

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

**WRIT PETITION NO. 8479 OF 2019**

Sachin S/o Balasaheb Raner,  
Age : 30 Years, Occu. : Nil,  
R/o Ramdas Nagar, Parbhani,  
Tq. & Dist. Parbhani. .. Petitioner

**Versus**

1. The State of Maharashtra,  
Through its Secretary,  
Agriculture Department,  
Mantralaya, Mumbai-32.
2. The Registrar,  
Vasantrao Naik Marathwada  
Agricultural University, Parbhani  
Administrative Building,  
Basmat Road, Parbhani  
Tq. & Dist. Parbhani.
3. The Selection Committee  
through its Member Secretary,  
Vasantrao Naik Marathwada  
Agricultural University, Parbhani  
Administrative Building,  
Basmat Road, Parbhani  
Tq. & Dist. Parbhani.
4. Kapil Pralhadrao Nirval,  
Age : 29 Yrs. Occu. : Service,  
R/o Nirval Niwas, Maroti Nagar,  
Selu, Tq. Selu, Dist. Parbhani. .. Respondents

Shri Sudhir K. Chavan, Advocate for the Petitioner.  
Shri K. N. Lokhande, A.G.P. for the Respondent No. 1.  
Shri Manish N. Navandar, Advocate for Respondent Nos. 2 & 3.  
Shri M. V. Salunke, Advocate h/f Shri V. D. Salunke, Advocate  
for the Respondent No. 4.

**CORAM : MANGESH S. PATIL AND  
SANDEEP V. MARNE, JJ.**

**CLOSED FOR JUDGMENT ON : 04.10.2022**  
**JUDGMENT PRONOUNCED ON : 14.10.2022**

**JUDGMENT (Per Sandeep V. Marne, J.) :-**

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The short issue which is involved in the present petition is, whether the respondent No. 2-university was justified in filling up both the posts reserved for the Project Affect Persons (PAP) quota through candidates not affected by the university project, for which their lands are acquired. The issue arises on account of provisions of Section 6 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for the sake of brevity hereinafter referred as to the “Act of 1999”) and specific stipulation in the advertisement that 50% of the posts reserved for PAP category are required to be filled up through PAPs of university project.

3. In the advertisement dated 25.11.2014 issued for filling up the posts of Agricultural Assistant (Graduate), two posts were reserved for PAP category, one for the Scheduled Caste and one for open category. Para 3 of the advertisement contained a specific stipulation that 50% of the posts reserved for PAP category would be filled from amongst the university PAP candidates. The petitioner and the respondent No. 4 belong to open category. One PAP post reserved for the S.C. category was admittedly filled from amongst non-university project affected candidate. The petitioner, therefore, expected that the balance

one post in open category would be filled from amongst university project affected candidate. The petitioner is a university-PAP, whereas the respondent No. 4 is a non-university PAP. To his dismay, even the post in open category has been filled by appointing the respondent No. 4, who is non-university PAP.

4. To examine the controversy involved in the petition, we straightaway refer to the provision of Section 6 of the Act of 1999 which reads thus:

**The Maharashtra Project Affected Persons Rehabilitation Act, 1999**

1. ....

6. It shall be the duty of the project authority,--

(a) to carry out such work for providing the necessary civic amenities in a new *goathan* or extension of an existing *goathan* as the case may be, established for rehabilitation of affected persons, as may be entrusted to it by the State Government or the Commissioner or the Collector:

(b) to take measures for the speedy rehabilitation of the affected persons under the overall supervision and guidance of the Collector:

(c) subject to any reservations validly made and subject to availability of posts, to give highest priority in Class III and Class IV category of service on the project establishment, to one member of the affected family nominated by the affected person, if such member is eligible for such employment according to the recruitment rules for such posts :

**Provided that, while recruiting a member of the affected family, against such quota, the project authority shall, as far as possible, employ not less than fifty per cent of such nominees who are**

**affected by the project under execution, as may be prescribed;**

*(Emphasis supplied)*

5. Thus, it is a statutory requirement to fill up 'not less than 50%' of the posts reserved for PAP category from amongst the nominees who are affected by the project under execution. Since the words used are 'not less than 50%', the appointing authority has the liberty to fill up more than 50% posts through candidates affected by the project under execution. However, under no circumstances, it can fill up less than 50% posts through candidates affected by the project under execution.

6. It is towards this mandatory statutory requirement U/Sec. 6 of the Act of 1999 that the university prescribed a specific condition in the advertisement that out of the posts reserved for PAP category, 50% would be filled in through candidates who are affected by the university project.

7. Mr. Sudhir Chavan, learned counsel appearing for the petitioner would contend that the appointment of the respondent No. 4 against open category post is in violation of proviso to Clause (c) of Section 6 of the Act of 1999. He would contend that the appointment would also be contrary to the specific condition in the advertisement. He would submit that after allotting one post in S.C. category to non-university project affected candidate, it was incumbent upon the university to allocate the other post of open category to university-PAP. He would therefore contend that the appointment of the respondent No. 4 is void and the petitioner is entitled to be appointed in his place.

8. Per contra, Mr. Manish Navandar, the learned counsel appearing for respondent Nos. 2&3/university supports the appointments. He would submit that the provisions of Section 6 of the Act of 1999 and the stipulation in the advertisement for reserving 50% posts for university-PAP was to be followed only in the event of availability of more than one post to be filled in. He would contend that only one post in each category of S.C and open were advertised and it was therefore impossible for the university to comply the said provision for 50% reservation for university-PAP. He relied upon the words 'as far as possible' appearing in Section 6 of the Act of 1999. He would submit that the respondent No. 4 secured 152 marks in the selection as against 142 marks secured by the petitioner. He would submit that the decision of the selection committee of the university is reasonable and cannot be faulted with. He prays for dismissal of the petition.

9. Appearing for the respondent No. 4, Mr. Salunke, the learned counsel would submit that the respondent No. 4 figured at Sr. No. 7 in the select list as against placement of the petitioner at Sr. No. 34. He would submit that the advertisement was silent about the open category PAP post being reserved solely for university-PAP. He would submit that in absence of any further reservation provided in the advertisement for the open category PAP post, the respondent No. 4 has been correctly considered and selected against that post. He would submit that respondent No. 4 has already been appointed on 06.08.2019 and period of more than three years has passed and, therefore, it would be unjust if his appointment is disturbed at this stage. Lastly, he would submit that the petitioner has

already been appointed as Agriculture Assistant in the office of Divisional Joint Director of Agriculture, Latur vide order dated 20.05.2000 and that he is unnecessarily persuing the petition.

10. In rejoinder Mr. Chavan would submit that the appointment of the petitioner on the post of Agriculture Assistant in the office of the Divisional Joint Director of Agriculture, Latur is only on temporary basis for a period of one year, as against regular and permanent appointment granted in favour of the respondent No. 4.

11. Rival contentions of the parties now fall for our consideration.

12. Short issue that we need to address in this judgment is whether the respondent-university could escape from the mandatory provisions of Sec. 6 of the Act of 1999 as well as specific stipulation in the advertisement on the pretext that only one post was advertised in each category of S.C. and open. Even though two posts of Agriculture Assistant (Graduate) were reserved for PAP, since the same were further subdivided into S.C. and open, the respondent-university has treated it as a solitary post in each of the category of S.C. and open. This according to us is clearly erroneous. The stipulation in the advertisement is unambiguous. It provided that out of the posts reserved for PAP in the advertisement, 50% of them would be filled in from amongst university project affected candidates. Therefore, the respondent-university was required to consider both the posts reserved for PAP, rather than considering subdivided posts in categories of S.C. and open for application of

50% reservation.

13. There is one more angle to the problem. If the pretext of availability of solitary post in open category was to be accepted as correct for the sake of arguments, there was no necessity for inclusion of condition of 50% reservation in the advertisement. The fact that despite existence of one post each in S.C. and open category for PAPs, the university prescribed specific stipulation for 50% reservation to the university-PAP, the contention of availability of solitary post cannot be countenanced.

14. Even otherwise, if the impugned action of the university is upheld, the entire objective behind special provision made in Proviso to Clause (c) of Section 6 of the Act of 1999 would be completely frustrated. In the present case, two posts were reserved for PAP category. Law mandates that atleast one out of the two is required to be filled from amongst university-PAPs. This mandatory provision of law cannot be given goby by subdividing the posts into S.C. and open and treating the open category post as solitary one to escape from clutches of 50% reservation requirement.

15. The words 'as far as possible' appearing in Proviso to Clause (c) of Section 6 cannot be used to give a complete goby to the provision for 50% reservation. As we have observed earlier, it was easily possible for the university to reserve one out of the two posts meant for PAP for university-PAP.

16. On account of the impugned action of the respondent-university, both the posts reserved for PAP have been filled from

non university-PAPs. This not only violates the specific stipulation in the advertisement, but is violative of the provision of Section 6 of the Act of 1999.

17. We are therefore of a considered view that the respondent-university ought to have reserved one out of the two posts available from PAP category for university-PAP. Since one post in S.C. category was already filled in before filing of the petition, the remaining post in general/open category ought to have been given to the university-PAP. We therefore hold that the appointment of the respondent No. 4, being a non-university project affected candidate is in violation of the provisions of Section 6 of the Act of 1999 as well as specific stipulation in the advertisement.

18. Mere appointment of the petitioner in another establishment on temporary basis or continuance of the respondent No. 4 on the post for three years would not be a reason to deny the relief to the petitioner. He cannot be denied regular and permanent appointment only on account he being engaged on temporary basis in another establishment or because the respondent No. 4 has been working on the post for three years. In fact, the respondent-university ought not to have made appointment of respondent No. 4 after filing of the present petition. The appointment of the respondent No. 4, made during pendency of present petition, was obviously subject to the outcome of the same.

19. We, therefore, allow the petition by setting aside the appointment of the respondent No. 4 and direct the respondent-

university to consider the candidature of the petitioner for being appointed on the post of Agriculture Assistant (Graduate) and if found fit and eligible, appoint him on that post with effect from the date of appointment of the respondent No. 4 i. e. 06.09.2019 with all consequential benefits except backwages.

20. Rule is made absolute in above terms. There shall be no order as to costs.

**[SANDEEP V. MARNE, J.]**

**[MANGESH S. PATIL, J.]**

21. After the judgment is pronounced, Mr. Salunke, learned counsel appearing for respondent No. 4 prays for stay to the judgment for a period of eight (08) weeks. Accordingly, the effect and operation of this judgment is stayed for a period of eight (08) weeks from today.

**[SANDEEP V. MARNE, J.]**

**[MANGESH S. PATIL, J.]**

*bsb/Oct. 22*