

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3419 OF 2021**

Vijay Sadashiv Gaikwad	...Petitioner
<i>Versus</i>	
The State of Maharashtra & Ors	...Respondents

Dr Uday Warunjikar, *with S Pilankar for the Petitioner.*
Mr RP Kadam, AGP, *for the State-Respondent.*
Mr Rananaware DD, *for Respondent No.2.*
Mr Pralhad Paranjape, *with Druti Datar, for Respondent No.3.*

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**
DATED: 1st March 2022

PC:-

1. Rule.

2. Respondents waive service. There are affidavits in reply. By consent, rule is made returnable forthwith and the petition is taken up for hearing and final disposal.

3. The petitioner is an individual of 52 years. He has a 48% disability and is therefore entitled to protection under the provisions of The Persons with Disability Act, 2016. A copy of his disability certificate is taken on record.

4. On 30th August 1992, the 2nd Respondent, the Maharashtra State Road Transport Corporation or MSRTC issued an advertisement for running a telephone booth at the Shivaji Nagar bus depot at Pune for disabled persons. The petitioner applied, and following an interview, was allotted a telephone booth at this bus depot by a letter dated 30th January 1993. MSRTC allowed the Petitioner to take a separate electricity supply. The petitioner made the necessary security deposit and advance license fees as well.

5. Since 1993, the petitioner ran this STD/ISD PCO booth at the Shivaji Nagar bus depot in Pune without any problems.

6. In February 2019, there came to be issued a notice by MSRTC directing that alternate arrangements be made within 90 days, because the site in question was temporarily required for the Pune Metro Rail Project for construction of a underground metro station. The petitioner was asked to deliver possession of the PCO booth. The requirement was that the Petitioner would be shifted elsewhere, and when the present site at Shivaji Nagar was returned to MSRTC, the Petitioner would be permitted to resume operations of the phone booth facility there. The Petitioner would only be in some sort of temporary or transit place while the metro work was under way at the MSRTC site at Shivaji Nagar, Pune.

7. In view of this, the petitioner applied to the Commissioner of Disabilities requesting the allocation or allotment of alternate premises. That representation is dated 8th March 2019. The

petitioner made a similar representation on 27th March 2019 to the Maharashtra Metro Rail Project, Respondent no.3.

8. On 31st July 2019, the Commissioner of Disabilities at Pune issued notice to the Respondents and called for replies. The Maharashtra Metro Rail Project filed a reply on 21st August 2019. The MSRTC filed a reply shortly thereafter on 27th September 2019, but said that the petitioner's request could not be granted. Accordingly, the Commissioner for Disabilities fixed the hearing on 18th December 2019. He heard parties again on 7th January 2020 and 20th January 2020. The Maharashtra Metro Rail Project filed a further reply on 22nd January 2020.

9. Ultimately, on 16th March 2020, the Commissioner of Disabilities passed an order partly allowing the Petitioner's application or complaint. Following that order, on 25th September 2020, the Petitioner made an application for allotment of an alternative site. To this, there was a reply from Respondent nos.1 and 4, the Dairy Development Department saying that they would not permit the Petitioner to start a telephone booth.

10. The Petitioner has requested MSRTC to comply with the order with the Disabilities Commissioner. A copy of that letter of 27th October 2020 is annexed. On 14th December 2020, the Dairy Development Department informed the Petitioner that notwithstanding the order of the Commissioner of Disabilities, alternate premises cannot be allotted to the Petitioner. There is also

an internal communication of 12th November 2020, to the same effect.

11. On 5th January 2021, the Petitioner asked that the proposal submitted by MSRTC to the Government of Maharashtra and its Dairy Development Department be accepted and that the Petitioner be allotted an alternate site.

12. There is no doubt that the Petitioner has indeed demanded a redressal of his grievances from the authorities concerned. He has invoked his legal rights and sought performance of a legal duty; specifically, implementation of the order of the Disabilities Commissioner. This relief has been denied to him. Hence this petition and the prayer for a mandamus.

13. The Maharashtra Metro Rail Project has filed an affidavit. Very generally stated, that affidavit points out that the site in question is indeed temporarily required for the Metro Rail Project. However, the Maharashtra Metro Rail Project has nothing whatever to do with providing alternate sites. That, it is submitted, is the responsibility of the State Government or MSRTC or both.

14. We accordingly turn first to the affidavit in reply on behalf of Respondents 1 and 4. The refusal to grant relief to the Petitioner is stated on affidavit in paragraph 4 at page 98 thus:

“4. I say that, the Maharashtra State Road Transport Corporation, Pune Division, Pune office has submitted letter dt. 29.10.2020 along with Order dt. 16.03.2020, but

not submitted the proposal as per the Order dt. 16.03.2020.”

15. Now the order of 16th March 2020 referred to in paragraph 4 is annexed at Exhibit ‘N’ at page 42. The relevant or operative portion is Clause AA at page 49 which only says that a proposal regarding the Petitioner’s application must be made by MSRTC within 30 days.

16. The MSRTC proposal itself is at Exhibit ‘R’ at page 53. There is no doubt that the MSRTC has made the application for allotment of an alternate premises for running an STD booth and that this request is made in respect of the Petitioner. As noted above, this is only temporary or transitory arrangement. But the project itself may take some time. The Petitioner cannot be expected to be rendered without an income for that duration.

17. We are wholly unable to understand what is meant by the Dairy Development Department and the Government of Maharashtra in saying baldly that the MSRTC proposal has not been submitted “as per the order of 16th March 2020”. If this is only a matter of form, then it entirely irrelevant. One must look at the substance, not mere form. Factually, there is no doubt that MSRTC has in fact made the proposal. The Dairy Development Department may not like the form of that proposal but that is surely immaterial. That is also no ground to deny the petitioner relief. No other ground is canvassed before us by Respondents nos. 1 and 4 to show why the Petitioner is dis-entitled to an alternate site.

18. To appreciate the controversy in its proper perspective, we must bear in mind that this is not a case where somebody is seeking a first time allotment on an otherwise unavailable site. The Petitioner was granted an allotment to run an STD/ISD PCO way back in 2019. He did in fact run it for all this time. That facility had to be temporarily surrendered for use by another public project, namely the Maharashtra Metro Rail Project for the Pune Metro and an underground metro station. This surely cannot mean that the Petitioner is deprived of his livelihood or that he is singled out for such unfair treatment.

19. Viewed, therefore, from the lens of either Article 14 or Article 21, and especially in the context of the Petitioner having a 48% disability, and even more emphatically because the Petitioner has an order in his favour from an authority under the Persons with Disability Act, we do not see how the Government of Maharashtra can refuse the Petitioner's demand or refuse to comply with the Disability Commissioner's order. It is, in our view simply not open to the Government to refuse to implement an order passed by a statutory authority.

20. In this context, we note the contents of paragraphs 5 and 6 of the Government affidavit. It is clear from paragraph 6 especially that even if the present site is to be handed over to the Maharashtra Metro Rail Project by mid-March 2022, there is an alternate ST stand at Wakade Wadi, Pune.

21. We find that the action of the Government in declining to grant the Petitioner an alternate site cannot be sustained.

22. Accordingly we will make rule absolute in terms of prayer clauses (a) and (b).

23. We specifically direct Respondent nos.1 and 4 to identify an appropriate site not less in area than the site that was being occupied by the Petitioner previously at some ST stand in the Pune metropolitan region.

24. This will be a temporary arrangement until the site at Shivaji Nagar is once again made available to MSRTC. Once that site is made available, the Petitioner will need to be re-accommodated in the same location, i.e. at the MSRTC ST stand at Shivaji Nagar, Pune.

25. While we are making rule absolute, at Dr Warunjikar's request, we list the matter for compliance on 30th June 2022.

26. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)

Digitally signed
by
BHACHANDRA
GOPAL
DUSANE
Date:
2022.03.03
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