

(2021) 07 CAL CK 0006
In the Calcutta High Court
Case No : WPCT No. 75 Of 2020, 28 Of 2021

Union Of India & Ors.

APPELLANT

Vs

Jahangir Chowdhury & Ors

RESPONDENT

Date of Decision : 01-07-2021

Acts Referred:

Citation : (2021) 07 CAL CK 0006

Hon'ble Judges : Hiranmay Bhattacharyya, J;Soumen Sen, J

Bench : Division Bench

Advocate : Deepak Kumar Singh, Rabindranath Bag, Saptamita Pramanick,
Sourav Mondal, Achintya Kr. Biswas, Indumouli Banerjee

Final Decision : Disposed Of

Judgement

Both the writ petitioners are taken up together as common questions of law and facts are involved in both the writ petitions.

The order under challenge in these two writ petition is arising out of a common order by which a large number of original applications have been

disposed of by the learned Central Administrative Tribunal.

The Railways authorities have preferred the writ petitions against two of the applicants who are private respondents in this proceeding in whose

favour order has been passed by the learned Tribunal.

The subject matter of challenge before the tribunal is the decision of the Railway Authorities not to give employment to the private respondents under

the category of land loser in terms of the policy of the Railway Board in RBE-99 of 2010. The private respondents claimed to have lost their land to

the Railways for construction of various railway projects namely, Dankuni Furfurasarif, Arambag-Bowaichandi, Nandigram and others.

In the original applications the applicants have prayed for cancellation of the order dated 17th March, 2016 by which the Railway Authorities have declined to consider their claims for employment under land loser category in view of the fact that the project for which the land was acquired could not be utilised.

The applicants before the learned Tribunal has claimed that pursuant to a notification dated 27th August, 2010 for acquiring land many land owners including the family of the present respondents have lost their land for construction of the Railway Project. In terms of the Railway Board's

Circular RBE 99 of 2010 dated 16th July, 2010, the applicants were entitled to employment in addition to compensation, but employment was not

provided to them. Aggrieved as such, they approached this Tribunal by filing OA no. 711 of 2015 which was disposed of by an order dated 17.06.2015

to screen them for employment. Since the order was not complied with, the applicants served a notice for contempt, whereafter their claim was turned

down by a communication dated 17.03.2016. Being aggrieved thereby the applicants filed a contempt application which was dismissed as a Speaking

Order was already issued by that time. They were granted liberty to file proceeding as per law before appropriate forum. A writ petition was filed

before the Hon'ble High Court of Calcutta against the order was dismissed and, thereafter they approached this learned Tribunal.

The writ petitioners before the tribunal as well as before us did not dispute the claim of the original applicants that they lost their land for the aforesaid

railway project. However, the claim of the private respondents were denied on the ground that the Bowaichandi "Arambag Special New B.G.

Railway Line project was sanctioned long back and the land was acquired from the respective owner as per Railway Board Circular No.

E(NG)II/2011/RC-5/1 dated 28.09.2010, however, progress of land acquisition work involved in the said project was stalled as State Government

refused to carry out land acquisition work. It is contended that in order to execute the said project land was acquired by the Railway Administration

and compensation was paid at the enhanced market rate to the land loser. The employment is project specific and not otherwise.

In view of the fact that the State Government did not cooperate to carry out the land acquisition work no further advancement of the project could be

achieved. It was, however, admitted before the learned Tribunal that the General Manager, South Eastern Railway accorded approval for extending employment assistance to the 28 land loser candidates under Land Loser Scheme in Group "D" category at the material time. Those land losers have been appointed and posted other than Bowaichandi Arambag Project area, since, the project is fully stopped due to land acquisition problem on the part of State Government of West Bengal and other administrative constraints.

The private respondents before the learned tribunal as well as before us have specifically contended that Clause 37A of the Railway Amendment Act, 2008 clearly indicates the manner in which land acquisition, its notification and award of compensation is to be executed in Chapter IVA of the Railways Act, 1989.

Our attention is drawn to the land loser certificates issued to the private respondents specifically certifying them as land losers, in accordance with RBE 99 of 2010. Our attention is also drawn to RB 99 of 2010 which deals with appointment of land loser affected due to railway projects. The said circular refers to a screening committee who shall examine the claim for employment. The screening criteria relevant for the present purposes are indicated below:-

(i) The applicant shall be a person (sole owner of land or son/daughter/husband/wife of the sole owner) whose land or a portion thereof has been acquired for the project in case the land is owned by more than one person, the Competent authority, as defined in the Railway (Amendment) Act 2008/Land Acquisition Officer, will decide who shall be considered as applicant. Only one job shall be offered to an applicant from the land loser family.

(ii) It must be ensured that the displaced person has not received any land from the State Government in lieu of his/her land acquired/being acquired for the project.

2. Railway administration should request the concerned Competent Authority/Land Acquisition Officer to issue certificate/s to those persons whose land has been acquired to facilitate proper verification of the claims.

4. the applicant should normally fulfil the eligibility and other conditions prescribed for the post against direct recruitment quota from open market. In

special cases, General Manager of the Railway can relax these conditions, and in respect of educational qualifications, applicants with read/write only

capability shall also be considered. (emphasis supplied)

The Call letters for screening shows that the original applicants were considered under the land losers category due to land acquisition for special

railway project in Group D category and they were provisionally allowed to appear in the screening test before screening committee on the date

mentioned in the respective call letters in October 2015 the Board subsequently, in RBE 193/2019 recall its earlier policy of employment to affected

land losers. The said policy however, makes it clear that it would be effected on the date of issuance of the said letter.

The learned Counsel for the private respondents has rightly submitted that the reasons furnished for not giving employment is not based on the

aforesaid circular but on a specious plea that the work in the project did not commence. Reliance has been placed on â??Mohinder Singh Gill and

another vs. The Chief Election Commissioner, New Delhi and others, reported in AIR 1978 SC 851 to contend that, â??when a statutory functionary

makes an order based on certain grounds its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the

shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by

additional grounds later brought out.â??

Further they have also relied on a judgment in State of Karnataka & Ors. vs. C. Lalitha reported in (2006) 2 SCC 747, wherein it was held that â??all

persons similarly situated should be treated similarly irrespective of the fact that only one person has approached the court.â??

The aforesaid submission is made in view of the fact that 28 land losers similarly placed if they could be accommodated against other project as

admitted by the writ petitioners then there could be no reason for depriving the applicants of similar reliefs. Our attention is also drawn to the earlier

order of the learned Tribunal in OA 711 of 2015 in which the learned Tribunal observed:-

â??the respondents should do well to see that the case of the applicants are screened and considered as per the scheme and if found suitable legally

then necessary benefits may be accorded, as otherwise, they may be informed of

their unsuitability, within a period of 4 months from the date of receipt of this order.â??

It is an admitted position that the private respondents are standing on the same footing as that of 28 land losers who were given appointment in other projects. This will be discernible from the letter dated 6th January, 2014 from the office of the Chief Personnel Officer under RTI Act which reads:

â??South Easter Railway

Office of the

Chief Personnel Officer,

11, Garden Reach Road,

Kolkata- 43

No. SER/P-HQ/740/1/RTI/AKM/415/2013 Dated:06.01.2014

To

Abul Kalam Mondal,

S/o, Golam Kader Mondal,

Vill & P.O. â?" Guir, Dist- Burdwan(WB),

Pin-713423

Sub: Letter under Right to Information under RTI Act, 2005.

Ref: Your Letter no. Nil dated 11.11.2013

When reference to your letter cited above, it is stated that the same has been carefully examined and information/documents as received from concerned department is furnished below for your ready reference.

It is stated that approval of the General Manager has so far been communicated for 28 Land Loser Candidates as per enclosed list (Annexure-1) pertaining to Bowaichandi- Arambag Project of Adra Division for consideration of their appointment in Gr-D, subject to fulfilment of other terms and conditions.

On the above contention, if you are not satisfied with the information furnished, you may prefer an appeal to the Appellate Authority and Addl.

General Manager/S.E. Railway/11, Garden Reach Road, Kolkata-43, as per provision of RTI Act, 2005.

Enclo:As Above

(Dr.Mahua Verma)

Public Information Officer(I)

&

Chief Personnel Officer (Admin)â??

These 28 persons were appointed by Adra Division against land acquisition in Bowaichandi â?" Arambag New Railway Line Project duly approved by DRM/Adra.

The Order dated 17th March, 2016, inter alia, says:-

â??However, progress of Land Acquisition work involved with Project has been stalled at this stage as State Govt. of West Bengal has refused to

carryout land acquisition work. Consequently, no further advancement of the Project can be achieved as on date. In view of that facts since project

itself is not progressing, the employment against land loser cannot be processed.â??

These reasons does not hold good in view of the fact that the persons similarly situated as that of the private respondents were given employment in

other projects as the project itself did not progress. The 28 land losers were also part of the same project and if those 28 land losers could be

accommodated in spite of the fact that the project itself did not progress the claim of the present land losers for being employed in other projects could

not be denied.

In this regard it is important to take note of the findings of the tribunal arrived at on consideration of the materials on record. The said findings are:

â??(8) From the records we discern the following:

(i) That, inarguably and indubitably the applicants are the land losers, whose lands have been acquired by the Railways to construct a Railway project

(here Bowaichandi Arambag Special New B.G. Project Railway line). They were thus dispossessed of their land to facilitate construction of a

Railway Project.

(ii) That their right to employment under Railwaysâ?? land loser scheme flows from RBE 99 of 2010 extracted supra, that was prevalent at the

material time when land was acquired. It was under a clear assurance of employment flowing from the Railway Policy that they agreed to part with

their source of livelihood.

(iii) That the respondents were already directed in the earlier O.A. to screen the applicants and consider them as per scheme, and it found suitably

legally, to accord necessary benefits to them.

(iv) The respondents had never sought for any liberty to not follow the direction on the ground that the project for which land was acquired did not turn

out viable. The respondents are therefore in clear contempt.

(v) Moreover, 28 identically circumstanced land losers who were dispossessed due to proposed construction of Bowaichandi Arambag New BG Line

and had supposedly lost their source of livelihood have been appointed/accommodated against other viable projects in compliance of the provision in

RBE 99 of 2010. Therefore, the respondents are estopped by their conduct to deny employment to the present land losers on the ground that the

project in question has been stalled.

(vi) Admittedly, the project got stalled, but even after the project got stalled, 28 land losers under the same project were accommodated, elsewhere

and therefore respondents have arbitrarily meted out discrimination against the present applicants. They have attempted to create a class within a

class, which is not permissible in law.

(vii) The applicants right to employment is fortified by the RBE 99 of 2010 as well as the decision rendered in the previous OA to screen them and

consider them as per scheme and to accord them necessary benefits, as also the fact that employment has been provided to identically placed land

losers. Hence they are entitled to identical relief.

(viii) We further discern that the Railways are conspicuous by their silence on the reasons why the present applicants, when other have been

accommodated already, that too, after the project in question was stalled, cannot be accommodated against its other similar viable projects. Railways

by depriving the present applicants their right flowing from RBE 99 of 2010, due to subsequent circular introduced with prospective effect, are

resorting to macro-compartmentalisation on the basis of a micro distinction or no distinction at all, which is grossly unfair.

(ix) The respondents have not rejected the claim of the applicant upon due screening. They have simply refused to screen them as the project in

question, has been stalled. (emphasis supplied)

(9) In WPCT 74 of 2016, the Honâ??ble High Court at Calcutta while considering an identical matter of a land loser who was denied employment by

Railways on the ground of age bar, has directed as under:

â??21. It is evident from the materials on record that even land losers, who were 47 years old, have been offered appointment. The respondent no. 1

was 46 years old on the date he approached the tribunal for the first time. When his claim was rejected by the first order dated July 15, 2014, age bar

was not cited as a ground therefore. What we find is that there were absence of certain documents/papers for which the claim of the respondent no.1

could not be put up before the screening committee for screening. If indeed that was the reasons for regretting his prayer, the petitioners ought to

have asked the respondent no.1 to supply the documents, which were not there in the file, instead of closing his right to claim appointment. We

therefore, propose to pass the following further directions to close the breach:

(i) within a period of seven days from date of receipt of a copy of this judgment and order, the chief Personnel Officer shall intimate the respondent

no.1 which of the documents are required from his end for ensuring placement of his claim before the screening committee.

(ii) Within a month of receipt of such intimation, the respondent no.1 shall produce the necessary documents/papers before the Chief personnel officer

and upon receipt of such document /papers the claim of the respondent no.1 shall be placed before the screening committee for an appropriate

decision.

(iii) Bearing in mind the fact that other land losers have been offered appointment even upon attaining 47 years of age we hope and trust that the

screening committee shall not cite age bar as a ground for not considering the claim of the respondent no. 1 and if a power of relaxation is indeed

available to consider invocation of such power if the merits of the case so warrants and

(iv) The entire exercise shall be completed as early as possible but not beyond June 30, 2019.â??

Mr. Rabindra Nath Bag, the learned Counsel for the Railways submits that the reference is WPCT 74 of 2016 was completely misplaced as the facts

are different. However, we feel that the original applicants before the tribunal who are presently the respondents before us could now be held to be

over aged and age bar could be factor now resulted due to delayed consideration of their representation in which the guide lines in WPCT 74 of 2016

are to be followed. Since the only reason for not giving the employment is that the project was stalled we take it that the private respondents are

otherwise suitable for employment. On such consideration we do not find any reason to interfere with the order of the learned Tribunal.

There shall be no order as to costs.

However, in view of the pendency of the writ petitions the time to comply with the order passed by the learned Tribunal is extended by three months.

WPCT 28 of 2021 and WPCT 75 of 2020 are accordingly stand disposed of.