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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.35 OF 2014

Suresh Vitthal Pawar ...Petitioner
vs.
The State of Maharashtra
and others ...Respondents

ALONG WITH
PUBLIC INTEREST LITIGATION NO.165 OF 2014

Shambhuraj Shivajirao Desai ...Petitioner
vs.
The State of Maharashtra
and others ...Respondents

Mr.Anand S. Patil for the Petitioner in PIL 35/2014
Mr.Tejpall S. Ingale i/b Mr.Nagesh Chavan for the
petitioner in PIL 165/2014
Ms M.P.Thakur, AGP for the respondent Nos.1 and 2

CORAM : A.S.OKA, AND A.S.GADKARI, JJ.
DATE ON WHICH SUBMISSIONS ARE HEARD:DECEMBER 9, 2014
DATE ON WHICH JUDGMENT IS PRONOUNCED:FEBRUARY 11,2015

JUDGMENT: (PER A.S.OKA,J.)

1 As the question arising in these two petitions is more or less identical, the same are taken up together for final disposal.

2 The State Government has issued a Government Resolution (for short 'GR') on 17th November 1994 in relation to earthquake affected persons. The said GR notes that as per the recommendations of Mandal Commission, the issue of providing reservation for the earthquake affected persons in the Government

employment was considered. The said GR records that there is a reservation provided for project affected persons in the employment. It was resolved that in the 5% quota reserved for project affected persons, a reservation should be provided even for earthquake affected persons. There is a further GR dated 9th August 1995. The said GR refers to the earlier GR dated 17th November 1994. It provides that the reservation for earthquake affected persons will be monitored by the District Collectors who shall examine the matters and take appropriate decision. The clause (a) of the said GR defines the earthquake affected persons. Free English translation of the clause (a) reads thus:

"(a) Definition of earthquake affected persons -----
In case of earthquake affected persons, one person each from earthquake affected families will be entitled to the benefit of reservation in the matter of employment. For determining whether a family is an earthquake affected family, following criteria shall be considered:

- (a) Families in 52 villages in Latur and Osmanabad Districts which were completely destroyed in earthquake;
- (b) Those whose houses have been completely destroyed;
- (c) those whose places of business or business were completely destroyed thereby causing the loss of the source of livelihood."

3 The GR dated 9th August 1995 also defines "family" of earthquake affected persons. It provides that as per clause(c) of section 6 of the Maharashtra Rehabilitation of Project Affected Persons Act,1986, the family will include husband, wife, son and unmarried daughter as well as brother, sister, grandson, daughter-in-law residing with the family and who are dependent upon the head of the family.

4 The issue involved in these PILs is whether the earthquake affected families of Koyana earthquake are entitled to the benefits of reservation provided under the said G.Rs. It is pointed out that there were earthquakes in the region of Koyana Dam in the year 1967 and 1993 in which large number of families in Patan Taluka, District Satara were severely affected. In PIL 35/2014 ,it is pointed out that by a communication dated 13th December 2010, issued on behalf of the District Collector, Satara a stand has been taken that considering the GR dated 9th August 1995, a certificate of earthquake affected persons can be issued only to the persons residing in 52 affected villages in Latur and Osmanabad Districts. It is stated that as per the letter dated 23rd September 1997 issued by the State Government to the Divisional Commissioner, Pune, the earthquake affected persons of Koyana Dam will not be entitled to the benefit of reservation. The relief sought in PIL 35 of 2014 is for a declaration that even the earthquake affected persons of Koyana Dam will be

entitled to the benefit of reservation. Similar relief is prayed for in PIL 165 of 2014.

5 A common reply has been filed by Shri Mandar Madhukar Pohore, the Deputy Secretary of the Disaster Management Unit, Revenue and Forest Department, Mantralaya, Mumbai. In the said affidavit, a stand has been taken that the aforesaid benefit is available exclusively to the persons residing in 52 villages in Latur and Osmanabad Districts and it is not applicable to earthquake affected people in any other districts.

6 The submission of the learned counsel for the petitioners is that the basic GR is of 17th November 1994 which is applicable to all districts in the State. Their contention is that in the GR dated 9th August 1995, it is provided that the persons falling in the three categories set out in clause (a) will be covered by the concept of earthquake affected families. Their contention is that the families in 52 villages in the Latur and Osmanabad Districts which were completely destroyed in the earthquake fall in the first of the three categories provided in GR dated 9th August 1995. The submission of the petitioners is that the object of issuing G.Rs is to give benefit of reservation to one member each of the families affected by earthquakes. The submission of the learned AGP is that the GR dated 9th August 1995 makes it clear that the same applies only to the families residing in 52 villages earthquake affected in Latur and Osmanabad Districts and that

the same will have no application to those who are affected by any earthquakes in other districts in the State.

7 We have given careful consideration to the submissions. The GR dated 17th November 1994 records the decision of the Government to include earthquake affected persons in the category of project affected persons. It is provided therein that the earthquake affected persons will be entitled to reservation in the 5% quota reserved for project affected persons in the Government employment. The said GR does not confine its applicability to the persons affected by earthquakes in any particular district or districts.

8 We have already made a reference to the GR dated 9th August 1995. We have reproduced free English translation of the definition of the project affected persons in the said GR dated 9th August 1995. The said GR dated 9th August 1995 makes a reference to the earlier GR dated 17th November 1994. It is a GR issued which clarifies the earlier GR dated 17th November 1994 by providing for definition of the Earthquake affected persons and the definition of Family. The definition of Earthquake affected persons provides that the families falling in three categories enumerated therein will be the families of Earthquake affected persons. The first category is of the families in 52 villages in Latur and Osmanabad Districts which were completely

destroyed due to earthquake. The second category is of those whose houses have been completely destroyed due to earthquakes and the third category is of those whose places of business or business have been completely destroyed due to earthquake resulting into the loss of the source of livelihood. The first category relates to 52 villages in Latur and Osmanabad District. In the other two categories, there is no reference to any particular district or any particular place. If the contention of the respondents that the reservation is applicable only to the earthquake affected families in 52 villages of Latur and Osmanabad Districts which were completely destroyed is accepted, there was no reason to provide a separate category of the persons whose houses have been destroyed. There was no reason to include a separate category of those whose places of business have been destroyed. Moreover, the second and third categories do not refer to any particular district or any particular place. The recitals of the GR dated 9th August 1995 show that the same has been issued in continuation of the earlier GR dated 17th November 1994. The GR dated 17th November 1994 does not restrict the benefit of reservation in the Government employment to the earthquake affected persons of a particular district or the districts. It is not provided in the GR dated 9th August 1995 that earlier GR dated 17th November 1994 stands modified.

9 On the conjoint reading of the GR dated 17th November 1994 and 9th August 1995, we are of the

considered view that the reservation in the employment will be available to the families of earthquake affected persons which are covered by one of the three categories in clause (a) of the GR dated 9th August 1995. Thus, the benefit of reservation will be available to all those who are covered by the GR dated 9th August 1995 provided they satisfy the tests laid down by the said GR. Thus, the benefits will be available to the families whose houses were destroyed due to earthquake. The benefit will be available to those whose places of business or business were destroyed due to earthquake. Families satisfying one of these two tests in all districts will be entitled to the benefit of reservation. The reservation in the said two categories is not restricted to Latur and Osmanabad districts. We make it clear that we are not deciding the issue whether the benefit will be available to those who are affected by the earthquakes which have taken place after 9th August 1995. The said issue is kept open.

10 Therefore, the petitions must succeed to the above extent. Hence, we pass the following order;

(a) We hold and declare that the benefits provided under the GR dated 17th November 1994 and 9th August 1995 are also available to earthquake affected families residing near Koyana Dam and particularly in Taluka Patan, District Satara provided on the date of the said GR, they satisfy the second or third

tests laid down in clause (a) in the GR dated 9th August 1995 which is quoted in paragraph above;

(b) We make it clear that we have made no adjudication on the issue whether the persons affected by the earthquakes which have taken place after 9th August 1995 are covered by the said GR;

(c) We direct the State Government to issue appropriate clarification in terms of this Judgment and Order to all the District Collectors in the State within a period of three months from today;

(d) Rule is made absolute on above terms with no order as to costs.

(A.S.GADKARI,J.)

(A.S.OKA,J.)

. After pronouncement of the Judgment, the learned AGP prays for grant of stay. The learned counsel for the petitioner objects to the said prayer. We accordingly direct that the operation of the Judgment will remain stayed for a period of six weeks from today.

(A.S.GADKARI,J.)

(A.S.OKA,J.)