

HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Petition (S) No.3819 of 2015

Laxmi Narayan Verma, son of Late Hemlal, aged about 26 years, resident of No.6 Dafai, Ward No.17, Haldibadi, Chirmiri, District Koriya (CG)

---Petitioner

Versus

1. South Eastern Coalfield Ltd., through its Chairman-cum-Managing Director, Seepat Road, Bilaspur (CG)
2. Chief Personnel Manager, West Chirmiri Colliery, Chirmiri Area, District Koriya (CG)
3. Sub Area Manager, West Chirmiri Colliery, Chirmiri Area, District Koriya (CG)

---Respondents

For Petitioner : Mr.Amit Sharma, Advocate

For Respondents : Mr.V.R.Tiwari and Mr.Varunendra Mishra, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal

C A V Order

18/01/2016

1. Petitioner's father Shri Hemlal while working as Electrical Helper in the respondent/SECL died in harness on 14.09.1994 leading to grant of monthly monetary compensation in lieu of employment on 3.1.1995 to the extent of ₹2000/- per month to the petitioner's mother in terms of Clause 9.5.0 (ii) of the National Coal Wage Agreement-V

(hereinafter referred to as "NCWA-V"), which she accepted without protest, but immediately thereafter on 15.6.1995 the petitioner's mother also made a request to the SECL authorities that his son i.e. present petitioner is minor and therefore, her right to claim dependant employment for her son be kept open and intact. Her son i.e. petitioner herein became major and on 16.5.2005 the petitioner's mother again made an application to the SECL authorities for dependant employment to the petitioner, which was not considered by the SECL authorities leading to filing of the present writ petition for dependant employment in terms of the NCWA-V for considering his claim as per policy prevailing at the time of death of the petitioner's father.

2. Learned counsel for the petitioner would submit that the petitioner's mother was given monetary compensation in terms of the NCWA-V, which she has accepted as the petitioner was minor on the date on which monthly monetary compensation was granted, but since the petitioner's mother has kept the option open for dependant employment for her son on attaining the age of majority and since the petitioner has become major on attaining the age of majority, he is entitled for dependant employment in terms of Clause 9.5.0 (ii) of the NCWA-V.

3. On the other hand, learned counsel for the respondents would oppose the writ petition and submit that the petitioner's mother has already opted for monetary compensation as provided in NCWA-V and once she has opted for monetary compensation and getting benefit of the said order, the petitioner is not entitled for further consideration or second consideration. The petitioner's mother having opted for monetary compensation, doctrine of election would be applicable and the petitioner is not entitled for fresh/second consideration for dependant employment.

4. I have heard learned counsel appearing for the parties, given thoughtful consideration to the submissions raised therein and also gone through the record with utmost circumspection.

5. Clause 9.5.0 of the National Coal Wage Agreement-V applicable to SECL employee as on death of the petitioner's father provides for employment/monetary compensation to female dependant. Sub-clause (i) and (ii) of clause 9.5.0 of the NCWA-V reads as under:-

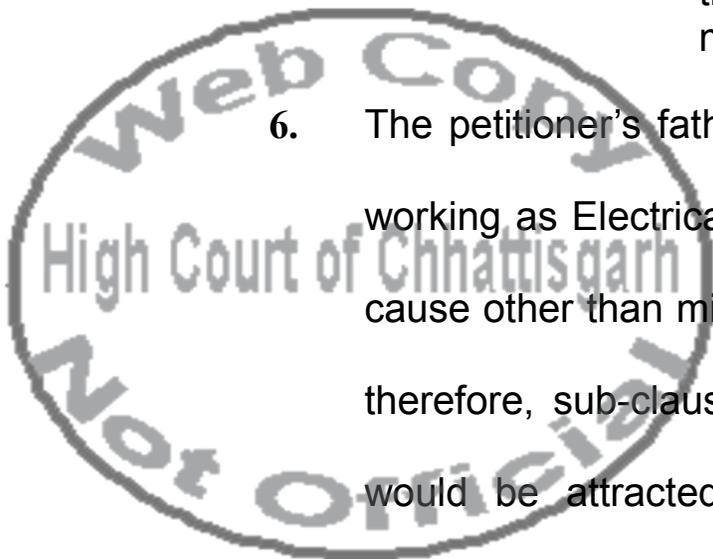
9.5.0 Employment/Monetary compensation to female dependant

Provision of employment/monetary compensation to female dependants of workmen who die

while in service and who are declared medically unfit as per Clause 9.4.0 above would be regulated as under:

- (i) In case of death due to mine accident, the female dependant would have the option to either accept the monetary compensation of Rs.3000/- per month or employment irrespective of her age.
- (ii) In case of death/total disablement due to cause other than mine accident and medical unfitness under Clause 9.4.0, if the female dependant is below the age of 45 years she will have the option either to accept the monetary compensation or Rs.2000/- per month or employment.”

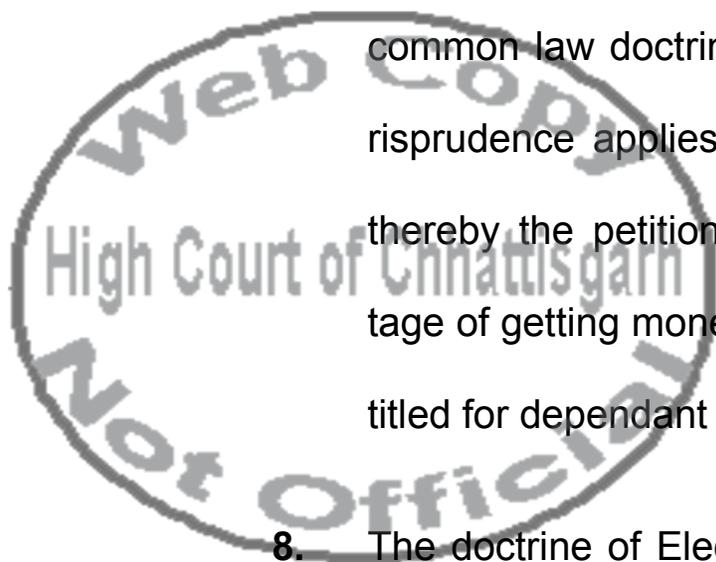
6. The petitioner's father died in harness on 14.9.1994 while working as Electrical Inspector in respondent-SECL due to cause other than mine accident and medical unfitness, and therefore, sub-clause (ii) of Clause 9.5.0 of the NCWA-V would be attracted and applicable to the petitioner/his mother and they had option in terms of said Clause either to accept the monetary compensation of ₹ 2000/- per month or dependant employment. It appears from the record that the petitioner was admittedly minor when his father died in the year 1994, therefore, respondent-SECL in all fairness granted monthly monetary compensation of ₹ 2000/- per month on 3.1.1995 to the petitioner's mother, which she has accepted without demur, but on 15.9.1995 requested to the SECL to keep the option of her son's em-



ployment open on his attaining the majority, which the petitioner claimed on 5.1.2008.

7. The question for consideration would be whether once the petitioner's mother/widow of deceased SECL employee has opted for monetary compensation in terms of sub-clause (ii) of Clause 9.4.0 of the NCWA-V and enjoying benefits the petitioner on attaining the age of majority can claim further consideration for dependant employment and whether the common law doctrine of Election which is a part of our jurisprudence applies to the facts of the present case, and thereby the petitioner/his mother having taken an advantage of getting monetary compensation by opting, is not entitled for dependant employment.

8. The doctrine of Election is based on rule of estoppel- The principle that one cannot approbate and reprobate inheres in it. The doctrine of Estoppel by Election is one of the species of Estoppels in pais, which is rule of Equity. By that law, a person may be precluded by his actions or conduct or silence when it is duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by party makes its conduct firm and satisfactory. Further the parties cannot blow hot and cold by taking incon-



sistent stands and prolong proceedings unnecessarily [Vide Bahuram vs. Indra Pal Singh (1998) 6 SCC 358].

9. The principle of “approbate and reprobate” has been described as species of estoppel which seems to be intermediate between estoppel by record and estoppel in pais (See Halsbury’ Laws of England, para 512, Volume XII, page 454).

10. The doctrine of election is based on the principle that the parties cannot, after taking advantage under an order, be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it.

The Supreme Court in the matter of **Nagubai Ammal and others v. B. Shama Rao and others**¹ relied upon English case and held as under:-

The observations of Scrutton, L. J. on which the appellants rely are as follows:

"A plaintiff is not permitted to 'approbate and reprobate'. The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election-namely, that no party can accept and reject the same instrument: Ker v. Wauchope(1819) 1 Blight 1 (21) (E): Douglas-Menzies v. Umphelby 1908 AC 224 (232) (F). The doctrine of election is not however confined to instruments. A person can-

¹ AIR 1956 SC 593

not say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction".

It is clear from the above observations that the maxim that a person cannot 'approbate and reprobate' is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The law is thus stated in Halsbury's Laws of England, Volume XIII, page 454, para 512:

"On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e.g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it".

11. Similarly, in the matter of **C. Beepathuma and others v. Velasari Shankarnarayana Kadambolithaya and others**²,

Their Lordships of the Supreme Court have held that a per-

² AIR 1965 SC 241(1)

son cannot approbate and reprobate the same transaction.

Paragraphs 17 and 18 of the report states as under:-

“17. The doctrine of election which has been applied in this case is well-settled and may be stated in the classic words of Maitland-

“That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it.”

(See Maitland’s lectures on Equity Lecture 18)

The same principle is stated in White and Tudor’s Leading cases in Equity Vol. 1 8th Edn, at n. 444 as follows:

“Election is the obligation imposed upon a party by courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one that he should not enjoy both.....That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument.”

18. The Indian courts have applied this doctrine in several cases and a reference to all of them is hardly necessary. We may, however, refer to a decision of the Madras High Court in Ramakottayya v. Viraraghavayya, ILR 52 Mad 556: (AIR 1929 Mad 502 FB) where after referring to the passage quoted by us from White and Tudor, courts Trotter, G.J. observed that the principle is often put in another form that a person cannot approbate and reprobate the same transaction and he referred to the decision of the Judicial committee in Rangaswami Gounden v. Nachiappa Gounden, ILR 42 Mad 523: (AIR 1918 PC 196). Recently, this court has also considered the doctrine in Bhau Ram v. Baij Nath Singh, AIR 1961 SC 1327.”

12. Similar is the effect of the decision of the Supreme Court in the matter of Commissioner of Income Tax, Madras v. MR. P. Firm Muar³, in which Their Lordships of the Supreme Court have explained the doctrine of “approbate and reprobate” and it has been held as under:-

“The doctrine of “approbate and reprobate” is only a species of estoppel, it applies only to the conduct of parties.”

13. In the matter of R.N. Gosian v. Yashpal Dhir⁴, the Supreme Court observed similarly as under:-

“10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that “a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage.”

14. In the matter of Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.⁵ explaining the meaning of “approbate and reprobate”, it has been held as under:-

“15. A party cannot be permitted to “blow hot blow cold”, “fast and loose” or “approbate and

³ AIR 1965 SC 1216

⁴ (1992) 4 SCC 683

⁵ (2013) 5 SCC 470

reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. Thus rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience [Vide Nagubai Ammal v. B. Shama Rao⁶, CIT v. V. MR. P. firm Muar (supra), Ramesh Chandra Sankla v. Vikram Cement⁷, Pradeep Oil Corpn. v. MCD⁸, Cauvery Coffee Traders v. Hornor Resources (International) Co. Ltd.⁹ and v. Chandrasekaran v. Administrative Officer¹⁰.

16. Thus, it is evident that the doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppels in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had."

14. Finally, in the matter of **State of Punjab and others v.**

Dhanjit Singh Sandhu¹¹, it has been held by the Supreme

Court in no uncertain terms that a party complying and deriving advantage from the order, cannot challenge it on any ground and concluded as under:-

"22. The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it

6 AIR 1965 SC 593

7 (2008) 14 SCC 58

8 (2011) 5 SCC 270

9 (2011) 10 SCC 420

10 (2012) 12 SCC 133

11 (2014) 15 SCC 144

cannot operate against the provisions of a statute (Vide CIT v. V. MR. P. Firm Muar (supra)).

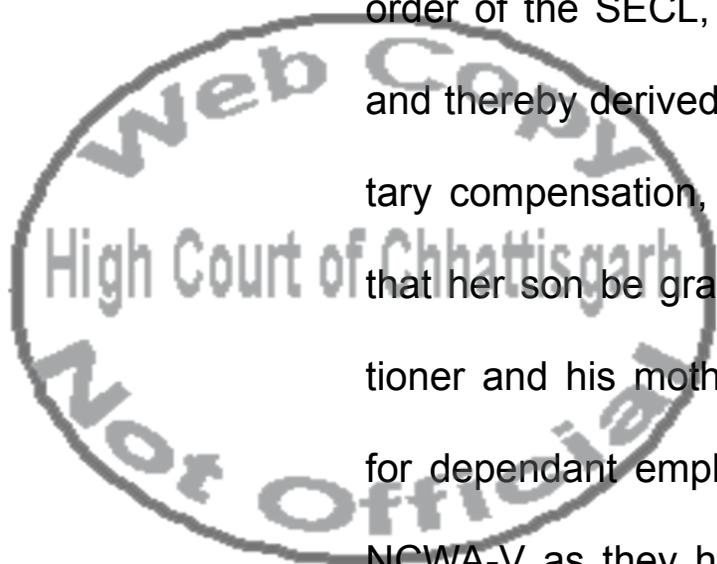
23. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground (Vide Maharashtra SRTC v. Balwant Regular Motor Service¹².) In R.N. Gosain v. Yashpal Dhir (supra) this Court has observed as under: (SCC pp. 687-88, para 10)

“10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that ‘a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage.

26. It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had.”

15. Having noticed the doctrine of election, which is based on rule of estoppel, leads me to advert to the factual matrix of the case. As per Clause 9.5.2 (ii) of the NCWA-V, the petitioner/his mother had the option either to claim monetary

compensation or to claim dependant employment. It appears from the record that the petitioner's mother was granted monetary compensation by SECL authorities by order dated 3.1.1995, which she accepted without protest, though later on she made a request for making the option of employment open for his son (petitioner) upon attaining majority, but the fact remains that the petitioner's mother having been granted benefit of monetary compensation by order of the SECL, which she accepted the same till date and thereby derived the advantage by accepting the monetary compensation, now she cannot turn round and claim that her son be granted dependant employment. The petitioner and his mother both are precluded now to contend for dependant employment as per Clause 9.5.0 (ii) of the NCWA-V as they have not only opted as per NCWA, but also derived advantage flowing from order of SECL and as such, doctrine of estoppel by election, which is one of the species of estoppels in pais (or equitable estoppel) squarely applies to the facts of the present case and thereby the respondent-SECL & its authorities are absolutely justified in rejecting the claim of the petitioner for dependant employment. I do not find any illegality or jurisdictional error in the said order.



9. As a fallout and consequence of the aforesaid discussion, the writ petition deserves to be and accordingly dismissed, but without imposition of cost (s).

Sd/-
(Sanjay K. Agrawal)
JUDGE

B/-



HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.3819 of 2015****PETITIONER**

Laxmi Narayan Verma

Versus**RESPONDENTS**South Eastern Coalfield Ltd and
othersHead Note

(English)

A dependant of the deceased SECL employee having opted & obtained benefit of monetary compensation, cannot claim for dependant employment based on doctrine of election

(हिन्दी)

मृतक एस.ई.सी.एल. कर्मचारी का आश्रित जिसके द्वारा आर्थिक क्षतिपूर्ति का लाभ चुना और प्राप्त किया गया हो, वह चुनाव के सिद्धांत के आधार पर अपने रोजगार हेतु दावा नहीं कर सकता।