IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6463 OF 2016

1. Kishor s/o Prabhakar Mahajan,
   Age : Major, Occu. Nil,
   R/o at post Fulgaon, Taluka
   Bhusawal, District Jalgaon

2. Bhushan s/o Dhanraj Choudhari,
   Age : Major, Occu. Nil,
   R/o at post Fulgaon, Taluka
   Bhusawal, District Jalgaon **PETITIONERS**

VERSUS

1. The State of Maharashtra
   through its Principal Secretary,
   Department of Energy,
   Mantralaya, Mumbai-32

2. The Maharashtra State Power
   Generation Company Ltd.,
   through its Managing Director,
   Prakashgad, IInd Floor,
   Bandra (East), Mumbai

3. The General Manager
   (Human resources),
   The Maharashtra State Power
   Generation Company Ltd.,
   Mumbai

4. The General Manager
   (Establishment Civil
   Construction Division No.I,
   The Maharashtra State Power
   Generation Company Ltd.,
   Deepnagar, Bhusawal,
   District Jalgaon

5. The Chief Engineer (O&M),
Bhusawal Thermal Power Station,
Deepnagar, Taluka Bhusawal,
District Jalgaon **RESPONDENTS**

Mr. U.R. Awate, Advocate, holding for Mr. S.B. Talekar, Advocate for the petitioners
Mr. K.S. Patil, A.G.P. for the respondent/State
Mr. Satish M. Godsay, Advocate for respondent Nos.2 and 3

CORAM : S.V. GANGAPURWALA AND R.G. AVACHAT, JJ.

DATE : 4th DECEMBER, 2018

ORAL JUDGMENT (PER : S.V. GANGAPURWALA, J.) :

Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties and the learned A.G.P., taken up for final hearing.

2. Mr. Awate, learned counsel for the petitioners submits that the petitioners are the nominees of the persons, whose land has been acquired by respondent Nos.2 to 5. The petitioners were also issued appointment orders and one year thereafter, the petitioners are discontinued. The learned counsel submits that the reason given for discontinuation, in the communication dated 6th October, 2012, is the closure of the project. Under communication dated 13th April, 2016, issued by the

General Manager – respondent No. 3, it is stated that nomination could not have been given in favour of the petitioners as they are the sons of sisters of the persons, whose land has been acquired and could not have been the nominees, as per Govt. Resolution dated 11th May, 2011. The learned counsel submits that the petitioners' land was acquired in the year 2009. The appointments were given to the petitioners pursuant to the Memorandum of Understanding ("M.O.U.", for short) dated 3rd June, 2010. There are other persons similarly situated, who have been given appointment and continued in service. The action of the respondents to discontinue the petitioners is required to be quashed and set aside.

3. Mr. Godsay, learned counsel for respondent Nos.2 and 3 submits that the petitioners have been given appointment as nominees of the persons, whose land has been acquired. However, it has been noticed that the petitioners do not come within the ambit of the definition of "family". The respondent being a Government company is bound by the Government policy. The family of the project affected person would include the person himself, husband, wife, son, unmarried

daughter, brother, sister and daughter-in-law. The appointment of the petitioners is not permissible as per the Government policy enshrined in the Govt. Resolution dated 11th May, 2011. The illustration given by the petitioners, appointed as trainees, is in respect of those persons who have been appointed prior to the said policy.

4. It is not disputed by respondent Nos.2 to 5 that the petitioners are the nominees of the persons, whose land has been acquired. The petitioners were also given appointment as trainees as per the Scheme under the M.O.U. dated 3rd June, 2010. The Scheme does not restrict the definition of a nominee. It only states that nominee of the person, whose land is acquired, would be considered. The Govt. Resolution relied by the respondents dated 11th May, 2011 is subsequent to the date of M.O.U. The rights are crystalized in favour of the parties pursuant to the M.O.U. dated 3rd June, 2010. Any subsequent Govt. Resolution may not affect the rights crystalized in favour of the person under the M.O.U. dated 3rd June, 2010. The parties have also acted upon the said M.O.U.

5. As observed above, the parties would be governed by the M.O.U. dated 3rd June, 2010. The said M.O.U. has also been accepted, implemented and acted upon by the parties as the petitioners were given appointment as trainees pursuant to the said M.O.U.

6. In light of above, the communications dated 6th October, 2012 and 13th April, 2016, refusing to treat the persons as project affected persons/nominees of the project affected persons, are quashed and set aside. Respondent Nos.2 to 5 shall treat the petitioners as valid nominees of the project affected persons and proceed further as per the Memorandum of Understanding dated 3rd June, 2010. The respondents shall take further steps expeditiously and preferably within eight weeks. The Writ Petition is accordingly allowed and disposed of. Rule made absolute. No costs.

[R.G. AVACHAT]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

npj/wp6463-2016