

Renu Devi and anr. Vs. the N.T.P.C. Limited and ors.

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Court : Patna

Decided On : Mar-17-2003

Judge : Ravi Dhavan, C.J. and Rajendra Prasad, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 415

Appeal No. : L.P.A. No. 263 of 1996

Appellant : Renu Devi and anr.

Respondent : The N.T.P.C. Limited and ors.

Advocate for Def. : Nveen Sinha, Adv.

Advocate for Pet/Ap. : R.N. Mukhopadhyaya and D. Mukherjee, Advs.Rajeshwar Prasad, GP 6

Disposition : Appeal allowed

Judgement :

Ravi S. Dhavan, C.J.

1. This matter was heard on Thursday last. A Thermal Power Station was planned to be established at Kahalgaon district Bhagalpur. This Thermal Power Station was to be established by the National Thermal Power Corporation. For this purpose, in April 1985, lands were acquired at Kahalgaon, Bhagalpur by the State of Bihar. Ordinarily when powers are utilised under the [Land Acquisition Act, 1894](#)

then to mitigate the circumstances compensation is paid under the Act and further mitigating damages like solatium, interest etc. Not to be ignored is an aspect that when the land is acquired under the Act the State utilises its sovereign powers to (a) acquire the land and (b) consequentially, dispossess those whose land is acquired. The payment of compensation is the necessary corollary. In short this completes the process of acquisition to allow the public plan for public purpose being executed on the acquired land. If this alone was the concluded exercise then there would be no issue in the present case.

2. In the process of acquisition of land for setting up a Thermal Power Station at Kahalgaon, District Bhagalpur, a public announcement was made by the Hon'ble Chief Minister, Bihar, in 1985 who ever he was at that time and this announcement was subsequently formulated into a scheme, to the effect, that every person whose land was acquired and dispossessed there would be an exercise for his rehabilitation. This rehabilitation was to come in the form of fa) granting a job at the Thermal Power Plant (b) offering a shop and (c) a work contract. All these mitigating circumstances where in addition to the compensation which was to be paid upon acquisition of law.

3. Before the Court goes to examine the matter further, it needs to be observed that there was no necessity for the Hon'ble Chief Minister of have gone out of his way to make a statement that persons whose land has been acquired will given a job at the Thermal Power Plant or other rehabilitation offers. Ruthless as the Act is in the exercise of its sovereign powers, compensation having been paid, that is the end of the matter. But in the present case, the Hon'ble Chief Minister not only made a promise but had guaranteed to execute a mitigating scheme. Now it became the guarantee of the State to execute the scheme until every person who was covered under it receives the benefits made under it. Unfortunately, the State respondents conveniently evaded filing a counter-affidavit in the writ petition. Thus, there is no version on behalf of the State Government as to what was done with the scheme as it was formulated.

4. The only counter-affidavit on record is on behalf of the National Thermal Power Corporation. In so far as the National Thermal Power Corporation is concerned, its

stand is that as many as could be accommodated they were given a job or a shop or a work contract during period when the thermal plant was being set up. The details are not in the affidavit. It is further submitted that the guarantee of a job was not absolute and there was meant to be a selection. The latter aspect has raised further issues. The further issues are basically on the aspect that the job which was promised and was meant to be executed under the scheme was basically a job on a Category IV

5. In so far as the State respondents are concerned they are conveniently watching the situation behind the scene as if time solve the problem. It will not. As time passes by some of these persons whose land has been acquired will perhaps be beyond the age of retirement and will not be able to receive a job today and one cannot rule out the possibility that many may have died. If this is the style of solving a problem then it is a very shabby way. This is not honouring the statement or a scheme of the Hon'ble Chief Minister. Time has solved no problem and the issues linger.

6. Further problems are also coming in the way as submitted on behalf of the National Thermal Power Corporation by its Counsel. He submitted that he has instructions to State that the Corporation is under pressure from the world Bank to reduce the work force. Perhaps what learned Counsel for the Corporation contends may not be incorrect that over staffing is to be reduced in public employment.

7. The scheme is as on record as Annexure-1, and it conveniently passes on the responsibility to the National Thermal Power Corporation to solve out the problem. This will depend upon how many people were displaced persons under the acquisition proceedings. Perhaps all cannot be accommodated as part of the staff of the Thermal Power Corporation. For those who have been left out the scheme is only an illusion.

8. The displaced persons were affected by the use of sovereign power under the Act, the consequence of which was that their lands stood vested with the State free from all encumbrances. The land was acquired for the National Thermal Power Corporation.

9. This case is not that with land acquisition proceedings concluded the monetary compensation has not been paid to the displaced persons. This case is about working of the rehabilitation scheme. Once a Chief Minister of the State makes a commitment on behalf of the State and formulates it into a scheme, the promise has been made into guarantee as a policy- No counter-affidavit is on record on behalf of the State respondents. This matter may have been one in the domain of politics as an illusion given to displaced persons to secure them employment as justice, social or economic. But once the public announcement became a formalised State scheme, it became a guarantee of the State. To avoid this assurance would be half way house to deception, otherwise explained in the explanation to Section 415, of Cheating, and amply illustrated in the ILLUSTRATIONS to his Section.

10. The scheme has yet to be worked out until the last man who was to receive the advantage of the scheme has received its benefits. Only then the State can get rid itself from the circumstances of the public announcement which was made by the Hon'ble Chief Minister formulated into a scheme, dated 15 February 1986 which itself was result of deliberations of meetings which was chaired by the Hon'ble Chief Minister of Bihar on 13 September 1985.

11. Counsel for the Corporation and the State, have by consent suggested that the respondents be given time to enlist the number of persons who have received the benefits of the scheme so as to eliminate those who have received a job, received an allotment of a shop and yet others who were given a work contract in pursuance of the scheme or any other benefits referred to in the scheme itself. Of the balance which remains, and it goes without saying, there will be many who are dead and beyond the age of retirement. Their elimination by killing time may be logic but not a solution. And yet others have to be considered for the benefits under the scheme. This may be done. For this purpose the respondents may have two months time.

12. But one aspect needs to be clarified that the obligations of giving benefits under the scheme cannot be entirely on the National Thermal Power Corporation. The scheme while it is being worked will have to be a joint venture between the

State of Bihar and the National Thermal Power Corporation. A public sector undertaking cannot be made the dumping ground for promises which are given in politics. If a public sector undertaking is a venture, it has to be run as a business like any other corporate body. The setting up of a thermal power plant may be a public purpose but it displaced a lot of persons whose land was acquired. While the acquisition was for a public purpose and there was an obligation on the State of Bihar to execute the economic and industrial plans, misplaced political guarantees will have to be honoured if law Courts are being resorted to by the State to hide behind a commitment not honoured. In the circumstances, of those who are identified as yet to receive the benefits of the scheme the enlistment of these persons is a commitment of the State to secure to them justice, social and economic.

13. Let the District Magistrate, Bhagalpur execute the scheme by eliminating those who have already received its benefits. Of the balance which remains the scheme has to be worked until its purpose is served. The enlistment of the persons concerned who have not received the benefits be done within two months from today. Let the purpose of the scheme exhaust itself within six months.

14. The writ petition was not such which should have been dismissed. The appeal succeeds.

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