

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

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WRIT PETITION 7745 OF 2014

Anil Govind Somase

..... Petitioner

Vs.

Bharat Petroleum Corporation
Ltd. & Ors.

..... Respondents

Mr. Rameshwar N. Gite for the Petitioner
Mr. S. B. Kalel, AGP for the State
Mr. R. S. Pai a/w. Mr. Anand Pai, Mr. Rahul Sanghvi, Mr.
Mehul Khetia I/b. M/s. Sanjay Udeshi & Co. for Respondent
No.1.

**CORAM: S.V. GANGAPURWALA &
M. G. SEWLIKAR, JJ.**

DATED : APRIL 28, 2022

P.C.

1 The Petitioner seeks appointment with Respondent
No.1 as per his qualification.

2 Learned Counsel submits that the land of the mother
of the Petitioner bearing Sy.No.21/1 and the land of the
father of the Petitioner bearing Sy.No.21/2 were acquired.
As per the agreement, one family member of the person
whose land is acquired, was given an employment. The
mother of the Petitioner was living separate from the father
of the Petitioner since the year 1989. Land under the

agreement was acquired by Respondents No.1 in the year 1993. The mother was given employment by Respondent No.1 pursuant to her land being acquired. No employment was given pursuant to the acquisition of the land by Respondent No.1 from the father of the Petitioner. The Petitioner is entitled to seek employment on account of the acquisition of the land from the father of the Petitioner. As the mother was residing separate and there was also a divorce by mutual consent under an agreement, both, father and mother would be considered as a separate family. Learned Counsel submits that the father and the mother of the Petitioner are not literate persons. They were not aware of the legal intricacy and as such, arrived at divorce by an agreement. Subsequently, realizing that the divorce can take place only by way of a decree of Court, filed proceedings in the year 1998. Decree of divorce was passed. Same was on the premise that the father and mother of the Petitioner were residing separate since 1989. According to the learned Counsel, the clause in the agreement specifically provides for the employment to one eligible dependent member from the family. Employment accorded to the mother of the Petitioner cannot be included in the family of

the father of the Petitioner. The Petitioner was residing with his father. To substantiate his contention, learned Counsel relies upon the ration card. Learned Counsel submits that while rejecting the Application of the Petitioner, for the first time, Respondent No.1 came out with a case that the Petitioner is under-age and un-qualified. They had not raised an issue that the employment is already provided to the mother of the Petitioner. It is because of the reason that even Respondent No.1 had accepted that father and mother of the Petitioner are two different entities and separate lands owned by them are acquired.

3 Learned Counsel for Respondent no.1 submits that only one member from the family is entitled to get employment on availability of the vacancy after completion of the project and candidates fulfilling the recruitment norms of the corporation. The divorce decree is of the year 1998. Mother of the Petitioner is already provided with the employment. Respondent No.1 has discharged its obligation under the agreement. The learned Counsel relies upon the appendix appended to the agreement to contend that the Kusumbai Govinda Samase had become landless and the husband is a small holder and one name is taken. One name

taken was of the mother of the Petitioner. No law exists for the Corporation to provide employment to the second member of the family.

4 The only question would be whether Kusumbai and Govinda constitute one family or separate family so as to enure the benefits to the Petitioner. In the present case, we do not have any material to conclude that the customary divorce is permissible under the said community to which the father and mother of the Petitioner belong. In absence thereof, the only mode of divorce would be through decree of a Court. The proceedings for divorce were filed in the year 1998 and decree was obtained in the same year. Respondent No.1 has entered into agreement with the Government in the year 1993. The mother of the Petitioner was provided with the employment. It is submitted by the learned Counsel for Respondent No.1 that the mother of the Petitioner is still in the employment.

5 It would not be open for us in the writ jurisdiction to conclude about the finding of fact vis-a-vis the marital status as existing in the year 1993 between the parents of the Petitioner. More particularly, in view of the fact that the

decree for divorce was passed in the year 1998.

6 Of course, the agreement between Respondent No.1 and the Government to provide for the employment to one eligible dependent member of the family is one of the welfare measures undertaken. The said clause certainly will have to be construed liberally and in such scenario we may not apply the Full Bench judgment of this Court in the case of *Rajendra Pandurang Pagare & Anr. Vs. State of Maharashtra & Ors. 2009 (4) Mh.L.J.* In the said judgment, the Full Bench has held that even by making an appointment of a person from a Project Affected Person category, same has to be through competition. Otherwise, same would be a back-door entry.

7 In the present case, an agreement was entered into between Respondent No.1 and the Government of which the Petitioner claims to be beneficiary and the beneficiary will also have a right to enforce the agreement. Considering the factual matrix, it cannot be conclusively concluded about the marital status of the parents of the Petitioner in the year 1993.

8 The learned Counsel for the Petitioner, alternatively, submits that clause 6 of the agreement may also be considered which states that if after providing employment, there still exists families, whose lands are acquired but no dependent member of the family is accorded employment by the Corporation, the Corporation can accord priority for contracting tanklorries at the proposed Petroleum Products Terminal.

9 The Petitioner, in such scenario, may make an Application with Respondent No.1. It is for Respondent No.1 to consider the same sympathetically, of course, in tune with the agreement and its policy.

10 With the aforesaid observations, the Writ Petition stands disposed of. No costs.

(M. G. SEWLIKAR, J.)

(S.V. GANGAPURWALA, J.)