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## **Akhtar Parwez Vs State**

**Criminal Misc. Case (Bail Application) (CRM) No. 2896 Of 2020, CRAN No. 1352 Of 2020**

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**Court:** Calcutta High Court

**Date of Decision:** April 8, 2020

**Acts Referred:**

Code Of Criminal Procedure, 1973 " Section 330

**Hon'ble Judges:** Joymalya Bagchi, J; Dipankar Datta, J

**Bench:** Division Bench

**Advocate:** Sekhar Basu, Mayukh Mukherjee, Saswata Gopal Mukherjee, N. Ahmed, S. Ahmed

**Final Decision:** Disposed Of

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## **Judgement**

Sambuddha Chakrabarti, J

The central issue that falls for consideration in this writ petition is whether a member of a family whose land has been acquired by the respondents

with an assurance of providing an employment over and above the financial compensation, can be denied any employment in the organization on the

ground of his suffering from colour blindness.

The case of the petitioner inter alia is that he belongs to a family of land loser inasmuch as 2.03 acres of land had been acquired by the Coal India

Limited in two moujas in the district of Burdwan. The petitioner was nominated by the members of the family for employment at Eastern Coalfields

Limited (ECL, for short) which is a subsidiary of Coal India Limited, under the land losers scheme. He was called for an interview and his

employment under the concerned scheme in a Group-D post at the ECL had been duly approved. However, the Medical Board had declared him unfit

as he was suffering from colour blindness. The eye specialist to whom he was referred was also the same opinion. The petitioner made a

representation for a re-medical examination by the Apex Medical Board, but the representation was not responded to.

The petitioner has mentioned the information given by the other coalfields to him on the issue whether colour blindness was a disqualification for any

employment. For example, the Western Coalfields Limited had replied that appointments are given to colour blind persons, Mahanadi Coalfields

Limited replied that a colour blind person is fit for employment in Group-C category. The response of the South-Eastern Coalfields Limited is that the

appointments are given to persons with colour blindness for jobs where colour discrimination is not required. In Bharat Coking Coal Limited also colour

blindness is not a bar to employment.

The petitioner made successive representations and appeals to various authorities. He came to learn of a letter, dated May 24, 2017 wherein, with

reference to the petitioner's case, the Assistant Manager (P) had written to the General Manager (LRE) ECL that possible avenues within the

scheme of the company should be explored since the case related to land employment in order to give employment to the land losers' family. In

response thereto the General Manager (LRE) informed that the employment of the petitioner had been duly approved. Under the Coal India Limited R

& R Policy of 2012, compensation in lieu of employment or change of nominee subject to specific proposal from Sodepur area may be opted.

In this background, the petitioner made a further representation, dated June 13, 2017 to the General Manager (M.P. & P & IR), ECL specifically

mentioning that according to his information received from other subsidiaries of Coal India Limited employment is given to persons suffering from

colour blindness.

It is the further case of the petitioner that the Minimum Physical Standard for all Classes of Employees Directly Connected with Coal Mining (Mining,

Geological, Survey, Mechanical, Electrical, Opencast Personnel and Mining Trainees, Automobile Drivers and Watch & Ward Employees) which is

applicable to the position to which the petitioner had applied, does not debar a colour blind person in any manner whatsoever. In terms of Clause 13,

even a candidate suffering from night blindness may not be rejected. The said standard debars cases of defective vision due to nebula of the cornea,

squint or any morbid condition subject to risk or aggravation or recurrence in either eye. It is also open to the Managing Director to relax one of the

conditions in favour of any candidate on special grounds. The petitioner states that the condition of the petitioner does not fall within the meaning of

defective vision caused by circumstances as mentioned above. Therefore, he could not be rejected on the ground of colour blindness.

The Medical Council of India has agreed to the recommendation of the Supreme Court to lift the bar on the people with colour vision deficiency from

joining the medical stream. He further mentions that under the Rights of Persons with Disabilities Act, 2016, 21 disabilities have been listed which

include blindness, low vision etc., but does not include colour blindness. Rejecting the petitioner's case on the ground of his suffering from colour

blindness shall amount to unfair discrimination. Persons similarly placed as the petitioner have not been denied employment by the other subsidiaries of

Coal India Limited and such act of the respondents are in violation of the rights guaranteed under Articles 14, 16 and 21 of the Constitution of India.

The petitioner, therefore, prayed for issuing a writ in the nature of mandamus commanding the respondents to revoke and withdraw the rejection of his

candidature as medically unfit for obtaining employment in the Eastern Coalfields Limited under the land loser category, a writ in the nature of

mandamus to immediately and forthwith grant employment to him in the Eastern Coalfields Limited as a Security Guard and for other ancillary reliefs.

In his report in the form of an affidavit, the Director (Personnel) i.e., the respondent no. 5 stated that the petitioner applied for employment under the

land loser scheme against land acquisition by Patmohana Colliery. The total extent of land offered by Sri Maji was 2.03 acres under package deal.

Since ECL is a subsidiary of Coal India Limited any person employed by the company must be physically fit to work in mines. Such physical standard

has been prescribed under Rule 29B of the Mines Rules, 1955. The physical fitness of the petitioner was also assessed in the initial medical

examination by the Medical Board of the Company on August 19, 2015. He was found "unfit" for employment due to colour blindness.

The report specifically mentions that Eastern Coalfields Limited is basically an underground based company where the land oustees are provided with

employment in underground mines only. In view of hazardous nature of the industry without sound vision and physical fitness no one may be

employed. So far as a person suffering from colour blindness is concerned, no such employment is provided in case of a land loser in ECL. There is a

bar in offering employment on the medical ground specially for colour blindness and no accommodation can be offered to the petitioner for providing

job in any other category.

Since this Court by its order, dated January 2, 2018, had directed the respondent no. 5 to disclose whether the petitioner could be accommodated in

any category of job where colour discrimination was not required, the report recorded that the hazardous nature of the underground mines had already

been explained and the management was not in a position to provide employment in underground mines to the petitioner who is only entitled to

compensation in lieu of employment. As per the Rehabilitation and Resettlement Policy (R & R Policy) of the company land losers are to be provided

with compensation in lieu of employment which is a considerably big amount. There is a definite policy for providing compensation in the said policy to

those persons who are found ineligible or who do not opt for employment. The respondent no. 5 prayed for dismissal of the writ petition.

The court had subsequently directed the respondents to file a supplementary affidavit mentioning the nature of job that the petitioner, if appointed,

would have to discharge and whether in that specific area of employment colour blindness is a medical disqualification for appointment and if so, how.

In response thereto the Deputy Manager (P) and the Constituted Attorney of the respondent no. 3 affirmed an affidavit mentioning that as per the

land losers scheme for providing employment to a land loser, every such person, if found eligible, is employed as Underground Mazdoor, Category 1

irrespective of his qualification subject to his being medically fit for underground job. There is no exception to such appointment. All appointees under

the land loser scheme being Category 1 are General Mazdoor who are required to go underground mines and do the mining work. This is the policy of

the ECL as stated in the relevant Scheme. A General Mazdoor or any person going underground must have a good eye vision and cannot be a colour

blind. Various modern safety devices are employed in the underground mines which makes it absolutely essential that an underground mazdoor going

underground for mining work must see and understand all the different lights and indications below the earth. The petitioner being colour blind will not

be able to follow this lights. Unless a mazdoor cannot understand the nature of lights, accident may occur any time. The petitioner is a land loser and is

required to go underground as a mazdoor. There is no exception to such employment and work. He cannot be employed in any other area or for any

particular job other than a general mazdoor, Category 1.

Mr. Partha Ghosh, the learned Advocate for the petitioner referred to certain rules which, if applicable, contradicts the statements made by the

respondents in their respective affidavits. The Court, therefore, directed the respondent no. 5 to be present in Court and to answer some of the issues

raised in connection with the present writ petition. Pursuant to the order, Mr. Binay Ranjan, the Director (Personnel), ECL appeared in Court and

made submissions. On the next date, i.e., March 28, 2019, however, Mr. Basu the learned senior counsel appearing for the respondents submitted that

despite every attempt on his part the respondents were not willing to budge and stuck to their decision of not offering any employment to the petitioner

on the ground of his colour blindness. Although, it has been mentioned in the affidavit that the stand of the respondents is based on their policy decision

Mr. Basu in his usual fairness has admitted that no policy decision could be produced by the respondents except a mere statement to that effect in the

affidavit.

At this stage, the Court directed the Additional District Sub-Registrar, Asansol to make an assessment of the valuation of the concerned plot of land.

The Court further directed the respondents to produce a copy of the policy decision referred to in their affidavit. Again on December 4, 2019, the

Court directed the respondents to mention in the affidavit to be filed by them in connection with the valuation of the concerned lands if there was any

policy decision with regard to the employment of persons suffering from colour blindness. The Court directed if there was any policy decision to that

effect a copy of the same should be annexed to the affidavit. The affidavit was also required to disclose the authority which had taken this decision, if

at all. The respondents were further directed to disclose if the Coal India Limited/ECL had ever appointed any person on compassionate ground when

there was no vacancy available.

In the affidavit affirmed by the Deputy Manager (P) of the Eastern Coalfields Limited it has been stated that the ECL enquired about the same from

the Coal India Limited, but that would take some time. ECL is not aware of any such policy decision of the Coal India Limited. Such policy decisions

are taken by the Board of Directors of Coal India Limited. The affidavit further stated that so far as the Eastern Coalfields Limited is concerned it is

obliged to appoint a person on compassionate ground irrespective of vacancy available in the company. Such an appointment is offered under the

provision of National Coal Wage Agreement. The case of the employment of the petitioner is governed by the R & R Policy of Coal India Limited,

2012. The affidavit also mentioned the location of the plots of land for the purpose of valuation.

On January 10, 2020, Mr. Basu after producing the affidavit in Court submitted that whatever the Court might direct about the employment of the

petitioner the respondents would abide by the same.

In needs be mentioned that Sri Rohan Aswal, the Deputy Manager (Personnel) and Constituted Attorney of respondent no. 3, categorically stated on

oath that as per the land losers scheme for providing employment every such person, if found eligible, is employed as an underground Mazdoor and

there is no exception to it. It was stated to be the policy of the ECL.

On being repeatedly directed the scheme requiring a nominated member of the family of land losers to be appointed only in underground mining

operations was not produced by the respondents. If a person suffering from colour blindness cannot be appointed for an underground job. The court

further wanted to know whether such a person suffering from colour blindness could be appointed for any other job and whether there was any such

policy decision to that effect. Lastly, the same person, viz., Mr. Rohan Aswal, has sworn an affidavit admitting that the appointment claimed by the

petitioner is guided by the R & R Policy of the Coal India Limited.

Since it was submitted in Court that such appointment can be made only when there is a vacancy and since there was no vacancy available for any

surface job employment to the petitioner was not possible the Court directed the respondents to specifically state whether the Coal India Limited/ECL

had ever appointed any person on compassionate ground when there was no vacancy available. Strangely enough, in the affidavit filed by the

respondents this direction has not been answered. Thus, the so-called policy restricting the appointment of a land loser to the underground areas alone

is not forthcoming in spite of the bold assertion on behalf of the respondents about no exception to such appointment. On the contrary, the R & R

Policy of Coal India Limited as annexed to the affidavit of the respondents dated July 4, 2019 specifically mentions that the land loser trainees shall be

posted as per requirement including underground duties. This makes it very clear that underground employment is not the only kind of employment

where a nominated member of the family of the land loser may be appointed. This provision has been incorporated in clause 8.1 (B)(5)(c) of the

relevant Policy which has been stated to be the clause applicable to the instant case. If that be so, the emphatic assertion of the respondents that the

petitioner as a land loser is required to go underground as a Mazdoor and he cannot be employed in any other area or for any particular job other than

a General Mazdoor, Category 1 was not only against the so-called policy decision but also an incorrect one. It is all the more so when the so-called

policy of the ECL does not find place in the land loser scheme.

The Additional District Sub-Registrar, Asansol submitted a valuation report of the concerned plot of land where the market value was assessed at Rs.

49,38,480/-. On the other hand, the market value assessed by the respondents was Rs. 23,40,151/-. Thus there was a huge difference between the

two assessments. In justification of the valuation made by them the respondents referred to the location of the land, condition of the land, absence of

road near the land in question, so on and so forth.

It is far too obvious that land which a family offers for the purposes of colliery, particularly for the sort of work for which the plots of land in the

instant case were taken, could not be the best and modern plots from the locational point of view. For very obvious reasons they are generally away

from the roads and consequently the market value will be much lesser than those lands with positive locational advantageous.

Must a person whose land has been taken and who has been suffering from colour blindness be satisfied with the market value of lands with such

disadvantageous location? If the policy decision really required that a land loser will only have to work in the underground mines only there might not

have been any occasion for exploring any other possibility; but there being no such indication in the policy decision it is definitely necessary to consider

the possibility of an employment on the surface level. The Director (Personnel) of the respondent company was asked to take a humane approach

considering that the family had given the land on a definite assurance that a member of the family would get an employment and at the time of taking

of the land it was never indicated that such nominated member will have to work in the underground mine.

As mentioned earlier, Mr. Basu conveyed to the Court that despite every effort on his part the respondents were not willing to budge and stuck to

their decision of not offering any employment to the petitioner. Mr. Basu fairly admitted that no policy decision could be produced by the respondents.

Such an insistence on the part of the respondents could be understood if their action could be justified in terms of their policy decision or any purported

provision in the Scheme to which repeated reference has been made. If there had been any scheme requiring the petitioner to be appointed only in an

underground mine there might not have been any occasion for considering any other employment for the petitioner. Since that is not the case here it

will be unjust, inequitable and improper for the Court to compel the petitioner to be satisfied with the market value of the lands in question, particularly

in view of what have been discussed above and the methods by which the respondents wanted to obstruct his employment.

The petitioner relied on the judgment in Nand Kumar Narayanrao Ghodmare Vs. State of Maharashtra and Others, reported in (1995) 6 SCC 720

where also the respondents did not offer any appointment to the appellant for his suffering from colour blindness. The Supreme Court after a finding

that out of 35 posts in the concerned department only five posts required perfect vision without colour blindness, directed the government to consider

the case of the appellant to any of the posts in the concerned department except those five posts.

Following the same principle the Court directs the respondents to consider the case of the petitioner for appointment to any post, subject to his

qualification and fulfilling the other eligibility criteria, in any department of the respondents where working in the underground will not be necessary

and his vision deficiency will not be a bar. The decision of the respondents should be guided in terms of the considerations and criterion laid down

above. Such decision is to be taken within 30 days from the date of the communication of the order.

The writ petition is allowed.

There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.

(Sambuddha Chakrabarti, J.)

Later:

After the judgment was delivered Mr. Pradipta Bose, the learned Advocate for the respondent prayed for stay of the operation of the order but Mr.

Mitra, another learned Advocate for the respondent submitted that there was no question of stay and he was not praying for stay of the operation of

the order. At this stage, Mr. Bose the learned advocate withdrew his prayer. Therefore, the question of stay is not considered by the Court.