

(2004) 02 JH CK 0079
In the Jharkhand High Court
Case No : CWJC No. 4207 of 1996 (R)

Sakur Ansari

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 20-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 319

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Sunil Kumar Sinha, for the Appellant; Ajit Kumar, R. Krishna, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—The back ground of the case is that a writ application being CWJC No. 1317 of 1993 (R) was filed before the Ranchi Bench of the Patna High Court by the petitioner alongwith others against the Bihar State Electricity Board and others, for issue of writ of mandamus, directing the Respondents for their absorption, as according to them, their lands were acquired for construction of Patratu Thermal Power Station and that in terms of the policy decision, the displaced persons were to be provided with suitable jobs. It was asserted that a list of 403 persons was prepared out of which only 289 persons were provided employment and the rest 114 displaced persons, no employment as per the policy decision was given. The said writ application was disposed of by a Division Bench by Judgment dated 4.9.1993. Para 7 to 9 of the said judgment are important and relevant for the decision of the present case, which is quoted herein below :

"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

thereform. 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 a fresh 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 CWJC No. 3658 of 1992 (R) on 4.3.1993.

8. We direct the respondent Board also to nominate its representative and produce relevant documents before the Deputy Commissioners, who shall himself examine or cause the Dam 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 finalised 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."

2. When the matter was not finalised regarding the employment of the petitioner and others a second writ application was filed before this Court being CWJC No. 1644 of 1995(R), which was also disposed of by an order dated 26.7.1995 by this Court. The operative portion of the order passed in CWJC No. 1644 of 1995(R) as contained in Annexure-2 to this application is quoted herein below :

"It is regrettable that although three months" time was granted to the Deputy Commissioner to dispose of the matter, the same is still pending. In the circumstances, this application is disposed of with a mandamus to respondent No. 2 to dispose of the claim of the petitioners for consideration of their case for appointment within two months from the date of production of a copy of this order.

This application is disposed of."

3. It appears that thereafter several meetings of the Committee constituted for the said purpose was held and then by letter dated 29.3.1996 as contained in Annexure-5 to the present writ application, the Deputy Commissioner, Hazaribagh wrote to the Secretary, Bihar State Electricity Board, Patna, recommending the case of the displaced persons.

4. It is asserted by the petitioner that the Bihar State Electricity Board, Patna has

taken a Resolution being Resolution No. 1082 dated 6.9.1996, whereby the Board expressed its inability to appoint any of the displaced persons on the ground of financial difficulty and surplus staffs. The said Resolution is annexed as Annexure-6 to the present writ application, which is under challenge by the petitioner.

5. From perusal of the Annexure-6 i.e. the impugned Resolution, it appears that it was noticed by the Board that pursuant to the order passed by the High Court, a Committee was constituted, headed by the Deputy Commissioner, Hazaribagh, for examining the grievance of those 114 persons, who were not provided employment as per the Board's policy decision.

6. In view of the changed situation after creation of the State of Jharkhand, the Jharkhand State Electricity Board was added as party-respondent No. 5 and the General Manager, Patratu Thermal Power Station for whom, the lands were originally acquired were added as respondent No. 6 in the present writ application.

7. A counter affidavit on behalf of the newly added respondent Nos. 5 and 6 has been filed. From perusal of the aforesaid counter affidavit, it appears that the averments made in the writ application have not been disputed. It has been asserted by the Respondents in Paragraph 11 of the counter affidavit that in compliance of the direction of the High Court, meetings were held and claims of 114 persons were examined and a report was submitted to the Secretary, Bihar State Electricity Board, Patna by the Deputy Commissioner, Hazaribagh, by his letter No. 1133 dated 29.3.1996, but in the meantime, the impugned Resolution dated 6.9.1996 was issued by the Board, wherein, it was resolved for not making any appointment in the Board. In Paragraph 12 of the counter affidavit, it has further been stated that Bihar State Electricity Board after considering its manpower, took a further Resolution No. 289 dated 13.5.1999, deciding not to make any appointment of displaced persons. The said Resolution has been annexed as Annexure-B to the counter affidavit.

8. Learned counsel appearing for the Respondent-Board on the basis of the aforesaid averments, submitted that it is not possible to make any such appointment, as claimed by the petitioner, in view of the said resolutions and also in view of the financial position and surplus staffs of the Board.

9. In my view, when the Deputy Commissioner, submitted his report as contained in Annexure-5, as has been admitted by the Respondent-Board, pursuant to the order directions of this Court, in the writ application, quoted above, it was not within the competence of the Board to take such Resolution as contained in Annexure-5 or as contained in Annexure-B to the counter affidavit totally contrary to the orders and directions of this Court. If the Board was feeling any difficulty in compliance of the orders/directions of this Court, then it could have very well approached the High Court for review/modification of the orders. Therefore, the action of the Electricity Board must be held to be arbitrary, illegal

and beyond its jurisdiction.

10. In view of the specific direction of this Court passed in CWJC Nos. 1317 of 1993 (R) and 1644 of 1995 (R), when the Deputy Commissioner recommended the case of the petitioner and others for appointment, it was incumbent upon the respondent-Electricity Board to act on the basis of the said report of the Deputy Commissioner, dated 29.3.1996 as contained in Annexure-5 to the present writ application. It is not disputed by the Board that out of list of 403 displaced persons initially prepared, 289 persons were already provided employment. It is not in dispute that the petitioner is also among the 114 left out displaced persons, who were not provided employment by the Respondents, in spite of the specific direction of the Division Bench, passed in CWJC No. 1317 of 1993 (R), therefore, the petitioner, who is one, amongst 114 left out displaced persons is also entitled to have the same benefit employment.

11. Accordingly, this application is allowed. The Resolution as contained in Annexure-6 to the present writ application is hereby quashed and the Respondent No. 7, Jharkhand State Electricity Board is directed to provide suitable employment to the petitioner within a period of eight weeks from today. Since the petitioner has unnecessarily been dragged into litigation and, therefore, he is entitled to cost also, which is assessed at Rs. 2000/- which shall be paid to the petitioner by the Respondent No. 7 within the same time.