

(2013) 04 SC CK 0146

SUPREME COURT OF INDIA

Case No: Petition for Special Leave to Appeal Civil No(s).14979 of 2009, 16243 of 2009 and 16278 of 2009

Director Rehabilitation

APPELLANT

Vs

Shakha Kathait

RESPONDENT

Date of Decision: April 2, 2013

Citation: (2014) ACJ 499 : (2014) 1 ALLMR 976 : (2014) 1 RCR(Civil) 575 : (2014) 1 WLN 83

Hon'ble Judges: Mr. G.S. Singhvi and Mr. Kurian Joseph, JJ.

Bench: Division Bench

Advocate: Mr. Dinesh Kumar Garg, Advocate, for the Appellant; Ms. Meenakshi Lekhi and Mr. Harish Pandey, Advocates, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. The applications for amendment of the cause title are allowed in terms of the prayer made.
2. These petitions are directed against order dated 5.3.2009 passed by the National Consumer Disputes Redressal Commission (for short, "the National Commission") whereby the revisions filed by the petitioner were dismissed and the directions given by District Consumer Disputes Redressal Forum, Tehri Garhwal (for short, "the District Forum") for allotment of plots measuring 150 sq.mtrs. to the respondents in New Tehri Town and payment of the cost and compensation, which were affirmed by the State Consumer Disputes Redressal Commission, Uttaranchal (for short, "the State Commission"), were upheld.
3. The respondents who were employed in different departments of the Central/State Governments and were posted in Tehri Town submitted applications for allotment of plots under the Rehabilitation Policy formulated in 1986 for those who were affected by submergence of the Tehri Town in the Tehri Dam. Under that policy, the Government employees posted in Tehri Town for long years, who were

likely to be affected by Tehri Dam were treated eligible for allotment of plots. However, that policy was not acted upon and new Rehabilitation Policy was framed in October, 1995. After three years, another Rehabilitation Policy was framed by the Government.

4. Since the respondents were not treated eligible for allotment of plots under the 1995 and 1998 policy, they filed complaints under Section 12 of the Consumer Protection Act, 1986. The petitioner contested the complaints on the grounds that the respondents were not consumers and that after promulgation of the 1995 and 1998 policies they were not entitled to allotment of plots. The District Forum adverted to the pleadings of the parties and held that the respondents are entitled to allotment of plots measuring 150 sq.mtrs. in New Tehri Town. Accordingly, the complaints filed by the respondents were allowed and the petitioner was directed to allot plots of 150 square yards to the respondents and also pay Rs. 500/- as cost and compensation.

5. The appeals filed by the petitioner against the orders of the District Forum were dismissed by the State Commission. For the sake of reference, the relevant portions of order **dated 11.4.2005 passed by the State Commission in Appeal No.110/2003 titled Director Rehabilitation v. Shakha Kathait** are reproduced below:

"9. Our attention was drawn to certain amendment made in October 1995 known as Rehabilitation Policy. The deposit in this was in 1986. Any new Policy in 1995 shall not affect the earlier case or deposits. The terms and conditions cannot be altered to the prejudice of the displaced persons. It shall apply only to the schemes floated and applications made after 1995. No retrospective applicability can be given to this notification.

10. Arguments were advanced that the Govt. servants and tenants were not entitled to allotment under this scheme. The complainant has given an application on 16.8.2002 and in that application she has mentioned the names of as many as 30 persons who have been allotted land, although they were Govt. servants and tenants. The Rehabilitation Department is not a dictator. They have to Act according to certain rules, procedure, norms. They cannot distinguish between men and men. Everybody is entitled to equality. There cannot be any difference between the equals. There is absolutely no reply that these 30 persons have not been allotted land or that they were not Govt. servants or tenant. A list has also been produced by the complainant which was published in the Newspaper Amar Ujala on 3rd September 2000 and in this list also a number of persons have been shown who are Govt. servants and have been allotted plots."

Similar orders were passed by the State Commission in the appeals filed by the petitioner in other cases. The National Commission referred to the three Rehabilitation Policies and held:

"It is quite clear from the perusal of the rehabilitation scheme of 1995 and December 1998, that at no time, it deals with the fate of the applicants or people, who had applied for plots keeping in view the clauses of the "rehabilitation policy" of 1986. In fact, the subsequent policy of 1995 and 1998 is silent on this particular point, i.e. the effect of changes in the "rehabilitation policy" announced in 1995 and 1998 on the status of people who were eligible/not disqualified under the Rehabilitation Scheme of 1986 for allotment of a residential plot? In fact, what we find is that scheme of 1995 under the heading evolution of rehabilitation policy at page 1 and 2, reads as under-

"Rehabilitation work had been commenced by the irrigation Department of the Govt. of Uttar Pradesh from the year 1976. The rehabilitation policy, including the location of the New Tehri Town, had been evolved and decided by the State Government at the highest level after interaction with the representatives of the local population. After the formation of the THDC and the transfer of rehabilitation work to THDC, rehabilitation policy as evolved by the State Govt. was fully adopted by the Corporation, and later on the amounts of compensation were improved where necessary.

A further comprehensive package of improvements has been decided by the THDC after interaction with the affected population and the local administration, both for rural and urban rehabilitation. These additional measures indicated hereafter would be effective from 01.09.1995."

(emphasis supplied)

A plain reading would make it clear, that was added/sought to be added by the rehabilitation package of 1995 has, in addition, to what was stated in the rehabilitation package policy of 1986. We specifically put into the Ld. Counsel for the petitioner as to show us anything in the new policy which ousted the eligibility of the applicants otherwise eligible in 1986 scheme, which according to him would be ousted or become ineligible under the scheme of 1995? Nothing could be shown to us in this regard, in view of which we hold that the respondents/complainants had applied for plots despite being Government servants or employees of PSU and cannot be held ineligible for allotment of plots for the simple reason that the policy enunciated in 1986 did not envisage any such ground for ineligibility and since the policy of 1995 and 1998 did not negate or repeal the policy of 1986 any change made subsequently in our view, would not adversely affect the rights according to the people living in the affected area, in view of the provisions of the rehabilitation policy of 1986."

6. We have heard Shri Dinesh Kumar Garg, learned counsel for the petitioner and Ms. Meenakshi Lekhi, learned counsel for the respondent and carefully perused the record. In our view, the reasons recorded by the three consumer forums for upholding the respondents' entitlement to be allotted plots measuring 150 sq.mtrs.

in New Tehri Town are based on correct analysis of the pleadings and documents of the parties and the impugned order does not suffer from any legal infirmity warranting interference under Article 136 of the Constitution.

7. The special leave petitions are accordingly dismissed. The petitioner is allowed three months time to implement the directions given by the District Forum.

8. The Registry is directed to send copies of this order to the respondents at the addresses mentioned in the memo of special leave petition.