



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

PUBLIC INTEREST LITIGATION NO.129 OF 2018
WITH
CIVIL APPLICATION NO.376 OF 2019

Shri Anil Wadpalliwar, Amrapali, New Ramdaspath, Nagpur

-VS-

Maharashtra Electricity Regulatory Commission, Thr. Secretary, Cuff Parade, Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and the Registrar's orders.

Court's or Judge's Orders.

Shri S. P Bhandarkar, Advocate with Shri A. C. Khose, Advocate for petitioner.
Shri S. V. Rungtha, Senior Advocate with Shri K. J. Rawandhe, Advocate for
respondent Nos.1, 2, 4 and 5/MERC
Shrei Shridhar Purohit, Advocate with Shri R. R. Pimpalkhute, Advocate for
application in CAO/2047/2018.

CORAM : NITIN W. SAMBRE AND SACHIN S. DESHMUKH, JJ.

DATE : June 19, 2025

Civil Application (CAO) No.376/2019

1. This is an application moved by the petitioner seeking addition of party respondent Nos.2, 3, 4 and 5 who were the members of respondent No.1-Statutory Body and addition of subsequent developments through paragraphs 19A to 19F on legal grounds.

2. The learned counsel appearing for the petitioner Shri Bhandarkar would invite our attention to the prayer clauses in the petition particularly prayer clauses (b) (c) (d) and (e) which read thus :

b) By an appropriate writ, order an/ or direction, hold and declare that the resolution dated 4th September 2018 (ANNEXURE-A) passed by the respondent-Commission as per se illegal, arbitrary, Draconian and highly unconstitutional which defeats the spirit of transparency in the proceedings held before the state commission and therefore does not stand to the scrutiny of law:

c) By an appropriate writ, order and/or direction, quash and set aside the resolution dated 4th September 2018 (ANNEXURE-A) passed by the respondent-Commission at the same is against the public interest and defeats

the spirit of transparency in the court and quasi-judicial proceedings held before the respondent-Commission;

d) By an appropriate writ, order and/or direction, restrain the respondent-Commission from eliminating any of the previous records as specified in the impugned resolution dated 4th of September 2018 (ANNEXURE-A);

e) By way of interim relief kindly be pleased to stay the effect, operation, and/or implementation of resolution dated 4th of September 2018 (ANNEXURE-A) passed by the respondent – Commission during the pendency of the instant petition; ...

3. According to Shri Bhandarkar, the very same amendment was earlier carried out by the petitioner in view of leave granted by this Court however, it appears that the respondents were aggrieved by the order of granting leave to amend and as such they sought a legal remedy before the Apex Court questioning the earlier grant of leave to amend.

He would further invite our attention to the order of the Apex Court dated 11/02/2025 whereby the Apex Court has issued directions to consider the amendment application and to pass the order after considering reply of the respondents including that of the proposed respondents.

4. It is by virtue of aforesaid directions issued by the Apex Court, the matter is taken up for hearing.

5. Shri Bhandarkar, learned counsel appearing for the petitioner based on prayer clauses in the petition and the order impugned would urge that this Court by causing notice in the matter on 12/10/2018 directed that the impugned order dated 04/09/2018 shall not be given effect to. According to him in spite of such order, based on the impugned resolution dated 04/09/2018 not only the recording of the proceedings of the respondent in the form of audio video is discontinued but also the earlier audio video recordings of the proceedings are destroyed. He would urge that one can understand the discontinuation of recording of proceedings in audio video form however, the respondent No.1 since lacks the authority to destroy its own public record and such act being subsequent to the filing of the petition,

same has compelled him to prefer the amendment application.

6. According to Shri Bhandarkar, the conduct of the respondent of destroying public record is an offence as per the provisions of Sections 8 and 9 of the Maharashtra Public Records Act, 2005 and that being so amendment is necessary for deciding the legal issue which is sought to be canvassed in the petition. He would claim that the amendment is required in view of the conduct of the respondents as referred to herein above.

7. As against above, Shri Rungtha, learned Senior Counsel appearing for the respondent No.1 so also the proposed respondents would strenuously oppose the prayer for grant of amendment. According to him, the prayer for amendment is liable to be rejected as the petitioner is trying to convert the civil proceedings into criminal. Drawing support from the judgment of the Apex Court in the matter of *Life Insurance Corporation of India vs. Sanjeev Builders Pvt. Ltd.* reported in **2022 (16) SCC (1)**, he would urge that the amendment in question cannot be granted. He would further claim that the amendment in the nature of proceedings qua from civil to criminal is not permissible and for original cause there is an independent cause of action present. According to him the erstwhile Chairman, Members and Secretary of the respondent No.1-Commission are sought to be impleaded which cannot be done as the prosecution against such persons is contrary to the provisions of Section 218 of Bharatiya Nagrik Suraksha Sanhita and Section 168 of the Electricity Act, 2003. He would claim that the prosecution against the proposed respondents is not maintainable as they are public servants and there is no sanction for such prosecution.

8. We have appreciated the aforesaid contention.

Challenge in the present public interest litigation is to the resolution dated 04/09/2018 (Annexure-A) whereby it was resolved by the Statutory Authority i.e. respondent No.1 not to record its proceedings in audio or video form and such audio and video recordings of the earlier meetings were to be eliminated in due course of time as the same were not part of official record. The resolution further puts an embargo on providing copies of audio and

video recording to the members of the public.

9. After the present public interest litigation was preferred, this Court vide order dated 12/10/2018 directed the respondent No.1 not to give effect to the said resolution dated 04/09/2018. However, it is an admitted position on record that not only after the said resolution was passed, the audio video recording was stopped but the entire earlier recordings were eliminated/destroyed.

10. This elimination/destruction of the audio video recording of the respondent No.1 Commission has prompted the petitioner to seek impleadment of the Chairman, Members and Secretary of the Commission as respondent Nos.2 to 5.

11. Impleadment of private respondents who are alleged to be the public servants by itself would not draw a conclusion that they have violated the provisions of the Maharashtra Public Records Act, 2005 and has made themselves liable for the action under Sections 8 and 9 thereof. However, we must be sensitive of the fact that under the aforesaid resolution they have eliminated/destroyed the record.

12. Such elimination in our opinion, even though claimed by the petitioner, cannot be part of the decision making power of the respondent No.1 pursuant to the provisions of Sections 92 of the Electricity Act, 2002.

Even otherwise, in case if the amendment is permitted, the respondents will be getting sufficient opportunity to put forth their case before the Court.

13. Merely because the amendment is allowed, that by itself cannot lead to the conclusion that respondent Nos.2 to 5 are required to be proceeded against the Act of Maharashtra Public Records Act, 2005.

14. The contention of Shri Rungtha, learned Senior Counsel that the proceedings are sought to be converted from that of civil to criminal is also

liable to be rejected as the petitioner is not seeking alteration of his existing prayers. All that the petitioner is trying to bring to the notice of this Court through this public interest litigation is the conduct of respondent Nos.2 to 5 and in case if this Court is satisfied that such conduct of respondent Nos.2 to 5 is contrary to the provisions of Sections 8 and 9 of the Act of 2005, they can be proceeded against in that respect.

As far as the defence of Shri Rungtha, during the course of hearing is concerned, we are not supposed to go into the merits of the case as the same can be appreciated at an appropriate stage. However, at this stage, we are convinced on the issue that since the earlier audio video recordings of the proceedings were eliminated/destroyed by the proposed respondents, they can be impleaded as party respondent Nos.2 to 5 to the petition and consequential amendment that is moved by the petitioner needs to be granted. Though Shri Rungtha has relied on the judgment of the Apex Court in the matter of *Life Insurance Corporation of India* (supra) so as to claim that in case the amendment changes the nature of proceedings or the cause of action so as to set up an entirely new case, foreign to the case set up in the petition, the amendment must be disallowed, the fact remains that the relief that is sought to be claimed by the petitioner by way of amendment is a consequence of the existing relief sought. It is not that the petitioner is setting up altogether new cause of action or new case before this Court. Rather in the said judgment in case of *Life Insurance Corporation of India* (supra) the Apex Court has held that generally the amendment should be allowed for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings and also to avoid the parties putting to any injustice. The Apex Court has held that a prayer for amendment is generally required to be allowed unless by way of amendment, time barred claim is sought to be introduced.

15. For the aforesaid reasons, we are of the view that a case for grant of amendment is made out.

Civil Application accordingly stands allowed. The amendment be carried out within a period of four weeks from today.

Civil Application stands disposed of.

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16. Once the amendment is carried out, issue notice to the newly added respondents, returnable four weeks thereafter.

17. Shri S. V. Rungtha, learned Senior Counsel, on instructions, waives service for newly added respondents.

(Sachin S. Deshmukh, J.)

(Nitin W. Sambre, J.)