

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

WRIT PETITION NO. 11916 OF 2015

Khandu Raosaheb Patil,
Age- 27 years, Occ.: Nil,
R/o. At Yelloriwadi, Post Korangda,
Tq. Ausa, Dist. Latur.

... PETITIONER.

VERSUS

1. The State of Maharashtra
Through its Secretary,
Power Department,
Mantralaya, Mumbai.
2. The Director General,
Maharashtra State Power Generation
Company Ltd., Plot No. G-9, 6th Floor,
Prof. Anant Kanekar Marg,
Bandra East, Mumbai – 400051.
3. The Executive Director
Maharashtra State Power Generation
Company Ltd., Plot No. G-9, 6th Floor,
Prof. Anant Kanekar Marg,
Bandra East, Mumbai – 400051.
4. Prakash Venkat Sarje,
Age: Major, Occu: Service,
R/o. 22/11 KV Rohan Mithila
Substation (MSEB),
Ronan Mitila, Viman Nagar,
Pune – 411 014.

... RESPONDENTS.

Mr. Anandsing Bayas, Advocate for Petitioner;
Mr. S.D. Kaldade, A.G.P. for Respondent No.1/State;
Mr. A.M. Gaikwad, Advocate for Respondents No.2 and 3;
Mr.E.S. Murge, Advocate for Respondent No.4.

CORAM : S.S. Shinde and P.R. Bora, JJ.

RESERVED ON : 01st March, 2016
PRONOUNCED ON : 18th March, 2016

JUDGMENT: (Per : P.R. Bora, J.)

- 1) Rule. Rule made returnable forthwith. Heard the learned Counsel for the respective parties.
- 2) The Petitioner has filed the present petition, challenging the selection of Respondent No.4 on the post of Technician-III from the quota, meant for the earthquake affected persons belonging to Scheduled Tribe. Further, the petitioner has sought the direction against the Respondents to consider his candidature for appointment to the said post.
- 3) As averred in the petition, respondents No.2 and 3 had issued an advertisement No.04(Aug)/2014, inviting applications for the post of Technician-III. Total 308 posts were to be filled-in, out of which 17 posts were reserved for the candidates belonging to Scheduled Tribe. Amongst the 17 seats so reserved for the Scheduled Tribe candidates, one post was

reserved for the earthquake affected persons. As further averred in the petition, since the petitioner belongs to the Scheduled Tribe and was also possessing the certificate of earthquake affected person, he submitted his on-line application, claiming reservation as an earthquake affected person belonging to Scheduled Tribe. Respondent No.4 had also applied for the post of Technician-III, claiming reservation to the post reserved for the earthquake affected persons belonging to Scheduled Tribe.

4) It is the case of the petitioner that, the petitioner and respondent No.4 both appeared for written and oral examinations, in which petitioner secured 23 marks, whereas respondent No.4 secured 29 marks. Since respondent No.4 has secured more marks than the petitioner, he was shown to have been selected for the sole post reserved for the earthquake affected persons belonging to Scheduled Tribe. It is the further case of the petitioner that, in the selection list published by respondents No.2 and 3, petitioner was declared ineligible on the ground that, he submitted the certificate of earthquake affected person of the latter date. It is the further case of the petitioner that, respondent No.4 was not liable to be selected for the seat reserved for the earthquake affected persons belonging to Scheduled Tribe category, for the reason that, respondent No.4 had already availed benefit of the said certificate and has

secured an appointment on the post of Operator and had also joined on the said post in the employment of respondents No.2 and 3. It is the further case of the petitioner that, the petitioner and respondent No.4 were the only two candidates who were eligible and entitled for the appointment on the post of Technician-III reserved for the earthquake affected persons belonging to Scheduled Tribe. It is the further case of the petitioner that, since respondent No.4 has already availed the benefit available to the earthquake affected persons, he was not liable to be selected and appointed on the post of Technician-III as advertised vide advertisement No.04 (Aug)/2014. It is the further case of the petitioner that, after eliminating the name of respondent No.4, petitioner alone was eligible and entitled to be selected and appointed on the said post of Technician-III. It is the further case of the petitioner that, the respondents have however declared him ineligible on the ground that, the petitioner did not submit the certificate of the earthquake affected person of the date prior to the date of submission of the on-line application.

5) In background of the facts as aforesaid, the petitioner has filed the present petition, seeking directions as mentioned here-in-above. It is the contention of the petitioner that, he was possessing the certificate of earthquake affected person since

13.12.2010, however, since a change occurred in his surname, the said earlier certificate dated 13.12.2010 was cancelled and a fresh certificate came to be issued in his favour on 18.02.2015. According to the petitioner, he was thus holding and possessing the certificate of earthquake affected person on the date of submitting his on-line application. In the circumstances, according to the petitioner, the respondents No.2 and 3 should not have declared him ineligible on the said ground.

6) Shri Samir Gopal Dewoolkar has filed an affidavit in reply on behalf of respondents No.2 and 3. It is the contention of respondents No.2 and 3 that, the candidates applying for the posts advertised vide advertisement No.04 (Aug)/2014 were required to possess the requisite qualification and the documents supporting their qualification and claim for reservation as on the last date of the application i.e. 10.09.2014. It is further contended that, when the petitioner was claiming reservation to the post reserved for the earthquake affected persons belonging to Scheduled Tribe category, it was incumbent on his part to submit the certificate of earthquake affected person valid as on the last date of the application i.e. 10.09.2014. It is the further contention of the respondents No.2 and 3 that, since the petitioner submitted the certificate of earthquake affected person of the date 18.02.2015, he was rightly declared ineligible.

Respondents No.2 and 3 have further contended that, the certificate of earthquake affected person submitted by respondent No.4 has been referred for verification, and in case it is found that, respondent No.4 has already availed the benefit of the said certificate, the selection of respondent No.4 would stand cancelled.

7) Respondent No.4 has also submitted his affidavit in reply wherein he has admitted that, he has already availed the benefit of the certificate of earthquake affected person. Respondent No.4 has further contended that, he is not opting for the appointment to the post of Technician-III. He has also contended that, he may not have any grievance if the petitioner is considered to be appointed to the said post, since he and the petitioner both belong to the same village, and petitioner also falls in the category of earthquake affected person.

8) Petitioner has placed on record the copy of advertisement No.04 (Aug)/2014, the list of candidates shortlisted for documents verification, the final selection list, the mark list and the copy of the certificate of earthquake affected person in his favour.

9) After having heard the learned Counsel for the respective parties and on perusal of the documents filed on

record, it is revealed that, the names of petitioner and respondent No.4 were shortlisted for documents verification. It is further not in dispute that, respondent No.4, as per his own contention, has already availed the benefit of the earthquake affected person and is not opting for the appointment on the post of Technician-III for which he has been selected. Admittedly, the petitioner has been held ineligible on the ground that, the certificate of earthquake affected person submitted by the petitioner is not in consonance with the requirement as envisaged. It is further not in dispute that, for the seat reserved for the earthquake affected persons belonging to Scheduled Tribe, petitioner and respondent No.4 were the only two candidates shortlisted for documents verification. In view of the fact that, respondent No.4 himself has admitted that, he has already availed the benefit of earthquake affected person, he has to be held dis-entitled for claiming the benefit of the earthquake affected person on the second occasion. In the circumstances, though respondent No.4 is shown to have been selected for to be appointed on the post of Technician-III, reserved for the earthquake affected person belonging to Scheduled Tribe category, no appointment can be issued in his favour and his selection needs to be cancelled.

10) Next question arises, whether the decision of the respondents No.2 and 3 declaring the petitioner ineligible for not

submitting the certificate of the earthquake affected person in consonance with the requirement can be sustained.

11) As contended by respondent Nos.2 and 3 in para 5 of their affidavit in reply, eligibility of the candidate was to be considered as on 10.09.2014. According to respondent Nos.2 and 3 since certificate of the 'earthquake affected person' submitted by the petitioner was of the date 18.02.2015, the petitioner has been rightly held not eligible for to be appointed to the advertised post.

12) The petitioner has placed on record the certificate of 'earthquake affected person' issued by Tahsildar, Ausa on 18.02.2015. We have carefully perused the contents of the said Certificate. In para No.1 of the said certificate, it is averred that, village Kavli , Tq. Ausa, Dist. Latur of which Shri Koli Raosaheb Vitthal is the resident is one of the village, which was completely destroyed in the earthquake occurred on 30.09.1993. In para No. 2 it is averred that, Shri Patil Khandu Raosaheb i.e. the present petitioner is the son of Shri Koli Raosaheb Vitthal, the earthquake affected person. The last para is more important wherein it is explained that, the previous certificate of earthquake affected person issued on 13.12.2010 by the Sub Divisional Officer, Latur in the name of Shri Koli Khandu Raosaheb vide outward no. २०१०/भूकंप/कावि/४२३ dated 13.12.2010 is cancelled and in place of

the said certificate, the present certificate is being issued in the name of Shri Patil Khandu Raosaheb.

13) From the contents of the certificate as aforesaid, it is quite evident that, the present petitioner was holding the certificate of project affected person since 13.12.2010. As has been clarified by the petitioner, by providing necessary particulars in that regard, since change occurred in the surname of the petitioner, which has been notified in the official gazette, the petitioner applied for the certificate of project affected person in his changed name, and accordingly the same was issued in his favour by Tahsildar, Ausa, Dist. Latur on 18.02.2015. As has been explained by the petitioner, since he has made an application for the post of Technician-III in the name as Patil Khandu Raosaheb, he was required to submit the certificate of earthquake affected person in the said name or else he could have very well submitted the certificate dated 13.12.2010, which was in his erstwhile name as Koli Khandu Raosaheb.

14) It appears to us that, the respondent Nos. 2 and 3 must have given due consideration to the fact mentioned in the certificate dated 18.02.2015 itself that, the said certificate has been issued in the name of the petitioner by canceling his earlier certificate dated 13.12.2010, which was issued to the petitioner in the name as Koli Khandu Raosaheb and should not have

therefore held the said certificate to be not in consonance with the envisaged requirement. Though the certificate produced by the petitioner before the respondents at the time of verification of documents bears the date as 18.02.2015, from the contents of the said certificate, it is quite evident that, the petitioner was certified as the earthquake affected person on 13.12.2010 itself. The Petitioner was thus fulfilling the requirement for to be appointed to the post reserved for the earthquake affected person. We feel that, wherever certain benefits are extended to the earthquake affected persons or project affected persons or other such similar categories, it should be the endeavor that, such benefits are actually extended to such candidates as far as possible and not to refuse them such benefits raising technical and some times hyper technical objections. In the instant case, according to us, the respondents ought to have accepted the certificate of earthquake affected person, submitted by the petitioner to be valid compliance of the requirement, having regard to the contents of the said certificate. We hold that the petitioner was holding the certificate of earthquake affected person on 10.09.2014 and was thus eligible to be considered from the category of earthquake affected person.

15) In view of the finding recorded by us as above that, on 10.09.2014 the petitioner was holding the certificate of

project affected person, the petitioner has become entitled to be considered for to be appointed to the post of Technician-III reserved for the project affected person (S.T.). As has been discussed hereinabove, the petitioner and respondent No.4 were the only two candidates shortlisted for to be considered for the appointment to the post reserved for the earthquake affected person belonging to Scheduled Tribe. In premise of the fact that, we have held the respondent No.4 to be not entitled for such appointment, the petitioner deserves to be considered for to be appointed on the said post, if he otherwise fulfills other requirements. We are, therefore, inclined to allow the present petition. Hence, following order.

ORDER

- (a)** Selection of the respondent No.4 for the appointment to the post of Technician-III, in pursuance of the advertisement No. 04(Aug)/2014, reserved for the earthquake affected persons belonging to Scheduled Tribe, is quashed and set aside.
- (b)** Respondent Nos. 1 to 3 are directed to consider the claim of the petitioner for the appointment to the said post of Technician-III, reserved for the earthquake affected persons belonging to Scheduled Tribe, if he otherwise fulfills all other requirements, within four weeks from the date of this order.

- (c) Rule is accordingly made absolute in the aforesaid terms with no order as to costs.

**P.R. Bora,
Judge**

...

**S.S. Shinde,
Judge**

S P Rane