Arun Kumar Manna and Others Vs The State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Sept. 19, 2013

Citation: (2014) 1 CALLT 46

Hon'ble Judges: Sambuddha Chakrabarti, J

Bench: Single Bench

Advocate: Amal Baran Chatterjee and Mr. M.R. Abedin, for the Appellant;Moloy Chakraborty and Mr. Naren Ghosh Dastidar for the Respondent No. 5, Mr. Samaraditya Pal Mr. Dipak Kumar Ghosh and Mr. Ranajoy De for the Respondent No. 6, for the Respondent

Judgement

Dr. Sambuddha Chakrabarti, J.
By the present writ petition the petitioners have inter alia prayed for a writ in the nature of Mandamus

commanding the respondents to forebear from giving any effect or further effect to the impugned memorandum dated April 21, 2010 as also the

notification dated August 28, 2002 issued by the Labour Department, Government of West Bengal, a writ in the nature of Mandamus commanding

the respondents to give employment to the petitioners and/or their nominees in cognizance of the policy of the state impugned by certain

notifications and for other reliefs. The case of the petitioners inter alia is that they have been affected by the acquisition of their homestead and

other cultivable lands by the state government for construction of Kolaghat Thermal Power Project (the Project'', for short). Those lands were

requisitioned and acquired in the year 1975-76 under Act II of 1948 at the instance of the West Bengal State Electricity Board (the Board'', for

short) and the West Bengal Power Development Corporation (the Corporation'', for short). The petitioners do not dispute that compensation for

such acquisition were paid to them or their predecessor-in-interest.

2. The petitioners, however, claimed that the State of West Bengal had also adopted a policy for providing employment to one member of the

family of the land evictees and pursuant thereto a local advisory committee was set up for the purpose of initial screening. The said committee

scrutinized about a little more than 1300 applications and thereafter recommended for appointment of 356 persons. The Corporation and the

Board invited applications for 321 vacancies out of which 307 had already been filled up.

3. The petitioners prayed for their employment and their cases were recommended by the concerned committee. Since they were not, however,

appointed they filed a writ petition which was disposed of by this Court with a direction upon the respondents that their representation should be

considered by the committee within four weeks from the date of the communication of the order by a speaking order. Ultimately a contempt

proceeding arising out of the said order was finally heard analogously with certain other matters and by a judgment and order, dated September

10, 1998, a learned single judge of this Court had inter alia directed that for giving appointment to the evictees or their nominees the age bar was to

be condoned. This Court further directed that the candidature of those evictees whose applications, whether scrutinized or not, should be placed

for consideration for appointment and should be completed at an early date, preferably from the date of the communication of the order. Appeals

from the said order were ultimately disposed of by a division bench of this Court by a judgment and order dated December 13, 2000 with a

direction that the appellants including the petitioners herein and other persons whose records could not be verified and others who have already

been identified should be scrutinized and as and when the next employments would be available they should be accommodated against those

vacancies.

4. The petitioners alleged that in spite of the said order they were not given any appointment to any post although there were sufficient vacancies

both under the Corporation as well as under the Board. The petitioners made a representation dated March 10, 2010 annexing thereto copies of

the representation, judgments and orders passed by this Court in various cases, verification certificates etc. In the individual applications made by

the petitioners they had given the details of their educational background and other relevant information. They had prayed for employment, either

for themselves or for their nominees.

5. The petitioners alleged that in spite of the orders passed by this Court and even after the completion of the scrutiny they have not yet been

provided with any employment till date although the authorities are appointing unrelated outsiders. The Sub-Divisional Officer, Tamluk by a

memorandum dated April 21, 2004 intimated the petitioner No. 4 herein that the petitioners could not be selected as the Labour Department of the

Government of West Bengal by a notification dated August 21, 2002 had inter alia specified that the land-losers who had lost their lands on or

after October 17, 1977 should be treated as belonging to Exempted Category and should be entitled to get their service. As almost all the

petitioners lost their lands before that date they were not entitled to get any job.

6. The petitioners have alleged that the government by earlier notifications had formulated a policy that one member of the family of the land-losers

would be treated as an Exempted Category and should be given service by condoning the age bar and the over-aged persons would also be

entitled to nominate one of the members of their families for getting employment. In consideration of those circulars the respective cases of the

petitioners were recommended and similarly placed persons as those of the petitioners got employment.

7. The judgment and order dated December 13, 2000 is still in force. According to the petitioners, to thwart the effect of the said judgment and

order the government had issued the notification dated August 21, 2002 which is discriminatory and bad in law.

8. By a supplementary affidavit the petitioners had brought on record that during the pendency of the writ petition some of the acquired but

unutilized lands have been leased out to other non-government corporate or private bodies for doing private business and the authorities of the

Project have handed over these lands by means of long term lease for years together. They have also mentioned the name of a company being

Madras Cements Limited which has been granted a lease of 100 acres of land for 99 years. The said company had established its factory there.

The lands of the petitioners Nos. 1, 3, 5, 6, 7 and 15 were located within the said factory premises. The petitioners who are the tillers of the soil

mostly depended on those lands which were acquired for the purpose of the said project. But by acquiring the lands for public interest the

authorities were now doing business and, therefore, the unutilized lands should be returned to their original owners.

9. The respondents Nos. 5, 6 and 7 have contested the petition by filing an affidavit-in-opposition. It has been contended therein that the

application is not maintainable inasmuch as the obligation of the state to ensure that no citizen is deprived of his livelihood does not extend to

provide employment to any member of each family in consequence of acquisition of land and giving employment to the members of the family of

the land-losers is a matter of concession which cannot be enforced by a writ petition. The answering respondents have referred to the notification

dated August 21, 2002 which superseded all the earlier circulars and executive orders. According to them since compensation was paid long back

the petitioners are estopped from preferring any claim after the lapse of more than 35 years as the notification concerned had made it very clear

that this should be applicable only in respect of cases where the land in question had been acquired by the state government on or after October

17, 1977.

10. The respondents have asserted that the petitioners could not establish their legal right. They have repeatedly referred to the said notification as

a document disentitling the petitioners to the reliefs sought for in the present writ petition, particularly after about 35 years of the acquisition. Their

claim has not been entertained by any authority nor accepted by any Court of law. Since the said notification supersedes all other earlier circulars

and orders relating to employment of persons belonging to exempted categories the petitioners'' legal right could not be established consistent with

the procedure laid down in the notification.

11. The respondents in their affidavit-in-opposition have referred to a judgment of the Supreme Court holding that if there is no scheme the

question of giving employment does not arise. The respondents maintain that the concerned notification had sought to systematize the whole system

of appointment of the land-losers consistent with the observation made by the Supreme Court and denied the allegations made by the petitioners

by maintaining that it has not been shown how cases similar to those of the petitioners were considered in terms of the said notification of 2002.

They have denied that the operation of the judgment and order dated December 13, 2000 is still in force. The respondents have prayed for the

dismissal of the writ petition.

12. In their affidavit-in-reply the petitioners have largely reiterated their stand taken in the writ petition. According to the petitioners they had

acquired a legal right and the writ petition is very much maintainable as these issues had already been decided by this Court. They insist that the

notification of 2002 did not supersede the Court''s order as regards their claim in the matter of employment. The said judgment and order is very

much in force and is binding upon the authorities as the same has not yet been set aside by any higher Court.

13. In their affidavit-in-reply the petitioners have taken a very specific point that even accepting the validity of the notification of 2002 the land of

petitioners Nos. 5, 6, 7, 9, 11 and 14 were acquired for the project after 1977. But none of these petitioners or the members of their families has

been provided with any employment. The respondents have been alleged to have adopted a policy of pick and chose by giving employment to the

members of the families of some of their favourite land-losers and now they are doing business with the lands acquired for the public purpose from

the poor tillers of the soil. A large area of land so acquired have been alienated to others to which the petitioners have already made reference in

their supplementary affidavit.

14. A further plank to the petitioners'' case is that many people have already been provided employment by the project authorities who have no

nexus with the lands acquired and their number would be around 60 to 70. The petitioners have given names of some of such persons. But the

authorities have persistently maintained a stand that there exists no vacancy for the employment of the petitioners.

15. Mr. Chatterjee the learned Senior Advocate appearing for the petitioners, had submitted that although about 1000 candidates were given

employment the petitioners were left out and a bunch of writ petitions were filed in the early 1990s which were all disposed of by a common

judgment and order on September 10, 1998. This Court had directed the authorities to complete the scrutiny and to take steps in accordance with

law. Against that an appeal was filed which was disposed of by a common judgment dated December 13, 2000. The appeal Court apart from

upholding the judgment of the learned trial judge directed the respondents that after scrutiny eligible candidates would be accommodated against

available vacancies.

16. Mr. Chatterjee further submitted that the notification dated August 21, 2002 has got no application in respect of the present case as the same

is saved by section 6(C) of the General Clauses Act. The effect of repeal shall not affect any right, privilege and obligation or liability acquired or

accrued or incurred under any enactment so repealed. Thus, the petitioners contend, the alleged supersession of earlier circulars and executive

orders does not affect the right of the petitioners in getting employment. The petitioners'' entitlement has been established on the basis of the law

prevalent at the relevant point of time which cannot be affected by any subsequent notification.

17. Mr. Chatterjee''s further argument is that section 6(C) of the General Clauses Act postulates that inchoate right or liabilities have already been

accrued in their favour but this is unaffected by the subsequent notification. In the present case the investigation or the proceeding has been

continuing by the local advisory committee pursuant to directions of this Court and the applications of the petitioners have already been considered

by the committee. Hence their right is protected under the General Clauses Act. This is not merely a hope which can be destroyed by the

subsequent notification issued by the respondents. The petitioners have referred to two judgments namely Aiten v. South District Council (1994) 3

All ER 400 and Plewa v. Chief Education Officer (1994) 2 All ER 323.

18. Mr. Chatterjee has also strongly submitted that the petitioners are heirs of the original land-losers and as such they are entitled to be

considered for employment. Since this Court has held that the writ petitioners are entitled to get the benefits of the policy of the government its

effect cannot be frustrated by a subsequent notification. The writ petition is not barred by limitation as it is a continuous result and/or the process

adopted by the authority and conformed by the judgment.

19. Mr. Chatterjee''s third limb of submission is that the notification of 2002 has no application to the facts of the present case. The said notification

was issued under the Act of 1999. But the petitioners'' claim had accrued long before that. The delegated power exercised by the authority was

beyond the scope of the parent Act 14 of 1999 which is silent regarding retrospectivity.

20. Mr. Pal, the learned Senior Advocate appearing for the West Bengal Power Development Corporation Limited has taken through the

judgment and order dated December 13, 2000. He has particularly referred to the operative portion of the judgment where it has been recorded

that the appellants and other persons similarly situated whose records could not be verified but have been identified, would be scrutinized and

accommodated for appointment as and when the next employment would be available. The Division Bench expressed hope and trust that all the

appellants who have been identified including the intervener shall be considered by the selection committee and as and when they were found

suitable the appointment might be given to them.

21. Mr. Pal has submitted that the crucial point which arises for consideration is whether the said judgment and order created any right in favour of

the petitioners as they have prayed for a Mandamus against the respondents. A bare reading of the judgment and order makes it clear that no

direction has been given by this Court in favour of the petitioners. Mr. Pal submitted that for any sort of acknowledgement or appointment there

must be an existing vacancy and the candidate must be suitable. As per the service requirements all the appointments against sanctioned posts shall

ordinarily be made on the recommendation of the appropriate selection committee.

22. The respondents have also taken the point of delay in making the application.

23. To the argument made by Mr. Chatterjee that the subsequent notification is saved by section 6(C) of the General Clauses Act Mr. Pal has

argued that a plain reading of section 6 of the General Clauses Act shows that the said provision has no manner of applicability inasmuch as it

applies only to a case where an enactment has been repealed. The petitioners are not claiming any right by way of an enactment but on the basis of

the judgment of this Court and as such relying on section 6 of the General Clauses Act is a misconceived one.

24. Mr. Moloy Chakraborty, the learned advocate for the State of West Bengal has also opposed the case of the petitioners. Mr. Chakraborty

has referred to the notification dated October 14, 1980 issued by the Secretary to the Labour Department, Government of West Bengal wherein it

had been notified that the benefits of direct appointment should be made available only where the land in question had been acquired by the state

government on or after October 17, 1977. The notification of 2002 reiterates that persons belonging to the families of the land-losers as a result of

the land in question being acquired by the government on or after October 17, 1977 shall be covered under the exempted category.

25. Mr. Chakraborty also relied on the case of Abu Bakhar Siddique (supra) wherein it has been held that giving employment to the land-losers is

a matter of concession which cannot be enforced by way of a writ petition. He has further relied on the case of Butu Prasad Kumbhar and Others

Vs. Steel Authority of India Ltd. and Others, In that case the government had paid the market value for the land acquired. The central and the state

governments took steps to ensure that at least one member of each family, displaced as a result of land acquisition, would be given employment in

steel plant. Not satisfied with this the petitioners filed a petition under Article 32 of the Constitution of India contending that omission to provide

employment to at least one member of the displaced families or omission to ensure preferential treatment to the future generations was violative of

Article 21 of the Constitution of India. The Supreme Court had rejected this contention as the land-losers had been paid compensation. Therefore,

the challenge raised on violation of Article 21 is devoid of any merit.

26. Mr. Chakraborty has also taken the point of delay. According to him the lack of knowledge on the part of the writ petitioners about the

notification is no justification for them to invoke the writ jurisdiction after an inordinately long time.

27. After hearing the learned advocates for the parties and after going through the petition it does not appear that the petitioners have been able to

make out a case for issuing the Mandamus as prayed for or that they are entitled to the reliefs. The main plank of the petitioners'' case is the

judgment and order dated December 13, 2000 passed by a Division Bench of this Court in a bunch of appeals arising out of the judgment and

order passed by a learned single judge of this Court dated September 10, 1998. The learned single judge while disposing several writ petitions had

kept in mind the facts and circumstances of the case and in view of the admission made by the respondents therein that the cases of the petitioners

had either been scrutinized or were to be scrutinized. The learned single judge further directed that the officers of the competent authority should

scrutinize other applications which were 743 in number if not already done within the said period and thereafter to place the same before the local

advisory committee. In appeal therefrom the division bench had considered the facts of the case in details and held that the reopening of the past

cases would be inequitable after a lapse of long years. The Division Bench had directed that the cases of 312 persons as well as that of the

intervener ""may be scrutinized and as and when new vacancies accrues they must be considered for appointment."" Their Lordships hoped and

trusted that those left out persons who had been identified as 312 should be considered by the selection committee as and when they would be

found suitable and appointments might be given to them. The appeals were disposed of with this observation.

28. I find sufficient substance in the submissions of Mr. Pal that the judgment and order of the Division Bench should not be construed as its

direction. The Division Bench directed that the cases of 312 persons as well as that of the intervener might be scrutinized and as and when new

vacancy would occur they were to be considered for appointment. The Court further directed that the appellant and other persons similarly

situated whose records could not be verified for one reason or the other have already been identified and their cases would be scrutinized and as

and when the next employment would be available they would be accommodated for appointment.

29. The Division Bench further expressed that the Court hoped and trusted that those left out persons should be considered by the selection

committee and as and when they were found suitable appointments might be given to them.

30. This by itself cannot be held to be a positive mandate commanding the respondents to give appointments to those persons. There is one

expression which is worth noting, i.e., ""hope and trust"". Mr. Pal submitted that this was a pious expression and contains no command. A

Mandamus is a command or a direction which is to be obeyed by an authority. But words expressing a wish are inconsistent with the sense of

command. The judgment of the appeal Court as such cannot be held to have created any right in favour of the writ petitioners.

31. The next submission of the petitioners that irrespective of the notification of August 21, 2002 their right created by the judgment of the High

Court has been saved by section 6(c) of the General Clauses Act. A plain reading of section 6(c) makes it wholly inapplicable to the facts of the

present case. The section applies to the case of a repeal of an enactment and as such it has no applicability to the facts of the present case where

the petitioners claimed their right from a judgment. There is no enactment under which they are claiming their right. So reference to section 6(c) of

the General Clauses Act is a misplaced one and this submission must fail.

32. That takes us to the consideration of whether any right was created in favour of the petitioner to seek Mandamus. The language of the

judgment belies the contention of the petitioners that their right could be traced to the judgment. ""Hope and trust"" are words that did not create any

right in favour of the petitioners. In such view of it the petitioners cannot consequently ask for a Mandamus being issued in their favour. It is also a

settled principle of law that all appointments are to be made against sanctioned posts and services whether by direct recruitment or by promotion

and the respondent No. 6 has informed the Court that there is no vacancy. That apart, the settled position of law cannot be altered that existence

of vacancy by itself does not give legal right to a candidate to be selected and even an empanelled person has no right to ask for appointment.

33. In the case of The State of Haryana Vs. Subash Chander Marwaha and Others, the Supreme Court had held that the existence of vacancies

does not give a legal right to a candidate to be selected for appointment.

34. According to Mr. Pal these types of employments for the land-losers are made in Group D and Group C (non-technical) categories. No

vacancy is available in those categories. Referring to the case of Himachal Road Transport Corporation Vs. Dinesh Kumar, Mr. Pal submitted, as

held by the Supreme Court, that in the absence of a vacancy it is not open to the Corporation to appoint a person to any post. The Supreme Court

had deprecated this practice as a gross abuse of the power of public authority and if such persons are appointed it will be a mere misuse of public

funds.

35. In the case of Union of India (UOI) and Others Vs. Tarun K. Singh and Others, a three-judge bench of the Supreme Court had held that an

individual application for any particular post does not get a right to be enforced by a Mandamus unless he is selected through the process of

selection and gets the letter of appointment.

36. Mr. Pal referred to a more recent judgment of the Supreme Court in the case of Vijoy Kumar Pandey Vs. Arvind Kumar Rai and Others, and

submitted that even a successful candidate in a selection process does not acquire an indefeasible right of appointment and the petitioners in any

case were not successful candidates in a selection process. In Abu Bakhar Siddique v. Director, WBSEB & Ors., reported in (2001)1 CHN 404

the division bench of this Court had clearly held that right of the land-losers to get employment is a concession which cannot be enforced by a writ

petition.

37. Mr. Moloy Chakraborty, the learned Advocate for the state respondents had submitted that the notification of 2002 did not introduce anything

new. This notification was preceded by a notification dated December 2, 1980 which inter alia read: ""It has since been decided that the benefit of

such straightway appointment shall be made available only if the land in question has been acquired by the state government on or after October

17, 1977."" This memo also contained the same cut off date and the petitioners not having challenged the same are not entitled to the relief by

challenging the notification dated August 22, 2002.

38. It is obvious that the petitioners had knowledge of it because they themselves have annexed these documents to the writ petition. The stand of

the state is very clear. After all land has been acquired and they have been granted compensation. If any concession over and above the same is

shown by the government that does not confer any legal right on the petitioners. The respondents have rightly relied on the case of Abu Bakhar

Siddique (Supra) that concession given by an authority cannot be enforced by law.

39. This writ petition must also fail on the ground of delay. Lands in question were acquired in the year 1974-75 and the division bench passed the

order in December, 1998. But the present writ petition having been filed about 12 years thereafter is plainly not maintainable on the ground of

delay alone. From the date of the acquisition of the land more than 35 years have passed. There is no explanation in the writ petition seeking to

justify this belated effort of seeking Mandamus. In the case of S.S. Balu and Another Vs. State of Kerala and Others, the Supreme Court quoted

the oft-repeated maxim that delay defeats equity. It held, ""It is now a trite law that where the writ petitioner approaches the High Court after a long

delay reliefs prayed for may be denied to them on the ground of delay and lapse irrespective of the fact that they are similarly situated to the other

candidates who obtained the benefit of the Judgment."" Again in the case of New Delhi Municipal Council Vs. Pan Singh and Others, the Supreme

Court had observed. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approached the Court after a long

time. Delay and laches are relevant factors for exercise of equitable Jurisdiction"".

40. Thus counted from whichever period, whether from the date of acquisition or from the date of judgment of the Division Bench, the delay has

been far too long and remains unexplained, sufficient to disentitle the petitioners to any relief.

41. Thus I find no merit in the case and the same is dismissed. In the facts and circumstances of the case there shall, however, 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.