
(2007) 04 UK CK 0039

In the Uttarakhand High Court

Case No : Special Appeal No. 41 of 2004

Hemwati Nandan Bahuguna Garhwal University and Another	APPELLANT
Vs	
Hem Raj Singh	RESPONDENT

Date of Decision : 13-04-2007

Acts Referred:

Constitution of India, 1950 — Article 16, 21
Land Acquisition Act, 1894 — Section 23, 23(1A), 23(2), 4

Citation : (2007) 3 UC 1557

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : L.P. Naitahni and J.P. Joshi, for the Appellant; Rajendra Dobhal, for the Respondent

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—This special appeal, under Rule 5 Chapter VIII of the High Court Rules, has been filed against the judgment and order dated 13-08-2004 passed by the learned Single Judge of this Court in Writ Petition No. 1706 of 2001 (S/S), Hem Raj Singh v. H.N.B. Garhwal University and others, whereby the learned Single Judge has allowed the petition and directed the University to coordinate to implement the policy decision laid down in G.O. dated 25-05-1999 and to decide the question of giving employment to the Petitioner in accordance with the rules.

2. A writ petition bearing No. 1706/2001 (S/S) was filed before the learned Single Judge by the writ Petitioner-Hem Raj Singh (Now "Respondent" in the present special appeal) for the following reliefs:

(i) To issue a writ of mandamus directing the Respondent No. 1 to grant the appointment to the Petitioner for the post of class III employees for he possess the requisite qualification.

(ii) To issue a writ of mandamus directing the Respondent No. 1 to grant seniority to the Petitioner from the date of initial appointment viz-a-viz other

candidates.

(iii) To issue any other writ, order or direction which may be deemed fit and proper in the circumstances of the case.

(iv) To award cost of this writ petition to the Petitioner.

3. A piece of land situated at Naithana Chauras has been acquired from the Petitioner's father for the establishment of Hemwati Nandan Bahuguna, Garhwal University (hereinafter referred as "University"). Notifications were issued by the Government under the provisions of the Land Acquisition Act. Pursuant to the acquisition proceedings, the Government took possession of the said land. The State of U.P. formulated a policy vide Government Order dated 25-05-1999 which provides that in case of land required for public purposes, the persons to be displaced by reason of acquisition of their land would be considered on preference basis for giving appointment to at least one member of such family. The Petitioner has alleged that the University was entrusted the list prepared on 29-05-1998 of such eligible candidates for consideration for appointment. The name of the Petitioner in the list figured at serial No. 67. The name of the Petitioner was however stuck of from the list of displaced persons when the final list was sent by S.D.M. on 31-07-1999 to the then District Magistrate for being forwarded to the University for appointment. The Petitioner's father made representations dated 20-08-1999 and 21-08-1999 that his son may be appointed in the University. On the representations, the University made endorsement to the effect that the permission had to be sought from the District Magistrate / State of U.P. The interview for appointment was conducted on 27-12-1999 but the Petitioner was not invited by the University although name of a person whose land was not acquired figured at serial No. 47 and further two members of one family whose names figured at serial Nos. 40 & 49 have been interviewed. Feeling aggrieved by this, the Petitioner has filed the writ petition before the Single Judge.

4. The Appellants (University) had filed the counter affidavit in which it has been alleged that there was no commitment to provide appointment to every displaced person or member of his family; that the name of only 92 persons in view of their eligibility, qualification and economic conditions were forwarded by the government for appointment by the University that the name of the Petitioner was never included in the said list of 92 eligible persons; that the list which has been filed as Annexure-3 to the writ petition is not one which was sent by the District Magistrate to the State Government and in the one which the State Government sent to the University by letter dated 25-05-1999; that the University made endorsement on the representation of the Petitioner that the Petitioner may approach the District Magistrate for the purposes of inclusion of his name in the list as the University was not the authority to prepare the list of the eligible candidates and that considering the various factors including the economic condition of the candidate and other qualifications the Petitioner is not entitled for appointment. In the rejoinder affidavit, the Petitioner has averred

that after a detailed inquiry on 29-05-1998 the S.D.M., Kirtinagar prepared a list of 91 candidates and sent it to the Registrar, H.N.B. Garhwal University and in this list his name shown at serial No. 67. The revenue officials thereafter prepared a new list of 92 candidates in the month of August, 1998 and in the said list the name of 13 persons at serial No. 21, 26, 29, 36, 39, 57, 64, 67, 70, 73, 80, 82 & 83 who were in the list prepared on 29-05-1998 have been deleted for the reasons best known to the revenue officials; that the list prepared in the month of August 1998 was never published and that the District Magistrate, Tehri Garhwal after enquiry wrote a letter to the Vice Charicello" on 03-01-2002 requesting him to provide job to the Petitioner, who being within the zone of consideration of displaced person is entitled for a job in the University.

5. After hearing the parties, the learned Single Judge has allowed the petition vide impugned order dated 13-08-2004 and directed the University to coordinate to implement the policy decision and to decide the question of giving employment to the Petitioner in accordance with the rules within a period of three months from the date of presentation of the certified copy of the order.

6. Feeling aggrieved by the said order, the present special appeal has been preferred by the Appellants-University.

7. Heard learned Counsel for the parties and perused the record.

8. It is admitted case of the parties that the land of Petitioner's father in village Naithana Chauras had been acquired by the State Government under the provisions of the Land Acquisition Act for the construction of the H.N.B. Garhwal University at Srinagar Garhwal. In pursuance of the land acquisition of the tenure holders, a meeting was held in the year 1996 between the University and District officials in which it was resolved that after considering the various factors including the economic conditions of the candidate and other qualifications, the employment will be provided to one member of the family of the person whose land has been acquired under the provisions of Land Acquisition Act. The State Government issued a G.O. dated 25-05-1999 to that effect. The District Magistrate prepared a list of 92 persons for appointment and it was supplied to the University. The said list was prepared by the District Magistrate after considering the economic conditions of the displaced families and other qualifications. The names of 92 persons were included out of 274 candidates. The said list was communicated to the State Government as well as to the University.

9. Learned Counsel for the writ Petitioner disputed that the revenue department initially prepared a list of eligible candidates in which the name of the Petitioner was figured at serial No. 67. Later on, the S.D.M. struck off his name from the list of displaced persons when the final list was sent by the S.D.M. to the District Magistrate for being forwarded to the University for appointment. Learned senior counsel for the Appellants (University) refuted the contention and contended that the list was prepared by the District Magistrate and it was forwarded to the State Government for necessary approval and recommendation. The University has

also provided employment to the persons whose names were enlisted in the said list. The said list did not contain the name of the Petitioner.

10. Learned Counsel for the writ Petitioner further contended that the Petitioner made representations to the University as well as to the District authorities. The matter was investigated by the District Magistrate, Tehri Garhwal through the S.D.M., Kirti Nagar and after the enquiry it was found that 7 persons including the Petitioner was legally entitled for a job in the University and therefore the District Magistrate wrote a letter dated 03-01-2002 to the Vice Chancellor requesting him to provide job to the Petitioner, who being within the zone of consideration of displaced person is entitled for a job in the University. It is pertinent to mention here that 0.35 hectare of land of the Petitioner's father was acquired and 1.493 hectare was left with him. Thus, the entire land was not acquired for the construction of the University.

11. It is not disputed that the Petitioner has received the compensation as provided under the Land Acquisition Act. Needless to say that Petitioner or his father was not deprived of his land without following the procedure established in law. The land of Petitioner's father was taken under the Land Acquisition Act and he was paid compensation for it which means an amount equal to the market value of the land with interest alongwith the amount of solatium for distress and inconvenience caused were paid to him. Even otherwise, the obligation of the State to ensure that no citizen is deprived of his livelihood does not extend to provide employment to one member of the family of the person whose land has been acquired under the provisions of Land Acquisition Act. The H.N.B. University at Srinagar was established for the educational growth of the citizens and it is one of the prestigious universities established in Uttarakhand. The University as well as the Government has paid the market value for the land acquired. Even if, the Government or the University would not have been giving employment to the displaced person it would not have resulted in violation of any fundamental right. Yet, considering the economic conditions of the displaced person and qualifications the State Government took steps to ensure that one member of the family of the person whose land has been acquired under the provisions of Land Acquisition Act may be given employment. It would not be out of place to mention here that less than half of the land of the Petitioner's father was acquired by the State Government and the compensation was paid to him. The appointment in public services on compassionate ground has been carved out as an exception, in the interest of justice, to the general rule that appointments in the public services should be made strictly on the basis of open invitation of applications and merit and no other mode of appointment nor any other consideration is permissible. It is also well settled position of law that an appointment on compassionate ground has to be given in accordance with the relevant rules and guidelines that have been framed by the authority concerned and no person can claim appointment on compassionate grounds in disregard of these rules or guidelines.

12. Learned senior counsel for the University further contended that the G.O. dated 25-05-1999 providing employment to one member of the family of a person whose land has been acquired under the provisions of Land Acquisition Act is not enforceable in the court of law and a writ of mandamus cannot be issued directing the acquiring authority to consider the claim in accordance with the Government Order/Circular. Learned senior counsel for the University relied upon the Full Bench decision of Allahabad High Court in Ravindra Kumar v. District Magistrate and Ors. 2005 A.I.H.C. 1653 in which it has been held as follows:

10. The Land Acquisition Act takes care of the difficulties of a person whose land has been acquired by granting 30% solatium u/s 23(2) in addition to the market value of the land which has been acquired. Thus, if the market value of the land acquired is Rs. 1 lac, the owner will get not only Rs. 1 lac but an additional Rs. 30,000/- i. e. he will get Rs. 1.30 lac with interest at 12% from the date of the notification u/s 4 to the date of the award or the date of taking possession whichever is earlier, vide Section 23(1-A).

11. This grant of solatium in addition to the full market value of the land has obviously been made to cater to the difficulties of the person whose land has been acquired. There is no provision in the Land Acquisition Act to grant a job in addition to the amounts specified in Section 23. Hence any Government order for providing a job in addition to that is our opinion violative of the provisions of the Land Acquisition Act, for such a Government order will amount to amendment of Section 23, which will be illegal.

21. The Land Acquisition Act is a self-contained Code and provides the procedure to be followed for acquisition as well as for assessment of the valuation and payment of fair and just compensation as per market value of the person whose land is acquired. In addition to that market value of the land interest @ 12% is also given from the date of publication of the Notification vide Section 23(1-A). Besides that, a sum of 30% on such market value is also paid as solatium for distress and for inconvenience or difficulties caused to the person on account of compulsory acquisition of the land vide Section 23(2) of the Act. Therefore, a person whose land is acquired not only gets adequate compensation as per market value of the land but also gets interest on the amount of compensation @ 12% from the date of notification u/s 4 of the Act as well as an amount of solatium, which is 30% of the amount of compensation. Neither the Land Acquisition Act nor the regulations provides that in the event of acquisition of the land one of the family members of the landholder shall be given employment in addition to the amount of compensation. Therefore, in the absence of any statutory provision or any promise, the Petitioner- Respondent cannot claim appointment as a matter of right nor can the Respondent make such appointment.

22. There is no provision under the Land Acquisition Act under which the Circular dated 28-12-1974 could be issued. Whatever compensation has to be given for

acquisition of the land is provided under the land Acquisition Act itself which is a self-contained Code. Any G. O. providing for any further benefit not mentioned in the Land Acquisition Act would be inconsistent with the intention of Parliament as contained in the Land Acquisition Act. Hence, any such G.O. would be violative of the Land Acquisition Act and would hence be invalid. Such a G.O. will also violate Article 16 of the Constitution as already mentioned above.

13. In Ravindra Kumar (supra), Hon''ble Justice M. Katju (Acting Chief Justice as he was the then) has observed on behalf of the court that the Government Order is wholly unworkable. It has been further held that the G.O./Circulars providing employment to one member of a family of a person whose land has been acquired are invalid. It was further held that the acquiring body for whose benefit the land is acquired is not bound by the G.O./Circular to provide employment. It was further held that no writ could be issued directing the acquiring body to consider the claim in accordance with the G.O./Govt. Circular. In Ravindra Kumar (supra), the Full Bench of Allahabad High Court has also referred the decision of the Hon''ble Apex Court in Butu Prasad Kumbhar v. Steel Authority of India Ltd. and Ors. 1995 (3) JT SC 428 in which it was held that there is no requirement under Article 21 of the Constitution to provide employment to a member of the family displaced by the acquisition of land.

14. Learned Counsel for the Petitioner relied upon the judgment of the Hon''ble Apex Court in Haryana State Electricity Board and another Vs. Maha Singh and another, in which the State Electricity Board was required to provide employment to one of the members of a family whose land has been acquired. The cut-off date prescribed was 13-12-1991. One Shamsheer Singh, brother of the Respondent and son of the owner had applied for appointment. Since he was not being considered, he filed a writ petition before the High Court. The High Court directed the Electricity Board to appoint the son of the deceased Shamsheer Singh. However, before appointment could be made, he died. Consequently, the Respondent- the other son of the deceased applied for appointment but he was not given appointment as appointment had already been given to the widow of Shamsheer Singh. Consequently, he filed a writ petition and same stand was taken in the High Court. When the matter came up before the Hon''ble Apex Court it has been held that however, she being a widow had applied for appointment in place of her husband and admittedly sanction was given for giving appointment to her husband. The Electricity Board had acceded to her request and given appointment to widow. She having been appointed, there cannot be a direction for appointment of another member from the same family. It was further held by the Hon''ble Supreme Court that the High Court was not right in giving direction to appoint the Respondent. We are of the view that the case referred by the learned Counsel for the Petitioner is not applicable in the facts and circumstances of the case.

15. In view of the foregoing discussion, we are of the view that the G.O. dated 25-05-1999 providing for employment to one member of the family of the person

whose land has been acquired under the provisions of Land Acquisition Act is not enforceable in court of law and the said G.O. has no statutory force. Our constitutional scheme clearly envisages equality of opportunity in public employment. The Constitution of India intends that no one should be denied opportunity of being considered for public employment on the ground of sex, caste, place of birth, residence and religion. This part of constitutional scheme clearly reflects strong desire and constitutional philosophy to implement the principle of equality in the true sense in the matter of public employment. In view of the above, the courts cannot countenance appointment to public office on the ground that Government had issued an executive order against the constitutional scheme as indicated above. The eligible person can only be appointed by following the procedure laid down under the constitutional scheme. In our constitutional scheme, there is no room for back door entry in the matter of public employment. There is no provision under the Land Acquisition Act that the person whose land has been acquired would be provided employment alongwith the compensation and solatium. The Land Acquisition Act does not contain any provision by which the Government has been conferred a power to issue a circular to provide employment to a family member of the displaced family whose land has been acquired under the provisions of the Land Acquisition Act. In absence of any statute or rule made under any statute, the aforesaid G.O. has no statutory force and it cannot be enforced in the court of law. As such, no writ can be issued directing the acquiring body to consider the claim in accordance with the aforesaid G.O. The learned Single Judge has erred in issuing a writ of mandamus directing the acquiring body to co-ordinate to implement the policy decision and to decide the question of giving employment to the Petitioner in accordance with aforesaid G.O.

16. Therefore, the special appeal deserves to be allowed. The impugned order dated 13-08-2004 passed in W.P. No. 1706 of 2001 (S/S) is hereby set aside. The appeal is allowed. Accordingly, the writ petition No. 1706 of 2001 (S/S) is dismissed. No order as to costs.