

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 95 OF 2023

ALONGWITH

INTERIM APPLICATION NO. 17140 OF 2023

IN

WRIT PETITION NO. 2412 OF 2023

Life Insurance Corporation of India,
Yogakshema, Jeevan Bima Marg,
Churchgate, Mumbai – 400 021.

**...PETITIONER
(ORIG. RESPONDENT
NOS. 3 AND 4)**

: V E R S U S :

1. Tribal Rights Protection Committee, Maharashtra State Having its office at Kashinath Nagar, Taloda, Tq. Taldoa, Dist. Nandurbar – 425 413 Through its Treasurer, Mr. Prakash Mirya Thakare.
2. Union of India Through its Secretary, Ministry of Tribal Affairs, Having its office at Ground Floor, 'D' Wing, Shastri Bhavan, New Delhi.
3. Hon'ble Secretary Department of Personnel and Training Government of India.

4. State of Maharashtra, Through its Secretary, Tribal Development Department, Mantralaya, Mumbai – 400 032.
5. Commissioner, Tribal Research and Training Institute, 28 Queen's Garden, Pune-411 001.

....RESPONDENTS

Mr. Omprakash Jha, a/w Mr. Roop Basu i/b The Law Point, for the Review Petitioner.

Mr. Siddeshwar N. Biradar, for Respondent No.1.

Mr. B.V. Samant, Addl. Government Pleader for Respondent No.4-State.

CORAM : A. S. GADKARI &

SANDEEP V. MARNE, JJ.

Reserved On : 8 November 2023.

Pronounced On : 29 November, 2023.

Judgment (Per : Sandeep V. Marne, J.)

1. Life Insurance Corporation of India (LIC) has filed this petition seeking review of the Order dated 4 July 2023 passed in Writ Petition No. 2412 of 2023.
2. By the said Order, this Court has directed the Senior Divisional Manager, Satara Division of LIC to comply with the provisions of Sub-section (3) of Section 6 of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta

Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (**the Act**) within a period of four months and to forward the proposals of 38 employees, included in the list submitted to this Court on 13 February 2023 to the Scrutiny Committee.

3. Mr. Jha, the learned counsel appearing for the Review Petitioner would submit that, there are errors apparent on the face of the record in the Order dated 4 July 2023. That this Court has ignored that, the Original Petitioner did not have any *locus* to file the Writ Petition as none of its fundamental right were violated or breached. The Petition was in the nature of Public Interest Litigation and could not have been decided as a Writ Petition. That, the 38 employees whose cases are directed to be sent for verification have not been heard before passing the Order under review. That, those employees have been in service for last several years, some of them have retired and therefore their cases now cannot be sent for scrutiny at such a belated stage. That most of the said 38 employees were recruited in service prior to coming into force of the Act and therefore the provisions of Section 6(3) of the Act would not apply to them. That scope of the Act is restricted to the State of Maharashtra and would not apply to the petitioning Corporation, whose activities are spread throughout the territory of India. He therefore prayed that, the Review Petition be allowed and the Order under Review may be set aside.

4. Mr. Biradar, appearing for the Original Petitioner, opposed the Review Petition stating that, the law about applicability of the provisions of the Act to the employees of the Central Government

PSUs as well as to the employees recruited prior to the coming into effect of the Act has already been settled by various judgments of this Court. That LIC was being represented by an Advocate and it never requested for an opportunity to file Affidavit-in-Reply when the petition was heard from time to time by this Court. That in any case, LIC cannot be said to be an aggrieved party by the Order of this Court, which merely directs forwarding of proposals of scrutiny of caste certificates of its 38 employees as per the law. He would pray for dismissal of the Review Petition.

5. We have considered the submissions canvassed by the learned counsel appearing for the parties.

6. It is the settled position of law that, the scope of review can be restricted only to the points which are pleaded and/or argued before the Court and which were not considered. Review of an Order cannot be sought by raising new contentions and/or grounds. It cannot be contended that, the Court has committed an error in not considering the submissions, which were never canvassed before it.

7. It is not the case of LIC in its Petition that, the points that are sought to be canvassed for seeking review were ever argued before the Court at the time of passing of Order dated 4 July 2023. Nonetheless, we proceed to examine whether LIC has made out any case for review of the Order dated 4 July 2023.

8. So far as objection on non-grant of opportunity to file Affidavit-in-Reply to LIC is concerned, we find that it was always open for LIC to file its Affidavit-in-reply, if it really desired to do so. The Writ Petition was listed and heard on 27 February 2023, 13 April 2023

and 4 July 2023. On all three dates, the LIC was represented by its Advocate who did not file reply. It is always open for a party to file reply opposing the petition. We find that LIC took a chance by not filing Affidavit-in-reply and cannot now be permitted to seek review of the order on the pretext that it was not afforded an opportunity to file reply.

9. So far as the issue of absence of *locus* of the Original Petitioner to file the petition is concerned, we do not find any error apparent on the face of the record in this Court entertaining the Writ Petition. The Original Petitioner was espousing the cause of genuine Scheduled Tribe employees, reservation meant for whom is allegedly misused by persons who actually do not belong to Scheduled Tribes. It petitioned this Court with a complaint that the LIC was not fulfilling the statutory obligations under sub-section (3) of Section 6 of the Act by not forwarding the cases of employees taking benefit of ST reservations for verification to the Scrutiny Committee. The Petition was thus filed to mandate fulfillment of statutory obligations prescribed under Section 6(3) of the Act by LIC. We therefore find that, the Petitioner had *locus* to file the Writ Petition. On the contrary, considering the nature of directions that are issued by this Court in the Order under review, we doubt whether LIC would have *locus* to file the present Review Petition. The Order under review does not affect the interest of LIC as such. LIC is merely directed to forward the cases of 38 employees for scrutiny to the Committee and we fail to comprehend as to what prejudice LIC has caused on account of that direction. Therefore, far from questioning the *locus* of the Original Petitioner to

file the petition, we doubt LIC's *locus* to file the present Review Petition.

10. The issue as to applicability of provisions of the Act to the employees of Central Government and its PSUs as well as to employees recruited prior to the enactment of the Act is no longer *res-integra*. This Court in ***Kawdu s/o. Dewaji Paunikar V/s. State of Maharashtra & Ors.*** reported in 2001 (Supp.) Bom.C.R. 711, has held that, employees of the Central Government are covered by the provisions of the Act. The SLP filed against that judgment came to be rejected by the Supreme Court by Order dated 8 May 2021. The Division Bench of this Court in ***Adivasi Samaj Kruti Samiti and Ors. V/s. Union of India*** (Writ Petition No. 7036 of 2012 decided on 23 October 2013) dealt with the issue, similar to the one involved in the present case. The Division Bench not only held that, the provisions of the Act are applicable to the employees of the Central Government but entertained the petition filed by Adivasi Samaj Kruti Samiti (organisation similar to the Original Petitioner) and directed all the appointing authorities of the Central Government to comply with the requirement of sub-section (3) of Section (6). The issue about applicability of the provisions of the Act to the employees of Bharat Sanchar Nigam Ltd. attracted attention of Division Bench of this Court in ***Ashabai Bhila Koli @ Ashabai Devman Borse V/s. Bharat Sanchar Nigam Ltd.*** By its Judgment dated 13 March 2020, the Division Bench of this Court has answered the question of applicability of the provisions of the Act to the employees of BSNL as well as to the employees recruited prior to

the enactment of the Act. This Court answered both the issues in paragraph Nos.9 and 10 of the said Judgment as under :

9. The respondent/ Bharat Sanchar Nigam Limited (B.S.N.L) is a Public Sector Undertaking. The said fact is not disputed. The petitioners are the employees of a public sector undertaking. Section 6(3) of the Maharashtra Act No. XXIII of 2001 would squarely apply with all its rigors.

10. Some of the petitioners are appointed from the year 1982. According to the petitioners, at the time they were appointed there was no condition imposed of submitting the validity certificate nor the Maharashtra Act No. XXIII of 2001 was in force, as such they cannot be directed to submit the validity certificate. The said argument of the petitioners is required to be repealed at the threshold. The Maharashtra Act No. XXIII of 2001 came into force as a result of the Judgment of the Hon'ble Apex Court in case of Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others (supra). In the said judgment, the Hon'ble Apex Court directed the State Governments to constitute committees assisted by vigilance cells to scrutinise and decide the cases expeditiously. The Apex Court in the case of Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others (supra) was dealing with the case of an employee of a Public Sector Undertaking. In the said case, the plea that appointments of the persons made prior to the date on which the Act came into force would not be required to

submit validity was rejected. The Apex Court interpreted Section 7 of the Maharashtra Act No. XXIII of 2001. The Apex Court observed that the expression before or after commencement of this Act under Section 7 of the Maharashtra Act No. XXIII of 2001 indicates that the scrutiny committee constituted U/Sec. 6 of the Maharashtra Act No. XXIII of 2001 is empowered to cancel caste certificate whether it was issued prior to the enforcement of the Maharashtra Act No. XXIII of 2001 or thereafter. Absence of the word before or after commencement of the Act in Section 10 makes no substantive difference because withdrawal of benefit as provided U/Sec. 10 is an event which flows naturally and as plain consequence of invalidation of a claim.

11. Thus, the issue of applicability of the provisions of the Act to the employees of the Central Government as well as to the employees recruited prior to the enactment of the Act is no more *res-integra*. In fact all the Judgments referred above, were produced by the Original Petitioners alongwith the petition and it is surprising that despite exposition of law in the above judgments, the LIC has chosen to file Review Petition raising the issues which are already settled by the above judgments.

12. We therefore do not find any error apparent on the face of the record in the Order under review.

13. The Review Petition is accordingly dismissed.

14. In view of dismissal of Review Petition, Interim Application No.17140 of 2023 does not survive and is also disposed off.

SANDEEP V. MARNE, J.

A.S.GADKARI, J.

**NEETA
SHAILESH
SAWANT**

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