
(2023) 12 CAL CK 0021

In the Calcutta High Court

Case No : FMA No. 846 Of 2023, IA NO.: CAN 3 Of 2023

Mohit Kr. Maji (Since Deceased) Represented By His Legal Heirs And Representatives Nayan Kumar Maji & Ors. APPELLANT

Vs

Union Of India & Ors. RESPONDENT

Date of Decision : 06-12-2023

Acts Referred:

Probation of Offenders Act, 1958 — Section 6

Citation : (2023) 12 CAL CK 0021

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : Samim Ahammed, Arka Maiti, Ambiya Khatun, Shamim ul Bari, Reshma Chatterjee, Lakshmi Kumar Gupta, Arjun Roy Mukherjee, Bandhu Brata Bhulya

Final Decision : Dismissed

Judgement

Debangsu Basak, J

1. IA No.CAN 3 of 2023 is an application for substitution. Appellant no.1 expired on October 30, 2023. He is to be substituted by the person named in paragraph 4 of the application.
2. IA No.: CAN 3 of 2023 is allowed as prayed for.
3. Advocate-on-record for the appellants will carry out necessary amendments in the memorandum of appeal and other cause papers.
4. The appeal is directed against a judgment and order dated July 4, 2023 passed by the learned Single Judge in WPA 7591 2016.
5. By the impugned judgment and order, the learned Single Judge disposed of the writ petition directing Steel Authority of India Limited (SAIL) to give preference to the writ petitioners, if they take part in the recruitment process conducting by SAIL, for employment, other things being equal.

6. Learned Advocate appearing for the appellants submits that, the writ petitioners are land losers. The petitioners stand on the same footing as that of the other land losers, namely, 178 of them, who were granted employment by SAIL. He submits that, the writ petitioners should be granted employment as that of the other 178 land losers. In support of the contention that, there exists a policy for grant of employment to land losers, learned Advocate appearing for the appellants draws the attention of the Court to a press release of the Ministry of Steel dated March 18, 2013. Referring thereto, he submits that, in principle, SAIL agreed to provide employment to at least one member of the displaced family initially. He contends that 178 members of the family of the displaced persons received employment. Therefore, the writ petitioners should also receive such employment.

7. Learned Advocate appearing for the appellants, draws the attention of the Court to the affidavit of the State filed in the writ petition. He submits that, State also acknowledged that 178 land losers received employment. In support of the contention that, the petitioners cannot be discriminated against and that SAIL cannot be allowed to act arbitrarily, learned Advocate appearing for the appellants relies upon AIR 1952 Supreme Court 75 (The State of West Bengal v. Anwar Ali Sarkar & Anr.) and AIR 1965 Supreme Court 444 (Rattan Lal vs. The State of Punjab).

8. Learned Senior Advocate appearing for SAIL submits that, the acquisition proceedings were initiated sometime in 1988 and 1989. Land was acquired in tranches and that in all likelihood, the acquisition of the land belonging to the appellants occurred during the period 2005-2006. He submits that, there existed a land loser's policy which was discontinued with effect from February 3, 1986. He relies upon 2008 0 Supreme (SC) 2056 (Steel Authority of India Ltd. vs. Daby Lal Mahto and Ors.) and 2014 SCC OnLine Jhar 1209 (Steel Authority of India Limited & Ors. Vs. Rati Ram Manjhi & Ors.) in support of his contentions.

9. Learned Senior Advocate appearing for SAIL submits that, the appellants cannot be afforded negative equality. The 178 appointments were de hors any land loser's policy. Appellants cannot be allowed to take advantage of such illegality.

10. Learned Senior Advocate appearing for SAIL submits that, the learned Single Judge by the impugned judgment and order followed the ratio of the Hon'ble Supreme Court rendered in Daby Lal Mahto & Ors.(supra). He draws the attention of the Court to the press release to which, reference was made on behalf of the writ petitioners. He submits that, such press release records that employment of displaced persons at SAIL was regulated in terms of the Department of Public Enterprise Guidelines and legal pronouncements. The Supreme Court's pronouncement holds the field at present.

11. State is represented.

12. The appellants before us as writ petitioners filed a writ petition seeking a

direction upon SAIL to include the names of the appellants or their family members in the list prepared by the State Government for employment under the land losers category.

13. Apparently, lands belonging to the appellants were acquired. We hasten to add that, the previous sentence should not be construed to be a final finding that land belonging to any of the appellants were acquired on behalf of SAIL. We are proceeding on the basis of the claim of the appellants that land belonging to the appellants stood acquired for SAIL.

14. The acquisition proceedings apparently were initiated in 1988-89 with the actual acquisition taking place for a period of 2005-2006. There existed a policy of SAIL to grant employment to land losers. Such policy was discontinued with effect from February 3, 1986. The issue as to whether, land losers for land acquired for SAIL would be granted employment in SAIL or not fell for consideration before the Supreme Court in Daby Lal Mahto & Ors. (supra). There the Supreme Court observed as follows:

"9. We have heard learned counsel for the parties. Learned counsel for the appellant has invited our attention to subsequent Memorandum of the Government dated 3.2.1986 in which it was clearly mentioned in sub para (v) of para 4 as under:-

"in the context of the urgent necessity of public sector enterprises operating at commercially viable levels and generating adequate internal resources, over manning has to be guarded against, any understanding formal or informal in regard to offer of employment to one member of every dispossessed family in the project will stand withdrawn".

10. It is unfortunate that despite the scheme having been withdrawn way back in 1986, the same finds no mention in any of the litigation which has arisen with regard to the project. If the decision to withdraw the scheme was already taken by the Government of India in 1986 then that should have been brought to the notice of the Courts at appropriate time that whatever scheme that had to be implemented had in fact been already implemented and henceforth no further employment would be given in terms of the scheme to such landless people whose lands had been acquired. Had this fact been brought to the notice of the Courts by the parties perhaps things would have been different. But unfortunately, this basic fact has been lost sight of and this has resulted in a large number of litigation and the present contempt petitions before the High Court are an outcome of this.

11. Be that as it may, it is now high time to put an end to the litigation. It is an admitted fact that the project was completed way back in 1966 and even after more than 40 years of the completion of the project, people whose land was acquired for the purposes of the project are still litigating for getting employment. This is not at all warranted. At the relevant time, the intention of the government was to rehabilitate the landless people whose lands had been

acquired and to provide employment to one member of the displaced family so that they could maintain the family so displaced. It was not at all the intention of the government to distribute this kind of largess's on an indefinite basis. This is nothing but an abuse of the process of Court.

12. However, in order to put an end to the controversy at hand, we direct that the 970 persons whose names have been included in category (ii) as per order dated 7.4.1998 of the High Court will be considered for appointment, other things being equal. It is submitted by counsel for the appellant that in the advertisement dated on 1.6.2007 for 300 general vacancies, it has been mentioned that preference will be given to those displaced persons whose lands have been acquired. The relevant portion of the advertisement reads as under:-

"Preference will be given to local displaced persons of Bokaro as per Company's policy".

It may be made clear that consideration of the names of persons for employment does not give them a right to appointment. Other things being equal, they will be given preference in the matter of employment as and when vacancies arise."

15. In *Anwar Ali Sarkar & Anr. (supra)*, the Supreme Court observed that there cannot be any discrimination between similarly situated persons. In the facts of the present case, the situation between the 178 land losers who got employment and the appellants are that, both are land losers. The similarity in situation stops at that point of time. The 178 persons received employment de hors any policy of grant of employment as land losers. Therefore, the appellants cannot claim to be similarly situated as those 178 persons as a policy for grant of employment to land losers did not exist.

16. In *Rattan Lal (supra)* the Supreme Court noted the provisions of the exercise of power under Section 6 of the Probation of Offenders Act, 1958. The fact situation in the present case, are absolutely different.

17. *Daby Lal Mahto & Ors. (supra)* was noted by the Jharkhand High Court in *Rati Ram Manjhi & Ors. (supra)*. Subsequent to the pronouncement of the Supreme Court in *Daby Lal Mahto & Ors. (supra)*, a press release was issued by the Ministry of Steel dated March 18, 2013. Such press release recognized that in principle, there was an agreement to provide employment to at least one member of the displaced family, initially. It went on to say that the number of persons granted employment in such category exceeded the number of families originally displaced. Then it goes on to say that this employment of displaced persons at SAIL was being regulated in terms of the Department of Public Enterprise Guidelines and legal pronouncements.

18. As on March 18, 2013, being the date of the press release, SAIL was governed by the pronouncement of the Supreme Court rendered in *Daby Lal Mahto & Ors. (supra)*.

19. The lands of the appellants were acquired sometime in 2005-2006. They

were not given appointment at that point of time. Thereafter Daby Lal Mahto & Ors. (supra) was rendered which recognized that, land losers policy stood expired with effect from February 3, 1986. Nothing is placed on record before us to suggest that, at the material point of time of acquisition of land of the appellants there was a policy for grant of employment to land losers.

20. In 2008, the Supreme Court rendered Daby Lal Mahto & Ors. (supra) which provided that, in the event, a land loser participates in a selection process, preference would be given to such land losers, other things remaining equal. Such direction of the Hon'ble Supreme Court was granted by the learned Single Judge in the impugned judgment and order while disposing of the writ petition.

21. In such circumstances, we find no merit in the appeal.

22. FMA 846 of 2023 is dismissed without any order as to costs.

23. I Agree.