
(2015) 07 OHC CK 0011
In the Orissa High Court
Case No : Writ Petition (C) No. 14671 of 2013

Indira Mohapatra

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 09-07-2015

Acts Referred:

Citation : (2015) 07 OHC CK 0011

Hon'ble Judges : Sanju Panda, J;Durga Prasanna Choudhury, J

Bench : Division Bench

Advocate : S.K. Jena, for the Appellant

Final Decision : Disposed off

Judgement

Dr. Durga Prasanna Choudhury, J.

1. The captioned writ petitioner seeks a direction to the opposite parties to declare her as displaced person under Talcher- Sambalpur Rail link Road Over Bridge Project at Boinda with a further direction to provide all facilities as available to a displaced person as per Odisha Resettlement and Rehabilitation Policy, 2006 (hereinafter called "RR Policy 2006") with consequential benefits.

2. The factual matrix leading to the case of the petitioner is that the petitioner is the recorded owner of land pertaining to Khata No. 5, Plot No. 682/998, area measuring Ac.4.62 decimals. It is alleged, inter alia, that for the Talcher-Sambalpur Rail Link Road Over Bridge Project at Boinda, opposite parties vide Land Acquisition Notification No. L.A.(c)-61/2004 dated 31.5.2005 Ac.3.43 decimals of land from the above suit plot of the petitioner. Again vide notification No. L.A.(c)-75/2005 dated 10.8.2005 the rest of the land of the petitioner measuring Ac.1.19 decimals was acquired. Therefore, the petitioner became the double displaced person under the "R.R. Policy 2006". Since the suit land as stated above, is situated about 1 k.m. distance from Boinda Chhak and it is adjacent to N.H.55, by acquiring such land, the petitioner was deprived of the said valuable suit land. It is also alleged that the petitioner is a widow and

became completely landless person due to acquiring of the aforesaid land. It is claimed by the petitioner that the petitioner is a displaced person belonging to category IV which deals with Urban Liner Projects such as Railway and Road Projects. According to Category IV of the "R.R. Policy 2006", each family will get the following benefits :

"(a) Homestead land @ 1/10th of an acre in rural area and @ 1/25th of an acre in the urban area or cash equivalent of Rs. 50,000/- preferably near growth centers like land by the side of roads, and important junctions, land by the side of railway station, etc, subject to availability. If required, project authority may acquire such suitable land under the relevant Act for the purpose.

(b) House Building assistance: Rs. 1,50,000/- to each displaced family will be admissible whether setting in Resettlement habitat or elsewhere.

(c) If house/homestead land of any landholder is acquired for liner project of if there is total displacement due to acquisition for such project, the project authority shall provide employment to one of the members of such displaced family in the project. Wherever RPDAC decides that provision of such employment is not possible, one time cash assistance as decided by the government will be paid by the project authority."

3. As the petitioner did not get any benefit, she approached O.P. No. 3 who after enquiry found that the petitioner is a multiple displaced victim and liable to get the benefit under the "RR Policy, 2006". So O.P. No. 3 recommended the case of the petitioner to the O.P. No. 4 who in turn forwarded the case of the petitioner to O.P. No. 5. It is alleged inter alia that the O.P. No. 5 is not taking any action at his end. It is further averred by the petitioner that the O.Ps. 4 and 5 are remaining silent having not taken any action on the grievance of the petitioner. Hence the petitioner is compelled to knock the door of this Court seeking relief under the "RR Policy, 2006".

4. Although O.P. No. 3 has not filed counter-affidavit, but learned counsel for the O.Ps. 4 and 5 filed para-wise comment. It is the case of the O.Ps. that a large patches of land were acquired for the execution of Sambalpur-Talcher Rail Link Project vide a letter dated 10.11.1989. The Railway made certain policy for acquisition of the land. One of the guidelines of that policy is to give appointment to the land losers as per the procedure decided by the Railway. It is further averred that there was advertisement for the recruitment to fill up the 280 sanctioned posts of gangman and in that advertisement, land losers of Sambalpur Talcher Rail Link Project were directed to apply. The last date for submission of application was 4.3.1999. It is averred that in the written test 110 land losers category were qualified. But after physical test, 76 persons from the land losers were finally recommended for appointment. The Railway made following guidelines for adopting preferential treatment to land losers in the above recruitment.

"i. A separate notification was issued for them to apply for this recruitment.

- ii. They were not required to be sponsored by the Employment Exchange as in the case of others (except wards of Railway employees and SC/ST applicants).
- iii. They were tested separately in the physical test and viva-voce.
- iv. Land losers securing 50% marks in aggregate (in written, viva-voce and physical test) were empanelled whereas it was the cut off marks 81% for UR candidates, 71.5% for ST candidates, 72% for SC candidates and 73.5% for OBC candidates.
- v. They were also given 05(five) grace marks extra as at the time of drawal of select list.
- vi. As a result of above concession, the success rate of land losers in the above recruitment comes out to be 14% of the applicants, whereas for other it is only 3% of the total applicants."

5. Against such notification containing guidelines of Railway, 145 candidates vide various applications challenged the said notification of the Railway before the Central Administrative Tribunal (hereinafter called as "CAT") wherein the entire notifications of Railway was quashed. Against that order of the CAT, Railway Administration preferred writ application before this Court. The Court confirmed the order of the CAT and dismissed the plea of the Railway. Against the order of this Court, the Railway went to Hon''ble Apex Court, where the order passed by this Court was confirmed and the Hon''ble Apex Court directed to implement the order of the Tribunal within three months. Thereafter the Railway instead of implementing the same, took a decision to form the national policy in the matter of the land oustees. Another batch of 52 candidates approached the CAT. against the notification/procedure adopted by the Railway for holding an open combined test for land oustees and prayed to follow the decision of the CAT passed in O.A. No. 67 of 2001 filed by the above 145 candidates before the CAT. The CAT after considering the contentions, gave instruction to the Railway to grant relief to the applicants as due and admissible under relevant rules governing the field. Against that order, Railway preferred W.P.(C) No. 3285 and 1185 of 2003 and 11 more writ petitions which were dismissed by this Court on 4.10.2010, as these cases are covered by the earlier judgment of this Court dated 21.6.2010 passed in O.J.C. No. 6165 of 2002. Against that order, the Railway preferred Special Leave Petition before the Hon''ble Apex Court but the same was dismissed on 8.7.2011 directing to implement the order of the CAT within a period of three months. It is further averred in the para-wise comments that due to inaction of the opposite parties, the petitioners in those cases moved for contempt against the erring officials. According to the Railway, when the matter before the Hon''ble Apex Court was dismissed, directing the Railway to implement the order of the CAT within a period of three months, the same amounts to pending and not dismissal of the case before the Hon''ble Apex Court. Now in the present case, learned counsel for the O.P.-Railway submits to wait till disposal of the first writ petition before the Hon''ble Apex Court, i.e., SLP(Civil) No. 696-710/2011 (CC

6. Thus the O.P.-Railway has not given employment to the petitioner although she is 100% land oustee while her land was acquired under Land Acquisition Act for the above purpose. According to the learned counsel for the petitioner, the finding of the CAT should be implemented as per the order of this Court and the Hon''ble Apex Court without making delay as till the decision of the Hon''ble Apex Court, order passed by this Court is final unless reversed or modified or set aside. Apart from this, the notification of the Railway having not come up with vacancies to be filled up by the land oustees on top priority, there is grave injustice caused to the petitioner and other similarly situated candidates. So she prayed to quash the notification following the judgment of this Court and the Hon''ble Apex Court.

7. Learned Additional Standing Counsel for the State appearing for the O.Ps. 1 to 3 submitted that the Railway has to follow the policy made for land oustees as prescribed under "RR Policy, 2006" and he fairly conceded to the arguments made by the petitioner.

8. Learned counsel for the O.Ps. 4 and 5 submitted that as long as the decision of the Hon''ble Apex Court in the aforesaid SLP has not reached its finality, no decision can be taken in this matter under such project. According to him, the matter relates to policy for the entire class of land oustees but not for individual. At the same time he has submitted the copies of the decision of the CAT, this Court and of the Hon''ble Apex Court. He submitted that the order passed in W.P. (C) No. 3299 of 2013 in a similar nature of case before this Court should also be followed by this Court in the present writ petition inasmuch as in the said writ petition on 14.5.2013 this Court directed the O.P.-Sr. Divisional Personnel Officer, East Coast Railway, Sambalpur to examine and verify the claim made by the petitioner in that case and take a decision expeditiously without any direction to implement the order of the CAT. According to him, this Court also should follow the earlier decision in the similar matter passed by this Court.

9. Regard being had to the submission made by the learned counsel for the respective parties, after going through the petition, the para-wise comment and also on perusal of the copy of the orders passed by the Hon''ble Apex Court, this Court and the CAT, we find that the present petitioner is 100% land oustee while her land was acquired under the project namely Talcher-Sambalpur Rail Link project and she is entitled to get the benefit under Clause IV Type D of "R.R. Policy 2006".

10. It is admitted fact that the said Talcher-Sambalpur Rail Link project is a linear project. Therefore, according to Clause IV Type D of above policy, the project authority shall provide employment to one of the members of the displaced person in the project. In fact according to the petitioner, she made representation before O.P.3 who after verification, forwarded the same to O.P. No. 4 to give her benefit of employment according to the above policy. Thereafter

O.P. No. 4 sent the same to O.P. No. 5 but O.P. No. 5 is sitting over the matter without disposing of the same. O.P. NO.5. Railway Authority can only give employment to the petitioner or any of her family member as per the above policy. It is needless to point out that this court in O.J.C. No. 6165 of 2002 has gone in detail when Railway has prayed this Court against the order of the CAT who in fact has directed the Railway to provide jobs to the petitioners in those cases on top priority basis. This Court in the batch of cases including O.J.C. No. 6165 of 2002 at paragraph-9 has observed that filling up of 511 vacancies of group-D basis was only confined to outsiders and without giving any appointment to the applicants before the Tribunal, the posts were sought to be filled up. Not only this but also the decision has reached its finality being dismissed in the Hon"ble apex Court. We have gone through the notification of the Railway and observe that the said notification is not issued in consonance with the "RR Policy, 2006" because according to the said policy one of the member of the family suffering of land oustees, must be given employment. So it was for the O.Ps. 4 and 5 to get the vacancies to be filled up on top priority by these category of persons and thereafter the vacancies should be filled up by the candidates from outside. Notification issued by the Railway project being inconsistent with the "RR Policy, 2006", is thus held not be applied for the case of the petitioner. On the other hand O.P. No. 4 and 5 should consider her case for providing employment on top priority basis as she is 100% land oustee. Therefore, in the present case, we hereby direct O.Ps. 4 and 5 to take a decision as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order so that the poor person can get the benefit within the "RR Policy, 2006".

The writ petition is disposed of accordingly.

Sanju Panda, J.

I agree.