

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1330 OF 2014

1. Ashok S/o Manikrao Shinde,
Age : 38 years, Occu. : Nil,
2. Laxman s/o. Ganeshrao Khating,
Age : 32 Years, Occu. : Nil,
3. Vijay s/o. Manchakrao Shinde,
Age : 33 Years, Occu. : Nil,
4. Praklapgrast Shekari Kruti Samittee,
Vasantryao Naik Marathwada Krushi,
Vidyapeeth, Parbhani,
Through its president
Ashok s/o. Baburao Salgode,
Age : 41 years, occu: President,
Project Affected Persons Committee,
M.K.U. Parbhani.

All R/o Parbhani,
Tq. & Dist. Parbhani.

.. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
Department of Agriculture,
Mantralaya, Mumbai - 32.
2. The Commissioner,
Aurangabad Division,
Aurangabad.

3. The Collector,
Collector Office, Parbhani.
4. The Vasantryao Naik Marathawada
Agricultural University, Parbhani,
Through its Registrar.
5. The Registrar,
The Vasantryao Naik Marathawada
Agricultural University Parbhani. .. Respondents

Shri S. K. Chavan, Advocate for Petitioners.

Shri S. S. Tope, A.G.P. for Respondent Nos. 1 to 3.

Shri M. N. Navandar, Advocate for Respondent Nos. 4 and 5.

**WITH
WRIT PETITION NO. 9450 OF 2014**

1. Rajkumar S/o. Radhakishan Dhage,
Age:- 33 years Occu:- Labour,
2. Datta s/o Venkatrao Dhage
Age 35 years Occu:- Labour
3. Jalba S/o Kinshan Jondhale
Age 29 years Occu:- Labour
4. Narayan S/o. Laxman Dhage
Age:- 29 Years, Occu:- Labour
5. Ram S/o. Narayan Jondhale
Age:- 26 Years, Occu:- Labour
6. Dadarao S/o. Jalbaji Jondhale
Age:- 35 Years, Occu. :- Labour

Petitioner Nos. 1 to 6 R/o Shendra,

Tq. & Dist. Parbhani.

7. Amol S/o Kondibharao Garud,
Age 27 years Occu:- Labour
R/o Pngli Tq. & Dist. Parbhani. .. Petitioners

Versus

1. The State of Maharashtra,
Through Secretary,
Agriculture, Animal Husbandry,
Dairy Development & Fisheries
Department Mantralaya
Mumbai - 32.
2. The Collector, Parbhani.
3. The Registrar,
Late Vasant Rao Naik Marathwada
Agricultural University, Parbhani,
Dist. Parbhani. .. Respondents

Shri P.B. Patil, Advocate for Petitioners.

Shri S. S. Tope, A.G.P. for Respondent Nos. 1 and 2.

Shri M. N. Navandar, Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA
V. K. JADHAV, JJ.**

Date on which Closed for Orders : 12/08/2015

Date on which Order Pronounced : 29/10/2015

JUDGMENT (Per S. V. Gangapurwala, J.) :-

. The writ petitions are based on similar set of facts and

involve common question of law, as such are decided together.

2. Rule, Rule made returnable forthwith. With the consent of parties, taken up for final hearing.

3. The petitioners in these writ petitions are Project Affected Persons. The lands of the petitioners are acquired for establishment of respondent/Vasantrao Naik Marathwada Agriculture University, Parbhani.

4. On 15.07.2009, the State Government issued directions to all the Agriculture Universities to fill in not less than 50% of the posts of Group - C and Group - D from the project affected persons, so that at least 50% of the project affected persons can be given employment. Thereafter, the advertisement was published on or about 28.08.2009 by the respondent university for filling up the posts of Class - III and Class - IV categories from project affected persons category giving 50% reservation for project affected persons of the said university. The selection process was undertaken, however, the recruitment process was not completed and abruptly issued subsequent advertisement to fill up only 5% posts from the project affected persons category. The same is pursuant to the communication issued by the respondent/State dated 21.08.2013 thereby conveying that, reservation to the project affected persons should not be more

than 5%. The petitioners are seeking cancellation of advertisement dated 25.11.2014 and 04.12.2014 issued by the respondent university for fresh recruitment, wherein only 5% posts are meant for project affected persons category. So also assailing the letter dated 01.11.2013 i. e. the decision taken at the secretarial level cancelling the advertisement dated 15.07.2009.

5. Shri Chavan and Mr. Patil, the learned counsel for respective petitioners submit that, majority of the persons whose lands have been acquired for the establishment of the respondent/university have participated in the selection process pursuant to the advertisement dated 26.08.2009. According to the learned counsel, there are 561 posts for the project affected persons lying with the respondent university. Vide advertisement dated 26.08.2009, 231 posts are to be filled in. The advertisement issued was perfectly as per provisions of Sec. 6(c) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (hereinafter for the sake of brevity referred to as "Rehabilitation Act of 1999"). The learned counsel submit that, the decision of the respondent/state to grant reservation of 5% only is not in consonance with Sec. 6(c) of the Rehabilitation Act of 1999. Sec. 6(c) of the Rehabilitation Act of 1999 enables the State to fill up not less than 50% seats from the project affected persons of the same project by which they are affected. The lands of the petitioners are acquired for the project of

respondent/university i. e. for the establishment and setting up of the respondent/university. It is erroneous on the part of the respondents to state that the reservation for such project affected persons cannot exceed 5%. The 50% of the Class - III and Class - IV posts can be filled from the project affected persons of the same project. The learned counsel submit that, the recruitment process initiated vide advertisement dated 26.08.2009 is almost complete and only appointment orders were required to be issued. The act of respondents in abandoning the said recruitment process and issuing fresh advertisement, moreover, by reserving only 5% posts for the project affected persons is erroneous and deserves to be set aside.

6. Mr. Navandar, the learned counsel for the respondent/university submits that, advertisement dated 26.08.2009 was issued by respondent/university as a special drive for the project affected persons in view of the circulars of the State Government. As per the Maharashtra Agricultural Universities (Krushi Vidyapit) Act 1983 and the Statute of 1990, more particularly Sec. 54, the total control over the university is of the State Government including creation of posts, grant of pay scale, allowances, directives as regards to service rules, reservation, recruitment, etc. The directions of the State Government are to be followed in that regard. The learned counsel submits that, as per Sec. 10(6)(a) of the Rehabilitation

Act of 1999 only 5% priority quota is required to be fixed for employment of nominees of the affected persons. Thus, 5% priority quota is of the total number of posts sanctioned by the State Government in Class - III and Class - IV category of the university. All the Government Resolutions from the year 1980 till today prescribes 5% quota for project affected persons. Those persons whose lands were acquired for a particular project, they or their nominees are to be given benefit of minimum preference of 50% from the reserved quota of 5% as per Sec. 10(6)(a) of the Rehabilitation Act of 1999. The earlier communication dated 15.07.2009 and 31.07.2009 were issued by the State Government under misconception. The corrective steps are taken subsequently by issuing fresh advertisement as per the directions of the Government. The respondent/State has made it clear that the quota prescribed to fill in the posts under P.A.P. category is only 5% and it is from these 5%, 50% of the posts from 5% post reserved for P.A.P. are to be filled in from the P.A.P. category of the concerned university and the balance 50% posts from 5% posts reserved for P.A.P. are to be filled in from the P.A.P. category of other projects of the State Government. Considering the same, the respondent/State on 01.11.2013 held that, the decision dated 15.07.2009 to reserve 50% posts of the total posts for P.A.P. category is wrong and decision was taken to cancel the advertisement and the earlier communication. The learned counsel submits that, perusal of Sec. 10 and Sec. 6 of the

Rehabilitation Act of 1999, it is clear that no discrimination is committed by the respondent university. The petitioners are misinterpreting the said provisions. If 50% reservation is made for P.A.P. category as alleged by petitioner, then total theme and scheme of reservation policy will come to an end. The learned counsel submits that, there are total 566 sanctioned posts of Group - C and 1391 posts of Group - D employees with the respondent/university and the respondents have filled in 405 posts till now from P.A.P. category i. e. almost 20.69% posts are filled in from P.A.P. category. The recruitment process has been undertaken pursuant to the advertisement dated 25.11.2014 and 04.12.2014. According to the learned counsel petitions deserve to be dismissed.

7. The learned Assistant Government Pleader also put forth the submissions on the same lines as learned counsel for the university and submits that, as per Sec. 10(6)(a) of the Rehabilitation Act of 1999 only 5% quota is reserved for nominated candidates from project affected persons for recruitment in Government Service and out of these 5% seats reserved for nominated candidates through projected affected persons not less than 50% i. e. minimum 2.5% candidates are to be recruited from the project affected persons of the same project for which their lands are acquired and remaining 2.5% seats are to be filled in through the candidates of project affected persons

category of other projects in the state. The learned A. G. P. also submits that, the petitions are devoid of substance and same be dismissed.

8. We have considered the submissions canvassed by learned counsel for respective parties. Before we proceed to deal with the contentions canvassed by learned counsel for respective parties, it would be appropriate to refer to the relevant provisions of the Rehabilitation Act of 1999.

**THE MAHARASHTRA PROJECT AFFECTED
PERSONS REHABILITATION ACT, 1999**

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6. It shall be the duty of the project authority,--

(a) to carry out such work for providing the necessary civic amenities in a new *gaathan* or extension of an existing *gaathan* as the case may be, established for rehabilitation of affected persons, as may be entrusted to it by the State Government or the Commissioner or the Collector ;

(b) to take measures for the speedy rehabilitation of the affected persons under the overall supervision and guidance of the Collector ;

(c) subject to any reservations validly made and subject to availability of post, to give highest priority in Class III and Class IV category of service on the project establishment, to one member of the

affected family nominated by the affected person, if such member is eligible for such employment according to the recruitment rules for such posts :

Provided that, while recruiting a member of the affected family, against such quota, the project authority shall, as far as possible, employ not less than fifty per cent of such nominees who are affected by the project under execution, as may be prescribed ;

Explanation.--For the purpose, of this clause the expression "family" means the spouse, son married or unmarried daughter or brother or sister or daughter-in-law or grandson, or grand-daughter (which includes son or daughter of the daughter also) of the affected persons, or adopted son or daughter who is residing with and is dependent on such affected person.

(d) to prepare or cause to be prepared annual budget for providing funds for the civic amenity works to be provided in a new *gaathan* or extension of an existing *gaathan* established for the rehabilitation of affected persons ;

(e) to furnish to the Commissioner and to the Collector, during the various stages of planning and execution of the project, information and plans in regard to the affected and benefited zone of the project as may be required for assessing the extent of the land and other facilities required to be provided to the affected persons for their rehabilitation ;

(f) to execute an agreement with the beneficiary to abide by the provisions of section 10 as may be prescribed.

10. (1) The State Government shall in accordance with the provisions made by or under this Act and subject to the availability of sufficient land for the purpose, rehabilitate affected persons from the affected zone under an irrigation project, on land in the villages or areas receiving benefit of irrigation from such project.

(2) Nothing in section 14 or any other provisions of this Act or any other law for the time being in force shall prevent the State Government from rehabilitating, in accordance with the other provisions made by or under this Act, as many persons as possible from the affected zone under any other project to which the provisions of this Act apply or not, including those under any irrigation project who have remained to be rehabilitated,---

(a) on land in benefited zone of any irrigation project or, as the case may be, in other villages or areas, acquired for the purpose under the provisions of section 14 ; or

(b) on any land from the land pool.

(3) The State Government shall provide civic amenities in the prescribed scale and manner in the new *gaathan* or in the extended part of any existing *gaathan* established for the purpose of rehabilitation of affected persons and such amenities shall include the following, namely :---

(a) permanent provision for drinking water, in proportion to the population, by open well, bore well, tube well, piped water supply scheme or by any other mode ;

(b) school with playground of appropriate level as prescribed by the Education Department of

the State Government with toilet facilities ;

(c) construction of *Village Panchayat Office and Chavdi or Samaj Mandir* ;

(d) internal metal roads and ashalted approach road of appropriate standard ;

(e) an access to the farm lands of the affected persons, if required ;

(f) electric supply along with street lights, and three phase connections, wherever required ;

(g) cremation ground with a shed, platform, electric supply, water supply and burial ground, as may be required with an approach road ;

(h) open built-up gutters ;

(i) financial assistance for individual latrines and public latrines, whenever necessary ;

(j) land for cattle stand with a water cistern ;

(k) land with pick up shed for Maharashtra State Road Transport Corporation bus services ;

(l) land for threshing floor, that is to say, *khalwadi* ;

(m) pasture land (if Government land is available) ;

(n) developed land for market ;

(o) land for future expansion of *goathan* ;

(p) land for a secondary school and a dispensary or primary health centre, bank, post-office, garden for children, etc., depending on the population of the new *gaonthan* ;

(q) land for registered bodies for public purposes in the old *gaathan* ;

(r) land for play ground ;

(4) In addition to the amenities listed above, the State Government shall also provide, to an appropriate standard, in the new *gaathan* having majority of the affected persons, all such other

amenities which existed in the old *gaothan* :

Provided that, the places of public worship shall not be constructed by the Government, however, the compensation for the places of public worship in the old *gaothan* shall be awarded to the concerned Public Trust and if the places of public worship do not belong to any public trust, such places of public worship shall be constructed as provided in the Maharashtra Religious Endowments (Reconstruction on Resettlement Sites) Act, 1970.

(5) The expenditure on all such amenities in sub-sections (3) and (4) above shall be part of the cost of the project.

(6) (a) In all Class III and Class IV category of services under the establishment of the State Government Departments, public sector undertakings, local self government, government-aided institutions and co-operative societies specified under section 73A of the Maharashtra Co-operative Societies Act, 1960 there shall be not less than five per cent, priority quota for the employment of nominees of the affected persons.

(b) The beneficiary persons, societies, companies, factories, sugar-factories, spinning-mills assisted by the State Government in the form of matching share contribution etc., shall provide employment to not less than five per cent, of the cadre strength of Class III and Class IV or equivalent of non-technical employees to the nominees of the affected persons :

Provided that, the above priority shall be treated as preference among the open and different reservation categories in *pro-rata* manner.

(c) The Collector shall maintain a register showing the recruitment position in the District and ensure removal of the backlog in recruitment of the nominees of the affected persons. However, at any recruitment, the percentage of the persons so recruited from amongst the nominees shall not exceed fifty.

09. Undisputed factual matrix can be culled out as under :

(i) The petitioners are the affected persons as laid down under the Rehabilitation Act of 1999.

(ii) The lands of the petitioners are acquired for the university project. As laid down U/Sec. 2(10)(f) setting up of university is within the realm of definition of project.

(iii) The respondent university had issued advertisement dated 26.08.2009 thereby inviting applications for filling in posts of Class III and Class IV with reservation of 50% posts for project affected persons of the project of the respondent university.

(v) The communication is issued thereby cancelling the said recruitment process initiated vide advertisement dated 26.08.2009 and thereby fresh advertisement is issued.

(vi) The bone of contention of the parties is with regard to percentage of reservation made for the persons whose lands have been acquired for the project that is establishment of respondent university.

10. The Rehabilitation Act 1999 is a beneficial legislation meant for rehabilitation of the persons affected by certain projects for the State of Maharashtra. Sec. 6 (c) of the Rehabilitation Act of 1999 casts a duty on the project authority apart from other duties as laid down in clauses (a), (b), (d), (e) and (f) of Sec. 6 to give highest propriety in Class - III and Class-IV category of services on the project established to one member of the affected family nominated by the affected person if such member is eligible for such employment according to the recruitment rules for such posts and subject to any reservation validly made and subject to the availability of the posts. The proviso to Sec. 6(c) further mandates that while recruiting a member of affected family against such quota, the project authority shall as far as possible employ not less than 50% of such nominees who are affected by the project under execution. Reading Sec. 6(c) along with proviso to Sec. 6(c) it is manifest that, an obligation is cast on the project authority to employ not less than 50% of such nominees who are affected by the project. Of course, the same has to be in consonance with the recruitment rules and subject to the availability of posts and reservation validly made. It is for the project authority to perform its obligation as mandated by the statute to employ not less than 50% of the nominees who are affected by the project under execution. It is one of the ways of the rehabilitating the project affected persons.

11. The respondents have placed emphasis on Sec. 10(6)(a), which lays down that in all Class - III and Class - IV category of services under the establishment of the State Government, etc. there shall not be less than 5% priority quota for the employment of nominees of the affected persons. According to the respondents, this provisions restricts reservation of nominees of affected persons to 5% only and it is from these 5%, 50% are to be employed, i. e. 2.5% who are affected by the project under execution.

12. Sec. 6(c) and Sec. 10(6)(a) will have to be interpreted harmoniously. It is well settled that all provisions have to be read together and construed harmoniously and even when there are apparent inconsistencies between the sections of the Act and the Rules framed thereunder. There should be a harmonious construction so as to give effect to the intention of the legislation and to achieve the object of the Act.

13. The Rehabilitation Act of 1999 is a beneficial piece of legislation. In interpreting such a beneficial legislation the construction has to be liberal. The beneficial provision has to be liberally interpreted so as to give it a wider meaning rather than restrictive meaning which would negate the very object of the statute. It is also settled proposition that in construing the

provisions of beneficent enactment the Court should adopt the construction which advances and fulfills the object of the Act, rather than the one which would defeat the same rendering the benefit illusory. The Rehabilitation Act of 1999 is enacted for the benefit of the persons affected by the certain projects. The provisions of Sec. 6(c) and 10(6)(a) will have to be read harmoniously in a manner they further the object of the statute. Head on collision between these provisions will have to be avoided. Sec. 10(6)(b) of the Rehabilitation Act of 1999 cannot be interpreted in a manner that would render Sec. 6(c) of the Rehabilitation Act of 1999 otiose or a dead letter. Sec. 10(6)(b) of the Rehabilitation Act lays down a general preposition that the State Government and the other persons, societies, etc shall provide employment to not less than 5% of the cadre strength of Class III and Class IV or equivalent of non technical employees to the nominees of the affected persons. The said provision does not at all restrict said reservation only for 5%. It on the other hand provides that it should not be less than 5%. Along with clause (b), clause (c) of sub Sec. 6 of Section 10 will also have to be considered, which requires that the Collector shall maintain a register showing the recruitment position in the District and ensure removal of backlog in recruitment of the nominees of the affected persons. However, at any recruitment percentage of the persons so recruited from amongst the nominees shall not exceed 50%, meaning thereby

that for removal of backlog for recruitment of nominees of affected persons the percentage of persons so recruited from and amongst the nominees can be upto 50%. The whole object of the Act is to rehabilitate the affected persons or their nominees. Considering the provisions of Sec. 6(c) and its proviso, so also Sec. 10(6)(b) and (c), it is manifest that the reservation for nominees who are affected by the project under reservation can be upto 50% of the posts. If the reservation to such project affected persons is restricted to 2.5% i. e. 50% from 5% then, the object of the Act would never be achieved may be it would be frustrated. Interpreting both these provisions coherently, it is manifest that, special drive can be implemented for filling up the backlog of the nominees who are affected by the project under execution to the extent of 50% of the posts.

14. While doing so the social reservation cannot be lost sight of. The social reservation would be vertical reservation and reservation for P.A.P. category would be horizontal in nature. The balance can be struck by applying inter locking reservation i. e. from the horizontal reservation across the vertical reservation called as inter locking reservation. The persons from this P.A.P. category can be placed in the category of the social reservation which they belong to i. e. if a person from P.A.P. category belongs to S.C. category he be placed in that quota by necessary adjustment and so on. In this way the social reservation would not be

affected.

15. Considering the above, it is clear that, the advertisement issued on 26.08.2009 was legal and valid and the subsequent letters issued by the respondents thereby cancelling earlier advertisement are illegal and same deserves to be quashed and set aside.

16. It is submitted that, recruitment process pursuant to advertisement dated 25.11.2014 and 05.12.2014 is not proceeded further, hence the same shall not be proceeded. The recruitment process undertaken pursuant to the advertisement of 2009 may be completed, if otherwise, there is no other legal impediment.

Rule made absolute in above terms. No costs.

Sd/-
[V. K. JADHAV, J.]

Sd/-
[S. V. GANGAPURWALA, J.]