

(2001) 07 CAL CK 0037
In the Calcutta High Court
Case No : M.A.T. No. 1024 of 1997

Steel Authority of India Ltd.

APPELLANT

Vs

Sarat Chandra Shaw and Others

RESPONDENT

Date of Decision : 10-07-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 21, 226

Citation : (2001) 3 CALLT 303

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : S.K. Panja and A. Roy, for the Appellant; Ajeya Mitra, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mathur, C.J.—This is an Appeal directed against the order passed by a learned single Judge dated 10th March, 1997 whereby the learned single Judge allowed the writ petition and directed petitioners to be absorbed and if the vacancy is not available then the respondents shall create supernumerary posts and appoint the petitioners. It was also directed that, without absorbing and appointing the petitioners, respondents shall not appoint any un-skilled or semi-skilled person. It was also directed that if there is any vacancy in the semi-skilled person is available then to absorb the petitioners against vacancies temporarily and train them. It was directed that the respondents are restrained from appointing any un-skilled or Semi-skilled worker in the Durgapur Steel Plant until the petitioners are absorbed. It was further directed that absorption by the appointing authority shall be completed within 30th April, 1997. The upper age limit was also directed to be relaxed. Aggrieved against this order passed by the learned single Judge the management has filed this Appeal.

2. For convenient disposal of this Appeal brief facts are: that for the construction of the Durgapur Steel Plant in Durgapur agricultural and non-agricultural lands were acquired in 1956-57. After acquiring the lands a policy was adopted for

compensating the land-loosers by offering employment to member of family in addition to monetary compensation already paid. A Scheme was prepared that each family would be provided with one job. It was further contemplated that in case the family member is not eligible for a job then the family member would be given job as and when their children would become eligible for the Job. It is alleged that the petitioners made several representations and on 17th April, 1980 the petitioners were asked to supply necessary particulars for giving the Job, and this exercise was entrusted to a Junior Vigilance Officer of Durgapur Steel Plant. In pursuance to the various representations received from various quarters including AH India Federation of SC/STs Backward Minorities Employees' Association they were informed on 10th November, 1989 that the matter is under consideration and they were directed to produce the original papers in respect of the land of 4.40 acres acquired in the Project. It is alleged that in pursuance of this petitioners submitted all papers to the respondents-appellant. All the petitioners submitted all papers to the respondents-Appellant. All the petitioners were asked to appear before the Junior Vigilance Officer within a period of 7 days from the date of receiving the letter dated 22nd November, 1980. Then it was assured that jobs would be provided shortly. It is alleged that the petitioners through the secretary. National Rural Labour Federation submitted a memorandum requesting the General Manager (P & A). Durgapur Steel Plant to consider their claim. Relying upon the Chief Executive Conference held on 5th and 6th April. 1983 under the heading "Recruitment and Managerial Policies of the Public Enterprises" a notification was Issued to all concerned on 5th August, 1983. The relevant policy reads as under:

"Every industry that is set up dislocated the local population and many of them belong to the poorest and the weakest sections. There is a commitment to employ those who are dislodged, at least one member per family should be provided employment. The persons so employed should be given training if they are not trained.

Special considerations should be given to minority as also to others who cannot easily get employment. In every area of public life, the public sector has a great responsibility."

3. However this policy of recruitment spelled out during the conference of the Chief Executives was revised by Bureau of Public Enterprises by Office Memo dated 3rd February, 1986 by which the policy of giving employment to the land-loosers was revoked. The relevant policy decision issued by the Department of Public Enterprises reads 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 withdrawing.

However, with a view to encouraging the dispossessed families taking to useful advocations like poultry fanning, animal husbandry etc. the project authorities will assist the concerned State Governments in organising and financing such activities. The basic responsibility of initiating such schemes will be that of the State Governments."

4. However learned single Judge after considering over the matter and relying on various decisions of the apex Court held that by virtue of the principle of promissory estoppel the respondents are bound to absorb/give employment to each member of the family whose land had been acquired under the category of land-loosers and therefore the learned single. Judge directed the respondents to abide the principle of promissory estoppel and give them the employment as assured from time to time.

5. It was contended by appellant that there is no question of promissory estoppel involved in the matter. The persons whose lands were acquired for Durgapur Steel Plant were paid compensation through the Collector, and the compensation was accepted by all the petitioners- There was no condition attached into it that each member of family will be given job in lieu of acquisition of land. A policy decision was taken in 1983 and that was revoked subsequently. Therefore there is no question of any promise whatsoever. It was also contended on behalf of the management that the writ petition is an extremely belated one. It was also contended that the petitioners did not apply for the Job at the time when the land was acquired or soon after the policy was laid down in 1983. Therefore it was submitted by the management that due to failure on the part of the petitioners to approach this Court at this belated stage, the writ petition should be dismissed on the ground of Inordinate delay. It was also submitted on behalf of the management that the policy was changed in 1986 and that policy was not challenged, therefore now on account of change of policy which has remained unchallenged, no mandamus can be issued for framing any Scheme for absorbing these persons at this belated stage.

6. We have heard learned counsel for the parties and perused the record. In fact there is no assurance whatsoever given by any authorities except a policy decision which was taken in December, 1983 that some persons whose land have been acquired they will be given compensation along with job to one of the members of the family. That was the policy of 1983. But it appears that looking to the viability of the Plant the said policy was revoked on 3rd February, 1986 and this writ petition was filed by the Respondents in 1993. Had they filed the petition prior to 1986 when the policy was in the currency at that time perhaps it would have been possible to grant relief to writ petitioners. But after the policy which has been changed on 3rd February, 1986 no direction can be given on the principle of promissory estoppel. On account of change of the Government Policy no-promissory estoppel can be enforced against the State. In order to Invoke the principle of promissory estoppel the first and foremost thing is to see that whether any such promise was held out and the Incumbent has acted on that

policy to his detriment But there is no such thing appearing in the present writ petition that on the basis of the so-called policy decision to extend the benefit of employment to the land-loosers he has acted upon that and surrendered his land. On the contrary, the land was acquired by the State under the Statute and compensation was paid for that Thereafter the Government looking to the social welfare of the people came out with the policy to provide a Job to one of the member of the land-looser. This was not an assurance in view of surrendering any land without payment of any compensation. This was only as a social measure over and above the amount of compensation already paid to all the land holders. Therefore it cannot be said that there was any promise on the part of the Government to provide employment to the incumbent for acquiring the land. In fact for acquiring a land the compensation was paid to the petitioner and as a measure of social policy they thought it at one point of time I.e. In 1983 to provide the benefit of a Job to each one of the family of land-loosers. but this policy was in 1983 and it was revoked in 1986. Therefore it is wrong to say that the promissory estoppel is Involved in the matter and the petitioners surrendered their land in lieu of providing the job(s). In fact the compensation was paid to the incumbents for acquiring their lands. Therefore . there is no question of promissory estoppel that they will be given Jobs in case they surrender land in favour of the State for construction of Durgapur Steel Plant it was over and above the compensation. This social measure was adopted to rehabilitate these persons for providing Jobs in the plant, but as the situation has changed and it was found that it was not possible to give Job to each of the family members of the land-loosers the policy was changed in 1986 and it cannot be said that by virtue of the principle of promissory estoppel the State can be estopped from going back to their so-called policy. More so, the petition was extremely belated to enforce the so-called policy of 1983 in filing a writ-petition in 1993, that is after 10 years. In this connection learned counsel for the Appellant, Steel Authority of India have invited our attention to the decision of the apex Court in the case of The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, . In this case it was observed by the apex Court as under:

"While. It is true that the plea of limitation ought to be raised at the first available opportunity but that does not mean and imply that the party raising it even during the course of hearing would be barred therefrom. Limitation is a mixed question of law and fact. Time-barred claim Would not even be entertained for a dull Court without there being any opportunity of filing a pleading by the respondents or the defendants in a civil suit."

7. It was further observed:

"It is now a well settled principle of law that while no period of limitation is fixed but in the normal course of events, the period of the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary Jurisdiction is available to mitigate the sufferings of the people in

general but it is not out of place to mention that this extraordinary Jurisdiction has been conferred on to the law Courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, "delay defeats equity" has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-bye to his rights. Equity favours a vigilant rather than an Indolent litigant and this being the basic tenet of law, the question of grant of order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise."

8. Similarly our attention was also invited to a decision in the case of State of Maharashtra Vs. Digambar, wherein it was observed:

"Unless the facts and circumstances of the case clearly justified the laches or undue delay, the writ petitioner, be he a citizen or otherwise, held, not entitled to relief against anybody including the State Grant of relief otherwise, although in respect of alleged deprivation of legal right, would be unsustainable."

9. Therefore, objection raised by the learned counsel in the matter of delay is well-placed because the petition was filed in 1993 for enforcing the policy of 1983 after 10 years. The policy of 1983 has already been superseded by the policy of 1986. That changed/modified policy was not challenged in this writ petition.

10. Hence, as a result of our above discussion, we are of the opinion that the view taken by the learned single Judge is not sustainable and the same is set aside and the writ petition is dismissed.

11. However, before parting with the case we may observe that as and when any vacancy arises in future, then the case of these persons may be considered for appointment against the appropriate post/posts sympathetically. But no mandamus can be Issued for appointing these persons as land-loosers category.

12. Hence the appeal of the appellant is allowed and the writ petition is dismissed. No order as to costs.

G.C. Gupta, J.

13. I agree.

14. Appeal allowed