
(2015) 05 MP CK 0088
In the Madhya Pradesh High Court
Case No : W.A. No. 195 of 2015

Kayum Mohd. and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 —
Section 2 (1)

Citation : (2015) 05 MP CK 0088

Hon'ble Judges : Rajendra Menon, J; M.C. Garg, J

Bench : Division Bench

Advocate : R.K. Samaiya, Learned Counsel, for the Appellant; Swapnil Ganguly, Learned Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J—In this appeal under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005, challenge is made to an order dated 26.2.2015 passed by the learned Writ Court dismissing a writ petition filed by the petitioner.

2. Petitioner had filed the writ petition and it was their case before the Writ Court that an in accordance with the rehabilitation policy formulated by the State Government on account of acquisition of land and in pursuance to the agreement entered into between the National Thermal Power Corporation and the Collector on behalf of the Government on 19.3.2010 and, thereafter, amended on 11.12.2010, there was a condition for grant of appointment to one member of the family, whose land is acquired.

3. The prayer made in the writ petition was that in contravention to this agreement and in violation of the same, the appointment in the company is not being granted to the members of the family, whose land has been acquired. After hearing all concerned and after taking note of the rival contentions, the learned Writ Court disposed of the writ petition with the following directions :

"(A) That if some persons have not received the compensation of the land which has been acquired by the appropriate government on behalf of the company, the respondent/ company shall make an endeavor to provide them alternate land or help the petitioners to purchase the alternate land and, if it is not possible then, the petitioners would be at liberty to receive the compensation and other benefits offered by the company.

(B) The company shall make an endeavor to provide employment to one of the family member, as far as possible, if there are vacancies and the incumbents fulfills requisite qualification. The employment would be restricted to Class-III and Class-IV posts. However, if the posts are not available then the company shall give preference to one person from each family of the petitioners whose land was acquired and which was more than five acres whenever the vacancy will occur, subject to maximum age limit in accordance with the terms and conditions of the contract."

4. It was vehemently canvassed before us by Shri R.K. Samaiya that once an agreement was entered into and when there was a provision for grant of employment, in contravention to the agreement, the respondent/ National Thermal Power Corporation cannot deny appointment to the petitioner and it was said that misconstruing the facts of the case and by incorrectly relying upon the judgments in the case of Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another, AIR 2011 SC 1989 : (2011) 6 JT 379 : (2011) 5 SCALE 624 : (2011) 7 SCC 639 : (2011) 3 UJ 1977 : (2011) AIRSCW 4473 , the writ petition was disposed of, which was not correct.

5. By taking us through various provisions of the Land Acquisition Act and the grounds raised, reliance is placed on a judgment of the Hon"ble Supreme Court in the case of Raghbir Singh Sehrawat Vs. State of Haryana & Ors. 2012 AIR SCW 240 by Shri R.K. Samaiya to say that the relief claimed for by the appellant has not been granted in accordance with law.

6. On the contrary, Shri Rajendra Tiwari, learned Senior Advocate appearing with Shri Greeshm Jain argued that the appellant can claim employment only if vacant posts are available and in the absence of any vacant post as in accordance with the terms and conditions of the rehabilitation scheme and the policy of the State Government, compensation is granted, no further indulgence into the matter is called for. They submit that the learned Writ Court has considered all these aspects of the matter and has issued appropriate directions, which does not call for any interference.

7. We have considered the rival contentions and we find that in the writ petition, the prayer made reads as under :

"(i) That, the record of the case pertaining to the petitioners may kindly be called for and writ of mandamus be issued commanding the respondents to provide all the benefits; plots, employment and other facilities in the light of Ramdin Case for setting right their grievance.

(i)a. That, Annexure-P7 dated 11.12.2010 may kindly be quashed being contrary to the provision of law.

(ii) That, the Respondents be directed to refer the case of the Petitioners to the Civil Court to determine the compensation according to law.

(iii) Any other relief which this Hon''ble Court may deem fit and proper be also granted."

8. Further Annexure-P7 is a settlement entered into between the Collector and the Corporation in the matter of granting one time settlement.

9. We have considered the contentions advanced and we find that the learned Writ Court took note of the totality of the circumstances and in regard to providing employment to one family member, finding recorded is that it was not possible for the Company to give appointment to each member of the family as no vacancy or post is available, instead as vacancies were not available, therefore, the directions as indicated herein were issued.

10. The directions issued, as indicated herein above, are in accordance with law and we find no infirmity in the same. That apart, as in terms of the rehabilitation scheme, if a person is entitled for further compensation and if such a compensation is not paid, they may claim it in accordance with law. Except for making such modification to the order passed by the learned Writ Court, we see no reason to interfere into the matter.

11. As far as the judgments relied upon by Shri R.K. Samaiya is concerned, they relate to merits of the acquisition proceedings and the tenability of the acquisition itself. In the present case, the said question is not involved. The only question involved is with regard to grant of appointment to one member of the family and as the learned Writ Court has given cogent reasons for not issuing a mandamus in this regard, instead has issued certain direction to the Corporation, we find no reason to interfere into the matter.

12. Accordingly, finding no merit in the appeal, the same is dismissed.