

(2013) 06 MAD CK 0062
In the Madras High Court
Case No : Writ Petition No. 34725 of 2007

Mr. R. Balaji

APPELLANT

Vs

The Chairman Tamil Nadu Electricity Board and Others

RESPONDENT

Date of Decision : 24-06-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 6 MLJ 726

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : Kamalesh Kannan, for the Appellant; R. Varalakshmi for R1 and Mr. M.S. Ramesh, Additional Government Pleader for R3 to R5, for the Respondent

Final Decision : Allowed

Judgement

P.R. Shivakumar, J.—This writ petition has been filed invoking the writ jurisdiction of this Court under Article 226 of the Constitution of

India praying for the issuance of a Writ of Certiorarified Mandamus pursuant to the rejection of the claim of the writ petitioner for employment in

the North Madras Thermal Power Project. Lands in Vallur Village, Ponneri Taluk, Thiruvallur District were acquired for the purpose of

constructing Housing Quarters and for laying of road for the employees of North Madras Thermal Power Project. For the purpose of smooth,

speedy and successful acquisition, a public statement was made by the Chairman, Tamil Nadu Electricity Board (first respondent), offering

employment assistance to one member of each family from whom lands were acquired for the North Madras Thermal Power Project. The same

was given effect to by issuing G.O.Ms. No. 656, Labour and Employment, dated 29.06.1978.

2. An extent of 0.93 acres belonging to one Subramani, S/o. Ganesan of Pattamandiri Village, Ponneri Taluk, Thiruvallur District comprised in S.

No. 797 of Vallur Village was also acquired for the said purpose. The said Subramani was the grandfather of the writ petitioner. Subramani died

on 08.05.2000 leaving his son Rajendiran (father of the petitioner) as his sole legal heir. The petitioner, being the son of Rajendiran and grandson

of Subramani, applied for employment under the Scheme on the ground that he is a member of the family from which the property was acquired.

The report of the Tahsildar dated 11.01.2007 also included the name of the petitioner as one of the persons entitled to get employment under

G.O.Ms. No. 656, Labour and Employment, dated 29.06.1978. However, the Chief Executive Engineer, North Madras Thermal Power Project

(second respondent) rejected the application of the petitioner by his proceedings dated 20.08.2007 on the ground that the petitioner was not the

direct legal heir of Late. Subramani from whom the property was acquired. Aggrieved by and challenging the same the petitioner has come

forward with the present writ petition.

3. The arguments advanced by Mr. Kamalesh Kannan, learned counsel for the petitioner, by Mr. R. Varalakshmi, learned standing counsel for the

first respondent and by Mr. M.S. Ramesh, learned Additional Government Pleader representing respondents 3 to 5 were heard. The materials

placed before the Court were also perused.

4. It is not in dispute that the petitioner is the grandson of Subramani, whose land in S. No. 797 of Vallur Village was also acquired for the North

Madras Thermal Power Project. Rajendiran is the only son of Subramani and the petitioner Balaji is the son of Rajendiran. Subramani is no more

and the death certificate produced by the petitioner shows that Subramani died on 08.05.2000. He has also produced a copy of the legal heir

certificate, according to which Rajendiran, the father of the petitioner, alone was the legal heir of late Subramani. The Tahsildar, Ponneri, after

enquiry, submitted a report in e/f/13751/2006/m1 dated 11.01.2007. In Serial No. 37 of the list found in the report, the petitioner's father

Rajendiran is shown to be the person entitled to seek employment under the scheme as his father, namely the land owner Subramani has expired.

A copy of the application submitted by the petitioner is also available in the

typed-set of papers. In the said application, the petitioner had sought for employment on the ground that his father Rajendiran was the sole heir of his grandfather Subramani and that he was one of the members of the family of Subramani. In the said application itself his father Rajendiran had made a note that he did not have any objection for giving his son, namely the writ petitioner, an employment in Tamil Nadu Electricity Board. In spite of the fact that the petitioner claimed to be a member of the family of the land owner from whom the property was acquired for the project, the second respondent issued the impugned order rejecting his application on the ground that the writ petitioner was not a direct legal heir of the land owner Subramani. The contents of the impugned order in vernacular is reproduced hereunder:

VERNACULAR (TAMIL) PORTION DELETED

Being the grandson of Subramani, the land owner from whom property had been acquired for the project, the petitioner staked a claim for employment in the Tamil Nadu Electricity Board under the scheme. The same was rejected not on the ground that he was not a member of the family of the land owner, but on the ground that he was not a direct legal heir of the land owner. According to the submissions made by the learned counsel for the petitioner, the said reason assigned by the second respondent in the impugned order for rejecting the application of the petitioner is against the letter and spirit of the scheme itself, since it does not make any distinction between direct legal heir and indirect legal heir of the land owner for seeking employment in the Tamil Nadu Electricity Board under the scheme of providing employment to one member of the family of the land owner whose land was acquired for the project. Learned counsel for the petitioner has pointed out the fact that it is not the case of the respondent that the petitioner is not a member of the family of Subramani, the land owner.

5. On the other hand, the respondents have contended that the scheme provided scope for providing employment assistance only to the direct legal heirs of the land owner and not to any other members of the family. In support of their contention, they relied on the letter of the 5th respondent in Letter No. 29264/C1/96-1 dated 26.07.1996 interpreting G.O.Ms. No. 656, Labour and Employment, dated 29.06.1978. As the said letter of

the 5th respondent was relied on by the respondents 1 to 4, the said letter has also been challenged by amending the prayer with the permission of

the Court for challenging the said letter and seeking quashing of the same also. The 5th respondent has also been made a party respondent. In the

said letter purporting to interpret the G.O., it has been stated as follows:

I am directed to refer to Para 4 of the letter cited and to state that in G.O.Ms. No. 656, Labour and Employment Department dated 29.06.1978,

the Government have issued specific orders that for consideration of appointment to the persons displaced on account of acquisition of lands for

the projects of the Public Sector Undertakings, first priority should be assigned to the cultivating owner and the cultivating tenant or varandars and

only second priority should be given to the absentee Land Lords. Hence only one of the family members whose lands were acquired alone is

eligible to claim employment. The Government have not issued orders to provide employment to the nominees of the affected persons. As per the

existing scheme the sons, unmarried daughters, wife or husband alone can be considered as nominees of the persons whose lands were acquired

for the projects of the Public Sector Undertakings and only one among them is eligible to get employment when duly nominated as a member of

that family. The Government Order dated 29.06.1978 issued in this regard by the Labour and Employment Department reads as follows:

G.O.Ms. No. 656, Labour and Employment Department, dated 29.06.1978

1. G.O.Ms. No. 188, Personnel and Administrative Reforms, dated 28.12.1976.

2. From the Government of India, Ministry of Industries, Lr. No. F. 8(4)/LP/77 dated 16.01.1977

3. From the Director of Employment and Training Lr. No./36453/75 dated 2.9.1977 dated 13.10.

Order

In the G.O. First read above, orders were issued among others, that the members of families whose lands have been acquired for Government

purpose as well as for the projects of the Public Sector undertakings, and displaced as a result of the acquisition be accorded third priority under

Group II of the list of priorities annexed to the said G.O. In the matter of provision of Employment assistance through Employment Exchange.

2. The Government of India, in their letter second read above, have requested

this Government to issue instructions to the Private Sector as well as State Public Sector Undertakings to provide employment to atleast one person of the family displaced on account of acquisition of land for the establishment of a project in the public sector or in the private sector. The Government have examined the above suggestion in detail in consultation with the Director of Employment and Training, Madras and pass the following orders:-

(i) All Public Sector Undertakings may recruit without reference to Employment Exchange, atleast one member of each family which is displaced on account of acquisition of lands for any projects of such public sector undertakings etc., provided that the acquired land should have been the only or major source of sustenance for that family.

(ii) The term ""Displaced family"" will include ""Owner of the land"" or the ""Cultivating tenants"" or ""Varandars"".

The appointing authorities concerned of the respective Public Sector Undertakings etc., shall themselves ascertain and decide whether the land was the major source of sustenance of family displaced from the land acquired, without insisting on production of any certificate from Revenue authorities before recruitment is made.

(iv) For consideration of appointment as indicated in 2(i) above, first priority should be assigned to the cultivating owner and the cultivating tenant or Varandars and second priority only should be given to the ""absentee land lords"".

3. The Departments of Secretariat are requested to communicate the above orders to all Public Sector Undertakings Statutory Corporations etc., under their control for adoption with immediate effect.

(BY ORDER OF THE GOVERNOR)

C. RAMACHANDRAN

SECRETARY TO GOVERNMENT

6. Learned counsel for the petitioner has pointed out the fact that said Government Order was issued by the order of the Governor, whereas the letter dated 26.07.1996 issued by Secretary to the Government was not issued by the order of the Governor and that hence, it shall not have the effect of amending or modifying the Government Order. It is the further

contention of the learned counsel for the petitioner that if the Government wants to amend or modify the scheme, it can be done only by way of an amendment to the earlier Government Order or by a new Government Order replacing the earlier Government Order and not by issuing a clarificatory letter by the Secretary to the Government which shall have the effect of amending or modifying the scheme itself. It is also brought to the notice of the Court by the learned counsel for the petitioner that a Board proceedings was issued in Permanent BP (F.P. No. 3) (Administrative Branch) dated 25.01.1990 referring to G.O.Ms. No. 656, Labour and Employment, dated 29.06.1978 and in the said Board Proceedings it had been stated that one member from a family, subject to the physical fitness and other rules, shall be selected for appointment in North Madras Thermal Power Project as Helper on a consolidated pay of Rs. 500/- for the first year, Rs. 650/- per month for the second year and Rs. 800/- per month for the third year. It has also been stated therein that in case there is no male member in the family, the members of the family could nominate a close relative for getting the employment opportunity and once such a nomination is made, thereafter request for change would not be entertained. When same was the scope of the scheme, the benefit was sought to abridged by issuing a clarificatory letter by the Secretary to Government. Such a clarificatory letter shall not have the effect of nullifying, amending or modifying the Government Order. As per the G.O., a member of the family, subject to fulfillment of other conditions, shall be given employment. Assuming that a person, his son and his grandson cannot be the members of the one and the same family, shall be against the hard realities faced by our society. Such a restrictive interpretation will not be in furtherance of the object sought to be achieved by the issuance of G.O.Ms. No. 656, Labour and Employment, dated 29.06.1978. A person aged about 90 years may be the registered owner of the land. His son, wife or daughter would be about 70 years. Having already crossed the age of superannuation, if such person cannot nominate a junior member of his/her family for getting the benefit of employment under the scheme, the same will result in denial of such opportunity to the members of the family as none of the members of the family would be in a position to get employment under the scheme. Therefore, the impugned letter issued by the 5th

respondent in Letter No. 29264/C1/96-1 dated 26.07.1996 is quite unreasonable besides tending to alter the scheme provided under G.O.Ms.

No. 656, Labour and Employment, dated 29.06.1978 in the guise of issuing clarification. The tendency of the respondents in avoiding issuance of

new G.O. modifying or replacing earlier G.O. and by simply issuing clarificatory letters having the effect of amending and modifying the G.O.

should be deprecated. For all the reasons stated above, this Court comes to the conclusion that the impugned letter of the 5th respondent cannot

stand the scrutiny of the Court and the same deserves to be quashed. For the same reasons, the order of the second respondent rejecting the

application of the petitioner is liable to be quashed. Since there is no other reason assigned for the rejection of the application of the petitioner,

except the reason that he is not the direct legal heir of the land owner from whom the property was acquired and that he is only a grandson of the

land owner, no other reason has been assigned, this Court comes to the conclusion that the petitioner is entitled to the direction in the nature of

mandamus directing the respondents 1 and 2 to provide employment to the petitioner in the 1st respondent Board.

In the result, the writ petition is allowed and the proceedings of the 5th respondent in Proceedings in Letter No. 29264/01-96-1 dated 26.07.1996

on the file of the Secretary to Government, Labour and Employment Department, Government of Tamil Nadu and the consequential order of the

2nd respondent made in Letter No. RC/North Madras Thermal Power Station/Chief Executive Engineer/Ka pa/Asst. Executive Engineer/JE/Ko

employment opportunity/1101/07, dated 20.08.2007 are quashed and the respondents 1 and 2 are directed to provide employment to the

petitioner in the 1st respondent Board in accordance with the scheme announced in G.O.Ms. No. 656, Labour and Employment, dated

29.06.1978. No costs.