

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7734 OF 2018**

Shankar Hari Dongre & Ors .. Petitioners
Versus
The State of Maharashtra & ors .. Respondents

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Mr. S.M. Sabrad with Neha Parte for the petitioners.
Mr.Y.S. Khochare, AGP for Respondent Nos.1, 5 and 6.
Mr.Prashant Chavan with Ms.Chaitali Kandare I/b Navdeep Vora
& Associates for respondent nos.2 to 4 MIDC.

**CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.**

DATED : 13th FEBRUARY, 2020.

ORDER : - (Per Smt.BHARATI DANGRE, J)

1 'Hope is seeing light in spite of being surrounded by
darkness'.

 This is the exact situation in which the 34 petitioners
before us find themselves in.

2 The petitioners are residents of Taluka Murbad,
District Thane and are affected by construction of Barvi dam, an
Irrigation project construction of which commenced in the year

1972 and its third stage completed in the year 2016 when the height of the dam was rised to 68.60 metres and contributing to storage of 234.71 million cubic meters of water.

3 The land of the petitioners has been acquired for construction of the dam in its first and second phase. It is the case of the petitioners that certain promises were made to the persons whose lands were acquired and this included a promise of securing a job in the establishment of the Respondent No.2 i.e. Maharashtra Industrial and Development Corporation (MIDC).

4 Based on the certificates which were issued in favour of the petitioners styling them as 'Project Affected Persons" and claiming their entitlement in terms of sub-section (6) of Section 10 of the Maharashtra Project Affected Persons (Rehabilitation) Act, the petitioners preferred applications with a request to the respondent No.2 to consider their candidature for recruitment in Group 'C" and Group 'D', commensurating with their educational qualifications. The request made through representations did not yield any results as a result the petitioners associated themselves and a meeting was held with the Hon'ble Chief Minister of the State who resolved that the Respondent No.2 and the Municipal Corporations to whom water was being supplied from Barvi dam should accommodate the Project Affected Persons by offering employment.

5 The case of the petitioners is that it is pursuant to outcome of the said meeting, the State Government issued a Resolution on 18th September 2017 and the petitioners seek a relief based on the said Government Resolution.

6 Perusal of the Government Resolution issued by the Urban Development Department of the State of Maharashtra dated 18th September 2017 agreeingly make a reference to the meeting held under the Chairmanship of the Hon'ble Chief Minister and a policy which was evolved pursuant thereto. By the Resolution, it is resolved that in view of the rise in the height of Barvi dam has made it possible to supply water to the MIDC as well as to various corporations including Thane, Mira Bhayander, Kalyan – Dombivli, Navi Mumbai, Ulhasnagar and Ambernath. Since the six Corporations are benefited in the last phase of the construction of Barvi dam, responsibility is fastened on them to accommodate the Project Affected Persons by engaging them on their pay rolls and approval is granted to the decision of the Collector, Thane to absorb the persons affected by Barvi dam by reserving 7% seats within its establishment. Approval is also granted for creation of super numerary post in Group 'C' and Group 'D' for implementing the reservation to the extent of 7%.

7 *Prima facie*, the petitioners are justified in setting up a demand for their absorption in the employment of the Thane

Municipal Corporation based on the said Resolution. However, a meaningful reading of the said Government Resolution would reveal that in light of the rise of the level of the dam in last phase six villages and five adjoining hamlets are displaced and it affects 1163 occupants. The Resolution therefore target those affected by the last phase of the dam and it is issued to rehabilitate 1163 affected families.

8 The State Government as well as MIDC has also understood the said Resolution in a similar way and this is to be found in the two affidavits filed. The affidavit in sync proceeds to state that in furtherance of the Government Resolution dated 18th September 2017, one member each from 1163 families was to be offered employment in Class-III and Class IV category in the various Municipal Corporations and this Resolution was restricted only to them who came to be displaced as a result of increase in the height of the dam and were required to be relocated at a new site. The MIDC in its affidavit dispute that the petitioners are entitled for any benefits flowing from the Maharashtra Project Affected Persons Rehabilitation Act since the acquisition of the project was carried out under the MIDC Act, 1961 and the persons affected in Phase I and Phase II were offered monetary compensation. The State Government in its affidavit dated 9th January 2019 state that the Deputy Collector (Rehabilitation) have compiled the applications received of the

persons affected by Barvi dam and published the eligibility list of the project affected persons. The details of the persons who are eligible also find place in the affidavit. It is however the stand of the State Government that being eligible does not make them entitle for the appointments to the post falling within the bound of the State Government.

9 It is no doubt true that under the Maharashtra Project Affected Persons Rehabilitation Act, 1999 which extends to the Irrigation projects in the State of Maharashtra in terms of the definition of the term "Project" in Section 2(10) cover construction, extension, improvement or development of any work for supply of water for the purposes of irrigation. In the wake of the project being an irrigation project, the Maharashtra Project Affected Persons Rehabilitation Act, 1999 makes it imperative for the State Government to rehabilitate the Affected Persons. The scheme of Rehabilitation which flows from the enactment provides for quota for employment of nominees of the Project Affected Persons in Class III and Class IV category of services under the establishment of State Governments, public sector undertakings, local self government etc. to the extent of 5%. The entitlement of the petitioners to be considered for 5% quota of employment flowing from sub-section (6) of Section 10 cannot be doubted but at the same time, this cannot be asserted by way of a right. Once the persons affected by a project are

issued the certificates of being 'Project Affected', they can be recruited after undergoing the regular process of selection by competing amongst other eligible project affected persons.

10 A Full Bench of this Court in case of Rajendra Pandurang Pagare Vs. State of Maharashtra & Ors reported in 2009 (4) Mh.L.J 961, has clarified the prevailing discrepancy existing as regards the rights of the project affected persons under the Maharashtra Projected Affected Persons Rehabilitation Act, 1999 and has categorically held that reservation for the Project Affected Persons is a horizontal reservation and it is not a right to be appointed without competing with the candidates from the same category. The project affected persons are required to compete among themselves in accordance with the relevant Recruitment Rules and the best candidate is entitled to be selected.

11 The petitioners unmindful of this position of law, are seeking the relief in the writ petition. In the additional affidavit filed by the petitioners, reliance is placed on several advertisements issued by MIDC which reflect reservation of 5% for Project Affected Persons and the petitioners are indeed entitled for preferring an application pursuant to the said advertisements and on competing with the other Project Affected Persons, on being satisfying the eligibility criteria for the post

advertised may secure an appointment on the establishment of Respondent No.2 on merits.

12 The decision of the State Government contained in the Resolution dated 18th September 2017 was a subject matter of challenge in Writ Petition No.1597 of 2018 in this very Court and by a decision dated 11th April 2019, the said policy decision has been upheld. Granting liberty to the petitioner to claim the benefits in the matter of employment under the statute and by making it obligatory upon the State to extend such benefits within framework of its policy and as contemplated by the Statute, the Writ Petitions filed by similarly situated persons have been dismissed. We cannot grant any relief more than that to the petitioners.

13 With a direction to the State Government to extend the admissible benefits to the petitioners being Project Affected Persons in accordance with the Maharashtra Project Affected Persons Rehabilitation Act, 1999 and the policy of the State Government as contained in the Government Resolutions, the Writ Petition is dismissed.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE