
(2016) 03 AHC CK 0164
In the Allahabad High Court
Case No : Special Appeal No. 154 of 2016

Kamlesh Chandra Tiwari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16, Article 21

Citation : (2016) 4 ADJ 193 : (2016) 6 ALLJ 664 : (2016) 3 AllWC 2429 :
(2016) 116 ALR 363

Hon'ble Judges : Dr. D.Y. Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Jayant Kumar and Prakash Rai, for the Appellant; CSC, Anadi
Krishna Narayana and S.N. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

1. This special appeal arises from a judgment of the learned Single Judge dated 20 January 2016. The writ petition¹ filed by the appellant (and another) seeking a mandamus to the Bharat Petroleum Corporation Limited² to provide appointment in pursuance of a Government Order dated 29 February 1996, has been dismissed.

2. The Uttar Pradesh State Industrial Development Corporation³ acquired land in Village Lawain Khurd, Tehsil Karchhana, District Allahabad during the 1960"s for setting up of an industrial estate. In 1997, BPCL applied to UPSIDC for land to set up a LPG Bottling Plant in the industrial estate. An agreement was entered into on 21 October 1997 by which a plot of land admeasuring 27.50 acres was allotted to BPCL by UPSIDC. The lease deed between UPSIDC and BPCL contained the following condition:

"In employing labour for the unit, skilled, semiskilled and unskilled, the allottee shall give preference to one or two able bodies persons from the families whose land has been acquired for the purpose of that Industrial Area."

3. In pursuance of the aforesaid condition, BPCL in October 1997 requested the district authorities to apprise it of the names and addresses of persons who had lost their land. Accordingly, the Sub Divisional Magistrate on 6 June 1999 forwarded a list of nineteen clusters/group of families whose lands had been acquired, treating them as project affected persons. BPCL was to consider the nominees from each cluster/group of families for employment, subject to their meeting the required criteria of eligibility for employment and suitability. On 7 August 1999, a letter was addressed by BPCL to those project affected families calling upon them to nominate a member of the family. The eligibility criteria prescribed was as follows:

4. Nominee should be a blood relation of the land losers such as:

"a) Self

b) Son

c) Grand-son (son's son)."

5. The land losers/nominees were required to present themselves before the Joint Development Commissioner, Naini on 23 August 1999 together with an affidavit indicating the details of the land acquired, compensation received and other details. An affidavit was filed on behalf of the appellant and his co-petitioner on 21 August 1999. The appellant was not found to be eligible for appointment, inter alia, on the ground that as on 1 August 1999, he was thirty four years and seven months of age on the cut-off date for screening which was 1 August 1999 (the date of birth of the appellant being 6 December 1964). This led to the filing of a writ petition. The learned Single Judge has followed the law laid down by a Full Bench of this Court in Ravindra Kumar v. District Magistrate, Agra , 2005 (1) UPLBEC 118 in holding that there was no vested right on the part of the family whose land had been acquired to claim appointment in the service of the fourth respondent. Dealing with the contention of the appellant that the appellant was entitled to be considered in pursuance of the condition contained in the lease agreement between UPSIDC and BPCL, the learned Single Judge held that the minimum criteria of eligibility which was prescribed was neither under challenge nor could it be said to be unreasonable. The case of the appellant was duly examined in terms of the criteria and the appellant was held not to fulfill the prescribed norms. Moreover, the learned Single Judge held that since the land was acquired in 1968 and a period of more than forty five years have elapsed, the object of granting appointment in lieu of acquisition of land may not survive anymore. Hence, the writ petition has been dismissed.

6. The learned counsel appearing on behalf of the appellant urges that -

"(i) The judgment of the Full Bench in Ravindra Kumar would not be applicable in the present case because, independently, the lease deed between UPSIDC and BPCL warrants the grant of a preference in employment by BPCL. Moreover, it is not in dispute that others, whose claims were found to be eligible, have been

granted appointment;

(ii) The condition of eligibility under which an age relaxation of five years has been granted to persons belonging to SC/ST but not to others, is not lawful since all land oustees should be entitled to uniform treatment in regard to the age relaxation; and

(iii) Though, the acquisition took place in 1968, BPCL was allotted land by UPSIDC in 1997 and appointment to other persons whose lands had been acquired was granted in 1999, i.e. thirty one years after the acquisition and hence the learned Single Judge was in error in rejecting the case of the appellant merely on the ground of a passage of time."

7. The basic principle of law which has been enunciated in the judgment of the Full Bench in Ravindra Kumar (supra) is that public employment must follow norms of equality of opportunity, failing which there would be a violation of Articles 14 and 16. Certain exceptions are permissible as in the case of compassionate appointment. Where the land has been acquired under the Land Acquisition Act 1894, the landholder who is deprived of his land shall be entitled to the payment of compensation and in the absence of a statutory provision, appointment cannot be claimed as a matter of right. Hence, any government order or circular providing employment to one member of a family whose land has been acquired would be invalid. The Full Bench has laid down the following principles:

"20. It is a general rule that appointments in the public services should be made by inviting applications through open advertisement and strictly on merit so that every citizen should get equal opportunity in the matter of appointment. This rule should be adhered to in the matter of any public employment or appointment. Neither the State Government nor its instrumentality nor any public authority can deviate from this common rule of appointment and if any other procedure or mode is adopted, it would be violative of Articles 14 and 16 of the Constitution of India which ensures and guarantees equal opportunity to all citizens in the matter of appointment to any office or of any other employment under the State. However, some exceptions to the general rule for public employment or appointment is also recognized which is commonly known as appointment on compassionate ground which is evolved purely on humanitarian ground and in the interest of justice. This rule was made to meet certain contingencies and to give appointment to a dependant of an employee dying-in-harness to prevent his family from destitution ... 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."

8. The conclusion of the Full Bench was in the following terms:

"1. The Government Orders/Circulars providing employment to one member of a family of a person whose land has been acquired (over and above the compensation awarded under the law) are invalid.

2. The acquiring body for whose benefit the land is acquired are not bound by such Government Order/Circular.

3. No writ can be issued directing the acquiring body to consider the claim in accordance with the aforesaid Order/Government Circular."

9. The judgment of the Supreme Court in *Butu Prasad Kumbhar v. Steel Authority of India Ltd.*, (1995) Supp 2 SCC 225 holds thus:

"...Needless to say that petitioners or their ancestors were not deprived of their land without following the procedure established in law. Their land was taken under the Land Acquisition Act. They were paid compensation for it. Therefore, the challenge raised on violation of Article 21 is devoid of any merit. Even otherwise the obligation of the State to ensure that no citizen is deprived of his livelihood does not extend to provide employment to every member of each family displaced in consequence of acquisition of land. Rourkela Plant was established for the growth of the country. It is one of the prestigious steel plants. It is established in public sector. The Government has paid market value for the land acquired. Even if the Government or the steel plant would not have offered any employment to any person it would not have resulted in violation of any fundamental right. Yet considering the poverty of the persons who were displaced both the Central and the State Government took steps to ensure that each family was protected by giving employment to at least one member in the plant. We fail to appreciate how such a step by the Government is violative of Article 21. The claim of the petitioners that unless each adult member is given employment or the future generation is ensured of a preferential claim it would be arbitrary or contrary with the constitutional guarantee is indeed stretching Article 21 without any regard to its scope and ambit as explained by this Court. Truly speaking it is just the other way. Acceptance of such a demand would be against Article 14."

10. In view of the above position of law, the matter would now have to be considered from the perspective of the condition in the lease deed between UPSIDC and BPCL. The condition which has been extracted above, merely provides that BPCL shall give preference to one or two able bodied persons from the families whose land has been acquired while employing labour for the unit in the industrial area. The condition does not specifically provide a reservation or quota but a preference in the matter of employment. The condition does not preclude BPCL from laying down reasonable terms and conditions to define norms of eligibility. The norms which were prescribed by BPCL, as stated in the counter affidavit, stipulated an educational requirement of having passed the seventh standard and a minimum and maximum age requirement. The criteria has not been questioned in writ proceedings before the learned Single Judge as

being unreasonable or ultra vires. Nor can the criteria be held to suffer from manifest unreasonableness or perversity. We find no substance in the submission that the age relaxation in favour of SC/ST candidates of five years and of three years in favour of OBC candidates must be extended to the general category. Such an age relaxation to the reserved category cannot be held to be unreasonable. In the present case, the appellant did not fulfill the eligibility criteria specified by BPCL.

11. In this view of the matter, the appellant having been considered in terms of the policy and having been found to be ineligible, no fault could have been found in the decision. The finding of the learned Single Judge that no employment could be granted after a lapse of nearly forty five years from the date of acquisition shades into the background since, even in terms of the policy as laid down for employment by BPCL, the case of the appellant was evaluated and he was not found to be eligible.

12. For these reasons, we find no merit in the special appeal. The special appeal is accordingly dismissed. There shall be no order as to costs.

1Writ-A No. 46991 of 1999

2BPCL

3UPSIDC