

Supreme Court of India

Culcutta Port Trust vs Deba Prosad Bag on 6 April, 1994

Equivalent citations: 1994 AIR 2137, 1994 SCC Supl. (2) 101

Author: S Mohan

Bench: Mohan, S. (J)

PETITIONER:

CULCUTTA PORT TRUST

Vs.

RESPONDENT:

DEBA PROSAD BAG

DATE OF JUDGMENT 06/04/1994

BENCH:

MOHAN, S. (J)

BENCH:

MOHAN, S. (J)

VENKATACHALLIAH, M.N. (CJ)

CITATION:

1994 AIR 2137

1994 SCC Supl. (2) 101

JT 1994 (3) 219

1994 SCALE (2) 509

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by S. MOHAN, J.- Leave granted.

2. All these civil appeals which have been preferred by Calcutta Port Trust can be dealt with under a common judgment since the point involved is common.

3. The facts necessary to render the decision are as follows. In the year 1966-67, land acquisition proceedings under the Land Acquisition Act (Central Act 1 of 1894) (hereinafter referred to as 'the Act') were initiated for acquiring land at Haldia Dock Complex. Consequent to this acquisition, several families came to be uprooted from the places of residence. Besides, the lands owned by them which were the only source of livelihood were lost. Respondents belong to that category.

4. On 17-10-1977 the Chief Secretary to the Government of West Bengal (Labour Department) issued a memo containing certain directions with regard to the recruitment in the State Government

Establishments, State Government Undertakings, Quasi-Government Establishments. Inter alia, it was stated therein that the employer authority shall notify to the appropriate employment exchange about all vacancies that might occur in their establishments from time to time. From the Judgment and Order dated 7-1-1993 of the Calcutta High Court in A. No. 280 of 1991 to time. It was laid down that the names of the unemployed persons were to be forwarded to the employers by the employment exchanges, generally in the order of seniority. The idea was, where other factors and requirements in respect of qualification are equal, priority in the matter of appointment was to be given to those who enrolled their names earlier unless they had been given adequate chance or already employed in comparable scales. It was further mentioned that every provision of Employment Exchange Manual shall be strictly followed. It was also stated that the employment exchange should also try to give greater priority to the candidates from the backward areas.

5. This notification was amended on 13-8-1979. The effect of the amendment was in certain category of cases. However, the employing authority would be competent without referring to the employment exchange to give appointment to candidates hailing from families who might have been uprooted from their places of residence or whose main source of income had been affected due to such loss of agricultural lands, owing to the acquisition for development projects like setting up a power plant or a township etc., as in Haldia. Only one member from an uprooted affected family shall be eligible for such special preference for jobs in and around the area acquired.

6. To consider the effect of the above acquisition, the appellant (Port Trust) held a meeting on 27-6-1978. In the said meeting a resolution was passed as to the principles which are to be followed in relation to recruitment to the posts in Haldia Dock Complex. It was mentioned that priority in appointment, inter alia would be given to those affected by the land acquisition and that such appointment could be through the employment exchange. In spite of the above, it appears that the Port Trust started absorbing the workers employed by the various contractors. This prompted some persons who were uprooted to move the High Court for a mandamus to command the Port Trust to provide them with jobs commensurate with their qualifications. By judgment dated 27-4-1987 of the Calcutta High Court, the following directions were issued :

"(a) Until the cases of the petitioners are considered for employment in terms of this order no appointment shall be made in Class IV grade.

(b) The petitioners shall within three weeks from the date of communication of this order give all particulars of the lands belonging to them which had been allegedly acquired and which are in the use and occupation of the Haldia Dock Complex. The petitioner shall also give Employment Exchange Regulation No. and the date of the last renewal, if any made.

(c) The petitioners shall also furnish their qualification and experience, if any, specifying the category of posts for which they are asking for their employment.

(d) The respondents shall within three weeks after the particulars are furnished by the petitioners scrutinise their cases and they shall ascertain the quantum of

agricultural land or homestead land or both, if any, acquired for/by the Haldia Dock Complex. If so, whether one member of each such family has been provided with any job or not by the Port Trust.

(e) Whether the petitioners, if otherwise eligible, being members of the evicted families have requisite qualifications or not for appointment to the Class IV grade. It appears that for the post of Mazdoor or manual labour no educational qualification is required. If it is found that no members of the evicted families represented by the petitioners had been provided with any employment after the acquisition of the land, in that event the respondents shall consider the case of the petitioners for employment irrespective of any other resolution, regulation of qualifications or any other conditions as a special case.

(f) The respondents shall prepare a list of eligible candidates amongst the petitioners and if any petitioner is not considered for any reason, the reason shall be disclosed to such petitioner and in that case such petitioner or petitioners will be at liberty to move before the appropriate forum.

(g) Upon consideration those of the petitioners who would be found eligible, shall be provided with employment as early as possible having regard to the available vacancies."

7. In compliance with this order, the respondents, originally 50 in number, furnished the respective particulars of lands before the authority concerned. Thereafter, by letter dated 2-12-1987 issued by the appellant, 20 of the said respondents were intimated that their cases could not be considered, inasmuch as, their acquired lands were not in use and occupation of the Haldia Dock Complex and that those lands had not been handed over to the said authorities. The said letter is extracted as follows :

"CALCUTTA PORT TRUST HALDIA DOCK COMPLEX PERSONNEL & INDUSTRIAL RELATIONS DIVISION CHIRANJIBPUR-HALDIA-MIDNAPORE No. Legal/HC/45/2845 Dated 2- 12-1987 TO, Shri Ashok Kr. Maity, Vill. Hatiberia, P.O. Hatiberia, P.S. Haldia, Dist. Midnapore.

Dear Sir, ShriJayanta Kr. Prodhan & Ors. : Petitioners Versus The Calcutta Port Trust & Ors.

:Respondents Please refer to the order dated 27-4-1987 of the Hon'ble High Court passed in the above mentioned case and your subsequent petition dated 25-5-1987 (received at the Administrative Office of the Haldia Dock Complex on 13-6-1987) furnishing in terms of the said Court order, the particulars of the lands belonging to you which are allegedly acquired and are allegedly in use and occupation of Haldia Dock Complex. On a scrutiny, it has been observed that your purported lands, as per particulars furnished with your aforesaid petition dated 25-5-1987, have not so far

been handed over to Haldia Dock Complex and, as such, the question of use and occupation of the same by Haldia Dock Complex does not arise. In the circumstances, your claim for any employment under H.D.C. specially on the ground of acquisition of your lands by Haldia Dock Complex is not sustainable under the aforesaid order dated 27-4-1987 of the Hon'ble High Court at Calcutta.

Accordingly your case cannot be considered under the aforesaid orders of the Hon'ble High Court.

Yours faithfully, Sd/-

(P. Bhattacharji) Manager (P&IR)."

8. Out of 50 writ petitioners before the High Court, 30 were found eligible for appointments. Other equally placed persons came forward with appeal in Matter No. 1705 of 1988 before the High Court praying that the same directions as issued in the order dated 27-4-1987 might be given to them.

9. The learned Single Judge by an order dated 3-5-1991 directed as under:

"(a) Until the cases of the petitioners are considered for employment in terms of this order, no appointment shall be made in the Class IV grade excepting those who are covered by the orders of this Court;

(b) The petitioners shall give all particulars of their respective lands which were acquired for the Haldia Dock Complex of the Calcutta Port Trust within four weeks from the date of communication of this order. The petitioners will also give their employment exchange card number etc.

(c) The petitioners shall also furnish the details of qualifications and experience, if any, so that their cases may be considered for appointment in Class IV posts.

(d) The respondents shall, within four weeks after the particulars are furnished by the petitioners, scrutinise the cases through their own machinery and agency and not through the Screening Committee as specified in the Memorandum No. 323-EMP dated 12th May, 1986. After scrutiny if it appears that the lands, (sic shown in the) particulars, were acquired then the respondents shall consider the cases of the petitioners for appointment in Class IV grade irrespective of any other resolution, qualification or any other condition as a special case.

(e) If any petitioner on being considered is not found suitable for employment as a Class IV staff, then the reasons thereof shall be disclosed to such petitioner(s) and in that case such disqualified petitioner(s) will be at liberty to move before any appropriate forum.

(f) If upon consideration of the relevant facts as mentioned in the judgment, any of the petitioners are found eligible for employment, they shall be provided with employment in Class IV grade as early as possible having regard to the available vacancies."

10. Aggrieved by this order, the appellant (Calcutta Port Trust) preferred an appeal before the Division Bench. It was urged that the trial Judge went wrong in directing that the respondents herein will have to go through that Screening Committee as specified in the Memorandum No. 323-EMP, EMP/60-4/86 dated 12-5-1986 issued by the Department of Labour, Government of West Bengal. In fact, the Screening Committee had been set up by the State Government. The purpose of that Committee was different. Therefore, the cases of the respondents herein could not be considered by such a Committee. This contention was not accepted by the Division Bench. It was held :

"The Screening Committee that was constituted by the memorandum dated 12-5-1986 was issued by the Labour Department, Government of West Bengal superseding some of the provisions of the earlier notification and that notification has been issued for the purpose of making relaxation of appointment except through Employment Exchanges under certain similar conditions. The State Government might have constituted the Screening Committee for the purpose of giving job under the State Government. The Screening Committee is neither bound nor can be asked to consider the case of the petitioners inasmuch as the Screening Committee has been constituted by the State Government for the purpose of screening the cases of the persons who have been evicted from the lands for the purpose of providing job under the State Government and/or authorities under the control of the State Government and the principle laid down cannot have any application in the facts and circumstances of the case. We have to keep in our mind the object of the policy for the purpose of giving some reliefs to rehabilitate the evictees who were in actual physical possession of the lands, houses etc. taken by the Port Trust Authorities for the purpose of the said project."

Accordingly, the appeals were dismissed. Hence, the present civil appeals.

11. The only contention urged by the learned Solicitor General is that the courts below have not correctly appreciated the stand of the appellant. Earlier, when the directions came to be issued on 27-4-1987, a circular relating to the existence of the Committee was not known to the appellant. It thereafter came to the knowledge of the appellant that a Committee had been constituted by the State Government. No doubt, the stand was taken that the appellant being an independent authority was not bound by the circular. However, where the bona fides of the claims of the respondents require to be examined, it should be done only by the Committee. This is the purpose for which the application for review filed before the learned trial Judge was rejected. Therefore, the impugned directions issued by the High Court require to be modified.

12. Per contra, it is urged that where concerning some of the uprooted employees, earlier the claims were accepted without going through the screening, a different treatment cannot be accorded now. Therefore, rightly, this request of screening made by the appellant was rejected by the courts below.

13. On a consideration of the above, we are of the view that the stand of the appellant is well founded. Certainly, some person or authority will have to examine the correctness and bona fides of those who claim to be uprooted persons. It is appropriate that such examination is done by a Screening Committee. Such a screening would ensure elimination of bogus claims. It is a wholesome principle which requires to be adopted in this case. Therefore, we modify the order under appeal and direct that the cases of the respondents will be considered by the Screening Committee. The Port Trust had screened 21 persons in the case of Jayanta Kumar Prodhan & Ors. before employing them. Only after the screening process, the appellant will be required to implement the directions of the learned Single Judge as confirmed by the Division Bench. The process of screening shall be completed within a period of four months from the date of this order. Accordingly, the civil appeals stand allowed in part. There shall be no order as to costs.