
(1999) 03 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 16974 of 1998

Dhaneswar Sahu and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-03-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (1999) 87 CLT 818

Hon'ble Judges : Susanta Chatterji, Acting C.J.; P.K. Mohanty, J

Bench : Division Bench

Advocate : Manoj Misra, B. Mishra, P.K. Das and S.K. Pradhan, for the Appellant; B.S. Tripathy, J. Sahoo, H.S. Sahu and P.S. Das for o.p. 2, A.K. Choudhury, H.K. Panigrahi and J. Dash for intervenor, for the Respondent

Judgement

P.K. Mohanty, J.—The Petitioners pray for a direction to the opp. parties to give them employment/appointment against the post to which they are eligible and have completed their trade/training in the 1. T. 1. as per the rehabilitation package while acquiring the Petitioners land for establishment of power plant by the N.T. P.C..

2. The short facts of the Petitioners case is that in the year 1990 the N.T.P.C. acquired the lands of the Petitioners for establishment of power plant and it was agreed at the time of acquisition of the land that the N.T.P.C. will provide employment to at least one member of the affected family. It is claimed that Petitioner No. 1 is the adopted son of one Natabar Sahu and Petitioner No. 2 is the adopted son of Lochan Naik whereas Petitioner No. 3 is the nephew/adopted son of one Ramesh Pradhan whose lands have been acquired. It is asserted that Petitioners after completion of their Matriculation, were asked by opp. party No. 4, the Special Land Acquisition Officer to appear in the interview conducted for the purpose of selection to undergo 1. T. 1. training and after attending the interview they were selected for the course, admitted and obtained their trade certificates. The trade certificates are Annexure-4 series in respect of Petitioners

1 and 2. The Petitioners got themselves registered in the District Employment Exchange. It is averred that opp. party No. 4 issued notices to the Petitioners calling upon them to furnish the educational certificates, Caste certificates, Employment Exchange cards, trade certificate etc. for the purpose of interview and employment in the vacancies for the post of Electrician and Fitter. According to the Petitioners they have all the eligible criteria and appeared in the office of opp. party No. 3 where after intimation was given to the affected persons i.e. the fathers of the Petitioners to produce the adoption deeds which were produced. It is alleged that in spite of the compliance of the direction under Annexure-7 the opp. parties have not issued call letters for the interview which has been scheduled to be held on 10-12-1998 even though others have been issued with the interview letters. The case of opp. party No. 5 has been cited to show that even though he had been adopted vide adoption deed of the year 1991 he was given employment whereas the Petitioners have been discriminated.

3. Opp. party No. 2 has filed a comprehensive counter affidavit through its Law Officer denying the claim of the Petitioners and challenging the maintainability of the writ application. It is the case of opp. party No. 2 that private lands were acquired for the purpose situated in 56 villages of Kaniha and Teacher Blocks. Due to implementation of the project 1904 families were identified to be substantially affected. but out of them 764 families have been identified as substantially affected families and the balance partially affected. It is stated that in January, 1998 the N.T.P.C. prepared a plan for rehabilitation of the displaced families. The families losing more than 1/3rd of their agricultural land. have been defined as substantially affected families in the Rehabilitation plan/scheme prepared by the Government of Orissa in consultation with the N.T.P.C. management which inter alia stipulates at least one member of each family affected will be rehabilitated. Under the revised Rehabilitation plan the date of issue of notification u/s 4(1) of the Land Acquisition Act would be taken as the reference date for enumeration of displaced families and the definition of family would be the affected person or his/her spouse, unmarried sons and unmarried daughters. It is stated that the Petitioners 1 and 2 claimed to be the adopted sons of Natabar Sahu and Lochan Naik and Petitioner No. 3 is the nephew/ adopted son of one Ramesh Pradhan. The deeds of adoption dated 26-10-1991 for Petitioner No. 1 and 18-7-1992 for Petitioner No. 2 and affidavit dated 15-2-1996 in respect of Petitioner No. 3 apparently makes it clear that the adoption deeds have been prepared after the out off date i. e. notification u/s 4(1) of the Land Acquisition Act. It is alleged that the adoption deeds were wilfully prepared in respect of Petitioners 1 and 2 with a view to get rehabilitation assistance/benefits under the R.N. plan notwithstanding the fact that the Petitioners 1 and 2 are iligibleigi for such benefits. It is stated that the proceedings of the Screening Committee dated 28-2-1996. the name of Petitioners 1 and 2 were eliminated from the list sponsored by the Screening Committee earlier because of the reason that they are not eligible for any rehabilitation assistance benefit as they have produced adoption deeds which are

executed after the Section 4(1) notification. The copy of the minutes of the Screening Committee dated 28-2-1996 is filed as Annexure-A/2. So far as Petitioner No. 3 is concerned it is the case of the opp. parties that as per the Rehabilitation plan, S.A.P. is authorised to nominate any person from his family for the Rehabilitation Plan and as such Petitioner No. 3 being not a member of the family the nomination could not be acted upon and as such, his name was not recommended by the Screening Committee.

4. Having heard learned Counsel for the parties, it appears that the case of Petitioners 1 and 2 has not been taken into consideration by the Screening Committee (a copy of the proceeding is Annexure-A/2) on the ground that the adoption deed produced by them is of a date subsequent to the date of publication of Section 4(1) notification. The assertions of the opp. parties are that the date of issue of notification u/s 4(1) of the Land Acquisition Act would be taken as the reference date for enumeration of the displaced families and the definition of the family would be the affected persons, his or her spouse, unmarried sons and unmarried daughters. Neither in the writ petition nor in the counter affidavit the date of Section 4(1) notification has been indicated in respect of any village. The learned Counsel for the Petitioners submitted that the adoption deeds are much prior to the date of notification u/s 4(1) of the Land Acquisition Act and according to opp. party No. 2, the adoption deeds are subsequent to the reference date i. e. notification u/s 4(1) of the Land Acquisition Act. The proceedings of the Screening Committee dated 28-2-1996 does not indicate the date of Section 4(1) notification whereas the Committee came to hold that the adoption deed was subsequent to Section 4(1) notification. It is therefore apparent that the Screening Committee while rejecting the applications of Petitioners 1 and 2 did not take into consideration the exact date of the Section 4(1) notification to come to a finding that the adoption deeds produced by Petitioners 1 and 2 were subsequent to that relevant reference dated in terms of the scheme. Thus the rejection of the application of the Petitioners 1 and 2 by the Screening Committee was without any basis and therefore cannot be sustained in law. However, the Screening Committee should reconsider the case of Petitioners 1 and 2 in terms of the Rehabilitation Scheme/ package in the context of the reference date Petitioner No. 3 admittedly is the nephew of one Ramesh Chandra Pradhan who has filed an affidavit nominating him for employment. According to opp. party No. 2, the Scheme does not contemplate any nomination outside the family. The Screening Committee has not directed its enquiry as to whether he was duly adopted by said Sri Ramesh Chandra Pradhan. In that view of the matter, it is directed that the Screening Committee shall consider the application of the Petitioners for appointment afresh in accordance with law in terms of the Scheme of Rehabilitation and depending on the result of reconsideration consequential action should be taken by the opposite parties promptly. This exercise should be undertaken and completed preferably within a period of three months from the date of communication of this order.

5. The writ application is disposed of with the aforesaid observation and directions.

S. Chatterji, A.C.J.

6. I agree.

Writ application disposed of.