

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5403/2008

N.T.P.C. LTD. Petitioner
Through Mr. G.E. Vahanvati, Attorney General for
India with Mr. Bharat Sangal, Advocate.

versus

MOHD. SAMAD KHAN Respondent
Through Ms. Sonia Mathur with
Mr. Pankaj Prasad, Advocate.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether reporters of local paper may be allowed to see the judgment? No
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the digest? Yes

ORDER
09.03.2010

1. The challenge by the Petitioner National Thermal Power Corporation (NTPC) in this writ petition is to an order dated 16th June 2009 passed by the Central Information Commission (CIC) in an appeal filed by the Respondent Shri Mohd. Samad Khan.

2. The Respondent is one of the 'oustees' affected by the setting up of the Farakka Super Thermal Power Project by the Petitioner at Murshidabad (West Bengal). In addition to the payment of compensation for acquisition of the land belonging to the Petitioner in terms of Land Acquisition Act, 1894 (LA), the NTPC had a scheme of rehabilitation under which employment would be offered to any one family member on the basis of educational eligibility according to the rules of the NTPC and in light of

the technical experience.

3. A letter dated 28th December 1984 was addressed to the Petitioner by the NTPC asking him to submit a form with all the necessary particulars for the purposes of considering the claims for employment. The Respondent has enclosed with his reply copies of the letters dated 22nd July 1986, 18th June 1988, 20th August 1990 sent by the NTPC to him directing him to appear for the written tests for the post of Store Keeper Grade IV and a letter dated 8th May 1991 calling him for an interview for the same post. According to the NTPC, the Petitioner was called for interview for the post of Store Keeper but was not found suitable.

4. It appears that the Respondent approached the Minister of State, Parliamentary Affairs & Sales Tax (Finance), Government of Bihar who then addressed a letter dated 29th November 1991 to the NTPC in which he alluded to information received by him to the effect that the Respondent's name had been empanelled and that he had been assured of being granted an appointment against the vacancies in the near future. It is not clear whether the Respondent followed up the matter thereafter.

5. On 8th August 2006 the Respondent addressed an application under the Right to Information Act, 2005 (RTI Act) to the Chief Public Information Officer (CPIO) of the NTPC praying that "he be served a copy of the field survey report undertaken by the officials of the Project". By its letter dated

6th September 2006, the CPIO, NTPC informed the Petitioner that as per the available records “NTPC Farakka is not aware of any ‘Field Survey’ of land oustees.”

6. The Petitioner filed an appeal on 14th November 2006 to the Appellate Authority (RTI), NTPC. By a response dated 11th December 2006 the Appellate Authority informed the Petitioner that “it has been reconfirmed that no such field survey has been conducted and hence no report is available.” Thereafter the Respondent appealed to the CIC.

7. On 17th December 2008 the CIC passed an order, *inter alia*, observing and directing as under:

“The evidence is conclusive that the NTPC has made endeavors to provide jobs to all the land oustees but it has not been able to absorb at least 42 affected persons. At the instance of the Minister’s intervention, a field survey was also conducted in 2005, in which the appellant participated. The appellant has asked for a copy of the survey report, which has been denied on the ground of its non-availability.

As agreed between the parties, the case is remanded to the CPIO, who should make a fresh attempt to search the relevant documents, mainly the Survey Report, as asked for by the appellant, within one month from the date of issue of this decision and furnish its copy to the appellant, failing which suitable action would be taken by the Commission in the matter, including institution of a high powered inquiry to unearth the truth.

The appellant is free to approach the Commission again if he is not satisfied with the compliance of the above decision by the CPIO.”

8. Pursuant to the above decision, the CPIO by a letter dated 24th January 2008 informed the Respondent as under:

“We made afresh attempt to search the relevant document and also checked with the concerned *NTPC Project, i.e. Farakka STPS*, but no such Field survey report could be found.”

This led to the Respondent again approaching the CIC.

9. In the impugned order dated 16th June 2008, the CIC observed in para 9 as under:

“The question whether a formal ‘field survey report’ was prepared or not is disputed between the parties. The respondent has however not disclosed the details of the communication, which it had with the Ministry.”

10. Thereafter the following directions were issued:

“16. In view of the foregoing, the following decision notice is issued:

- i) The CPIO is directed to furnish the entire details relating to the reference made by the Ministry of Power to the NTPC alongwith the replies given to the MOP, including the ‘file notings’ in the matter, within 15 working days from the date of issue of this decision. The appellant, along with Shri Gautam Kaul, who was present during the hearings, would be free to inspect the relevant documents on the date and time mutually convenient to the parties, within 15 working days from the date of issue of this decision.

ii) The NTPC is required to pay a suitable compensation u/s 19 (8) (b) of the Act for all kinds of losses and other detriment suffered by the appellant in the process of securing justice through different ways, including accessing information that could reveal the fact about his claim for the right to work. The appellant has not only sacrificed the land, the prices of which have increased manifold, and has also missed the opportunity of working and earnings, he has been deprived of timely justice for want of information or lack of accountability of the respondent, as discussed above.

- The NTPC is therefore directed to pay an amount equal to the total payments made so far to an employee, 'land oustee', who was offered employment (in the first batch) in the minimum scale of pay plus admissible allowances, in pursuance of the circular issued on 28.12.1984 to the appellant.
- Alternatively, on the assumption that the respondent was at least offered the job of a peon/attendant, keeping in view his physical fitness, including educational qualifications, he should have been paid, on an average amount of Rs.4,000/- per month for 282 months (since January 1985 to June 2008), which comes to Rs. 11,28,000/- (Rupees eleven lakh and twenty eight thousand).
- The Chairman, NTPC, is directed to arrange to pay the above amount, on behalf of the respondent, through a bank draft in favour of the appellant on or before July 30, 2008, failing which interest at the rate of 10 percent per annum would be applicable.

iii) The Chairman, NTPC is also directed to explore the ways and measures to redress the grievances of all land oustees of the Farakka Project in terms of the understanding reached between the parties on the issue of rehabilitation of the affected persons. In view of its social responsibility and the national policy to empower the deprived groups, the NTPC should take urgent steps to alleviate the economic difficulties of land oustees, the costs of which to the company would be negligible in relation to its total profits since its inception. A compliance report should be submitted to the Commission within three months as a testimony of its accountability, which is a major concern of the RTI Act.”

11. On 29th July 2008 while directing notice to issue in the petition, this Court stayed the directions given by the CIC in paras 16 (ii) and (iii) of the impugned order. The Respondent has filed his reply to the petition.

12. This Court has heard the submissions of Mr. G.E. Vahanvati, the learned Attorney General for India and Ms. Sonia Mathur, the learned counsel appearing for the Respondent.

13. On behalf of the Petitioner, it is submitted that the CIC exceeded its jurisdiction under Sections 18 and 19 of the RTI Act 2005 in issuing the directions in paras 16 (ii) and (iii) of the impugned order, as extracted hereinbefore. It is submitted that the scope and ambit of the powers of the CIC under Section 19(8)(b), RTI Act does not extend to issuing the above directions. In any event, the CIC could not have directed payment of a sum

equivalent to the minimum scale of pay in the post which was offered to other land oustees or in the post of Peon/Attendant for the period January 1985 to June 2008 aggregating to Rs.11,28,000/-. Further, there was no occasion for the CIC to issue general directions to the NTPC to take steps to alleviate the economic difficulties of other land oustees.

14. In reply, it is contended on behalf of the Respondent that in the background of the facts which led to the filing of the application under the RTI Act, the directions issued by the CIC were justified. It is sought to be submitted that the Respondent, being a poor person waiting for justice for several years, could not be faulted for approaching the authorities under the RTI Act for relief. The CIC's direction to the NTPC to pay the Respondent the aforementioned sum is sought to be justified with reference to the powers of the CIC under Section 19(8)(b) of the RTI Act.

15. In the considered view of this Court, the scope of the powers of the CIC under the RTI Act is essentially to ensure that no citizen is unfairly deprived of information to which he or she is legitimately entitled to, subject of course to such information being held by a public authority and being accessible. Under Section 2(f) of the RTI Act information includes any records, documents which can be accessed by a public authority under any other law and under Section 2 (j) of the RTI Act the 'right to information' means "the right to information accessible under this Act which is held by or under the control of any public authority". In the context of the present case, therefore the CIC was first required to determine if the survey report which was sought by the Respondent, was in

fact a document that was available with the NTPC. The impugned order reveals that even according to the CIC, the existence of the survey report was a 'disputed' question. NTPC kept asserting that there was no such survey report and the Respondent kept contending to the contrary. CIC concluded that this question was a disputed one.

16. In terms of Section 18 of the RTI Act, the powers and functions of the CIC, *inter alia*, includes the power to conduct an inquiry into the complaint of a person who has been refused access to any information requested under the RTI Act or who has not been given a response to a request for information or access to information within the time limits specified under this Act. When a person who has been denied any information, approaches the CIC by way of an appeal, then under Section 19(8) while rendering its decision in such appeal, the CIC has the power to do the following:

“19 (8) In its decision, the Central Information or State Information Commission, as the case may be, has the power to,--

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including--

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

- (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
 - (v) by enhancing the provision of training on the right to information for its officials;
 - (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;
- (b) require the public authority to compensate the complainant for any loss or other detriment suffered;
 - (c) impose any of the penalties provided under this Act;
 - (d) reject the application.”

17. The ambit of the power under Section 19 (8)(b) has to be determined by the scope of the powers of the CIC generally under Section 19, and as an Appellate Authority in terms of Section 19 (1) to (8). The compensation payable under Section 19 (8)(b) is “for any loss or other detriment suffered”, on account of the denial of the information under the RTI Act and not just about any loss or detriment suffered by the applicant. In the context of the present case if the CIC had found that the Respondent was unfairly denied by the NTPC, the information sought for by him, the CIC was next to determine the precise loss suffered by the Respondent on account of such denial of information. Thereafter it could pass appropriate orders to compensate the Respondent for the loss or detriment suffered. In the present case, there is no finding by the CIC that the NTPC had in its records a survey report which it unfairly denied to the Respondent. This factual determination was essential for the CIC to proceed to determine the loss suffered by the Respondent on account of the denial of such

information. Thereafter under Section 19(8)(b) RTI Act it was in the discretion of the CIC to award compensation. Even while exercising that power a finding would have to be rendered by the CIC on the extent of loss, even approximately, suffered by the person to whom such information ought to have been furnished. This is because the compensation that has to be awarded under Section 19 (8)(b) is for the loss or the detriment suffered “on account of the denial of such information” and not just about any loss or detriment suffered by such person. There is no such determination by the CIC in the present case.

18. This Court is of the considered view that there was no occasion for the CIC to issue the directions contained in para 16 (ii) and (iii) of the impugned order. Those directions were entirely outside the scope and powers of the CIC under the RTI Act. This Court has no hesitation, therefore, in setting aside the said directions in para 16 (ii) and 16 (iii) of the impugned order.

19. It is, however, made clear that this Court has not expressed any opinion on the merits of the Respondent’s claim for employment with the NTPC. As and when the Respondent seeks appropriate remedies for that purpose, his case will be decided by such authority or court concerned without being influenced by any of the observations on merits in this order or the impugned order of the CIC.

20. The learned Attorney General for India informs the Court that the

NTPC has no objection to provide information to the Respondent in terms of the directions contained in para 16(i) of the impugned order. It is submitted that such information has in fact already been furnished to the Respondent. However, the Respondent who is present in Court, denies having received any such information.

21. Considering that the Respondent is not a resident of Delhi and has come here only for the purposes of this case, it is directed that the learned counsel for the NTPC will arrange to have another set of the entire information and documents in terms of para 16 (i) of the impugned order furnished to the Respondent by tomorrow, i.e., 10th March 2010. Mr. Bharat Sangal, the learned counsel appearing for the NTPC, states that if the Respondent visits his chamber tomorrow, i.e., 10th March 2010 at 11 a.m., he will arrange to have the entire information and documents, as directed by the CIC in para 16 (i) of the impugned order, furnished to the Respondent. The NTPC will also pay to the Respondent a sum of Rs.5,000/- towards costs of his having to stay back in Delhi to receive the information. This costs will be paid to the Respondent when he visits the chamber of the learned counsel for the Petitioner tomorrow.

22. The petition is accordingly disposed of in the above terms. Order dasti to the counsel for the parties under the signature of the Court Master.

S. MURALIDHAR, J.

MARCH 09, 2010

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