

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

WRIT PETITION NO.3602 OF 2020

**PRAKASH AMBADAS KARGUDE
VERSUS
THE UNION OF INDIA AND OTHERS**

**AND
WRIT PETITION NO.3625 OF 2020**

**SHAHDEV AMBADAS KARGUDE
VERSUS
UNION OF INDIA AND OTHERS**

...

Advocate for the Petitioners : Shri Chandak Raviraj R.
Advocate for Respondent 1 : Shri A.N.Patale
Advocate for Respondent 2 : Shri D.S.Manorkar
Advocate for Respondents 3 and 4 : Shri S.S. Deve
Advocate for Respondents 5 and 6 : Shri M.V. Ghatge
AGP for the Respondents/ State : Smt.V.N.Patil Jadhav

...

**CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.**

DATE :- 12th October, 2021

Per Court :-

1. Leave to correct the prayer clause. Correction be carried out forthwith.
2. The petitioners in these two petitions are identically placed. After hearing the learned counsel appearing for the

respective sides on 23.09.2021, the following order was passed:-

- “1. *The learned advocate for the petitioners submits that the petitioners received certain papers under the Right to Information Act, 2005. The compilation of said papers along with advocate’s attestation as true copies (60 pages), is placed on record. The same is marked as ‘X-1’ for identification.*
2. *The standing counsel for Union of India has filed an affidavit in reply through Smt. Bharati Annasaheb Sagare, Deputy Collector, Land Acquisition, Jaikwadi Project, Beed dated 23.09.2021 on behalf of respondent nos.3 and 4. She has stated in the opening sub-para that she has been duly authorized by respondent nos.3 and 4 to file this affidavit. The learned standing counsel now informs us that the affiant Smt. Sagare was not empowered to file this affidavit. The District Collector who is the Arbitrator under the National Highways Authority of India, would depute another officer, who is competent to file the affidavit on his behalf or he may himself file such affidavit.*
3. *We do find it intriguing that respondent nos.3 and 4 have authorized Smt. Sagare to file affidavit and now it is said, on the very same day when the affidavit is filed, that some other officer will have to be deputed. Be that as it may, let such affidavit in reply be filed on or before 07.10.2021.*
4. *Since one more affidavit is to be filed as noted above, we find that the District Collector, Beed needs to express his view on the following issues as an answering respondent :*

 - (a) *At page 17 in compilation X-1, it is clear that two advocates along with 3 other parties have signed on a blank paper on 20.11.2019. The allegation is that the roznama dated 20.11.2019 was later on written above the said signatures on the blank paper.*
 - (b) *The notice of hearing dated 06.11.2019 served upon the petitioners, indicates that the date of*

hearing was 20.11.2019 at 11.30 am before the Arbitrator cum District Collector, Beed in his office. However, the impugned order signed by the Arbitrator cum District Collector Beed carries the date as 14.11.2019.

- (c) The District Collector shall produce the register in which the entries of orders/judgments passed are recorded, for the entire months of October, November and December, 2019.*
- (d) By the impugned order dated 14.11.2019, the Arbitrator has quashed and set aside the award dated 13.02.2017 on the ground that it was delivered without jurisdiction and was illegally passed. Whether the Arbitrator has the power to quash an award?*
- 5. We expect the District Collector to consider the above aspects so as to tender a proper explanation through his affidavit in reply.*
- 6. The standing counsel for Union of India tenders an apology and submits that, by mistake, his appearance has been entered on behalf of respondent no.2. Shri Manorkar, the learned advocate actually appears for the said authority. Shri Manorkar confirms the said statement. As such, the appearance of the standing counsel on behalf of respondent no.2 is discharged and the appearance of Shri Manorkar be recorded. He would file a vakalatnama on behalf of respondent no.2.*
- 7. The learned AGP points out that the District Collector is arrayed in this matter in his capacity of being an Arbitrator under the National Highways Act. The standing counsel for Union of India submits that they are instructed to appear on his behalf and would also file a vakalatnama so as to complete the formalities. As such, the appearance of the learned AGP on behalf of the Collector / Arbitrator in these matters is discharged and the appearance of the standing counsel is recorded. Vakalatnama to be filed.*
- 8. List both these petitions in the urgent category on 12.10.2021.”*

3. Pursuant to the above, the affidavit in reply has been filed on behalf of respondent No.2 on 03.10.2021 and on behalf of respondent No.3 on 07.10.2021.

4. The Resident Deputy Collector Shri Santosh Zumbarlal Raut has tendered an unconditional apology in paragraph 2 of his affidavit dated 07.10.2021, for the reason that the office staff committed a mistake in preparing the Roznama dated 20.11.2019 and legal action will be initiated against the erring employees. He has then submitted in the affidavit that the matter was concluded vide order dated 20.11.2019 and was signed on the same day. Erroneously, the date 14.11.2019 is mentioned. He has then set out in paragraph 6 of the affidavit as under :-

“6. I further request to Hon’ble Court that the answering respondent is with all fairness ready to give a fresh hearing in the said matter in presence of all the parties concerned and will pass order thereafter.”

5. In view of the above, both these Writ Petitions are partly allowed. The order dated 20.11.2019 is quashed and set aside. Consequentially, Arbitration Application No.62/2019 is restored to the file of the District Collector and Arbitrator,

National Highways Authority, Beed. The litigating parties would appear before the said authority on 25.10.2021 at 12:00 noon. Formal notices need not be issued. The parties shall abide by the dates of hearing on which the matter would be posted by the said authority. Written notes of submissions along with the oral submissions are permitted. The said authority would close the hearing of the matter by 30.10.2021 and deliver a reasoned order on or before 30.11.2021.

6. We are passing this order in the peculiar facts and circumstances of the case and especially in the light of paragraph 6 of the affidavit dated 07.10.2021 filed by Shri Santosh Raut. This order shall not be cited as a precedent.

kps (S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)