

(2023) 04 OHC CK 0250
In the Orissa High Court
Case No : Writ Petition (C) No. 22163 Of 2017

NTPC Ltd

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 25-04-2023

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 21, 226, 227
Land Acquisition Act, 1894 — Section 4(1)

Citation : (2023) 04 OHC CK 0250

Hon'ble Judges : Dr. B.R. Sarangi, J; M.S. Raman, J

Bench : Division Bench

Advocate : B.S. Tripathy I, A. Tripathy, P.K. Muduli, Manoj Kumar Mohanty, T. Pradhan, Mithilesh Mohanty, A. Mohanty

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J

1. National Thermal Power Corporation (NTPC) Limited, which is a company registered under the Companies Act, 1956 and a Government of India Enterprise engaged in construction of super thermal power projects and generation of electricity in the interest of national power, has filed this writ petition seeking to quash the order dated 28.12.2016 passed under Annexure-6, whereby the Collector & District Magistrate, Angul, by observing that opposite party no.4, being a major married son of Late Dwari Behera, has been rightly included in the SAP list, has directed that as opposite party no.4 has exercised job option for his son, the name of the nominee of opposite party no.4 may be sponsored to NTPC for giving employment under the R&R Scheme applicable to him.

2. The factual matrix of the case, in brief, is that Late Dwari Behera of village Derang was the owner of the land measuring area of total Ac.2.37 decimal appertaining to khata nos.287 & 288 and plot nos.9462, 9463, 9464 and 9471. The said land was acquired by the State Government in the year 1991 for construction of Stage-II Ash Dyke of TSTPP, pursuant to the notification dated

23.04.1990 made under Section 4(1) of the Land Acquisition Act, 1894. Owing to such acquisition, Late Dwari Behera was declared as SAP No.A-307 and his other major married son Maheswar Behera was also declared as SAP No. B-123 for the purpose of grant of rehabilitation benefit as was prevalent then. Apart from receiving the land acquisition compensation of Rs.1,81,351/- on 07.05.1992, the awardee Late Dwari Behera made a requisition in favour of his nominee son Jagdish Behera and Maheswar Behera made a requisition in favour of his nominee son Bibhuti Behera for giving employment in NTPC as per R&R Scheme. Considering the local grievance, survey was done by M/s. IMCO, an agency during the year 1996 to finalize SAP status of the persons whose land has been acquired for establishment of TSTPP of NTPC Ltd. Based on the survey report, the SAP List was finalized by the District Administration, Angul. Thereafter, decision was taken in different RAC and RPDAC meetings that no further addition would be made to the said finally drawn SAP List. In the said finally drawn SAP List the name of Prafulla Chandra Behera-opposite party no.4 was not included as R&R benefit has already been given to the family of Late Dwari Behera, the sole land oustee, based on the prevalent R&R Policy and on the basis of nomination made by the land oustees.

2.1 Opposite party No.4, claiming himself to be a separate family of Late Dwari Behera and original land oustee, filed a writ petition bearing W.P. (C) No.14454/2014 seeking a direction to the opposite parties to declare him as Substantially Affected Person (SAP) / Local Displaced Person and grant the benefit of employment to his son (nominee) as per the R&R policy adopted by NTPC. This Court disposed of the said writ petition on 19.02.2015 directing opposite party no.1 therein to dispose of the representation filed by the petitioner within a period of three months. Pursuant to such direction, opposite party no.2-Collector & District Magistrate, Angul registered the case of opposite party No.4 as Grievance Misc. Case No.1/2015 and issued notice through PR dated 03.07.2015 requiring the petitioner to appear before him on 08.07.2015 at 11.00 AM along with its views for hearing of the grievance of the present opposite party no.4. On being noticed, the petitioner appeared before the opposite party no.2 and furnished its views in brief.

2.2 During pendency of the Grievance Misc. Case No.1/2015, opposite party no.2 keeping in view the views of the petitioner, directed opposite party no.3 to cause an inquiry and submit report. Opposite party no.3, in its turn, caused an enquiry on the basis of the documents produced and submitted its report on 05.09.2015 indicating that the sole land oustee Late Dwari Behera was awarded SAP No. A-307 and his major married son Maheswar Behera was awarded SAP No.B-123 and based on their nomination two persons of their family, namely, Jagdish Ch. Behera and Bibhuti Behera were given employment in NTPC. But opposite party no.4, Prafulla Chandra Behera, who was the middle son of Late Dwari Behera, was not included in the SAP List and, therefore, has not got R&R benefit from NTPC.

2.3 The petitioner filed objection on 12.11.2015 to the report dated 05.09.2015 before opposite party no.2 with a prayer to reject the inquiry report of the Special Land Acquisition Officer, NTPC, Angul and to hold an impartial and fair enquiry by taking into consideration the rival contentions of both the parties to ascertain additional land holdings and pass such other order as would be deemed fit and proper in the bona fide interest of justice.

2.4 The opposite party no.4, who is the middle son of the original land oustee Late Dwari Behera, was an employee and remaining outside by serving in his work place. Therefore, he could not avail the opportunity of inclusion of his name in the SAP List. Subsequently, he pursued his claim to be included in SAP List. As a consequence thereof, in compliance to the order passed by this Court, the opposite party no.3 conducted an inquiry and vide order dated 12.11.2015, opposite party no.2 declared opposite party no.4 as the beneficiary with SAP No.B-123(A). The said order dated 12.11.2015 was communicated by opposite party No.3 vide letter dated 30.11.2015.

2.5 Aggrieved by the order dated 12.11.2015 of opposite party no.2, the petitioner filed W.P.(C) No. 4693/2016 with a prayer to quash the said order dated 12.11.2015 and to direct opposite party no.2 to cause a fresh and fair inquiry by providing reasonable opportunity to the petitioner to participate in the inquiry and produce relevant documents in their support. The said WP(C) No.4693/2016 was disposed of by this Court on 22.11.2016 by remitting the matter back to opposite party no.2 with a direction to comply the principles of natural justice and in case any decision had been taken in the RPDAC meeting dated 05.04.2016 the same would also be considered and consequential action would be taken accordingly. The said exercise would be completed within a period of six weeks from the date of production of the certified copy of the order. In view of the aforementioned order dated 22.11.2016, opposite party no.2 issued notices to the petitioner as well as opposite party no.4 on 15.12.2016 requiring to appear before him on 28.12.2016. Pursuant to such notice, the petitioner appeared through their advocate and opposite party no.4 as well as learned Govt. Pleader also appeared. Upon giving due opportunity, the order impugned dated 28.12.2016 was passed by the opposite party no.2 holding that being a major married son of Late Dwari Behera, name of Prafulla Chandra Behera has been rightly included in the SAP List. As regards his being a Government Servant, it was further observed that there is no law or rule debarring a Government servant to avail R&R benefit, if he is a land oustee. By so holding, the opposite party no.2 directed that as Sri Prafulla Chandra Behera-opposite party no.4 has exercised job option for his son, the name of his nominee may be sponsored to NTPC, if not already done. Hence, this writ petition.

3. Mr. B.S. Tripathy, learned counsel appearing for the petitioner vehemently contended that the claim of opposite party no.4 to include in SAP List, after lapse of long years of its finalisation, which was done in 1996, is absolutely

misconceived one. It is further contended that at the relevant point of time opposite party no.4 was a Government servant and was not residing in the village and, as such, he cannot be included in the SAP List. His further contention is that as per the clarification issued by the Govt. of Odisha, R&DM Department, vide letter no. 92388 dated 20.10.2010, the persons/families who were ordinarily not residing in or near the project area are not eligible for and shall not be enumerated as displaced/affected families for the purpose of R&R benefit. It is also contended that by the time the notification under Section 4(1) was issued opposite party No.4 was not a major married son. Without considering the submissions made on behalf of the petitioner and the objection filed on its behalf, opposite party no.2 came to a conclusion that opposite party no.4, being a major married son of Late Dwari Behera, has been rightly included in the SAP List, and that there is no law or rule debarring a Government servant to avail R&R benefit, if he is a land oustee, and that as he has exercised job option for his son, the name of nominee of opposite party no.4 may be sponsored to NTPC, if not done already. According to learned counsel for the petitioner, the opposite party no.4, after long lapse of 24 years, has raised his grievance for being included in the SAP List, and that too upon receipt of appropriate land acquisition compensation with R&R benefit, therefore, the order impugned, having been passed without application of mind, is liable to be quashed. In support of his contention, he has relied upon a decision of the Allahabad High Court in the case of Mohd. Aslam v. State of U.P & Ors, 2005 (2) AWC 1861, besides the decisions of the apex Court in the cases of Union of India v. Joginder Sharma, JT 2002 (7) SC 425, State of J & K and others v. Sajad Ahmed Mir, 2006 (5) SCC 766 and Butu Prasad Kumbhari and others v. SAIL, JT (1995) 3 SC 428.

4. Mr. P.K. Muduli, learned Additional Government Advocate appearing for the State-opposite parties vehemently urged before this Court that Late Dwari Behera was the exclusive owner of holding nos.287 and 288 of village Dereng appertaining to plot nos. 9462, 9463 and 9471 measuring Ac.2.37 dec., which was acquired by NTPC for construction of Ash Dyke. During the period of acquisition, Late Dwari Behera had three major sons, namely, Maheswar Behera, Prafulla Chandra Behera and Jagadish Behera. As a land oustee, Late Dwari Behera was awarded with SAP No.A-307. His major married eldest son Maheswar Behera, who was awarded with SAP No.B-123, nominated his son Bibhuti Behera for job as per the provision of R&R Policy of NTPC. Late Dwari Behera, being over aged and unfit, nominated his youngest son Jagadish Behera as his nominee. But due to communication gap, the agency which was entrusted with the work of survey for enumeration of SAPs, excluded Prafulla Chandra Behera, who was the middle son of Late Dwari Behera, as he was serving in other department. As the land of Late Dwari Behera had been acquired for NTPC project and as per the R&R scheme of NTPC all awardees and beneficiaries have availed their R&R benefit, except the middle son Prafulla Chandra Behera- opposite party no.4, therefore, he cannot be debarred from his legitimate claim. The date of birth of Pradyumna Kumar Bhera, son of Prafulla Chandra Behera, as ascertained from

HSC certificate, is dated 12.6.1987. Therefore, it cannot be said that at the time of Section 4(1) notification dated 23.4.1990 Prafulla Chandra Behera was unmarried.

4.1 So far as non-inclusion of the name of Prafulla Chandra Behera in the final SAP List is concerned, it is contended that at that time the agency, i.e., IMCO Ltd. had finalized the SAP List by investigating the land/family status of the land owners, but Prafulla Chandra Behera-opposite party no.4 was debarred from his legitimate claim of R&R benefit due to ignorance of family status of the land owner by IMCO Ltd. As a matter of fact, the beneficiary would have been included in the SAP List, which was done accordingly by opposite party no.2 in compliance to the order dated 19.02.2015 passed by this Court in W.P.(C) No.14454/2014. By the said order, opposite party no.2 was directed to dispose of the representation filed by opposite party no.4 within a period of three months from the date of communication of the order. In compliance to the said order, Grievance Misc. Case No.1/15 was registered and after giving due opportunities to all concerned to put forth their views in their support, the order dated 12.11.2015 was passed.

4.2 It is further contended that aggrieved by the order passed by opposite party no.2, the petitioner preferred W.P. (C) No.4693 of 2016 with a prayer to quash the order dated 12.11.2015 of the Collector, Angul and after obtaining the subsequent order dated 22.11.2016 of this Court, the opposite party no.2 initiated another misc. case bearing no.1/15 and to preserve the right and to comply the principle of natural justice, as a consequence of which, the petitioner was given ample opportunities during hearing on 28.12.2016. Both the parties were heard elaborately and consequentially the order impugned was passed. Therefore, no illegality or irregularity has been committed by the State-opposite parties while passing the order impugned.

5. Mr. Manoj Kumar Mohanty, learned counsel appearing for opposite party no.4 vehemently contended that the order dated 28.12.2016 has been passed in compliance to the direction given by this Court in W.P.(C) No. 4693 of 2016 disposed of on 22.11.2016, by affording opportunity of hearing to all the parties. In the order impugned, opposite party no.2 has come to a definite conclusion that opposite party no.4 is a major married son of Late Dwari Behera at the time of notification issued under Section 4(1) of the Land Acquisition Act, 1894, therefore, he has been rightly included in the SAP List and, as such, his son is entitled to a job under NTPC under the provisions of R&R Scheme of NTPC. Thereby, no illegality or irregularity has been committed by the Collector & District Magistrate, Angul in passing the order impugned so as to cause interference by this Court. To substantiate his contention, reliance has been placed on the decision of this Court in the case of Govinda Chandra Naik v. Collector, Angul and others, 2011 (Supp.-II) OLR-267.

6. This Court heard Mr. B.S. Tripathy, learned counsel appearing for the petitioner, Mr. P.K. Muduli, learned Addl. Government Advocate appearing for the

State-opposite parties and Mr. Manoj Kumar Mohanty, learned counsel appearing for opposite party no.4 in hybrid mode and perused the records. Pleadings have been exchanged between the parties and with the consent of learned Counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

7. On the basis of the factual matrix, as discussed above, there is no dispute that the land of Late Dwari Behera was acquired by the petitioner, and that said Late Dwari Bhera had three major sons, but, while making inquiry, the investigating agency did not include the name of opposite party no.4, who is the middle son of Dwari Behera, in the SAP List, as he was employed outside. It is also not in dispute that Talcher Super Thermal Power Project, Kaniha (Phase-I) of NTPC had formulated Rehabilitation and Resettlement Plan on 04.05.1991. Clause-3 thereof, which deals with rehabilitation, is quoted hereunder:-

"3. Rehabilitation.

The issue of rehabilitation of families to be displaced as a result of the construction of this project has been hanging fire since the commencement of work. As would be explained later, a satisfactory rehabilitation plan acceptable to the oustee as well as to the State Government could not be so far formulated. The displacement is a serious human problem and its short-term and long-term implications cannot be brushed aside. The families who are going to lose their home and hearth and the means of livelihood for the interest of the nation should have some perceptible compensatory benefits so that they do not visualize the project as inimical to their interests. Any plan of rehabilitation has to aim at least restoring their existing financial and social status, if not improving it. The State Government have been seized with the problem of displacement in a number of irrigation, hydel and thermal project in the State and have substantially liberalized their rehabilitation policy recently to remove the feeling of discontent from the affected families. In the case of the State's own Ib Thermal Power Station presently under construction in Banharpalli in Sambalpur district, the State Government has provided a package of rehabilitation assistance which is in even more liberal than what has been provided in the revised rehabilitation policy. Some of the salient feature of that package are:-

- i) Houses including Ac.0.10 of homestead land for the oustees who are losing their houses.
- ii) Shifting allowances at the rate of Rs.2000/-per family.
- iii) Job for at least one member of each family (both substantially and marginally affected families).
- iv) Treating the married sons as separate families.
- v) Training of oustees for improving their potential for semi-skilled jobs.
- vi) Provision of school, hospital, roads and drinking water facilities in the rehabilitation area.

vii) Allotment of shops and pindis for rehabilitation of marginally affected families.”

8. In view of the aforementioned provision, it is made clear that a married son is to be treated as a separate family and job for at least one member of each family (both substantially and marginally affected families) shall be provided. By the time Section 4(1) notification was issued, opposite party no.4 was the major married son and, as such, constituted a separate family and is entitled to get R&R benefit, being SAP, by providing job to his nominee. The reason for non-inclusion of his name in the SAP List is well founded because he was not available in the locality at the time of inquiry conducted by the private investigating agency, i.e., IMCO Ltd. That is to say, the name of opposite party no.4 was not included in SAP List, as he was rendering service outside the locality. Admittedly, opposite party no.4 is the 2nd son of the original land oustee, namely, Late Dwari Behera. Therefore, non-inclusion of his name in the SAP List is absolutely illegal and arbitrary. When opposite party no.4 approached this Court, vide order dated 19.02.2015 passed in W.P.(C) No. 14454 of 2014, this Court directed for consideration of his representation. As a consequence thereof, after conducting an inquiry, vide order dated 12.11.2015, direction was given to extend the R&R benefit to opposite party no.4. The said order dated 12.11.2015 was challenged by the petitioner in W.P.(C) No. 4693 of 2016, which was disposed of by this Court, vide order dated 22.11.2016, remitting the matter back to opposite party no.2 to comply the principle of natural justice. It was also directed that in case the decision was taken in RPDAC meeting dated 05.04.2016, the same shall also be considered and consequential action shall be taken accordingly, as because in view of the provisions contained in Clause-3 of the R&R Plan, as quoted above, a right has been accrued in favour of the petitioner.

9. In the proceeding of the 13th RAC Meeting of NTPC/TSTPP, Kaniha held on 20.10.2005, which has been placed on record as Annexure-H/4 to the counter affidavit filed on behalf of opposite party no.4, under the heading “consideration of genuine left out cases for inclusion in SAP list”, it was resolved as follows:-

“The reason advanced by G.M. for not considering the genuine left out cases is devoid of any merit or legitimacy. The R.A.C., therefore, strongly recommended for considering the genuine left out cases for selection as SAPS. The Collector was advised to form a committee with his representative and a representative of G.M., NTPC which will examine the cases and select only genuine cases strictly on merit.”

10. In view of the aforementioned decision taken, it was strongly recommended for considering the genuine left out cases for selection as SAPS. In consonance of such decision taken in the proceeding no.7 of RPDAC meeting of NTPC/TSTPS, Kaniha held on 05.04.2016, which has been placed on record as Annexure-A/4 to the counter affidavit filed on behalf of opposite party no.4, at Sl. No.4 it was indicated as follows:-

4.

Rehabilitation of new SAP, Sri Prafulla Kumar Behera who was added to the SAP list as per the order of Hon'ble High Court of Odisha. He had prayed job to his son Sri Pradyumna Kumar Behera (B, tech)

Nominee change is allowed in favour of Sri Pradyumna Kumar Behera. His name will be sponsored to NTPC for job.

11. But the same had undergone review. Accordingly, in the proceeding of review meeting on R&R issues of NTPC/TSTPS Kaniha, which has been placed on record as Annexure-1/4 to the counter affidavit filed by the opposite party no.4, at Sl. No.4 it was held as follows:-

4.

Rehabilitation of 01 SAP added to SAP list due to order of Hon'ble High Court, Odisha.

On this issue, it was decided that NTPC will implement the decision of 7th RPDAC.

12. Therefore, the decision taken in the 7th RPDAC meeting was implemented. Meaning thereby, the nominee change being allowed in favour of Sri Pradyumna Kumar Behera, his name was sponsored to NTPC for job. Even though such decision was taken and his name was recommended by the Addl. District Magistrate, Angul, vide letter dated 27.03.2017, which is annexed as Annexure-P/4 to the counter filed by opposite party no.4, and the same has been implemented, non-consideration of the case of opposite party no.4 is an outcome of non-application of mind and, as it seems, the petitioner is determined not to extend the benefit to opposite party no.4 by giving job to his nominee-Pradyumna Kumar Behera.

13. In the case of Mohd. Aslam (supra), the Allahabad High Court held that, as such, employment to those persons whose land has been acquired can be compared with the compassionate employment in service law and, therefore, no relief can be claimed at such a belated stage. The ratio decided in Joginder Sharma, Sajad Ahmed Mir and Butu Prasad Kumbhari (supra), on which reliance was placed by the learned counsel for the petitioner, are applicable to the facts and circumstances of the own cases and has no application to the present case.

14. In Govinda Chandra Naik (supra), where the displaced victim of NALCO Angul Project was under consideration for acquisition of land, the right of occupation guaranteed under Article 19(1)(g) of the Constitution was taken away by the State Government while exercising its eminent domain by acquiring the land of the petitioner in favour of NALCO. It was held that the right of occupation of the petitioner is interrelated to Article 21 as his livelihood depends upon the agricultural income. Income from agriculture is the only source of his livelihood and NALCO having framed the scheme to provide employment to the family

members or nominee of land displaced persons, LAP and SAP to rehabilitate, denial of same cannot be sustained. Thereby, it was directed that the petitioner is entitled to get relief of getting employment being LAP and SAP. The ratio decided by this Court in the case of Govinda Chandra Naik (*supra*) has application to the present context. Needless to say, in the name of development the lands are being acquired by depriving the livelihood of the land owners. They are being deprived of getting their sustenance from generation to generation. Thereby, their right to life is being affected.

15. The apex Court in the case of National Legal Services Authority v. Union of India, (2014) 5 SCC 438: AIR 2014 SC 1863 observed that Article 21 is the heart and soul of the Indian Constitution, which speaks of the rights to life and personal liberty. Right to life is one of the basic fundamental rights and not even the State has the authority to violate or take away that right. Article 21 takes all those aspects of life which go to make a person's life meaningful. Article 21 protects the dignity of human life, one's personal autonomy, one's right to privacy, etc. Right to dignity has been recognized to be an essential part of the right to life and accrues to all persons on account of being humans.

16. In *Bugdaycay v. Secretary of State*, (1987) 1 All ER 940, it has been held that right to life is the most fundamental of all human rights, and any decision affecting human life, or which may put an individual's life at risk, must call for the most anxious scrutiny.

17. In *R (Pretty) v. DPP*, (2002) 1 All ER 1, it has been held that the sanctity of human life is probably the most fundamental of the human social values. It is recognized in all civilized societies and their legal system and by the internationally recognized statements of human rights.

18. In *State of A.P. v. Challa Ramakrishna Reddy*, AIR 2000 SC 2083, it has been held that Right to life is one of the basic human right and not even the State has the authority to violate that right.

19. In *Kehar Singh v. State of Chattisgarh*, AIR 2002 Chatt 14, it has been observed that it is also the duty of the State to create a climate where members of society belonging to different faiths to live together and the State has a duty to protect the life of all and if it is enable to do so, it cannot escape the liability to pay compensation.

20. In *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni*, AIR 1983 SC 109 : (1983) 1 SCC 124, it has been observed that the term "life" used in article 21 of the Constitution of India has a wide and far reaching concept. It means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed.

21. In *Chameli Singh v. State of Uttar Pradesh*, AIR 1996 SC 1051 : (1996) 2 SCC 549, the apex Court held that "right to life" means to live like a human

being and it is not ensured by meeting only the animal needs of man. It includes the right to life in any civilized society implies the right to food, water, decent environment, education, medical care and shelter.

22. On careful analysis of the facts and circumstances of this case in the touchstone of the ratios decided in the plethora of decisions cited hereinbefore, this Court does not find any merit in this writ petition, which is accordingly dismissed. However, there shall be no order as to costs.

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