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BUTU PRASAD KUMBHAR AND ORS.

v.

STEEL AUTHORITY OF INDIA LTD. AND ORS.

MARCH 30, 1995

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[R.M. SAHAI AND S.B. MAJMUDAR, JJ.]

*Constitution of India, 1950: Article 21.*

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*Right to livelihood—Land acquisition for Rourkela Steel Plant—Payment of compensation for land acquired—Displaced person—Rehabilitation and resettlement of—Employment to one member of displaced family—Huge expenditure incurred for rehabilitation—Writ petition after 35 years of land acquisition—Claim for employment not only to each and every member of displaced family but also to their descendants—Held not maintainable.*

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For the purpose of setting up the Rourkela Steel Plant nearly 20000 acres of land were acquired in 1954 and the compensation for the acquired land was paid. With a view to resettling and rehabilitating the displaced persons the then Union Minister for Steel advised that at least one person of each displaced family may be provided job in the steel plant. Many years after the acquisition i.e. in 1995 the displaced persons filed a writ petition in this Court seeking directions for employment not only to every member of the displaced family but also to their descendants and in any case to treat them preferentially for employment on the ground that giving employment to only one person of the family of the displaced person was violative of constitutional guarantee under Article 21.

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The respondents raised preliminary objection as to the maintainability of the Petition on the ground of inordinate delay and filed a counter affidavit stating that though approximately only 2900 families were affected by the acquisition, yet 4557 persons have been employed; part of the land acquired was surrendered for resettlement of displaced persons and huge expenditure has been incurred for providing basic development facilities in these resettlement colonies. These averments were not seriously disputed by the petitioners though they based their claim on the basis of Constitutional guarantee enshrined in Article 21.

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Dismissing the petition, this Court

**HELD: 1. A petition on incorrect facts and after such an inordinate delay which has resulted in a generation gap normally is sufficient for refusal to exercise the extra-ordinary jurisdiction. However, considering the nature of the problem and respondents' decision to give employment to displaced persons it did not appear expedient to dismiss the petition on the ground of delay or the conduct of some of the petitioners in joining those who have not been given employment. There is no satisfactory answer to the averments in the counter affidavit that the respondent company provided employment to 4557 displaced persons when only 2901 families were affected by the land acquisition. There is no reason, therefore, to doubt that one person of every displaced family whose land was acquired has been given employment and therefore, the letter and spirit of the scheme to accommodate the displaced persons stood satisfied. [81-E-H]**

**2. Petitioners or their ancestors were not deprived of their land without following the procedure established in law. They were paid compensation for their land acquired. Therefore, the challenge raised on violation of Article 21 is devoid of any merit. Even otherwise the obligation of the State to ensure that no citizen is deprived of his livelihood does not extend to provide employment to every member of each family displaced in consequence of acquisition of land. Even if the Government or the steel plant would not have offered any employment to any person it would not have resulted in violation of any fundamental right yet considering the poverty of the persons who were displaced both the Central and the State Government took steps to ensure that each family was protected by giving employment to at least one member in the plant. Therefore, one fails to appreciate how such a step by the Government is violative of Article 21. The claim of the petitioners that unless each adult member is given employment or the future generation is ensured of a preferential claim it would be arbitrary or contrary with the Constitutional guarantee is indeed stretching Article 21 without any regard to its scope. Truly speaking it is just otherwise. Acceptance of such a demand would be against Article 14. [82-C-F]**

*Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors.*, [1985] 3 S.C.C. 545, held inapplicable.

CIVIL APPELLATE JURISDICTION : Writ Petition (C) No. 167 of 1992.

(Under Article 32 of the Constitution of India.)

A Prashant Bhusan for the Petitioners.

Dipankar P. Gupta, Solicitor General, S.K. Mehta, G.M. Mishra and Dhruv Mehta for the Respondent No. 1 & 2.

Ms. Kirti Mishra for the Respondent in No. 3 & 4.

B N.N. Goswami, Y.P. Mahajan and A.K. Sharma for the Union of India.

The Judgment of the Court was delivered by

C **R.M. SAHAI, J.** The question that arises for consideration in this petition filed under Article 32 of the Constitution of India, by the petitioners, who were residents of villages which formed part of Rourkela, is whether the respondents were bound to give employment to all the erstwhile residents and even their descendents and in any case to treat them preferentially for employment as they or their members of families were displaced due to setting up of Rourkela Steel Plant even though they were given market value for their land acquired.

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H Rourkela Steel Plant, one of the largest steel plants was conceived in the year 1954. It was decided to set it up at Rourkela which at that time consisted of small villages and for this purpose nearly 20000 acres of land were acquired under the Land Acquisition Act. Compensation was paid. When the project was in offing there was probably resistance by local residents, therefore, the State Government issued statement that the displaced persons would be given alternative sites of farming and they would be given jobs in the steel plant. According to petitioners the hopes of the displaced persons were belied as after the steel plant was constructed workers were employed from outside and no offer of employment was made to the poor displaced tribals. The petitioners claim that when the then President of India visited Rourkela to inaugurate the first blast furnace of the Rourkela Steel Plant in 1959 a representation was made to him by the Rourkela Displaced Persons Welfare Committee highlighting their grievances and explaining that the alternative sites offered to them were just an eyewash as they were at a distance of about 20 miles from the resettlement colonies and it was impossible for the displaced persons to travel to and fro and undertake any agricultural operations. It was also pointed out that in these circumstances the only alternative was to afford

gainful employment to the displaced persons in the steel plant. It is pointed out that in 1981 after prolonged discussions an agreement was reached between the Rourkela Steel Plant and the displaced residents of one of the resettlement colonies, namely, Jhirpani Resettlement Colony and it was agreed that the displaced persons would be given employment at the earliest under the T.N. Singh Formula, yet the petitioners all of whom are of Jhirpani Resettlement Colony were not given any employment. According to petitioners the sympathetic sentiments were echoed even in the meeting held on 29th November 1988 but the petitioners and various other unemployed displaced persons numbering nearly 1500 whose list has been attached as Annexure 'A' to the Writ Petition could not secure any employment. In the counter affidavit filed by the Additional chief Personnel Manager of Rourkela Steel Plant of Steel Authority of India Limited (for short 'SAIL') these allegations are denied and it is stated that the minutes dated 25th August 1981 have been fully implemented as even though only approximately 2900 families were affected by the land acquisition yet the company has employed 4557 displaced persons. It is further averred that in accordance with the minutes of the meeting held on 25th August 1981 171.50 acres of land was surrendered to the State Government for allotment to the residents of Jhirpani Resettlement Colony and had even been handed over by the respondents to the Government. It is stated that this petition was filed in 1952, that is, 30 to 35 years after the acquisition and now it is even the second and third generation who are seeking employment on the basis of descent which is violative of Articles 14 and 16 of the Constitution. The affidavit further states that the company has shared to the extent of 50% the expenditure incurred in the resettlement/rehabilitation of the families in providing infrastructure and other amenities like roads, water supply, health care, education facilities, school etc. All the displaced persons were given additional amount as housing subsidy of Rs. 200-400 per family and reclamation subsidy of Rs. 200 per acre of land. The company has further stated to have provided basic development facilities to the peripheral areas including the resettlement colonies and has incurred huge expenditure. It has been pointed out that due to all this pressure the company had to employ 22538 persons as against the requirement of 19500.

What is described as T.N. Singh Formula shall be clear from the letter dated 25th July 1973 which is extracted below:

- A "With reference to the letter cited above, I am to say that there is no specific scheme of Govt. to provide employment to the displaced persons of Rourkela in the H.S.L. Rourkela. However, Shri T.N. Singh the then Steel minister of Govt. of India during course of discussion, advised that atleast one person of each displaced family may be provided job in Rourkela Steel Plant. Accordingly
- B Rourkela Land Organisation, Rourkela has prepared family history of displaced persons after spot inquiry. Such list has also been available to the local employment exchange as well as H.S.L. to consider their cases for appointment in H.S.L."
- C There was thus no scheme for employing every displaced person. but in view of the press statement of the State Government the then Union Minister considered it reasonable that the respondents should employ in the Plant at least one member of each family. Whether such assurance or decision was legal and constitutional or not but it was certainly fair and in the larger interest of displaced persons. Its compliance as averred in the
- D counter affidavit could not be seriously disputed.

- E Faced with the factual difficulty which the petitioners could not successfully rebut either by filing a proper affidavit or by bringing material on record to demonstrate that the averments in the counter affidavit were incorrect the learned counsel for petitioners submitted that the effect of acquisition was that it deprived not only the head of the family or the member in whose name the land was entered in the revenue records but every adult member suffered the injury as he was prevented from reaping the benefit from the land both at the date when acquisition was made and
- F even in future. Therefore, giving employment to one person of the family of displaced persons was violative of the constitutional guarantee under Article 21 and consequently it was the obligation of the State to ensure that every member of the family was given employment in the plant or in the alternative whenever the vacancy arose it should consider them on preferential basis. The learned counsel urged that the employment of one
- G person of each displaced family on T.N. Singh Formula could not deprive other members of family who were adults or would have been adult at any time in future of their fundamental right of livelihood as explained by this Court in *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.*, [1985] 3 SCC 545. He urged that payment of compensation for acquired land was
- H a poor solace and in any case the State Government having assured and

the Central Government having advised the SAIL to give employment to the displaced persons and the petitioners and others like them having been kept under a promise that they shall be given employment they are precluded on principle of promissory estoppel from backing out and claiming either that the employment was not available or that there was over staffing or that they have to accommodate the displaced persons of Mandira bandh. It was further urged that apart from persons whose land had been acquired the assurance was to offer employment to those eligible displaced persons who in consequence of setting up of the steel plant were rendered unemployed. He also pleaded vehemently that not only the adult members and other members of the family but even those children who were then minor but they have now become major or they being descendants and may be the second generation were entitled, on the same principle of being deprived of their bread and butter which could have been available to them after they became major to be employed or at least given preference.

What stands admitted is that the land was acquired in 1953-54 and the steel plant was set up in 1959. Yet these petitioners many of whom, we are informed, are already in employment of the respondents and that was vehemently urged by the learned Solicitor General as a preliminary objection to the maintainability of the petition, approached this Court in 1992 for enforcement of their rights. That a petition on incorrect facts and after such an inordinate delay which has resulted in a generation gap normally is sufficient for refusal to exercise the extraordinary jurisdiction. However, considering the nature of the problem and respondents' decision even in 1988 in relation to giving employment to displaced persons it did not appear expedient to dismiss the petition on ground of delay or the conduct of some of the petitioners in joining those who have not been given employment. There is no satisfactory answer to the averment in the counter affidavit that the respondent company having provided employment to 4557 displaced persons when only 2901 families were affected by the land acquisition and the assurance given was to employ only one person of each family there does not appear much substance in the grievance made by the petitioners. Further no details have been furnished by the petitioners in respect of the persons whose list has been appended with the writ petition as to whether any member of their family was given appointment by the Steel Plant or not. There is no reason, therefore, to doubt that one person of every displaced family whose land was acquired has been given employ-

A ment and, therefore, the letter and spirit of the scheme to accommodate the displaced persons stood satisfied.

The constitutional challenge based on Article 21 does not appear to have any substance. In *Olga Tellis* (supra) it was observed by this Court that the concept of right of life conferred was wide and far-reaching and the deprivation of the right to livelihood without following the procedure established by law was violative of the fundamental guarantee to a citizen. Needless to say that petitioners or their ancestors were not deprived of their land without following the procedure established in law. Their land was taken under the Land Acquisition Act. They were paid compensation for it. Therefore, the challenge raised on violation of Article 21 is devoid of any merit. Even otherwise the obligation of the State to ensure that no citizen is deprived of his livelihood does not extend to provide employment to every member of each family displaced in consequence of acquisition of land. Rourkela Plant was established for the growth of the country. It is one of the prestigious steel plants. It is established in public sector. The Government has paid market value for the land acquired. Even if the Government or the steel plant would not have offered any employment to any person it would not have resulted in violation of any fundamental right yet considering the poverty of the persons who were displaced both the Central and the State Government took steps to ensure that each family was protected by giving employment to at least one member in the plant. We fail to appreciate how such a step by the Government is violative of Article 21. The claim of the petitioners that unless each adult member is given employment or the future generation is ensured of a preferential claim it would be arbitrary or contrary with the constitutional guarantee is indeed stretching Article 21 without any regard to its scope and ambit as explained by this Court. Truly speaking it is just the otherwise. Acceptance of such a demand would be against Article 14.

The learned Solicitor General however stated that even though the public sector undertaking because of being over-staffed is being put to great strain and even though the Government of India had taken a policy decision as far back as 1986 not to give employment to any one in future, yet the respondent-Steel Plant after verification has found 247 persons eligible for being given employment. They are willing to abide by it. He has pointed out that in the meantime another dam has been constructed and the persons who had been displaced have also been required to be accom-

modated and, therefore, a scheme has been framed in which 80% displaced A  
in consequence of Mandira Dam and 20% out of 247 are being given  
employment since 1993. He stated that nearly 50 persons out of 247 have  
already been absorbed. We are of the opinion that given employment to  
20% may take longer time and since the age bar has been put at 35 it would  
be appropriate if the SAIL expedited the absorption of these persons by B  
increasing their number from 20% to 40% each year.

In the result, this petition fails and is dismissed subject to the  
observations made in respect of 247 persons identified by the respondents.  
There shall be no order as to costs.

T.N.A.

Petition dismissed. C