

SUPREME COURT OF INDIA

Chairman-cum-Managing Director & others

Vs.

Bharat Chandra Behera

(Surinder Singh and Nijjar Fakkir Mohamed Ibrahim Kalifulla, JJ.)

12.12.2013

JUDGEMENT

Fakkir Mohamed Ibrahim Kalifulla,J.,

1. Leave granted.

2. This appeal is directed against the order of the Division Bench of the High Court of Orissa at Cuttack dated 25.04.2008 in O.J.C. No.369 of 1998. The first appellant before us is the Chairman-cum-Managing Director of National Aluminium Company Limited (in short 'NALCO') along with its Chief Personal Manager (S & P) and Deputy General Manager (P & A).

3. The short question for consideration in this appeal is whether the Division Bench was justified in directing the appellants to provide employment to the first respondent herein under the scheme introduced by NALCO for assistance to displaced persons whose lands are acquired for the purpose of setting up NALCO's establishment at Angul.

4. The brief facts are that the first respondent's brother Trilochan Behera came to be appointed under the rehabilitation assistance scheme by which such appointment was provided to displaced persons. The said Trilochan Behera, who came to be appointed on 22.10.1992, met with a road accident on 03.11.1996 and lost his life. Late Mr. Trilochan Behera is the elder brother of the first respondent herein. The lands belonged to the joint family, consisted of the father of the first respondent one Nakula Behera, his wife Jeera Behera, the deceased Trilochan Behera, the first respondent, one Arata Behera, the younger brother of first respondent and Dulana Behera and Bhulana Behera, the two younger sisters of the first respondent. An extent of 33 decimals of land was acquired at the instance of NALCO. As provided under the scheme for providing employment to displaced persons and based on the nomination made by the head of the family, i.e. the father of the first respondent Nakula Behera, the deceased Trilochan Behera was appointed on 22.10.1992 as a Mazdoor. Unfortunately, after about four years of his appointment, he died in a road accident on 03.11.1996. When the first respondent approached NALCO on 27.01.1997 to give him employment in the place of his brother, NALCO declined his request. Thereafter, the first respondent preferred the writ petition in the High Court on 05.01.1998, in which the

impugned order dated 25.04.2008 came to be passed by the High Court directing NALCO to consider the claim of the first respondent for employment in any of the posts befitting his qualification on the ground that his brother died in an accident occurred out of and in the course of his employment. The High Court further directed that such exercise, as directed, should be completed within a period of three months from the date of communication of the order. For giving the above directions, the Division Bench relied upon the case of Alekh Bhutia, who was also similarly placed like that of Trilochan Behera and who was appointed as Mazdoor on 03.08.1985 and after his death in an accident on 07.06.1986 his brother Sanjay Bhutia was appointed and in the case of one Sanjaya Dwibedi, who was appointed on 02.05.1986, who also died in an accident and after his death his brother Bijay Dwibedi was appointed in 1995.

5. We heard Mr. Ashok K. Gupta, senior counsel for the appellants and Ms. Aishwarya Bhati, counsel for the first respondent. Having heard the learned counsel for the parties and having bestowed our serious consideration to the issue raised before us, we are of the considered opinion that the High Court failed to examine the issue in the proper perspective. We say so because we find that the appointment relating to land given cases, as well as compassionate appointment in NALCO are governed by specific schemes and the Division Bench of the High Court unfortunately failed to examine those schemes before issuing the ultimate direction to the appellants.

6. In order to appreciate the legal issues raised in this appeal, at the very outset, it is necessary to note the terms of the scheme to provide employment under the category of 'Land Displaced Persons'. Paragraphs 2.1 (a), 2.4, 3.1, 3.2 and 4 will be relevant, which can be usefully referred to. The said paragraphs read as under:

‘2.1(a) One nominated person of each such land displaced person/substantial affected person family will be offered employment subject to vacancies being available and the nominee possessing the requisite qualification/skill, and further subject to the condition that land displaced person will get preference over substantial affected persons;’

2.4 Such preferential assistance to the land displaced person/substantially affected person will cease beyond a period of one year from the date of the commissioning of the units. Further, the types of assistance referred to earlier will be confined to the unit concerned and not to another unit of the company.

3.1 After the vacant possession of the land has been taken over by the Government/National Aluminium, the appropriate district authorities will prepare a list of land displaced persons/substantially affected persons in association with the representative of National Aluminium which should indicate the khata nos. of the land, size of the plot and amount of compensation paid. There may be cases where a number of persons from the same family may hold a single khata and so also a number of persons from the same family may be the owner of a number of plots having different khata nos. Keeping this in view, the list will further be refined

treating each family as one unit and then the list should be made showing the details of khata no., size of the plot and total amount of compensation paid. The list so prepared shall be authenticated by the concerned Revenue authority of the Government as the authorized list of land displaced person/substantially affected person.

3.2 A list of family members of the land displaced person/substantially affected person along with their age (date of birth) and qualification will be prepared by the above authorities. The family for the purpose would include as follows:

- a. Self (i.e. the head of the family who is the owner of the land)
- b. Name of the spouse
- c. Name of the dependant sons
- d. Unmarried dependant daughter if there is no son. (Bold is ours)

4. Nominee of Land Displaced Person/substantially affected person. The head of the family shall indicate in writing his/her nomination from among the family members so listed above whom he/she would desire to get the assistance offered by the company. The nomination made by the head of the family shall be duly authenticated by the concerned revenue authority of the Government. Generally, the nomination once made will not be allowed to be changed except in special circumstances. But in no case, he/she will be allowed to change the nomination more than once. Wherever the State Government agrees, the change in nomination shall also be authenticated by the concerned Revenue Authority of the Government.

7. Before examining the provisions contained in the scheme for compassionate appointment it will be appropriate to analyze the above provisions contained in the scheme for employment under the category of displaced persons. Paragraph 2.1(a) discloses that the said scheme by way of assistance/benefit provides for certain types of assistance one of which included appointment to a person nominated by the affected persons family subject to, however, vacancies being available and the nominee possessing required qualification/skill etc.

8. Under paragraph 2.4 there is a further condition to the effect that the said benefit should be availed within a period of one year from the date of commissioning of the unit and that the said assistance would be confined to the unit concerned and not to any other unit of the company.

9. Under paragraph 3.1, it is specifically stated that even if there were number of persons in the same family holding a single khata or number of plots having different khata numbers such cases would be identified individually with specific reference to the khata number. Under paragraph 3.2 the details about the family members of the land displaced person at the

time of acquisition should be prepared. The details gathered under the said paragraph would disclose the head of the family, who is the owner of the land, his spouse, his dependant sons, unmarried dependant daughters if there is no son.

10. Under paragraph 4, the nominee of the land displaced person is also ascertained. The said paragraph specifically stipulates that the head of the family should indicate in writing his/her nomination from among the family members whom he/she would desire to get the assistance offered by the family. Further such nomination offered by the head of the family was also to be authenticated by the concerned Revenue Authority of the Government. It is further stipulated that a nomination once made will not be allowed to be changed except in special circumstances and in no case he/she would be allowed to change the nomination more than once. The change in nomination should also be authenticated by the concerned Revenue Authority of the Government.

11. A conspectus consideration of the above provisions under the scheme makes it clear that in respect of a claim under the category of a 'land displaced persons', owned by a family, it is for the head of the family to nominate one among his family members who is his dependant, that such nomination under special circumstances would be allowed to be changed once, that such nominated person would be authenticated by the concerned Revenue Officer and befitting the qualification possessed by such a nominee, the appointment would be made. To be more precise, the provision for changing the nominee under special circumstances is far different from anyone seeking for appointment of an alternate candidate in the place of originally nominated person whose employment for no fault of NALCO ceased to survive due to unforeseen circumstances like death, etc. To put it differently, the provisions contained in the scheme does not provide for appointment of an alternate candidate in the place of originally nominated person whose appointment had already taken effect and for whatsoever reason the said appointment did not survive later on.

12. Apart from the above scheme providing for employment under the category of 'land displaced persons', the only other scope for anyone to claim appointment in NALCO is under the scheme of 'employment on compassionate ground'. Before us, under Annexure P-2, the said scheme dated 02.04.1996 has been placed. A perusal of the said scheme disclose the provision in the form of guidelines, which are as under:

“(1) The employment on compassionate ground will be considered only on accident/death cases which comes under the category of 'arising out of and in course of employment' as per the provision of Workman's Compensation Act.

(2) The compassionate employment may be offered after being satisfied that there is no other means of livelihood of the family of the deceased employee.

(3) The compassionate employment can be confined to the post in non-executive category at induction level and against available vacancy.

(4) The dependant wife/son/daughter of the deceased, may be considered for employment provided he/she meets the minimum requisite qualification for the post as specified under the Recruitment Rules for non-executives.

(5) Relaxation in age and experience may be considered, if required.”

13. The abovesaid guidelines relating to 'employment on compassionate ground' is conditional to the effect that such employment would be considered only in the case of accidental death arising out of and in the course of employment as governed by the provisions of the Workman's Compensation Act. It is also stipulated that such appointment might be offered on being satisfied that there is no other means of livelihood for the family of the deceased employee. The very vital condition under the compassionate employment scheme is that such employment can be claimed only by the dependant wife or son or daughter of the deceased, who possess the minimum requisite qualification for any non-executive post.

14. Keeping the above provisions contained in the two schemes, namely, the one under the category 'land displaced persons' and the other by way of 'compassionate appointment', when we examine the claim of the first respondent, we find that his very claim was under the land displaced persons scheme. When the said claim is considered, indisputably his elder brother was offered appointment under the said category and was also appointed on 22.10.1992 as a Mazdoor. He continued to discharge his duties as a Mazdoor till his death which occurred on 03.11.1996 in some road accident. Having regard to the factum of the appointment of the first respondent's elder brother having fructified under the scheme meant for 'land displaced persons' as a validly nominated person of the family, whose land was acquired by NALCO, it will have to be held that the availability of the said benefit had come to an end once and for all. Once the benefit under the said scheme was duly availed, there would be no scope for anyone to approach NALCO for appointment for any other person under the said scheme in the absence of any provision providing for making such a claim.

15. It was not brought to the notice of this Court or for that matter before the Division Bench of the High Court any such provision under the scheme providing for any assistance/benefit under the category of 'land displaced persons' entitling other members of the family to claim for subsequent employment on the ground that the nominee who was validly appointed earlier lost his life in an accident in the course of his appointment. In such a situation, the only scope was to make a claim under the scheme of 'compassionate appointment'. But, when the respondent did not fit in any of the beneficiaries, under the scheme of 'compassionate appointment', the appellants rightly declined his claim.

16. Once we steer clear of the said scheme provisions the only other aspect to be considered is the factum of appointment of two persons by name Sanjay Bhutia and Bijay Dwibedi whose brother Alekh Bhutia and Sanjaya Dwibedi, who were earlier appointed under the very same scheme on 03.08.1985 and 07.06.1986 respectively died in accidents and in whose place their brothers, namely, Sanjay Bhutia and Bijay Dwibedi came to be appointed in 1985 and 1995 respectively. In so far as the said appointments are concerned, the same is not

disputed by the appellants. In fact, in the additional affidavit, filed on behalf of the appellants in the High Court, it has been admitted by the appellants. It is, however, contended that such appointments were not in accordance with the scheme. It is further stated therein that noticing such claims in the year 2004 a scheme called 'NALCO Employees Family Financial Assistance Rehabilitation Scheme' was brought into effect on 02.06.2004 under which some financial assistance came to be provided to the family of the deceased brother of the respondent.

17. Having noted the above facts placed before the Court, which have been heavily relied upon by the Division Bench to grant the relief under the impugned order, we only state that when once it was found that those two appointments were irregular and not strictly in accordance with the scheme providing for appointment in the case of land displaced persons, it can only be stated that the same would be hit by the principle of one illegality cannot be the basis for committing another. In other words, two wrongs do not make one right. In this context useful reference can be made to the decision of this Court in *Union of India and another v. International Trading Co. and another*¹ reported in. Paragraph 13 can be usefully referred, which reads as under:

'13. What remains now to be considered, is the effect of permission granted to the thirty two vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as the thirty two vessels are concerned, but it cannot come to the aid of the respondents. It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short 'the Constitution') cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality.'

18. Therefore, the appointments of Sanjay Bhutia and Bijay Dwibedi though came to be made in the place of death of their brothers in accidents, in the year 1986 and 1995, the same cannot be quoted as valid precedent for the first respondent to claim employment. In other words, as there is no provision for claiming such appointment on the death of validly nominated person whose appointment already taken place under the scheme meant for 'land displaced persons' and there being no provision for making any other appointment for the very same family under the said scheme, the very claim of the first respondent was not maintainable in law. The Division Bench, unfortunately, failed to appreciate the said position, instead proceeded to give a direction to the appellants to consider the claim of the first respondent for providing an appointment in the place of his deceased brother. The said

order of the Division Bench cannot, therefore, be sustained. As noted by us under the 'compassionate appointment' guidelines as well there is no scope for considering the claim of the first respondent, inasmuch as, the said guidelines provide for compassionate appointment only to the spouse or the dependant son or unmarried dependant daughter. Therefore, the first respondent had no right to claim for employment in NALCO either under the scheme for 'land displaced persons' or by way of 'compassionate appointment' pursuant to the death of his deceased elder brother Trilochan Behera.

19. The appeal, therefore, stands allowed. The order of the Division Bench dated 25.04.2008 in O.J.C. No.369 of 1998 is set-aside. There will be no order as to costs.

Judgment Referred.

¹*JT (2003) 4 SC 0549 : (2003) 5 SCC 0437*