
(2014) 05 OHC CK 0009
In the Orissa High Court
Case No : W.P.(C) No. 5102 of 2013

Krushna Chandra Nayak

APPELLANT

Vs

The Railway Board

RESPONDENT

Date of Decision : 14-05-2014

Acts Referred:

Constitution of India, 1950 — Article 16, 21, 309

Citation : (2014) 118 CLT 664 : (2014) 142 FLR 808 : (2014) 2 ILR 290 :
(2014) 4 LLN 250 : (2014) 2 OLR 333

Hon'ble Judges : I. Mahanty, J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—This writ petition has been filed with a prayer to quash the order dated 15.1.2013 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1032 of 2012 under Annexure-4 and to direct the opposite party-Railway Authorities to issue necessary appointment order in favour of the petitioner under Rehabilitation Assistance Scheme as against any substantive vacancy commensurate with his qualification as his family is in distress condition.

2. Petitioner's case in brief is that when the father of the petitioner continued to be a recorded tenant under the State Government having absolute right, title and interest over the properties appertaining to Plot Nos. 2314, 2318, 2319, 2320 and 2325 under Khata No. 754 in Mouza Godiputmatiapada under Delanga Tahsil in the district of Puri and his family was earning their livelihood out of usufructs from the said property through agriculture, the process of acquisition of land was initiated by the authorities of the State Government for the purpose of construction of Khurda Road-Bolangir New B.G. Rail Link Project in the year, 1999 to be undertaken by the East Coast Railway under the Ministry of Railways. Consequentially Land Acquisition Case No. 05 of 1999 was registered before the Land Acquisition Officer pertaining to the landed property of his family and

similar other persons of the locality. In the process of such acquisition of land, a sum of Rs. 78,292/- was granted as compensation in favour of his family by the Land Acquisition Officer, Puri, which was received by his family on 25.5.2001 without prejudice to the rights and contentions, if any. In view of such acquisition of the land, no other alternative plots were allotted to his family save and except the amount of compensation. When the family of the petitioner along with many other similarly situated persons of the locality enquired about the Rehabilitation Assistance Scheme providing employment to the family of the land oustees, the authorities suggested that the said aspect was under active consideration and necessary notification would come out, once it is finalized. After passage of several years, ultimately the Railway Authorities decided to grant the benefit of compassionate appointment to the family of those land oustees whose lands were acquired and/or to be acquired. In consequence of such decision, the Government of India in its Ministry of Railways vide Notification No. E (NG) 11/2010/RC-5/1 dated 16.7.2010 under Annexure-2 notified a scheme for providing employment to one of the family members of the land oustees in deserving cases as against the land acquired by the Railways for its various projects. Pursuant to the said notification, the petitioner submitted an application before the opposite party No. 3-Divisional Railway Manager, East Coast Railway, Khurda Road for consideration of his case for compassionate appointment under Rehabilitation Assistance Scheme commensurate with his educational qualification. Along with such application, the petitioner enclosed a certificate regarding "No Objection" from the family members along with his educational testimonials as per requirement of the authorities as well as an undertaking expressing his willingness to work against any available vacancy. The further case of the petitioner is that though he satisfied all the eligibility criteria coming within the zone of consideration to avail the benefit of Rehabilitation Assistance Scheme so far as it relates to grant of employment as a land oustees/loser, he has not received any communication on his application and pending consideration of his application, in the recent past, the opposite party-authorities have gone for recruitment of fresh candidates ignoring his case. Due to non-consideration of the application of the petitioner for grant of benefit under Rehabilitation Assistance Scheme for an inordinate period, the petitioner made a representation to the authorities in this regard. The said representation having not been considered, he approached the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1032 of 2012 seeking a direction to the opposite party-authorities to consider his case for appointment under Rehabilitation Assistance Scheme (Annexure-2) as a land loser and for a further direction to issue necessary order of appointment in his favour against any available vacancy commensurate to his educational qualification within a stipulated time. The Tribunal after hearing the parties vide order dated 15.1.2013 dismissed the O.A. Against the said order of dismissal, the petitioner has approached this Court in the present writ petition seeking appropriate relief.

3. Mr. S. Das, learned counsel appearing on behalf of the petitioner submitted

that the Tribunal is not justified in holding that the notification issued by the Railway Board on 16.7.2010 cannot be made applicable to the case of the petitioner since the land of petitioner's family has been acquired much prior to the date of notification. The notification in question is issued with regard to appointment of land losers affected by the land acquisition for Railway Projects. Since the said notification covers up the displaced persons whose land has been acquired and also whose land are being acquired, the Tribunal is not correct in holding that the said notification is not applicable retrospectively.

4. In Clause-8 of the notification, it has been specifically indicated that the instructions normally would not be applicable to those cases where land acquisition process has been concluded by way of possession of land by Railway. The said clause does necessarily mean and infer that the notification would not be applicable for those completed projects those which have been commissioned, otherwise the contents of the said clause runs contrary to the very provisions of main clause under the screening criteria. The Clause-8 under the screening criteria needs to be read along with the notification in its entirety but not disjunctively. In the district of Puri to which the petitioner belongs a total extent of Ac. 14.08 decimals of private land has been acquired by the State Government and the process of land acquisition is going on in other districts. Construction work of the said project is in progress in three districts, namely, Puri, Khurda and Nayagarh. Thus, the project is not completed and it can only be stated to be so when it is commissioned. A notification is normally issued with a purpose of covering the projects and its applicability apparently ceases when the project attains its completion. During continuance of the project, if a notification is brought out, it has to be made applicable to the entire project from its starting point to the finish line. By the time notification was issued, the petitioner's family had lost their land. Therefore, he cannot be deprived of getting the benefit of the said notification as the persons of neighbouring districts would enjoy the benefit of the said notification. Non-consideration of the case of the petitioner creates a class within a class and he has been treated as an unequal among the equals. The scheme itself covers up two sects of persons, i.e., those who are already affected by the land acquisition process and those who are going to be affected. As the entire process of land acquisition has been made in patches and stretches for the ongoing project, the authorities cannot segregate the land oustees, according to their choice, by taking the plea that Clause-8 of the said scheme cannot be construed as non obstante one. The petitioner has accrued definite right in his favour for appointment/engagement under the category of being a land loser. Non-consideration of the case of the petitioner perpetuates illegal discrimination and such arbitrary action of opposite parties is in complete violation of Articles 16 and 21 of the Constitution of India. Concluding his argument, Mr. Das, learned counsel for the petitioner prays to declare the applicability of the notification dated 16.7.2010 to the land loser of the entire project from its starting point to the finish line and the clauses which are found to be repugnant and contrary to the true intent of the Scheme may be struck

down as against the sanction of law.

5. Per contra, Mr. B.K. Das, learned counsel appearing on behalf of opposite parties submitted that for the purpose of construction of Khurda Road-Bolangir New B.G. Rail Link Project, a notification for land acquisition was issued by the State Government in the year, 1999. Pursuant to the said notification, lands were acquired and compensation was paid by the Land Acquisition Officer to the affected persons including the family of the petitioner on 25.5.2001. The Railway Board in supersession of all previous instructions issued a fresh instruction vide No. E(NG) 11/2010/RC-5/1 dated 16.7.2010 for appointment of those land losers who are already affected on account of land acquisition for Railway Projects with a stipulation that the said instruction normally will not be applicable in those cases where land acquisition process has been concluded by way of possession of land by Railway. The land described in the Original Application was acquired and compensation amount was paid by the Land Acquisition Authority in the year, 2001. Accordingly, the Railway Authorities also took the possession of land much prior to the notification dated 16.7.2010. Placing reliance on Clause-8, Mr. Das further submitted that the said notification is not applicable to the displaced persons in a land acquisition process, which has been concluded by way of possession of land by Railway. The Railway Board has ample power under Article 309 of the Constitution of India to issue such notification specifying the time from which it will be applicable and the person who would be the beneficiary. Concluding his argument, Mr. Das submitted that the writ petition being devoid of merit is liable to be dismissed.

6. On rival contentions of the parties, the following questions arise for consideration by this Court:

- (i) Whether the notification dated 16.7.2010 issued by the Railway Board is applicable to the case of the present petitioner?
- (ii) Whether the petitioner is entitled to get the benefit flowing from the said notification dated 16.7.2010?
- (iii) Whether the Tribunal is justified in dismissing the petitioner's O.A. on the ground that since the land acquisition process has been concluded much prior to the notification/instruction dated 16.7.2010, the same shall not be made applicable retrospectively unless and otherwise specifically provided therein?

7. The Question Nos. (i) and (ii) being interrelated, they are dealt with together.

The undisputed facts are that in the year, 1999, the process of acquisition of land was initiated by the authorities of the State Government for the purpose of construction of Khurda Road-Bolangir New B.G. Rail Link Project to be undertaken by the East Coast Railway under the Ministry of Railways. In the process of such acquisition, the lands of the petitioner's family along with other similarly situated persons of the locality were acquired. An amount of Rs. 78,292/- was received by the family of the petitioner as compensation in the

year, 2001. When the construction work of the said project is in progress, the Government of India in its Ministry of Railways vide notification No. E (NG) 11/2010/RC-5/1 dated 16.7.2010 notified a scheme for providing employment to one of the family members of the land oustees in deserving cases as against the land acquired by the Railways for its various projects. Though the petitioner claims benefit basing on Clause -3 of the screening criteria of the notification dated 16.7.2010 (Annexure-2), the opposite parties-Railway Authorities have denied such benefit placing reliance on Clause-8 of the said notification.

8. At this juncture, it would be appropriate to extract hereunder the relevant portions of the notification dated 16.7.2010 (Annexure-2) including Clauses 3 and 8 of the said notification:

Government of India, Ministry of Railways, (Railway Board)

RBE No. 99/2010

No. E (NG) II/2010/RC-5/1. New Delhi, Dated: 16.7.2010

The General Manager (P), All Zonal Railways/Production Units (As per standard mailing list)

Sub: Appointment of land losers affected by land acquisition for railway projects.

In supersession of all previous instructions on the subject, it has been decided that Railways may call and consider applications for employment to PB-1 Pay Band of Rs. 5,200-20,200 with grade pay of Rs. 1,800/- only, from land losers on account of acquisition of land for the projects on the Railways (excluding those for Deposit works). Applications shall be invited, by Personnel Branch of Zonal Railways, from the land losers fulfilling the screening criteria as enumerated in para 2 below.

xxx xxx xxx

3. Railway administration should request the concerned Competent Authority/Land Acquisition Officer to issue certificate/s to those persons whose land has been acquired to facilitate proper verification of the claims.

xxx xxx xxx

8. These instructions normally will not be applicable in those cases where land acquisition process has been concluded by way of possession of land by Railway.

9. A bare reading of the first paragraph of the notification dated 16.7.2010 extracted above makes it clear that applications for employment were called for from the land losers on account of acquisition of land "for the projects on the Railways". The use of expression "land has been acquired in Clause 3" of screening criteria unambiguously covers the land losers whose land has already been acquired for a Project. Therefore, it cannot be said that the said notification has no retrospective effect and it will apply prospectively. There is no reason to give a narrow interpretation to a benevolent circular/notification. Beneficial

circular should be liberally interpreted. The Hon'ble Supreme Court in the case of Commissioner of Customs (Preventive), Mumbai Vs. M. Ambalal and Co., , observed that the beneficial notification providing the levy of duty at a concessional rate should be given a liberal interpretation. It is needless to say that the object of issuing notification dated 16.7.2010 is a social welfare measure to rehabilitate the land losers whose land has been acquired for the Project on the Railways. The primary duty of the Court while interpreting the provisions of such benevolent notification is to adopt a constructive approach to achieve the purpose of such notification. Any other interpretation that would defeat the very purpose of the notification is not permissible under law. In case of providing employment to the family members of the land losers under Rehabilitation Assistance Scheme, technicalities cannot have preference over the substantive justice. Clause-8 of the said notification provides that the instructions contained in the notification dated 16.7.2010 normally will not be applicable in those cases where land acquisition process has been concluded by way of possession of land by Railway. Clause--3 and Clause- 8 operates in two different sets of circumstances. When Clause-3 operates for un-going Projects, Clause-8 operates in completed projects where land acquisition process has been concluded by way of possession of land by Railway. Therefore, Clause-8 cannot restrict/circumvent/block the benefits flowing under Clause-3 to land losers whose land has been acquired for an ongoing project.

10. The matter can be looked at from a different angle.

According to the opposite parties-Railway Authorities, the petitioner is not entitled to get the benefit under the notification in question as by the time the notification was issued, his land has been acquired. This contention of opposite parties is not tenable as the same project is going on and the persons of neighbouring districts will get the benefit under the notification dated 16.7.2010, the petitioner and similarly situated persons would be deprived of getting such benefit merely because their lands were acquired earlier to the date of notification for the self-same project. Such an act is definitely discriminatory.

It may be noted here that the notification dated 16.7.2010 has been issued to consider the applications of land losers whose lands have been acquired on account of acquisition of land for the Project by Railway. Further, the petitioner sought for information under the R.T.I. Act from the East Coast Railway with regard to applicability of the notification dated 16.7.2010 for land losers of Khurda Road-Bolangir New B.G. Rail Link Project. The information supplied to the petitioner reveals that the said notification pertains to land losers on account of acquisition of land for the Project of Railways. Thus, the benefit available under the notification dated 16.7.2010 is project based.

11. For the reasons stated above, it is difficult to accept the contention of the opposite parties-Railway Authorities that under the same project of the Railway, while some of the land losers are entitled to get the benefit flowing from the notification dated 16.7.2010, the others will be deprived of getting the same

benefit.

12. In view of the above, we are of the considered opinion that the notification dated 16.7.2010 is applicable to the case of the present petitioner and he is entitled to the benefit flowing from the said notification.

13. So far as the Question No. (iii) is concerned, in view of the answer to Question Nos. (i) and (ii), the Tribunal is not justified in dismissing the petitioner's O.A. on the ground that the land of petitioner's family was acquired much prior to the notification dated 16.7.2010.

14. In the result, the order dated 15.1.2013 passed by the Tribunal in O.A. No. 1032 of 2012 under Annexure-4 is set aside and the writ petition is, accordingly, allowed. No costs.

I. Mahanty, J.

15. I agree.