

(2010) 01 OHC CK 0009

In the Orissa High Court

Case No : Petition (s) for Special Leave to Appeal Civil No. 3810 of 2010

Union of India (UOI) and Others

APPELLANT

Vs

Nila Die

RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Land Acquisition Act, 1894 — Section 4(C)

Limitation Act, 1963 — Section 5

Citation : (2010) 1 ILR (Ori) 426

Hon'ble Judges : G.S. Singhvi, J;Asok Kumar Ganguly, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is a petition by Union of India and two others for setting aside order dated 3.3.2009 passed by the division Bench of Orissa High Court in O.J.C. No. 2411/2001 whereby it reversed the order of the Central Administrative Tribunal, Cuttack Bench (for short, "the Tribunal") and directed the concerned authority of South Eastern Railway to provide suitable employment to one of the family members of the Respondent in accordance with the guidelines framed by the Railway Board.

2. The Petitioners have also filed an application for condonation of 203 days delay in filing the Special Leave petition.

3. We have heard Shri Vivek Tankha, learned Additional Solicitor General who is assisted by Shri S. Wasim A. Quadri and carefully perused the record. In our view, the averment contained in the application for condonation of delay showing that the file of the case was tossed between different functionaries of the railway administration and the advocates does not furnish valid excuse for delayed filing of the special leave petition. A decade and half ago this Court may have accepted such specious and ready-made explanation offered by the officers of the State and its agencies and instrumentalities by judicially acknowledging red tapism and

lethargy in the functioning of the Government and other public bodies but such an approach is not compatible with the time when people of the country are demanding accountability of all concerned with the functioning of the public institutions. Therefore, the explanation given by the Petitioners for the delay of 203 days can not be treated as sufficient so as to warrant exercise of discretion by this Court in their favour u/s 5 of the Limitation Act and the application for condonation of delay is liable to be dismissed. As a sequel to that, the SLP is liable to be dismissed as barred by time.

4. Notwithstanding the above, we have thought it proper to consider the issue raised by the Petitioners on merits. Undisputedly, the Respondent is a member of Scheduled Tribe. Her land measuring 9.24 acres in Khata No. 114/277 of Tikiri Village was acquired by the authorities of South Eastern Railway in 1986 for construction of Koraput-Rayagada Railway line. In terms of the policy framed by the Railway Board to provide employment to one member of the family of the land owner besides award of compensation, the Respondent approached the concerned authority for appointment of her son as a casual labour. The name of her son was recommended by the special Land Acquisition Officer (Railways) Koraput vide letter dated 4.10.1991 for providing employment, but no action was taken by the competent authority on the said recommendation. The legal notice dated 23.8.1995 sent by the Respondent through her advocate also did not yield any result compelling her to file an application u/s 19 of the Administrative Tribunals Act before the Tribunal. The learned Vice Chairman of the Tribunal who decided the original application noted that as per the decision taken in the meeting held between the Chief Minister of Orissa and Chief Engineer (Constructions), South Eastern Railway, 188 members of the families of land owners were to be provided job but, rejected the Respondent's plea on a wholly untenable ground that she had approached the Tribunal after 10 years of acquisition and as per the Railway Board's circular employment was to be given within two years.

5. The Division Bench of Orissa High Court, on a consideration of the factual matrix of the case held that the Tribunal was not at all justified in dismissing the application filed by the Respondent on the ground of delay ignoring the fact that in the first instance the competent authority had recommended the name of her brother and even though the mistake was rectified in 1991, action was not taken by the concerned authority for providing employment to her son. The High Court then considered the policy framed by the Railway Board and held that one member of the family is entitled to be employed as a matter of right. The relevant portions of the order passed by the High Court are extracted below:

4. It appears that notice u/s 4(C) of the Land Acquisition Act was issued to the Petitioner on 19.09.1987 vide Annexure-2. Notice u/s 12(2) was issued to her on 24.3.1988 to appear before the Land Acquisition Collector on 20.04.1988 to receive compensation. From Annexure-6, the letter dated 04.10.1999 of the Special Land Acquisition Officer (Railway), Koraput addressed to the Chief

Engineer (Con.) S.E. Railway, Laxmipur, it appears that Ac.9.24 decimals of land belonging to Petitioner was acquired for Koraput-Rayagada Railway Line but by letter dated 8.6.1989 the name of her brother was wrongly recommended for providing employment. When the Petitioner approached the Special Land Acquisition Officer by filing a petition, the mistake was corrected and the name of her son was recommended. As the Railway authorities did not take any action, the Petitioner served legal notice and thereafter after obtaining the certificate from the Land Acquisition Officer approached the Tribunal in 1996. In view of the aforesaid, the Tribunal was not right in holding that as the Petitioner has not approached the Tribunal for the last 10 years, her claim for providing employment to her son was not maintainable.

5. Now it is necessary to see whether according to the guidelines of the Railway Board, the employment on rehabilitation is only given for the purpose of the work done on the acquired land or may also be some other place. In this regard, the Petitioner has filed a copy of the letter of the Railway Board date 31.12.1982/01/01/1983 with the subject "appointment to Group "C" and "D" posts on the Railways of members of families displaced as a result of acquisition of land for establishment of Projects." In paragraph 2 thereof, it has been provided that the Zonal Railways and Production Units and also project authorities may consider applications received from persons displaced on account of large-scale acquisition of land for projects on the Railways for employment of the displaced person, or his son/daughter or wife for employment in Group "C" or Group IV posts in their organization including engagement as casual labour and given them preferential treatment for such employment, subject to the following conditions:

1. The individual concerned should have been displaced himself or he should be the son/daughter/ward/wife of a person displaced from land on account of acquisition of the land by the Railways for the Project.
2. Only one job on such preferential treatment should be offered to one family;
3. This dispensation should be limited to recruitments made from outside is direct recruitment categories and to the first recruitment of within a period of two years after the acquisition of land, whichever is later;
4. It must also be ensured that the displaced persons did not derive any benefit through the State Government in the form of alternative cultivable land etc; and
5. The person concerned should fulfill the qualification for the post in question and also be found suitable by the appropriate recruitment Committees, in the case of the Group "C" posts for which recruitment is made through the Railway Service Commission, the Chairman or the Member of the Railway Service Commission should be associated in the recruitment.
6. In view of the above, it can not be said that the employment to a displaced person or any member of his family is confined only to the work which is to be

done on the acquired land but it is liable to be provided anywhere within the zone and, therefore, we are of the opinion that one of the family members of the Petitioner is entitled to get employment; more so when in the counter affidavit the opposite parties themselves conceded that they have provided employment to 188 persons of the displaced families then why the Petitioner should be discriminated.

7. The Petitioners have questioned the impugned order mainly on the grounds that the scheme for rehabilitation of the oustees has come to an end and that the application filed by the Respondent was highly belated.

8. In our opinion, neither of the grounds put forward by the Petitioners can be made basis for upsetting the direction given by the High Court because they have not produced any evidence before this Court to show that the name of the Respondent's son had not been recommended in 1991 for providing employment in accordance with the policy of the Railway Board. It is most unfortunate that instead of adopting a sympathetic and humane approach qua a woman belonging to Scheduled Tribe, who was deprived of the only source of livelihood in the name of public interest, the functionaries of the State administration and South Eastern Railway treated her with utter contempt and deprived her son of the legitimate right to be employed as per the policy of the Railway Board. In a case like the present one, the concerned officers should have suo moto apprised the Respondent of her entitlement to get one member of her family employed in accordance with the policy of Railway Board, ensured that the paper formalities are completed without delay and, thereafter, issued necessary order but, as is usual, everyone in the administration appear to be out to deprive the Respondent, who, as mentioned above, belongs to Scheduled Tribe of her legitimate right. This is a sad commentary on the functioning of the State apparatus. The Directive Principles of State Policy enshrined in Part IV of the Constitution obligates the State and its functionaries to take all possible measures for ameliorating the conditions of Scheduled Caste, Scheduled Tribe and other weaker sections of the society so that the promise made to the people on 26th January, 1950 can be fulfilled but when it comes to implementation of the legislative and executive measures intended to benefit that class of the society, those involved in the operation of bureaucratic system, at times, make all out efforts to deprive the have-notes of their legitimate dues.

9. In our considered view, the order passed by the High Court is most just and equitable and does not call for interference under Article 136 of the Constitution.

10. With the above observations, the SLP is dismissed as barred by time and also on merits. The Petitioner shall pay cost of Rs. 50,000/-. This amount shall be paid to the Respondent within a period of eight weeks. Within that period, the Petitioners must provide employment to the son of the Respondent in terms of the order passed by the High Court. A report showing compliance of this direction shall be filed in the Court within nine weeks and the Registry shall list the matter before the Court after ten weeks.

11. SLP is dismissed.