

AGK

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

WRIT PETITION NO.6685 OF 2021

Amol Bharat Maske

...Petitioner

V/s.

The State of Maharashtra & Ors....Respondents

Mr. Prashant D. Patil for the petitioner.

Ms. R. A. Salunkhe, AGP for respondent no. 1
(State).

Ms. Anjali R. Shiledar Baxi for respondent nos. 2 to
4 (MSEDCL).

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE: SEPTEMBER 13, 2022

P.C.:

1. Pursuant to our order dated 26th August, 2022, Ms. Baxi, learned advocate for the respondents 2 to 4 has obtained instructions to submit before us that all the vacant unreserved/open posts of Substation Assistant were not filled up pursuant to the recruitment process in question.

2. Having heard Ms. Baxi as well as Mr. Patil, learned advocate for the petitioner and Ms. Salunkhe, learned AGP for respondent no. 1/State, we are of the considered opinion that this is a peculiar case where the petitioner has paid a price for his honesty. The reason why we say so would be clear from

the following discussion.

3. The petitioner had applied for appointment on the post of Substation Assistant ('Upkendra Sahayyak', in Marathi) pursuant to advertisement no. 5/2019 issued by the Maharashtra State Electricity Distribution Co. Ltd. (hereafter "MSECDCL", for short). Some of the questions that he had to answer as per the prescribed format of the application for offering his candidature read as follows:

"Post	: UPKENDRA SAHAYYAK
Category	: SEBC
Sub Caste	: MARATHA
Whether possessing Caste Certificate issued by the Competent Authority of Govt. of Maharashtra	: YES
Caste Certificate Number	: 5041
Are you an employee of MAHAVITARAN	: YES
CRF Number	: 02421968
Date of Joining the Company	: 15-09-2010
Designation	: Sr. Technician
Are you a Project Affected Person"	: YES

4. Since there was no question inquiring of the petitioner as to whether he had obtained employment in MAHAVITARAN as a Project Affected Person, obviously the petitioner could not have said so in the application. After his application was processed, the petitioner was found to have obtained adequate marks for being appointed but he was denied such an appointment on the ground that he had already obtained employment in MAHAVITARAN as a Project Affected Person. In

other words, the benefit of being a Project Affected Person could not have claimed twice over.

5. This has triggered the present writ petition, where the petitioner claims that he had not applied for appointment as a Substation Assistant in the MSEDCL as a Project Affected Person but that he had applied as an open candidate but was perforce required to indicate that he belongs to Maratha sub caste, he possessed a caste validity certificate and that he is a Project Affected Person in view of the questions posed and also in view of the fact that he could not have given an incorrect answer while applying for appointment.

6. These being the basic and undisputed facts, a coordinate Bench of this Court by its order dated 26th August, 2022 had called upon Ms. Baxi to obtain instructions as to whether all the 547 posts which were unreserved/open had been filled up or not. The answer today, as noticed above, is in the negative. It is also not in dispute that the petitioner has obtained marks more than the last appointed candidate on an unreserved/open vacancy.

7. Since the petitioner has been honest in correctly answering the questions which were posed to him and that he could not have, in the absence of any question being posed to him, answered that he had obtained employment in MAHAVITARAN as a Project Affected Person, we are of the opinion that MSEDCL was not justified in denying him appointment as an open candidate. It would be iniquitous, in the circumstances, to deny relief to him.

8. In that view of the matter, we dispose of the writ petition by directing the respondent no. 4 to take appropriate steps to offer appointment to the petitioner on the post of Substation Assistant, if he is otherwise eligible as per the rules. Let such appointment be issued to the petitioner as early as possible but not later than four (4) weeks from the date of receipt of a copy of this order.

9. No costs.

(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)

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