

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

PUBLIC INTEREST LITIGATION NO. 70/2018

Elgar Pratishthan & ors.

..VS..

Union of India & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.S. Sanyal, Advocate for petitioner(s)
Shri A.S. Fulzele, Addl. GP for respondent nos. 3 to 9

CORAM : B.P. DHARMADHIKARI AND

Z.A.HAQ, JJ.

DATED : 13/06/2018

1] The 26 individuals and a public trust are before this Court with a prayer that being displaced persons, they have migrated from other country to this part of country between 1964 and 1970 and the State Government has as per law asked them to settle in various areas of Gadchiroli District. Those areas/Tahsils are described in individual description of the petitioners. There they are dependent upon forest and forest produce only to earn their livelihood and as such no discrimination can be made between citizens residing there since long and the petitioners. Emphasis is, the petitioners have been constrained to live on forest/forest produce by circumstances.

2] In this situation, our attention is drawn to Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 particularly definition contained in Section 2 (o) to urge that it makes an artificial distinction particularly *qua* the petitioners.

Requirement of staying in forest for three generations defeats the object of the Act that the persons like petitioners who are forest dwellers not by volition, must also be permitted to take advantage of such beneficial legislation.

3] Learned AGP has opposed the contention. He submits that provisions of law are very clear and an exception has been made out only in case of Scheduled Tribes and traditional forest dwellers.

4] Petitioners do not claim to be Scheduled Tribes. They are trying to compare themselves with forest dwellers. Section 2 (o) does not qualify all forest dwellers to seek benefit of above mentioned legislation. It enables only traditional forest dwellers to apply and seek benefit. Thus, even in case of citizens, residing in said area since long, they have to establish that atleast three generations prior to 13/12/2005, they are primarily residing and are dependent on forest or forest land.

5] The object of Act is therefore to assist Scheduled Tribes and traditional forest dwellers. We do not see anything wrong either with the object or then classification amongst forest dwellers i.e. traditional forest dwellers as defined in Section 2 (o). The difference adopted is neither arbitrary nor irrelevant.

6] Petitioners therefore have not been discriminated against only because they have migrated from some other country or some other part. They are being treated similarly with the citizens who are not traditional forest dwellers. They are attempting to have new legislation or a new policy in the

field. In this jurisdiction, it is not possible for us to look into the same.

7] Hence, with liberty to petitioners to take suitable steps as are open in law, we dispose of PIL. No costs.

JUDGE

JUDGE

Ansari