

(1993) 09 PAT CK 0041

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1317 of 1993 (R)

Md. Yasin and Others

APPELLANT

Vs

The Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 04-09-1993

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1994) 1 PLJR 65

Hon'ble Judges : S.B. Sinha, J; Narayan Roy, J

Bench : Division Bench

Advocate : S.B. Gadodia and A.K. Sahani, for the Appellant; Rajendra Prasad and I. Senchaudhary, for the Respondent

Judgement

S.B. Sinha, J.—The Petitioners, in this application, have prayed for issuance of an appropriate writ of or in the nature of mandamus directing the Respondents for their absorption as they are said to be the displaced persons. According to the Petitioners; their lands had been acquired for construction of Patratu Thermal Power Station. The contention of the Petitioners is that in terms of a policy decision, the displaced persons were to be provided with suitable jobs and for that purpose, upon a thorough inquiry, a list of 403 persons was prepared out of which 298 persons have been provided with employment. According to the Petitioners, no offer of employment has ever been made to 114 displaced persons, including the Petitioners, inspite of several representations.

2. In this case, a counter affidavit has been filed on behalf of the Respondents, wherein, inter alia, it has been contended that the lands were acquired in the year 1960 and upon verification of the cases of the parties, employment had been given to the displaced persons as far back as in 1977. It has further been contended that the remaining 114 candidates/persons did not turn up, nor did they produce the relevant papers and as such no employment could be given to them. It has further been submitted that some members of the family whose lands were acquired had already been working with the contractors, or they had

been working in the Patratu Thermal Power Station itself. It was submitted that the main criteria for giving preference for employment was that the displaced should be working on casual basis with the contractor of the Thermal Power Station. It has further been submitted that the list submitted by the Deputy Commissioner is a tentative one and thus they had no right to be appointed on the basis of the defective list of the displaced persons. It has further been submitted that some cases, more than one person of a family had been working in the Board and as such they cannot be considered for appointment. Further contention of the Respondents is that meetings had been held between the General Manager of the Electricity Board and the Deputy Commissioner wherein after inquiry it was found that 220 jamabandi raiyats whose lands had been acquired were to be given employment. The Petitioners' name also figure in the jamabandi raiyats' list. It has further been stated that objections had been raised by other land losers, and the list was prepared without verifying the entries in Register No. 2 maintained by the circle officer. It is submitted on behalf of the Respondents that the list of 220 persons is not final and therefore no of feet can be given to it.

3. It appears that a writ application be in C.W.J.C. No. 3658 of 1992 (R) was filed in this Court and by order dated 4.3.1993, it was disposed of with direction to the Respondents Nos. 1 to 3 to take a final decision upon the recommendation of the Deputy Commissioner Hazaribagh, in accordance with law, within a period of three weeks. If was submitted on behalf of the Respondent Board that the Respondents could not file any counter affidavit is the said writ application, entire fact could not be placed before this Court.

4. Mr. S.B. Gadodia, learned Counsel appearing on behalf of the Petitioners, inter alia submitted that the reasons stated by the Respondents in the counter affidavit filed in this application are wholly non-existent, inasmuch as employment had to be given to those displaced persons whose lands had been acquired. According to the learned Counsel, list of 413 persons have been finalised and in view of the fact that 298 persons have already been provided with employment, the action on the part of the Respondents in not providing employments to the Petitioner must be held to be arbitrary. The learned Counsel submitted that from annexure-3 to the writ application, it would appear that a committee was constituted which submitted its report and the names of 413 persons aforementioned were based on the said report. According to the learned Counsel Respondent No. 5 cannot be permitted to take a different stand now as annexure-2 contains the names of the Petitioners. It was further submitted that from perusal of annexure- 4 to the writ application, it appears further that the Petitioners were selected for appointment.

5. The question as to whether the persons whose lands have been acquired would be provided with employment or not is a matter of policy decision of the State. It is unfortunate that despite the fact that the lands have been acquired as far back as in the year 1960, the question of providing employment to the

displaced persons have not attained finality. As noticed hereinbefore, the Respondents had granted employment to 298 persons as far back as in the year 1977. The Petitioners, on the other hand, contend that they are not guilty of any delay or laches on their part, as they had all along been pursuing the matter with the Board.

6. This court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot embark upon determination of disputed question of fact. Further, after lapse of 33 years of acquisition, this Court cannot issue writ of or in the nature of mandamus directing the Respondent Board to appoint all the persons irrespective of the fact as to whether there are vacancies and whether the persons applying are now eligible for appointment or not. However, the conduct of the Respondent Board is evidently not fair in so far as it appears to have been taking inconsistent stand from time to time. It is not the case of the Respondent that it had rejected the recommendation of the Deputy Commissioner in respect of providing employment to 114 persons. As a matter of fact, the contention of the Respondents that after inquiry a list of 220 jamabandi raiyats has been prepared, which includes the names of some of the Petitioners, but that the names of such persons have not been verified from the Register 2 maintained in the office of the circle officer.

7. The Bihar State Electricity Board, a State within Article 12 of the Constitution of India, was expected to act fairly and adhere to its own policy decision. It was expected of a State under Article 12 of the Constitution to act in terms of the policy decision formulated by it without making any deviation or departure therefrom. However, the position appears to have changed completely in view of the passage of time and in view of the assertion and counter assertions made by the parties to the effect that many out of the aforesaid 114 persons, had neither been working as casual labourers with the contractor or in the Patratu Thermal Power Station, and some of them even did not produce their relevant papers. In this situation, in our opinion, the matter should be considered afresh by the Deputy Commissioner keeping in view the policy decision for providing employment to the displaced persons, requisite qualifications, existing vacancies and other relevant factors. For this purpose, the persons displaced may nominate and/or authorise their representatives to be present in the meeting to be held for this purpose in terms of the order of this Court passed in C.W.J.C. No. 3658 of 1992 (R) on 4.3.93.

8. We direct the Respondent Board also to nominate its representative and produce relevant documents before the Deputy Commissioner, who shall himself examine or cause them to be examined by a responsible officer of the revenue department of the State. He may also call for a report from the Circle Officer in this connection.

9. In our opinion, the matter should be finalized in a meeting between the representatives of the State, Bihar State Electricity Board and the displaced persons at an early date preferably within three months and thereafter the

parties should act pursuant thereto. It will be open to the Petitioners to produce all records before the Deputy Commissioner. This application is disposed of accordingly.

Narayan Roy, J.

10. I agree.