

(2008) 05 JH CK 0003
In the Jharkhand High Court

Rakhohari Gope and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-05-2008

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2008) 3 JCR 174

Hon'ble Judges : M. Karpaga Vinayagam, C.J;D.G.R. Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—In the instant writ application filed by way of public interest litigation, the petitioners have prayed for quashing the notification/resolution dated 30.9.2003 (Annexure-5) issued by the respondent No. 2, whereby rehabilitation policy earlier declared by the undivided State of Bihar in respect of displaced persons whose lands and houses were acquired for the purposes of the Subarnarekha Project was amended.

The main grievance of the petitioner is that by introducing the amendment in the originally declared rehabilitation policy, the respondents have curtailed many advantages, benefits and facilities, which were given to the displaced persons under Annexure-2, resulting in irreparable loss and injury to the displaced persons.

2. The facts stated briefly are that for the purpose of providing irrigation facilities to the vast tracts of the land in the Chhotanagpur region, the erstwhile undivided State of Bihar launched a project known as Subarnarekha Multi-purpose Project.

Vast tracts of lands and houses of many villages were acquired under the Land Acquisition Act. For compensating the persons who stood displaced from their lands and houses, the State of Bihar formulated a rehabilitation policy, which was notified on 21.2.1981 (Annexure-2). The policy provided several measures including allotment of alternative land, financial grant and priority in employment

under the Government by way of compensation to the displaced persons.

In December 1990 the State of Bihar liberalized the rehabilitation policy by adding a few new schemes. The amended policy was notified on 11.12.1990.

By another resolution notified on 18.9.1993 (Annexure-3) the State Government classified the displaced persons indifferent categories on the basis of area of their lands acquired for assuring the extent of compensation to each category.

Later, by a circular dated 12.11.1999 (Annexure-4) an amendment was introduced by the State Government in the definition of "displaced persons".

After bifurcation of the erstwhile State of Bihar on 15.11.2000, the State of Jharkhand comprising 22 districts came into existence.

The State of Jharkhand sought to introduce further amendment in the previous rehabilitation policy and notified its resolution vide the impugned notification dated 30.9.2003.

3. Mrs. Jaya Roy, learned Counsel for the petitioners, explains that the petitioners are some of those displaced persons whose lands and houses were acquired for the Subarnarekha Project.

Under the original rehabilitation policy, the assurance given was that every displaced family would be provided with 25 decimals of land within residential colonies free of cost and a monetary grant of Rs. 20,000/- will be provided for construction of two roomed house within the land. This benefit has been curtailed by the impugned notification. Similar other benefits have also been withdrawn vide Clauses 5, 5.1, 5.2, 6, 6.1 and Clauses 9, 9.1 and 9.3 of the impugned notification. Learned counsel argues that the State of Jharkhand is bound by the principle of promissory estoppel and cannot reduce the facilities of rehabilitation in the matter of offering substitute lands and employments to the displaced persons.

4. In their counter-affidavit, respondents deny and dispute the claim of the petitioners and counter assert that the amended rehabilitation policy would not deprive the displaced persons of any of the benefits assured to them. Rather, the amended rehabilitation policy introduces facilities better than what was provided in the policy declared by the erstwhile State of Bihar in 1981.

Shri Rajeev Ranjan Mishra, learned Counsel for the respondents, while inviting attention to a comparative study of the previous policy and the impugned amended policy, would explain that whereas in the previous policy each displaced family was assured of allotment of 25 decimals of land for rehabilitation and grant of Rs. 20,000/- to those persons who were not desirous to accept the land, the amended policy provides for allotment of 15 decimals of land free of cost and a grant of Rs. 50,000/- for construction of house to those who are not desirous to accept land. Likewise, assurance in the previous policy was that top priority will be given to the displaced persons in employment in class-III and class-IV posts

in Chhotanagpur and Santhal Pargana region; 50% class-III posts will be filled up by the displaced persons; each displaced person will be given Rs 750/- for conveyance and other expenses; the displaced persons, who received compensation amount less than Rs. 2,000/-, will be granted Rs. 1500/- as grant in aid; each displaced family will be provided with soft loan of Rs. 25000/- for self-employment; each displaced family belonging to landless, marginal and small farmers will be given grant in aid of Rs. 10,000/- for purchase of land and Rs. 15,000/- as grant-in aid for development of agricultural land.

In the amended policy, the amount of grant for house construction has been raised to Rs. 50,000/- to each displaced family; conveyance grant has been raised to Rs. 2,000/- for each displaced family for shifting of household materials to the new rehabilitated site. The grant for self-employment has been raised from Rs. 25,000/- to Rs. 75,000/- for enabling purchase of land and for the development of agricultural land. In addition to these, provision of grant of Rs. 15,000/- has been made for training as per eligibility and a sum of Rs. 1,000/- per month for each displaced family towards subsistence grant for a period of one year from the date of actual displacement.

In the matter of employment, priority would be given in employment against the sanctioned class-III and class-IV posts in the Water Resources Department, State of Jharkhand. Furthermore, a provision has been introduced in the revised policy for community development such as, construction of roads, primary schools, health care center, ponds, etc.

5. Referring to paragraphs 7, 8 and 9 of the counter-affidavit, Mr. Mishra would explain that as many as Rs. 12.789 displaced families were identified and out of them, 6662 families have been rehabilitated, 1685 displaced persons have been employed and a grant of Rs. 2384 lakhs under different heads has been paid to the displaced persons. A further amount of Rs. 9396 lakhs has also been assessed as outstanding amounts to be paid to the displaced persons. In addition, shops have been allotted to the displaced persons for their self-employment. Furthermore, as per the audit report of the Accountant General, the benefit cost ratio of Water Resources Department has declined up to 50% within 20 years due to escalation in cost and other expenditure. This has created an alarming situation in the financial position of the Subarnarekha Project.

6. It is argued further that class-III and class-IV posts cannot be exclusively reserved for the displaced persons for their employment since, under Article 16 of the Constitution of India, equal opportunities have to be given to all citizens in the matter of employment through selection process against vacant posts. The State Government has therefore decided to give priority to the displaced persons in the matter of employment against all sanctioned post of class-III and class-IV posts in the Water Resources Department. The demand of the petitioners for compulsory employment even in absence of any vacancies or actual need of class-III and class-IV in the employment would entail huge financial burden on the establishment expenditure of Water Resources Department.

7. In the light of the rival contentions, questions, which arise for determination, are,--

1. Whether in the facts of the instant case, the State of Jharkhand is bound by the principle of promissory estoppel and has no authority to alter or modify the rehabilitation policy?

2. Whether by introducing modification in the rehabilitation policy by the impugned notification, State of Jharkhand has acted arbitrarily?

8. Contention of the petitioners is that under the original rehabilitation policy declared by the State of Bihar, promise was given to the displaced persons for allotment of minimum area of 25 decimals of land for rehabilitation and also for providing employment in class-III and class-IV posts under the Government. A right was thereby created and vested in the displaced persons on the basis of legitimate expectation to demand what was promised to them under the original rehabilitation policy. The State of Jharkhand being the successor of the erstwhile State of Bihar, is bound by the principle of promissory estoppel to honour the commitment as made in the original rehabilitation policy.

9. The doctrine of promissory estoppel is an equitable doctrine and is founded on a representation with regard to an assurance as to future conduct. The representation, be it of promise or intention or future conduct, on which this doctrine is founded, is susceptible of generating enforceable promises and binding on contractual obligation even where there is no consideration. The principle would apply to the Government and statutory bodies also. If the Government makes a promise and the promisee acts in reliance upon it and alters his position, the Government also can be compelled to make good such promise for every private individual.

10. The State of Jharkhand was carved out of the erstwhile State of Bihar. Process for acquisition of lands within the Chhotanagpur region, which after bifurcation of the State in November 2000, falls within the State of Jharkhand, was initiated way back in 1981. Lands and houses belonging to inhabitant of several villages within the region, were acquired. Compensation for acquisition of lands and houses was offered to the displaced persons by way of a rehabilitation policy under which promise was made that suitable alternative land would be made available to the displaced persons besides grant of monetary aid and employment under the Government Department in Chhotanagpur and Santhal Pargana region. The displaced persons were assured under the rehabilitation policy that they would be adequately compensated for the lands, which they had to forgo. The promises made by the Government of Bihar did create a reasonable expectation in the minds of the displaced persons that they were entitled to get what was promised for them in return of their lands and houses. Under these circumstances, the doctrine of "legitimate expectation" would definitely apply and the displaced persons would certainly be entitled to claim for fulfillment of promises made to them.

After reorganization of the State, the State of Jharkhand would be equally bound by the promise and assurance made to the displaced persons for adequately compensating them under the rehabilitation policy. The doctrine of promissory estoppel would certainly apply against the respondent State of Jharkhand.

11. However, even though the doctrine of "promissory estoppel" and "legitimate expectation" would apply to the respondent State of Jharkhand, the question still would be as to whether the principle of these doctrines would be absolutely binding upon the State or whether the obligations on its part can reasonably be modified?

12. Since the doctrine of promissory estoppel is an equitable doctrine it must yield when equity so requires. If, it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise equity in favour of the promisee and enforce the promise against the Government.

13. While dealing with similar issues in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , the Supreme Court has observed as follows:

When the Government is able to show that in view of the facts which have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest with the Government carrying out a promise made to the citizens which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies.

The Supreme Court has further observed that:

The doctrine of "legitimate expectation" has developed as a principle of reasonableness and fairness and is used against the statutory bodies and the Government authorities on whose representations or promises, parties or citizens act and some detrimental consequences ensue because of refusal of authorities to fulfill their promise or honour their commitments. Relief to the parties aggrieved by action or promise of public authorities, can be granted on the doctrine of "legitimate expectation". However, when grant of such relief is likely to harm larger public interest, the doctrine cannot be allowed to be pressed into service.

14. The exposition of the doctrine of "promissory estoppel" and "legitimate expectation" as made by the Apex Court in the above judgment would imply that the principles of these two doctrines cannot be made absolutely binding on the Government and statutory bodies. On the principles of rule of equity, if the Government is able to convince that it would be in the larger interest of the public that it should be exempted from the performance of the promise made

earlier, the Court would have to balance the public interest with the Government carrying out the promises made to the citizens and determine which way the equity lies.

15. In the counter-affidavit, the respondent State has not denied its legal obligations. The stand taken by the respondent State, as mentioned above, is that the impugned amended rehabilitation policy does not withdraw any of the benefits assured to the displaced persons in the earlier policy. Rather, it adds some additional benefits to them. Under the modified rehabilitation policy, the amount of monetary benefit has been substantially increased by maintaining the assurance that substitute lands would be provided to the displaced persons for their rehabilitation. The only deviation from the previous policy is, in the matter of providing employment to the displaced persons inasmuch as, reservation of 50% in class-III and class- IV posts under the Government, has been withdrawn, although the continued assurance is that priority would be given to the displaced persons in employing them in class-III and class-IV posts in the Water Resources Department under the State Government. The reason explained for withdrawal of the assurance of providing 50% jobs to the displaced persons, is that the class-III and class-IV posts cannot exclusively be reserved for the displaced persons as it would be violative of Article 16 of the Constitution of India which clearly stipulates that equal opportunity have to be given to all citizens in the matter of employment through selection process against the vacant posts. It is also explained that the State Government cannot be made to concede compulsory employment to the displaced persons even in absence of any vacancy or actual need of employees in class-III and class-IV posts.

16. There is force in the plea advanced by the respondent. Reserving 50% vacancies in class-III and class-IV posts exclusively for the displaced persons would certainly deprive equal opportunities to the citizens in general in the matter of employment. Furthermore, even in absence of any vacancy or actual need of hands, the State Government cannot be bound by any promise to give compulsory employment to the displaced persons. Such demand of the petitioners cannot be fulfilled. It would be inequitable to hold the Government to the promise made by it. The petitioners would therefore have to remain content with the assurance of the respondent that priority in the matter of employment in class-III and class-IV posts would be given to the displaced persons. The petitioners must also remain content with the monetary compensation, which has been substantially increased.

17. Since the amended rehabilitation policy assures adequate compensation to the displaced persons, it cannot be said that by introducing amendment in the rehabilitation policy, the respondent State has acted arbitrarily. Even though, certain promises were extended to the displaced persons by the State of Bihar under the previous rehabilitation policy, the State of Jharkhand, after reorganization of the State, can alter or modify the rehabilitation policy in the larger interest of the citizens of the State.

18. In the light of the above discussions, we do not find any merit in this application. Accordingly, this application is dismissed.

M. Karpaga Vinayagam, C.J.

19. I, agree.