

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

WRIT PETITION NO.1597 OF 2018

Mahadu Janu Kurlle
and others

.... Petitioners.

Versus

The State of Maharashtra
and others

....Respondents.

Mr. Subhash Pakale i/b. Mr. S.M. Katkar for the Petitioners;
Mrs. P.N. Diwan, AGP for Respondent Nos. 1 to 3;
Mr. Prashant Chavan with Ms. Chaitali Kendare i/b. M/s. Navdeep
Vora and Associate for Respondent No.4.

....

**CORAM : R.M.BORDE &
N.J. JAMADAR , JJ.**

DATED : 11th April, 2019.

ORDER (Per: R.M Borde, J)

1. Heard.
2. The petitioners are the projected affected persons whose landed properties have been acquired for construction of Barvi Dam Project. Respondent No.4 i.e. The Maharashtra Industrial Development Corporation undertook construction of Barvi Dam Project with a view to provide water to the industrial area of Thane and Raigad Districts. In the first phase of the Barvi Dam Project having water storage capacity of 122.85 million liters was

completed in the year 1972. The water storage capacity was thereafter increased in phased manner in the year 1986 and 1998 and the height of the Dam was increased. As a result of augmentation of the water storage capacity of the Barvi Dam, the lands belonging to the petitioners were acquired. The petitioners thus claim that they are the affected persons within the meaning of the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 and are entitled for the benefits provided under Section 10(6) of the said Act.

3. The petitioners also contend that they have been discriminated in the matter of providing employment by the State Government. The petitioners object to the Government Resolution dated 18.09.2017 and contend that the policy adopted by the State is a discriminatory since it creates sub categories of the displaced persons and the affected persons. The Government Resolution dated 18.09.2017 mandates providing for employment benefits to the extent of 7% vacancies in the institution of local self Government and M.I.D.C. However, the benefits have been restricted only in favour of the displaced persons. The petitioners contend that though the decision recorded in the Government Resolution dated 18.09.2017 refers to the affected families, however, the introductory part of the

Government Resolution refers to extension of benefits to the families who have been displaced as a result of construction of Barvi Dam Project.

4. The information gathered by the State Government indicates that there are 1163 families who have been displaced as a result of the Barvi Dam Project and the benefits in the matter of employment have been extended to one member from each of the 1163 families. The petitioners contend that the decision has been taken by the State Government in pursuance to the directives issued by the Hon'ble Chief Minister on 10.08.2016. The directions issued by the Hon'ble Chief Minister relate to providing employment to a member of the family belonging to displaced persons category. It is not a matter of dispute that the families of the petitioners have not been displaced as a result of the construction of Dam, however, the petitioners belong to affected persons category. The Government Resolution dated 18.09.2017 does not relate to the petitioners and the same is restricted to 1163 displaced persons and families.

5. An affidavit in reply is presented on behalf of the State Government, wherein it has been contended that the policy

decision has been taken in view of the instructions issued by the Hon'ble Chief Minister on 10.08.2016. As a part of rehabilitation measure, the State Government decided to accommodate one member from each of the displaced persons families in employment. It is reiterated that the Government Resolution dated 18.09.2017 does not extend benefits to the petitioners and it is specifically recorded in the affidavit in reply that the petitioners would not be entitled to secure the benefits under the provisions of the Maharashtra Projected Affected Persons Rehabilitation Act, 1999, since they are not the displaced persons. The contention raised is not in consonance with the provisions of the Act of 1999 and does not deserve to be accepted. The petitioners, however, would not be entitled to secure the benefits provided under the Government Resolution dated 18.09.2017. It is for the State Government to provide the benefits of rehabilitation to the categories of the persons who have been displaced as a result of the the Barvi Dam Project. The policy decision taken by the State Government does not preclude the petitioners who are affected persons from securing the benefits provided under Section 10(6) of the Rehabilitation Act. Section 10(6) of the Rehabilitation Act reads thus :-

"10 (6) (a) In all Class III and Class IV category of services under the establishment of the State

Government Departments, public sector undertakings, local self government, government-aided institutions and co-operative societies specified under section 73A of the Maharashtra Co-operative Societies Act, 1960 there shall be not less than five per cent priority quota for the employment of nominees of the affected persons.

(b) The beneficiary persons, societies, companies, factories, sugar-factories, spinning-mills assisted by the State Government in the form of matching share contribution etc., shall provide employment to not less than five per cent of the cadre strength of Class III and Class IV or equivalent of non-technical employees to the nominees of the affected persons :

Provided that, the above priority shall be treated as preference among the open and different reservation categories in pro-rata manner.

(c) The Collector shall maintain a register showing the recruitment position in the District and ensure removal of the backlog in recruitment of the nominees of the affected persons. However, at any recruitment, the percentage of the persons so recruited from amongst the nominees shall not exceed fifty."

6. The definition of 'affected persons' is recorded in Section 2(2) of the Act, whereas, the word 'project' has been defined under sub section 10 of Section 2 of the Act. The relevant provisions are quoted as below:-

"2(2) 'affected persons' means -

(a) an occupant whose land in the affected zone (including land in the gaothan) is acquired under section 14 for the purposes of a project;

Explanation:-For the purpose of this sub-clause, where any agricultural land is recorded in the relevant village records in the name of one of the brothers as a Karta or Manager of a Hindu Joint family, then every brother (or son or sons of any deceased brother all together as one unit) who has a share in the lands, whether his name is recorded in such village record or not, shall be treated as affected person;

(b) a person who is a tenant in actual possession of land under the relevant tenancy law in the affected zone at the time of acquisition of land;

(c) an occupant whose land in the benefited zone is acquired for construction, extension, improvement or development of canals and their banks under irrigation project or for establishment of a new gaothan within or outside the benefited zone for rehabilitation of persons from affected zone, and whose -

(i) residual cultivable holding is reduced to less than one hectare after acquisition; or

(ii) residual holding stands divided into fragments which are rendered unprofitable for cultivation; or

(iii) residual holding is rendered uncultivable.

Explanation:-For the purposes of this sub-clause, the expression "occupant" includes a tenant in actual possession of land under the relevant tenancy law in the benefited zone at the time of acquisition of land;

(d) a person who is an agricultural labourer;

(e) a person, not being an occupant or a person referred to in sub-clauses (a), (b), (c) and (d), who for a continuous period of not less than five years immediately before the date of publication of the notification under section 4 of the Land Acquisition Act, 1894, has been ordinarily residing or carrying on any trade, occupation or calling or working for gain in a gaathan in the affected zone;"

"2 (10) "project" means,-

(a) an irrigation project, that is to say, the construction, extension, improvement or development of any work for the supply of water for the purpose of irrigation;

(b) atomic energy and 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;

(c) a public utility project, that is to say, any work of

construction, extension, improvement or development of public utility including roads, other than irrigation project and power project;

(d) National Park and Sanctuary declared under the provisions of the Wild Life Protection Act, 1972;

(e) an industrial project, that is to say, setting up of production, distribution or service industry or providing any service, in relation to them and includes an Industrial Estate;

(f) an university project, that is to say, setting up of any university or any teaching, training institution;

(g) a chemical project, that is to say, extraction, production and processing of chemicals;

(h) a mine project, that is to say, extraction of any mineral from the bed of the earth or river bed;

(i) any composite project of any of the two or more such projects; and includes any work of construction, extension, improvement or development which is incidental or supplemental to the execution of a project, such as construction of pump house, lift irrigation scheme, colony, etc., and which results in rendering the holders or occupants of land, which may be used for such project, as affected persons and in respect of which a notification is issued under section 11"

7. The petitioners form part of the category of affected persons within the meaning of Section 2(2) of the Act, and as such, are entitled to claim the benefits provided under Section 10(6)(a) and (b) of the Act of 1999.

8. The policy decision taken by the State Government to extend the favourable treatment to 1163 families displaced on account of construction of the Barvi Dam Project cannot be said to be discriminatory or violative of the provisions of the Act of 1999. The request made by the petitioners for quashment of the policy decision of the State Government dated 18.09.2017 is devoid of substance. It would be open for the petitioners to claim benefits in the matter of employment as provided under Section 10(6)(a) and (b), and it would also be obligatory upon the State Government to extend such benefits within the framework of the policy and as provided under the Act of 1999 to the category of affected persons within the meaning of Section 2(2) of the Act of 1999.

9. The writ petition presented by the petitioners does not deserve favourable consideration and the same stands rejected.

(N.J. JAMADAR, J.)
SPR

(R.M.BORDE, J)