

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
WRIT PETITION NO.3602 OF 2020

Petitioner : Hanuman Ramaji Chikankar,
Aged 51 years, Occ. Nil,
R/o Bhanegaon, Post Khaparkheda,
Tq. Saoner, Dist. Nagpur.
– Versus –

Respondents : 1) The State of Maharashtra,
Through its Secretary,
Ministry of Energy & Power,
Mantralaya, Mumbai – 32.
2) The Collector, Nagpur.
3) Maharashtra State Power Generation Company
Limited, Plot No.G-9, Prakash Garh, Bandra East,
Mumbai – 440 001,
By Its Managing Director.
4) Maharashtra State Power Generation Company
Limited, Koradi Thermal Power Station,
Koradi, Nagpur,
By its Chief Manager.

Mr. A.B. Patil, Advocate for the Petitioner.

Mrs. Ketki Joshi, Additional G.P for Respondent Nos.1 & 2.

Mr D.M. Kale, Advocate for Respondent Nos.3 & 4.

CORAM : **ROHIT B. DEO AND Y.G. KHOBRAGADE, JJ.**

DATE : **2nd JANUARY, 2023.**

J U D G M E N T : *(Per Y.G. Khobragade, J.)*

Rule. Rule made returnable forthwith. Heard finally by consent of
the learned Counsel for the parties.

02] By the present writ petition, the petitioner prays for quashing and setting aside the order dated 30/07/2020 passed by respondent No.2-Collector and issuance of direction against respondent No.2 for issuance of certificate of 'Project Affected Person'. The petitioner further prays for issuance of direction against respondent Nos.3 and 4 to provide him employment in Class-III or Class-IV category on compassionate basis by considering his qualification.

03] The grievance of the petitioner is that in the year 1980, the respondents acquired the land bearing Survey No.127/2, admeasuring 1.28 HR of his father for the project of respondent No.4 for aerial rope-way from Kamptee to Koradi and respondent No.3-Power Generation Company formulated a policy for providing employment to one person from project affected persons due to acquisition of land and respondent No.2-Collector, Nagpur is the competent and authorized person for issuance of certificate under Section 5 (c) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (hereinafter referred to as 'Act' for the sake of brevity). Although the respondents acquired the land of the petitioner's father for the project of respondent No.3, respondent No.2-Collector refused to issue 'Project Affected Certificate' to the petitioner. Therefore, the petitioner had filed Writ Petition

No.2996 of 2011 before this Court. On 06/02/2020, the said petition came to be disposed of with the following directions :

- a. Respondent Nos. 1 and 2 shall pay an amount of Rs.1,00,000/- (Rs. One Lakh only) to the petitioner as costs and the said amount shall be paid to him on or before 29.02.2020.
- b. The petitioner as well as respondent Nos.3 and 4 shall remain present in the office of the District Collector, Nagpur on 12.03.2020 at 3.00 p.m.
- c. Formal notices need not be issued.
- d. The District Collector shall commence the hearing on the applications of the petitioner dated 17.09.1987 and 04.08.1989. In the event, the office cannot trace out these two applications, the petitioner shall submit typed copies of the said two applications, which are already placed in the petition's paper book, and the hearing in the matter shall be commenced.
- e. Legal assistance, if necessary, for the petitioner and the respondent Nos.3 and 4, is granted.
- f. The District Collector shall conclude the hearing on or before

31.03.2020 and shall pass a reasoned order on or before 30.04.2020.

- g. If the petitioner's grievance is not redressed, he would be at liberty to take recourse to a remedy as may be permissible in law

04] In pursuance of said order, on 30/07/2020, respondent No.2 passed an order and rejected representation dated 17/09/1987 submitted by the petitioner on the ground that as per the Government Circular dated 13/04/1988, if the land of any person is acquired for the purpose of road, railway line, rope-way, canal and pipeline, said person does not fall within the ambit of 'Project Affected Person' and since the land of the father of the petitioner acquired for aerial rope-way, therefore, the petitioner is not entitled for the certificate of 'Project Affected Person.

05] The learned Counsel appearing for the petitioner submits that in the year 1980, the land of the petitioner's father was acquired by respondent Nos.3 for the project of respondent No.4 for aerial rope-way from Kamptee to Koradi and the Special Land Acquisition Officer passed an award under the provisions of the Land Acquisition Act, 1894. On 11/07/2000, respondent No.3 issued Administrative Circular No.351 and provided by giving sixth

reference being 'Project Affected Person', whose land is acquired by respondent No.3 for the purpose of road, railway line, rope-way, canal and pipelines. However, on 30/07/2020, respondent No.2 passed impugned order and wrongly held that since the land of the petitioner's father was acquired for aerial rope-way, therefore, as per the Government Resolution dated 13/04/1988 and Circular 08/01/1981, the certificate of 'Project Affected Person' cannot be granted in favour of the petitioner, which is illegal, bad in law, because respondent No.3 acquired land of the petitioner's father for the project of respondent No.4. Therefore, as per the provisions of Section 2(10) of the Act, the petitioner comes within the ambit of 'Project Affected Person'. However, respondent No.2 failed to consider the provisions of Section 2(10) and Administrative Circular No. 351, dated 11/07/2000 issued by respondent No.3. Therefore, the impugned order is illegal, bad in law and prayed for quash and set aside the same.

06] *Per contra*, the learned Assistant Government Pleader submitted that in earlier round of litigation, the petitioner had filed Writ petition No.2996 of 2011 before this Court and had prayed for issuance of direction against respondent No.2 for issuance of certificate of 'Project Affected Person'. On 06/02/2020, the said petition came to be disposed of with certain directions and in pursuance of the said directions, respondent No.2 conducted

enquiry and found that on 17/09/1987, Shri Rama Sadu Chikankar, father of the petitioner, had submitted an application with the District Rehabilitation Officer for issuance of certificate of 'Project Affected Person' in respect of acquisition of his land bearing Survey No.127/2, admeasuring 1.28 HR for Koradi Thermal Power Project in pursuance of award dated 10/06/1980 passed by the Land Acquisition Officer. However, as per the Government Circular dated 08/01/1981, when land of any person is acquired for the project approach road, in that event the person who loses such land cannot be termed as 'Project Affected Person' and the land of the father of the petitioner acquired for aerial rope-way, therefore, the petitioner is not entitled for certificate being 'Project Affected Person'.

07] It is needless to mention here that Shri Rama Sadu Chikankar, father of the present petitioner, was holding the land bearing Survey No.127/2, admeasuring 1.28 HR and the said land acquired under the provisions of the Land Acquisition Act by the acquiring body for the project of respondent No.4 of aerial rope-way for transportation of coal to the Thermal Power Station from Kamptee to Koradi. The respondents have not denied the fact of acquisition of land of the petitioner's father for the project of respondent No.4. The record speaks that the father of the petitioner had submitted an application with respondent's authority for issuance of certificate

being 'Project Affected Person', but no such certificate was issued, therefore, again on 04/08/1989, the petitioner had submitted an application with respondent No.4 and sought appointment being 'Project Affected Person', but said application was found defective and the petitioner was called upon to fill up the lacuna including production of certificate of 'Project Affected Person'. Thereafter, the petitioner submitted an application with respondent No.2 for issuance of certificate of 'Project Affected Person', but no such certificate was issued by respondent No.2. Therefore, the petitioner was constrained to file Writ Petition No.2996 of 2011 on 06/02/2020, which came to be disposed of with direction to the petitioner as well as respondent Nos.3 and 4 to remain present in the office of respondent No.2- Collector and after hearing, respondent No.2-Collector shall pass a reasoned order on or before 30/04/2020.

08] It is submitted that on 30/07/2020, respondent No.2 passed the impugned order and refused to issue certificate of 'Project Affected Person' in favour of the petitioner only on the ground that the land of the petitioner's father is acquired for aerial rope-way, therefore, as per the Government Resolution dated 13/04/1988 and as per the Circular dated 08/01/1981, the petitioner is not entitled to get certificate as "Project Affected Person".

09] Section 2(10)(b) of the Act provides as under :

“2. In this Act, unless the context requires otherwise, -

(10) “project” means, -

(b) atomic energy and power project, that is to say, construction, extension, improvement or development of any work for the production or supply of electricity or any work conducive to electrical development;”

Section 5(c) of the said Act provides that respondent No.2-Collector is duty bound to issue certificate being ‘Project Affected Person’ in favour of the person, who has been nominated by the project affected person for being employed against the quota reserved for the nominees of the affected persons.

10] Therefore, considering the definition provided under Section 2(10)(b) of the Act, if any land of any person is acquired for any power project for construction, extension, improvement or development of any work for production or supply of electricity or any work conducive to electrical development, certainly falls within the ambit of public project defined under Section 2(1) of the Act, because the land of the father of the petitioner acquired for construction of aerial rope-way from Kamptee to Koradi for transportation of coal. Respondent No.3-Power Generation Company issued

administrative Circular No.351 dated 11/07/2000, wherein sixth reference has been given to the person being 'Project Affected Person', whose land acquired by the Board for the purpose of road, railway line, rope-way, canal and pipelines. Though respondent No.2-Collector relied on Circulars dated 08/01/1981 and 13/04/1988, however, both Circulars do not provide for exclusion of issuance of certificate of 'Project Affected Person' in regard to the land, which has been acquired for laying aerial rope-way for the electric power generation company. Therefore, respondent No.2 could not have considered and relied on the Government Resolutions dated 13/04/1988 and 08/01/2081, when the land of the petitioner's father acquired for the special project of aerial rope-way for transportation of coal from Kamptee to Koradi Thermal Power Station. Therefore, the grievance of the petitioner is certainly governed as per the Administrative Circular No.351 dated 11/07/2000 issued by respondent No.3 Board (now Power Generation Company). Therefore, considering the provisions of the Act and Circular dated 351 dated 11/07/2000, the petitioner is entitled for certificate of 'Project Affected Person' for acquisition of land of his father. However, respondent No.2 passed impugned order dated 30/07/2020 by relying the Government Resolution dated 13/04/1988 and Circular dated 08/01/1981, which is illegal, bad in law and liable to be quashed and set aside.

11] In view of the above discussions, we are inclined to allow the present petition and proceed to pass the following order :

ORDER

- I. The writ petition is hereby allowed.
- II. Impugned order dated 30/07/2020 passed by respondent No.1-Collector, Nagpur is hereby quashed and set aside.
- III. Respondent No.2-Collector, Nagpur is hereby directed to issue certificate of 'Project Affected Person' in favour of the petitioner in respect of acquisition of land bearing Survey No.127/2, admeasuring 1.28 HR of village Mouza Bhanegaon of the petitioner's father Shri Rama Sadu Chikankar within a period of eight weeks from today.
- IV. Rule is made absolute in the above terms with no order as to costs.

(Y.G. KHOBRAGADE, J.)

(ROHIT B. DEO, J.)

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