESPONDENT

Date of Decision : 23-09-2009

Acts Referred:

Citation : (2009) 09 CAL CK 0026

Hon'ble Judges : Debiprasad Sengupta, J

Bench : Single Bench

Advocate : Malay Kr. Basu, Kishore Dutta and Sumita Shaw, for the Appellant; Soumitra Bandyopadhyay and Salil Kr. Mapdavi, for the Respondent

Final Decision : Dismissed

Judgement

Debiprasad Sengupta, J.—This appeal is directed against the Judgment and Order dated 13.1.2005 passed by the learned Single Judge in W. P. No. 548 of 2003.

2. In the writ petition the subject matter of challenge was illegal and mala fide action of the respondent authority in not giving appointment to the writ petitioners in the unskilled category in Haldia Dock Complex in spite of the fact that they are in possession of "Land Losers" Certificates", which were issued to them as their lands were acquired for development of Haldia Dock Complex.

3. In the year 1966-67 land acquisition proceedings under the Land Acquisition Act were initiated for acquiring lands for development of Haldia Dock Complex. As a result of such acquisition several families became uprooted and their lands, which were the source of their livelihood, were lost. The writ petitioners/respondents belong to that category, which is described as "Land Losers", and they were also given "Land Losers" Certificate".

4. It was the case of the writ petitioners/respondents that Govt. of West Bengal decided to consider for employment, candidates hailing from families, who were

uprooted from their lands, which were acquired by the Government for development of Haldia Dock Complex. The writ petitioners/respondents approached the authority on number of occasions by submitting representations for getting such appointment, but those were not considered by the concerned authority. It was the case of the writ petitioners/respondents that several evictees/land losers were selected for employment and were given appointment, while some others were not considered for such appointment. It was the further case of the writ petitioners that the Employment Exchange had sponsored the candidates from the land loser evictees and two panels were prepared, one in the year 1996-97 and another in 1998-99. But the Port Trust Authority did not select the petitioners and issued rejection order without assigning any reason. It was the grievance of the writ petitioners/respondents that there were sufficient vacancies in Haldia Dock Complex, but in spite of that the concerned authority did not appoint the writ petitioners and on the contrary appointed contract labourers.

5. The learned Single Judge by the impugned judgment dated 13.1.2005 allowed the writ application and directed the respondent authorities to appoint the writ petitioners/respondents in the post of unskilled labourers within a period of three months. It was also directed that the writ petitioners would be given appointment prospectively and no age bar or other bar would stand in the way. Hence, this appeal preferred by the Calcutta Port Trust.

6. Mr. Malay Basu, learned Senior Counsel appearing for the appellants submits that by a circular dated 12th May, 1986 the State Government formed a Screening Committee for screening the actual land evictees and also laid down other guidelines. In terms of the guidelines as laid down by the Hon'ble Supreme Court, the appointment of "land losers" should be on the basis of recommendation of the Screening Committee constituted by the State Government as provided in the circular dated 12th May, 1986. The names of such candidates were required to be sponsored by the Employment Exchange against requisition of vacancies sent by the Port Authority. Thereafter appointments would depend on qualifying in the Selection Test conducted by the Port Authorities and subject to availability of vacancies.

7. Mr. Basu points out that against the requisition of Port Authority the Employment Exchange sponsored the names of 372 candidates on diverse dates between 28.09.95 to 11.01.1996. Out of those 372 candidates, 83 candidates were from S/C Community, 40 candidates from S/T Community and 249 candidates belonged to general category. Interview/Trade Test of all the 372 candidates were held on different dates in March and April, 1996. Mr. Basu, learned Advocate points out that out of 372 candidates 321 candidates obtained qualifying marks and amongst them 218 belonged to general category and others belonged to S.C./S.T. category.

8. Mr. Basu, learned Counsel further submits that pursuant to the direction of this Court on various writ petitions, Port Authority sent a requisition to the

Employment Exchange, Haldia for sponsoring names for filling up 75 vacancies to the unskilled category of posts and against the said requisition the Employment Exchange sponsored names of 700 candidates including writ petitioners. Accordingly sponsored candidates, including writ petitioners, were asked to appear for the test/interview in the year 1998. But the petitioners could not qualify themselves and so, their names did not appear in the panel so prepared in the year 1998-99. It is the further contention of the learned Advocate of the appellants that being unsuccessful in the selection process the writ petitioners/respondents cannot claim for inclusion of their names in the panel of the selected candidates nor they can claim any employment. Mr. Basu further submits that pursuant to the direction of this Court dated 4th April, 2001 in the MAT No. 94 of 1998 (F.M.A. No. 478 of 2000) results of the test/interview held in the year 1998-99 in unskilled category of posts were duly communicated to all the candidates including the writ petitioners. Some of such communications are appearing in the Paper Book at pages 47 to 51.

9. It is also the contention of Mr. Basu, learned Advocate that after the lands were acquired, compensation was duly paid to all land losers including the present writ petitioners/respondents. There is no provision in the Land Acquisition Act for providing any employment nor the writ petitioners/respondents can claim any employment as a matter of right on the ground of such acquisition of land. But a policy was adopted by the State Government to consider the case of the land losers for employment in the Haldia Dock Complex. Pursuant to the direction of the Hon"ble Apex Court a Screening Committee was constituted for recommending the names of suitable candidates by eliminating bogus claims. On the basis of recommendation made by the Screening Committee the candidature of the land losers, whose names were sponsored by the Employment Exchange, were considered. They were called for Trade Test/Interview. Candidates, who could qualify themselves in the Trade Test/Interview, were given appointments. The candidates, who could not qualify themselves, were also communicated the result of the Selection Test. The writ petitioners/respondents could not succeed in the selection process when their cases were considered along with other candidates.

10. Finally it is submitted by Mr. Basu, learned Counsel that by the impugned judgment the learned Single Judge directed the respondent authorities to appoint the writ petitioners/respondents within the period of three months without taking into consideration age bar of those candidates without considering the fact that at present near about 300 candidates of 1996 and 1998 panel are still waiting for appointment. In such circumstances, it is submitted by the learned Advocate of the appellants, giving appointments to the writ petitioners/respondents would amount to deprivation of right of those empanelled candidates, who are waiting for almost a decade for getting such appointment.

11. The learned Advocate appearing for the writ petitioners/respondents submits that pursuant to the liberty granted by this Court the writ petitioners submitted

representation before the Screening Committee for considering their case for appointment in Haldia Dock Complex as they were "land losers" and their lands were acquired for development of Haldia Dock Complex. After such acquisition, "Land Losers" Certificates" were also issued to them. It is submitted by the learned Advocate of the writ petitioners/respondents that the Screening Committee duly recommended their names and they were also called to appear in the Trade Test/Interview along with other candidates. But to their utter surprise they noticed that several "land losers/evictees were selected and were given appointments, and some other candidates, including the writ petitioners/respondents, were kept in dark about the result of such selection process. As a result, number of litigations cropped up in different courts. It is submitted by the learned Advocate that in the selection process Port Trust Authority had played a mockery by maintaining a silence and by not communicating the result of Selection Test. Ultimately by an order of the Division Bench of this Court, the Port Trust Authority was directed to communicate the result of selection test and thereafter the result was communicated to the writ petitioners/respondents.

12. It is contended by the learned Advocate of the respondents that the writ petitioners were evicted and became landless after their lands were acquired for development of Haldia Dock Complex. Government of West Bengal also decided to consider for employment, the candidates hailing from families, who were uprooted and evicted from their lands. Their names were considered by the Screening Committee and they were found suitable and their names were forwarded to the Selection Committee. It is the contention of the learned Advocate that Haldia Dock Authority adopted a pick and choose policy in the selection test, gave appointments to some candidates and rejected the candidature of others, including the writ petitioners, on the plea that they could not qualify themselves in the selection test. This, according to the learned Advocate of the respondents, is an attempt to frustrate the scheme adopted by the Government.

13. It is the contention of the learned Advocate of the writ petitioners/respondents that the learned Judge was justified in allowing the writ petition and passing mandatory direction upon the respondent authority to give appointments to the writ petitioners within a period of three months and the impugned judgment does not suffer from any illegality.

14. We have heard the learned Advocates of the respective parties. We have also perused the relevant papers and documents relied upon by the learned Advocates of the respective parties. It is the admitted position that the lands of the writ petitioners/respondents were acquired for development of Haldia Dock Complex and compensation for such acquisition was also received by them. After such acquisition they were described as land losers/evictees and "Land Losers" Certificates" were also issued to the writ petitioners/respondents. The grievance of the writ petitioners/respondents was that although they were assured that they would be provided with employment as unskilled labours in Haldia Dock

Complex, the respondent authorities refused to consider their case for such appointment.

15. By a circular dated 12th May, 1986 State Government formed a Screening Committee for screening the actual land evictees by eliminating bogus claims. In terms of guidelines laid down by the Hon"ble Apex Court the appointments of the land losers would have to be given on the basis of recommendation of the Screening Committee constituted by the State Government in its circular dated 12th May, 1986 after the names of the candidates were sponsored by the concerned Employment Exchange and such appointments would, however, depend on qualifying in the selection test, conducted by Port Authorities and subject to availability of vacancies.

16. It appears that in July, 1997 Port Authorities sent a requisition to the local Employment Exchange, Haldia for filling up 75 vacancies in the unskilled category and against such requisition names of 700 candidates, including the writ petitioners/respondents, were sponsored. All the sponsored candidates were asked to appear in the Trade Test/Interview. But the writ petitioners could not qualify in the selection test. Candidates, who could qualify themselves in the test, were also given appointment. The unsuccessful candidates were also communicated the result of such test. The names of the writ petitioners were not included in the panel as they could not qualify themselves in the test. The writ petitioners being unsuccessful candidates cannot claim for inclusion of their names in the panel.

17. In our considered view, the result of Trade Test/Interview on merits cannot be successfully challenged by the candidates, who took a chance and participated in the selection process and ultimately became unsuccessful. We cannot reassess the relative merits of the candidates, who were assessed by a Selection Committee and cannot form an opinion that the writ petitioners/respondents were given less marks and their performance was much better than those, who became successful in the test. We are of the view that the assessment on merits made by an expert committee cannot be challenged only on the ground that the assessment was not proper and justified.

18. Merely on the basis of suspicion that the writ petitioners/respondents were given less marks in comparison to the successful candidates, it cannot be said that the process of assessment was vitiated. Decision of the Selection Committee can be interfered with only on limited ground such as illegality or patent material irregularity in the constitution of the Selection Committee or proved mala fide affecting the selection. In the writ petition there is even no whisper about any personal bias of the members of the Selection Committee against the writ petitioners. There is also no allegation of mala fide against the members of the committee.

19. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee, which has expertise on the subject.

This is not the function of the court as the court has no such expertise. From the records we find that the writ petitioners/respondents appeared before the Selection Committee, but they could not come out as successful candidates. Result of such selection test was also communicated to the writ petitioners/respondents and they accepted the same. Now, they cannot challenge the selection process on the ground as stated hereinabove.

20. In view of the discussion made above, we find sufficient merit in the submission made by Mr. Basu, learned Advocate on behalf of the appellants.

21. We accordingly allow the appeal and set aside the impugned judgment and order passed by the learned Trial Judge.

22. The writ petition is also accordingly dismissed.

23. There will be no order as to costs.

24. Urgent Xerox certified copy of this judgment and order may be supplied to the learned Advocates of the respective parties, if the same is applied for.

25. I agree.