

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

**WRIT PETITION NO. 9890 OF 2013
WITH
CIVIL APPLICATION NO.8909/2014 IN WP 9890/2013**

PRAKALP BADHIT SHETKARI BAHUDDDESHIYA SANSTHA
THROUGH ITS PRESIDENT SUDHESH PRABHAKAR PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Mr. Vinod P. Patil, Advocate for petitioner
Mr. D.R. Korde, A.G.P. for respondent no. 1
Mr.S.M.Godsay, Advocate for respondent nos. 2, 3 and 5

.....
WITH
WRIT PETITION NO. 8517 OF 2013

PRAFULLA SOMNATH AWARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Mr. Ajeet B. Kale, Advocate for petitioner
Mr. D. R. Korde, A.G.P. for respondent no. 1
Mr. S. M. Godsay, Advocate for respondent nos. 2 to 6

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

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DATE OF RESERVING THE ORDER : 08.07.2015
DATE OF PRONOUNCING THE ORDER : 14.08.2015

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PER COURT :- (Per S.V.Gangapurwala, J.)

1. The petitioner in Writ Petition no.9890/2013 claims to be registered society. The members of the Petitioner society are Project Affected Persons. The Petitioner in Writ Petition No.8517/2013 is also Project Affected Person. The lands of these petitioners have been acquired for the project of

respondents. The petitioners, vide the present petitions, seek directions against the respondents to grant permanent appointment to the petitioners as per the agreement executed between petitioners and respondents, so also, seek directions to issue appointment to the candidates as per merit in Trade Test as per Clause (6) of the advertisement dated 01.11.2012, so also, to cancel the appointments of the candidates in the recruitment process on the post of Technician-III and to direct the respondents to conduct fresh examination. They seek further directions to absorb all the project affected candidates who have participated in the said recruitment process and more particularly, the members of petitioner Union as per the educational qualification.

2. Mr. Kale, the learned counsel for the petitioner states that, the agreement has been entered into by the respondents. The respondents have to abide by the said agreement. In the agreement, there is no reservation of 50% or so. Near about 700 project affected persons are required to be absorbed. The said agreement nowhere restricted the appointment of the persons whose land was acquired for the project to the extent of 50% only. The learned counsel submits that, when the agreement is in force, the respondents have to abide by the agreement and

they have to absorb and accommodate each and every one. The learned counsel submits that, in view of Section 1(4)(b) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999, (hereinafter referred as to 'Act' for brevity) the respondents being instrumentality of the State, is bound by the same. According to the learned counsel, there is no affidavit filed on record spelling the concrete policy. No such concrete policy is available. According to the learned counsel, the petitioners are affected persons as per Section 2(2) of the Act and respondents are duty bound to implement the agreement and the provisions of the Act. The respondents cannot have concession. The concession can only be granted by the Government and by enacting Rules to that effect. The affidavit at no point of time states that the petitioners are not qualified. The petitioners are qualified. There was no impediment for the respondents to accommodate and absorb the petitioners. According to the learned counsel, the very purpose and the object of the Act is not being achieved. The persons are on the verge of crossing 45 years of age, still, they have not got benefit of the said agreement and the enactment. According to the learned counsel, no purpose would be served if the appointments are not being given for 15 to 20 years. The learned counsel submits that in the agreement there is no stipulation of 45 years of age. As such, this embargo put by the

respondents of maximum age limit of 45 years is beyond the purview of the agreement itself.

3. Mr. Patil, the learned counsel for petitioners adopts the argument of learned counsel Mr. Kale, and further states that, respondents are not considering the marks obtained in the Trade Test and are considering the candidates only on the basis of I.T.I. Marks. Many of the candidates are selected, and the petitioner has given names of the candidates in paragraph no. 10 of the petition. More than 15 persons have become age bar. Their children are minor and they cannot be considered till they are major.

4. Mr. Godsay, the learned counsel for respondents, submits that, as per the relevant Government Resolution, the reservation for project affected persons is to the extent of 5% only. But the respondents are keeping 50% of the posts for their project affected persons. There are in all 9 projects and the respondents are taking care to accommodate all. They are taking care to see that maximum persons should be accommodated at the place from where their land is acquired. The respondents have come out with the 'Pragat Kaushalya Prashikshin Scheme'. As per the said scheme, till the employment is given to the project affected

persons, Rs.6,000/- per month is being paid to them. If they are not I.T.I. qualified, training is given to them at the expenses of the respondents and stipend of Rs. 2000/- per month is paid to them. The learned counsel submits that even as per Section 6(c) of the Act, the respondents are required to fill in 50% posts of the 5% reserved for the project affected persons from amongst the person whose lands are acquired for the project. But, in fact, the respondents are keeping 10 times more reservation i. e. to the extent of 50% of the total posts for their project affected persons. According to the learned counsel, all endeavour is made to accommodate the project affected persons. The learned counsel submits that even as per the statute, appointments cannot be given beyond 45 years of age. According to the learned counsel, the Trade Test is conducted and on the basis of marks obtained in the Trade Test, the list is prepared.

5. We have considered the submissions canvassed by the learned counsel for the respective parties.

6. It is not a matter of dispute that Lands of the Petitioners and their members are acquired for the Project of Respondents. It is also not debate that the company has agreed to provide employment to these project affected persons. For the said

purpose respondents are keeping 50% of the post reserved for Project Affected persons category. While filling in the post from Project Affected Persons category the respondents are bound to follow the provisions of Statute and the Rules.

7. The Respondents are bound to provide employment to the project affected persons as per Rules and regulations on the basis of Corporate Social responsibility. The Act also orders implementation of such policy by providing reservation for PAP Category persons. Explanation to Section 6(c) also lays down that such establishment should see that at least 50% of the persons whose lands are affected by the project should be accommodated.

8. In the present case, it appears that, respondents have evolved a scheme by virtue of which training and stipend is given to these persons. The scheme known as 'Pragat Kushal Training' provides for modalities to be followed and observed by the respondents.

9. It appears that, before commencing upon the contentions of the petition it would be appropriate to appreciate the aim and object of the provisions of Administrative Circular No.118 dated

7.6.2010 issued by MAHAGENCO. It says MAHAGENCO is providing employment to project affected persons ("PAP" for short) as per the Government Rules and Regulations and based on principle of Corporate Social Responsibility. By way of temporary arrangement, for project affected persons by MAHAGENCO projects, who have completed ITK were provided "Pragat Kushal Training". Condition No.1 of this scheme was made for those PAPs who have completed ITI but could not be provided with employment by MAHAGENCO such PAPs will undergo one year "Pragat Kushal Training". Condition No.III of the scheme is, under, "Pragat Kushal Training" will be given stipend of Rs.6000/- per month. Condition No.IV of the scheme is, after completion of one year "Pragat Kushal Training", the trainees will undergo departmental examination and those who have cleared said examination will have to apply in response to the advertisement by MAHAGENCO. Later on based upon written test-trade by undergoing selection process, merit list will be prepared and candidates will be selected for appointment as per rules and regulations of MSPGCN, Government of Maharashtra orders and the Court's verdict on this subject. Condition No.5 of this scheme is, the trainee should not clear trade test (Departmental Examination) will be given one more opportunity as "Pragat Kushal Training" and if trainee does not

clear trade test (Departmental Examination) will not be allowed for further training and no consideration for the service will be given.

10. It is further made clear that under Administrative Circular No.183 dated 02.11.2011 a decision has been taken that project affected persons will be continued as “Pragat Kushal Trainees” until they are employed/appointed in the company by following due process of recruitment as stated above.

11. It is not the case of the petitioner that respondent is not following aforesaid scheme. The respondents while absorbing the PAP of their project will have to follow the mandate of law. The full bench of this Court in case **Rajendra Pandurang Pagare Vs. State of Maharashtra and others reported in 2009(4) Bom.C.R.928** has held that even PAPs have to undergo selection process. As such, these PAPs will have to apply pursuant to advertisement and as per the merit have to be selected amongst Project Affected Persons category.

12. The person in PAP category will have to be qualified and eligible for said purpose also. The Respondent is providing training opportunity to them as well as paying stipend and said

stipend is paid until they are finally absorbed by following due selection process.

13. We had specifically asked the Respondents to clarify as to if the PAP crosses 45 years of age, then what is the further course being followed. It is stated by respondents that, in that case, the nominee of such PAP is considered for employment. We feel the said course to be reasonable and proper. The outer age limit of 45 years as fixed in employment cannot be relaxed by the respondents. So, in case, said PAP of their project crosses 45 years of age, then, his next kin or nominee is provided with employment from PAP category by following procedure.

14. One of the grievance of the petitioner is that, marks obtained in trade test pursuant to advertisement is not followed. We had called for information in this regard from the respondents. The respondents have placed on record the facts with list, which shows that selection from PAP category is made on the basis of marks obtained in trade test pursuant to advertisement and the apprehension of petitioners in this regard is without basis.

15. On going through the affidavit filed, it is observed that respondents are following the scheme as agreed between the parties and the respondents are taking efforts to accommodate the persons whose lands are acquired under the Project. There are limited posts available. It is submitted by respondents that, in the State they are having 9 projects and in all said projects the respondents are trying to accommodate these PAP. We would only add that respondents shall try to accommodate as far as possible these Project Affected Persons at the project where his land is acquired. Of course, it may not be possible to follow the same with mathematical precision and would depend upon availability of post, but, the respondents can certainly make efforts in this direction. As direct appointments cannot be given de hors selection process the prayer of the petitioner for appointment cannot be considered. Writ Petition is disposed of accordingly. No costs.

16. In view of disposal of writ petitions, pending civil application also stands disposed of.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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aaa/-