



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 5223/2021

1. Namdeo s/o Gangaram Dhawas,
Aged about 82 yrs., Occ. Nil,
2. Sonu d/o Suresh Dhawas,
Aged about 31 yrs., Occ. Nil,
Both R/o.Naglon, Post Office Kuchna,
Tah. Bhadrawti, Dist. Chandrapur.

...PETITIONERS

VERSUS

1. Western Coal Fields Ltd.,
Coal Estate, Civil Lines, Nagpur
through its Managing Director.
2. Area Personnel Manager,
O/o Area General Manager, Majri
Area (Kuchna), Tah. Bhadrawati,
Dist. Chandrapur.
3. Mines Manager, U.G. to O.C. Mine,
New Majri, Post Shivajinagar, Tah.
Bhadrawati, Dist. Chandrapur.
4. Area Planning Officer,
O/o Chief General Manager, Majri
Area (Kuchna), Tah. Bhadrawati,
Dist. Chandrapur.
5. Coal (I) Limited,
Coal Bhawan, Premises No.04 MAR,
Plot No. AF-III, Action Area-1 A,
Newtown, Rajarhat, Kolkata- 700156,
through its Managing Director

Amended as per Court's
Order dated 28.11.2022.

....RESPONDENTS

Mr. P.D. Meghe, Advocate for petitioners.
Mr. C.S. Samurda, Advocate for respondent Nos. 1 to 4.
Mr. A.M. Ghare, Advocate for respondent No.5.

CORAM : VINAY JOSHI AND
SMT. M. S. JAWALKAR, JJ.

DATE : 11.07.2024

JUDGMENT : (VINAY JOSHI, J.)

Petitioners are invoking writ jurisdiction of this Court under Article 226 of the Constitution of India for grant of employment to grand-daughter (petitioner No.2) in terms of Rehabilitation and Resettlement ('R&R') Policy on account of acquisition a land for Western Coal Fields Ltd. ("WCL").

2. It can be briefly stated that the Petitioner No.1 was the owner of land measuring 1.62 HR bearing survey Nos. 61/4 and 47 situated at Mouza Naglon, Tah. Bhadrawti, Dist. Chandrapur. By virtue of Notification issued by the Government of India under the provisions of Coal Bearing Areas (Acquisition and Development) Act, 1957 ('the Act of 1957'), the aforesaid land was acquired for WCL project. Preliminary Notification under Section 4(i) of the Act of 1957

was issued on 19.04.2009 whilst Section 9(i) Notification dated 18.10.2011 was published on 22.10.2011, in effect vesting all rights, title and interest of the land in the Central Government.

3. At the time of publication of Notification under Section 9(i) of the Act of 1957, petitioner No.1 was exclusive owner of said land. In terms of R&R Policy, the petitioner No.1 (land owner) has nominated his grand-daughter (petitioner No.2) for providing an employment against the acquisition of land. Initially, the respondents have acted upon said nomination by directing nominee (petitioner No.2) to report the Chief Medical Officer for medical examination. After clearing medical examination, the respondents included her name in the list of other female candidatures who are selected for vocational training. It was followed by admitting petitioner No.2 for vocational training which she did. Petitioner No.2 was also included in the list for job training which she completed.

4. In the wake of said position, respondents vide communication dated 19.11.2016, informed that petitioner No.2 being a grand-daughter, not eligible for employment, and requested to

nominate some other eligible family member. Thereafter, again vide communication dated 28.07.2017, the respondents informed the petitioner No.1 (land owner) to comply other formalities to accept one employment for acquisition of two pieces of lands being one unit. The said communication also bears a reference that the petitioner No.1 has nominated his grand-daughter (petitioner No.2) for the employment. However, no further steps have been taken, hence petitioner made representations on 12.11.2019 and 17.07.2021 for grant of employment, but in vain.

5. It is petitioners' contention that despite initial acceptance of nomination of grand-daughter, respondents vide communication dated 20.08.2021, denied the employment to petitioner No.2 for the reason that she is grand-daughter of the land owner. It was communicated that grand-daughter is not eligible for employment, hence to nominate some other eligible family member, or in the alternate accept additional compensation. Being aggrieved by the denial of employment to the grand-daughter, the petitioner has invoked writ jurisdiction of this Court.

6. The respondent WCL resisted the petition vide reply-affidavit dated 28.09.2022. Though respondent admitted the preliminary facts, however contended that grand-daughter is not eligible for grant of employment as she does not satisfy the policy condition namely she does not fall within the term “family” defined under Clause 4(b) of the policy. Secondly, it is not shown that petitioner No.2 (grand-daughter) was residing with the land owner at the time of publication of Notification or was dependent on the land owner. In addition, the respondent would submit that the petitioner No.1 land owner was having two sons namely Suresh and Ramesh. Both owns separate landed property which was also acquired. The land of Suresh bearing survey No. 61/3 was acquired against which already employment was provided to his son Sandip who is real brother of petitioner No.2. While giving an employment to Sandip, his father Suresh (also father of petitioner No.2 Sonu) made a statement that his son Sandip was dependent on him. It is stated that during lifetime of father Suresh, petitioner No.2 (daughter) cannot be considered as dependent on her grand-father i.e. land-owner.

7. Precisely resistance is on two counts i.e. a grand-daughter cannot find place in the term “family” as defined under Clause 4(b) of the policy and secondly, she did not meet policy condition that she is residing with land owner and was dependent on him. The aforesaid contention is denied by the petitioner in rejoinder stating that only because father of petitioner No.2 is alive that does not mean that she is not dependent on her grand-father i.e. land owner.

8. It is contended that R&R Policy of the year 2008 would apply as Section 9(i) Notification was published on 22.10.2011 i.e. before introducing the new policy of the year 2012. The said contention is made since in the old policy of 2008, the definition of term “family” was of inclusive nature stating that “other relatives” residing with the land owner are also eligible, whilst in new policy, the term “other relatives” has been omitted. To counter said submission, the respondent asserted about applicability of new policy of the year 2012 since physical possession of the acquired land was taken after introduction of new policy as well as additional compensation has been paid in terms of new policy. According to the respondent, daughter-in-law would not come within the purview of definition

“family” as per new policy of the year 2012. Both sides have relied on various decisions of this Court to substantiate their respective stand.

9. For the sake of convenience, admitted facts can be stated in brief as below:-

- (i) Petitioner No.1 Namdeo was owner of land ad-measuring 1.62 HR bearing survey No. 61/4 and 47 of Mouza Naglon.
- (ii) Land of petitioner No.1 Namdeo was acquired for the WCL project for which he is entitled for one employment as per R&R Policy of 2008 as well as of 2012.
- (iii) Petitioner No.1 Namdeo has nominated his grand-daughter (petitioner No.2) Sonu for giving an employment against acquisition of land.
- (iv) Initially, the name of nominee (petitioner No.2) was accepted, she was medically examined and given a requisite job training.
- (v) Son of land owner namely Suresh also owns a land which was acquired, against which employment was provided to his son Sandip (brother of Petitioner No.2 Sonu).
- (vi) Father of petitioner No.2 namely Suresh is alive.

10. In the above background, the question needs to be answered whether petitioner No.2 a grand-daughter is entitled for employment as per R&R Policy. The learned counsel appearing for petitioner would submit that since the Notification under Section 9(i) of the Act of 1957 was issued on 22.10.2011, the then prevailing R&R Policy of 2008 would apply. The term “family” defined in the old policy of the year 2008 reads as below:-

“family” includes a person, his or her spouse, minor sons, unmarried daughters, minor brothers, unmarried sisters, father, mother and other relatives residing with him or her and dependent on him or her for their livelihood and includes “nuclear family” consisting of a person, his or her spouse and minor children.”

(Emphasis supplied)

11. In said context, it is submitted that grand-daughter being other relative of the land owner, she is entitled for employment. To substantiate said contention, the petitioner relied on the decision of this Court in case of **Pradip s/o Vithoba Bhoyar Vs. Union of India & ors**, (Writ petition No. 5802/2012, decided on 23.01.2014). In the said decision, based on the old policy of the year 2008, it has been held that the term “family” is not exhaustively defined but an inclusive

one. The said policy is a beneficial piece of subordinate legislation brought with an avowed purpose of re-settling persons, who have been destabilized on account on acquisition of their land. The construction which advances the purpose, has to be preferred than the construction which defeats the purpose. With such observations, it is held that a grand-son (daughter's son) is entitled for an employment.

12. Per contra, the respondents heavily relied on the decision of this Court in cases of **Mr. Dhanraj Anandraoji Panchbudhe & ors. Vs. Coal India Limited & anr.** (Writ Petition No. 7235/2018, decided on 11.03.2021) and **Shankar Bodhe & anr. Vs. Western Coal Fields Ltd., & anr.** (Writ Petition No. 8206 of 2018, decided on 25.02.2022). In case of Dhanraj (*supra*), the claim of married daughter was rejected by holding that she does not find place in the term “family” as defined under Clause 4(b) of the year 2012 policy. Moreover, on facts, it is held that she equally does not meet other criteria of dependency. Special emphasis is led on the decision of Shankar (*supra*), wherein employment has been denied to the grand-daughter by holding that in new policy of 2012, there is no reference of grand-daughter. The Court has distinguished the earlier decision in case of Pradip Bhoyar

(*supra*) by stating that the same was rendered on the base of old policy and thus, the grand-daughter's claim was rejected.

13. It necessitates us to primarily decided as to which policy would apply to the case in hand, which is most relevant. Undisputedly, Notification under Section 9(i) of the Act of 1957 dated 18.10.2011 was published on 22.10.2011, meaning thereby prior to introducing new policy of 2012. Merely, because possession was taken later or partial benefit of new policy was given to the land owner, does not mean that the new policy would apply. Endeavour was made to contend that the petitioner in his correspondence has also referred the applicability of the policy of 2012. However, that cannot be criteria for deciding the applicability of particular policy. Upon publication of Notification under Section 9(i) of the Act of 1957, all rights, interest and title over the land vest absolutely in the Central Government in terms of Section 10 of the Act of 1957. Certainly, the said date is decisive which has no impact on the date of taking possession.

14. The applicability of the policy cannot be suspended on the ground of date of taking actual possession. Though the additional

compensation has been given in terms of new policy, however that would not change the complexion as on the date of Notification, the land stood vested in the government and thus, the policy which was prevailing on the date of Notification would apply. Therefore, the decision rendered by this Court in case of Dhanraj and Shankar (*supra*) has no application since they were rendered on the basis of new policy of 2012 which has differently defined the term “family”.

15. The respondent relied on the decision of this Court in case of **Rama s/o Vithoba Bipte & anr. Vs. Western Coal Fields Limited & ors**, (Writ Petition Nho. 1373/2017, decided on 03.05.2019), wherein the claim of grand-son was rejected. In-fact, the claim was rejected on the ground that the nominee was not residing with the land owner as well as was not dependent. The respondent also relied on the decision of this Court in case of **Chhabutai w/o Bhalchandra @ Bhalerao Dethe & anr. Vs. W.C.L. & anr.**, (Writ petition No. 1690/2018, decided on 30.08.2023), wherein the claim of divorced daughter was denied on the touchstone of the policy of 2000 which was the then prevailing. As against this, the petitioner relied on the decision of this Court in case of **Mahadeo Sadashiv Nannware & anr. Vs. Western CoalField**

Ltd. & & anr. (Writ Petition No. 3547/2020, decided on 22.09.2022), wherein the claim of widowed daughter-in-law was allowed by taking a broader and holistic view. The petitioner also placed reliance on the decision of this Court in case of **Ku. Shimla d/o Late Satiram Rajbhar & anr. Vs. Wester Coalfields Limited & ors.** (Writ petition No. 4074/2018, decided on 20.01.2023), however, it would not render any help since it relates to the compassionate appointment which has different parameters.

16. We have revisited the facts to ascertain whether as per the then prevailing policy of 2008, grand-daughter could find place in the term “family”. In case of Pradip Bhoyar (*supra*), while considering the case of grand-son based on the policy of 2008, this Court took a view that the definition of term policy is inclusive which would include grand-son since the term “other relatives” has been employed in the definition. Failing in same line, we find no hesitation to include grand-daughter by applying same analogy.

17. Even assuming that policy of the year 2012 would apply, however, admittedly by way of circular dated 13.02.2023, grand-son

has been included in the term “family” in the policy of the year 2012. There is no denial that by said circular, grand-son has been included in new policy. In said context, we see no justification to make discrimination only on the basis of gender to exclude grand-daughter. The respondent is unable to justify exclusion of grand-daughter when they themselves have included grand-son in the new policy. Therefore, we are of the considered view that merely on the basis of gender discrimination grand-daughter cannot be excluded. Moreover, as per inclusive definition of the term ‘family’ made in old policy, grand-daughter is also eligible.

18. The next ground is about non-compliance of the rest policy conditions. The respondents have stated that unless nominee satisfies the second condition of dependency, she is not eligible. Both policies equally put a rider that nominee shall be dependent on the land owner. According to the respondent during lifetime of father (Suresh), petitioner No.2 Sonu cannot be termed as dependent on her grand-father Namdeo. Reference was made that Suresh while nominating his son, stated that nominee was depending on him. However, it does not mean that Sonu was also depending on him. There may be variety of

circumstances, where grand-daughter may be dependent on her grand-father during lifetime of her father.

19. Notably, candidature of petitioner No.2 was not rejected on the ground of dependency. Particularly, we have gone through the impugned communication dated 20.08.2021, whereby nomination of the petitioner No.2 (grand-daughter) was rejected purely on gender basis. The relevant portion of said communication reads as below:-

“उक्त भूमी पर आपके द्वारा नौकरी के संबंध में आपकी आश्रीत कु. सोनू सुरेश ढवस का नामीनेशन अधोहस्ताक्षरी कार्यालय में जमा किया गया था। उसके पश्चात उक्त रोजगार हेतु का प्रस्ताव वेकोली मुख्यालय नागपूर में भेजा गया था। वेकोली मुख्यालय नागपूर द्वारा जांच पड़ताल के पश्चात यह पाया गया की, आपकी आश्रीत नाते संबंध नाती (लडके की लडकी) होने के कारण उक्त रोजगार करने हेतु आपके नामे संबंधी में स्वयंम आप तथा आपका लडका/अविवाहीत लडकी/लडके का लडका इस नाते संबंध में किसी भी आश्रीत का नामीनेशन जमा करे। तथा आपके पास कोई उक्त आश्रीत में से कोई आश्रीत नहीं है तो, आपको सलाह दी जाती है की उक्त भूमी पर रोजगार के बदले अनुदान राशी स्विकारणे की कृपा करे।”

By said communication, the respondents have conveyed that nominee being grand-daughter (daughter of son), she is not eligible, but instead, the owner may nominate his another eligible family member including son's son. The said communication clearly conveys that rejection was purely on gender basis, meaning thereby no ground was taken that the nominee was either not residing with land owner or was not dependent. If the rejection was also on said ground then one can reasonably expect the pleading to that effect. The law in this regard is well settled in the decision of the Supreme Court in case of ***Mohinder Singh Gill & anr. Vs. The Chief Election Commissioner, New Delhi & ors., (1978) 1 SCC 405***, wherein it is ruled that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In the result, additional reasons assigned in the reply needs to be outrightly rejected.

20. In conclusion, we hold that the R&R policy of the year 2008 which was prevailing on the date of Section 9(i) Notification would apply. We also hold that grand-daughter is eligible for employment, her eligibility can not be denied on gender basis.

21. For the aforesaid reasons, the impugned communication dated 20.08.2021 is hereby quashed and set aside. The respondent WCL shall consider the name of petitioner No.2 nominee for grant of employment, however it shall not be rejected on the ground which we have dealt above. Necessary exercise shall be completed within the period of eight weeks from the receipt of copy of this judgment.

(SMT. M. S. JAWALKAR, J.)

(VINAY JOSHI, J.)

Gohane