
(2022) 09 CHH CK 0082

Chhattisgarh High Court

Case No: Writ Petition (S) No. 5804 Of 2022

Union Of India

APPELLANT

Vs

Vijay Jaiswal

RESPONDENT

Date of Decision: Sept. 23, 2022

Hon'ble Judges: Arup Kumar Goswami, CJ; Deepak Kumar Tiwari, J

Bench: Division Bench

Advocate: Ramakant Mishra

Final Decision: Dismissed

Judgement

1. Heard Mr. Ramakant Mishra, learned Deputy Solicitor General, appearing for the petitioners.

2. This writ petition is directed against an order dated 08.04.2022 passed by the learned Central Administrative Tribunal, Jabalpur Bench, Circuit Court Sittings, Bilaspur,

(for short, the CAT) in Original Application No. 203/00843/ 2021 (for short, the OA).

3. A notification dated 02.11.2017 was issued by the petitioners herein to acquire agricultural land of village Patarkoni and village Madna of Pendra Road for a Railway Project. Pursuant thereto, the land of the applicant before the OA, bearing Khasra No. 60/1 (area 0.101 hectare) was acquired and an award also came to be passed on 07.09.2018 by the Sub Divisional Officer (Revenue) for payment of compensation. The land having been acquired, the applicant made an application for appointment in the

prescribed format, in terms of the policy under RBE No. 99/2010 dated 16.07.2010, which provided for employment assistance to one of the family members whose land is

acquired.

4. Though the applicant was called for a screening test on 17.12.2019, subsequently, by letter dated 20.10.2020, candidature of the applicant was cancelled on the ground

that under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the Act of 2013),

the applicant is entitled to compensation amount only.

5. Challenging the said rejection order dated 20.10.2020, the OA came to be filed.

6. Before the CAT, the petitioners had placed reliance on a policy under RBE No. 193/2019, dated 11.11.2019 issued by the Government of India, Ministry of Railways

(Railway Board), on the subject of revision of policy regarding compensation of land-losers affected by acquisition for Railway projects, whereby amongst others, the earlier

policy offering appointment to the land-losers was withdrawn.

7. The CAT held that the policy dated 11.11.2019 would be applicable only to those land-losers whose land was acquired after the issuance of RBE No. 193/2019 and

accordingly, quashed the order dated 20.10.2020 and directed reconsideration of the case of the applicant for employment assistance within a period of three months from

the date of receipt of a copy of the order.

8. Mr. Mishra submits that the learned CAT was in error in coming to the conclusion that the policy dated 11.11.2019 would be applicable only to those persons whose land

is acquired after issuance of the said policy. It is submitted by him that the policy dated 16.07.2010 was issued while land was acquired under Railways Act, 1989 and with

the coming into the force of the Act of 2013, there is a change in the entire scheme of acquisition of land and therefore, the policy dated 16.07.2010 would not be applicable.

9. We have considered the submissions of Mr. Mishra and have perused the materials on record.

10. It is not in dispute that there was in existence a policy dated 16.07.2010 providing employment assistance to one of the family members whose land is acquired. It will be

appropriate to reproduce the relevant extract of the policy dated 11.11.2019 for better appreciation. The same reads as under:

GOVERNMENT OF INDIA

MINISTRY OF RAILWAYS

RAILWAY BOARD)

RBE No. 193/2019

No. E(NG)II/2010/RC-5/1, New Delhi, dated 11.11.2019

To

The General Manager,

All Zonal Railways/Production Units

(As per standard mailing list)

Sub: Revision of policy regarding compensation of Land losers affected by land acquisition of Railway projects.

Ref: (i) RBE No. 99/2010 dated 16.07.201008

(ii) RBE No. 120/2010 dated 13.08.2010

(iii) Railway Board's letter No. E(NG)II/2010/RC/5/1 dated 28.09.2010

1. On notification of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (Removal of Difficulties) Order 2015

dated 28. 08.2015, provision of RFCTLARR Act 2013 related to determination of compensation in accordance with the First, Second and Third Schedules of the

RFCTLARR Act 2013 have become applicable to all cases of land acquisition under the Railways Act 1989 also. This inter alia means that, irrespective of whether land

acquisition for Railway projects is done through Railways Act 1989 after declaring it as a Special Railway Project or through RFCTLARR Act 2013 through State

Government, determination of compensation shall be in accordance with the First, Second and Third Schedules of the RFCTLARR Act, 2013.

2. The modalities for implementation of Serial No. 4 of the Second schedule of the RFCTLARR Act 2013 were examined by Ministry of Railways and it has been decided

that:

i. Ministry of Railways' earlier policy of offering appointment in Railways to affected land-losers issued vide references above is withdrawn and circulars issued

in this

regard vide reference above stands superseded.

ii. Lump sum payment of Rs. 5 Lakhs to be provided to affected families who were primarily dependent on acquired land for livelihood, i.e. cases where their livelihood is

affected by such acquisition or whether entire land-holding of the affected family have been acquired.

3. Before considering grant of any relief under Second Schedule, however, the Competent Authority for Land Acquisition (CALA) or Collector should unequivocally certify

that the affected family has been displaced and dislocated to another area or their entire land holding has been acquired. Further, in case of joint ownership of a plot of land,

lump sum payment of Rs. 5 Lakhs should be shared between joint owners of plot in same ratio in which land value is to be shared.

4. This may be brought to the notice of all concerned authorities dealing with the acquisition of land and ensure that all determination of compensation for acquisition of land

under the Railway Act 1989 are in consonance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013.

5. This policy shall be effective from the date of issue of this letter.

6. This issues with the concurrence of Finance and approval of the Competent Authority.

Sd/-

Illegible

Sd/- Illegible

(Chandra

Shekhar)

(M.M.Rai)

Jt. Director Land & Amenities
Jt. Director Estt (N) II

Railway

Board
Board

Railway Board

11. A perusal of the said policy would go to show that irrespective of whether the land acquisition for railway projects was done through the Railways Act, 1989 after declaring it as Special Railway Project or through State Governments, determination of compensation shall be made in accordance with the First, Second and Third Schedules of the Act of 2013 and accordingly, the policy of offering appointment in Railways to affected land losers was withdrawn and circulars issued in that regard were superseded.

12. Clause 5 of the policy, however, makes it amply clear that the new policy shall be effective from the date of the issue of the letter. Therefore, there is no manner of doubt that the earlier policy which was withdrawn continued to remain in force till issuance of the notification dated 11.11.2019.

13. In view of the above discussion, the view taken by the CAT cannot be faulted with. Resultantly, we find no merit in this petition and the same is dismissed.