

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

**REVIEW APPLICATION (CIVIL) NO. 224 OF 2016 IN
WRIT PETITION NO. 798 OF 2015**

**SHAIKH AJIMODDIN PACHULAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Applicant : Shri R. P. Adgaonkar
AGP for Respondent Nos 1 to 5 : Shri N. T. Bhagat

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**CORAM : RAVINDRA V. GHUGE AND
P. R. BORA, JJ.**

DATED : 12th JULY, 2019.

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PER COURT :

1. We have heard the learned Advocate for the Review Applicant and the learned AGP on behalf of respondent Nos.1 to 5.

2. The learned Advocate for the Review Applicant submits that he has served respondent No.6 - the acquiring body through Advocate's notice considering the leave granted to him by order dated 15/04/2019.

3. The issue raised is as regards whether the Review

Applicant would be covered by Section 2(10)(b) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 which describes a project and consequentially, whether the petitioner would be entitled for the issuance of a Project Affected Person Certificate with all benefits accruing therefrom.

4. We had heard the learned Advocate and the learned AGP on 29/04/2019 and had passed the following order :-

"1 On 15.04.2019, we had passed an order bringing it to the notice of the learned AGP that he would have to prepare himself on the Review Application and especially on Section 2(10)(b) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for short "the 1999 Act"), which describes a "project".

2 We find that there is a change in the assignment of the learned AGP before us today in this Review Application. It is stated by the learned AGP that the Government Resolution dated 01.01.1980 would exclude the persons like the Review Applicant, whose land has been acquired for the project concerning transmission of electricity or erection of a sub-station.

3 We find it unconscionable that for every date of hearing, there is a change in the learned AGP in such a matter, which is to be considered with utmost seriousness

keeping in view the contentions of the Review Applicant. We, therefore, wish to bring it to the notice of the learned Government Pleader that either he himself may consider representing the State in this matter or he may allot this matter to any learned AGP with the understanding that the said AGP would continue with this brief till we decide this Review Application.

4 We find that the Review Applicant has put forth a prayer as regards he being entitled for a Project Affected Person Certificate, which would further entitle him to all such benefits as are available under the various Government Resolutions in this State, including the right to have a preference in employment on the basis of the Project Affected Person Certificate.

5 In this backdrop, we find that the State will have to be prepared to address us on Section 1(4)(a) and (b), which pertain to the applicability of the 1999 Act, Section 2(10)(b) and (c) wherein, clause (b) includes a power project that is to say construction, extension, improvement or development of any work for the production or supply of electricity or any work conducive to electrical development, and clause(c) excludes a power project, which would have semblance of a public utility project. We also find that the definitions of "affected zone" and "affected persons" as prescribed under Section 2 of the 1999 Act, will have to be considered in the light of Section 13, which permits declaration of areas to be treated as affected areas or benefited zones.

6 We also find that it needs to be decided as to whether, the Government Resolution dated 01.01.1980, excluding persons, like the Applicant herein, from the benefits available to the project affected persons, would lose its efficacy in view of the 1999 Act introduced by Maharashtra Act No.XI of 2001.

7 The learned AGP seeks an adjournment since he submits that the office has allotted this file to him today.

8 In view of the above, though we express our displeasure on the part of the State in seeking an adjournment, this matter shall stand over beyond vacation in order to enable the State to consider the above provisions and file an affidavit in reply so as to indicate as to what has been the policy of the State Government pursuant to the introduction of the 1999 Act in matters similar to the one in hand. Such an affidavit in reply shall be filed on or before 14.06.2019, failing which, we would presume that the State Government does not desire to enter an affidavit in reply.

9 After such an affidavit in reply is filed by the State, liberty is granted to the Review Applicant to circulate this matter."

5. The order sought to be reviewed is dated 19/08/2015 passed by us, by which, we have relied upon the Government Resolution dated 09/06/1986 and have concluded that a simple certificate certifying that the petitioner is a project

affected person could be issued. We have recorded that such certificate does not entitle the petitioner to secure benefits *insofar* as job reservations are concerned. We have also mentioned that if the petitioner needs the certificate, he could approach the Collector with a proper application.

6. The learned AGP has drawn our attention to the affidavit in reply filed by respondent No.4 Pradeep Prabhakar Kulkarni working as Deputy Collector (EGS), Collector Office, Latur, dated 04/06/2019, in this Review Application. Our attention is specifically drawn to paragraph 6 of the said affidavit which reads as under :-

"In view of the above facts and circumstances I say and submit that, power project is a project as per section 2(10) (b) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 and the petitioner's land from village Takali, Tq. & Dist. Latur to the extent of 69 R from Survey No. 265 has been jointly acquired for the purpose of constructing 33 KV Sub-station of electricity board and a compensation of Rs. 1,22,475/- has been jointly paid to the petitioner and his brothers, hence permission may be granted to decide the application of the petitioner for grant of Project Affected Certificate afresh by following due process of law"

7. The learned AGP, therefore, submits that respondent No.4 acknowledges that the case of the Review Applicant would be covered by Section 2(10)(b) of the 1999 Act and a certificate to that effect could be issued after the Review Applicant moves an application.

8. In view of the above, this Review Application is allowed. The order passed by us dated 19/08/2015 shall stand recalled. We, therefore, hold that the petitioner's case would be covered under Section 2(10)(b) of the 1999 Act.

9. The petitioner would be at liberty to move an appropriate application to the District Collector, Latur for the issuance of such a certificate. It is expected that the District Collector, Latur would consider this case expeditiously and would issue such a certificate preferably within a period of EIGHT WEEKS from the date of receiving such an application from the petitioner.

10. Needless to state, *insofar* as the advantage of the PAP Certificate for seeking employment is concerned, we leave it to

the authorities to consider such an application strictly in accordance with its policies and the rules applicable, keeping in view that the petitioner has two sons, who are eligible for employment and the rules mandate that only one person of the family can take advantage of the PAP Certificate while seeking an employment in the state government or the state instrumentalities.

11. It goes without saying that since the acquiring body is respondent No. 6 herein, namely Maharashtra State Electricity Distribution Company Limited, the said authority would consider an application for employment as per rules, without questioning the PAP Certificate which would be granted by the State Government to the review applicant.

(P. R. BORA, J.)

(RAVINDRA V. GHUGE, J.)

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