



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

WRIT PETITION NO. 2180 OF 2024

Shri Vishal S/o. Nagorao Ambagade,
A/a 45 years, Occu. : Service,
R/o. Qtr. No.5/8/1, K.T.P.S. Colony,
Koradi, Nagpur.

.... **PETITIONER.**

// VERSUS //

1. State of Maharashtra
Through its Principal Secretary,
Department of Energy,
Mantralaya, Mumbai.
2. Maharashtra State Power Generation
Company Limited (M.S.P.G.C.L.)
through its Chairman and
Managing Director.
3. Executive Director (H.R.)(M.S.P.G.C.L.)
4. Chief General Manager (H.R.)
M.S.P.G.C.L.
(Respondent no. 2 to 4 office at
Prakashgad Building, 2nd Floor,
Plot No.G-9, Anant Kanekar Marg,
Bandra (East), Mumbai -51).
5. AGM H.R. (Recruitment Cell)
M.S.P.G.C.L. Estrella batteries
Expansion Compound Building,
Labour Camp, Dharavi Road,
Matunga, Mumbai -19.
6. Shri. Laxman Nago Bawankule
A/a Major, Occu. Service,
Presently posted as Addl. Executive
Engineer (SAP ID-11588), Koradi
T.P.S. Urja Bhavan Koradi, Nagpur.

7. Shri Abdul Hayat Samsi,
A/a Major, Occu. Service,
Presently posted as Addl. Executive
Engineer (SAP ID-11708), C.S.T.P.S.
Urja Bhavan, Chandrapur.
8. Shri Naeem Khader Abdul
A/a Major, Occu. Service
Presently posted as Addl. Executive
Engineer (SAP ID-10756), Parli T.P.S.
Parli Vaijyanath District : Beed.
9. Shri Abhijeet S/o. Gautam Lokhande,
A/a Major, Occ. Service,
Presently posted as Executive
Engineer, C.S.T.P.S. Urja Bhavan,
Chandrapur.

.... RESPONDENTS.

Shri Sagar D. Shukla, Advocate for Petitioner.
Ms Tajwar Khan, A.G.P. for Respondent No.1.
Shri Onkar A. Ghare, Advocate for Respondent No.2 to 5.
None for respondent Nos. 6 to 9.

CORAM : ANIL S. KILOR AND
RAJ D. WAKODE, JJ.

DATED : APRIL 10, 2026.

ORAL JUDGMENT : (Per : Anil S. Kilor, J)

1. Heard learned counsel for the petitioner, learned counsel for the respondent Nos.2 to 5 and the learned A.G.P. for the respondent/ State.
None for the respondent Nos. 6 to 9, though served.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. The petitioner, who is a physically disabled person applied for the post of Executive Engineer under the category reserved for 'Persons with Disabilities'. The post of Executive Engineer and Additional Executive Engineer are from the same cadre. The common reservation for the category of 'persons with disabilities' was shown in the advertisement. While selecting and appointing the candidates from the category of 'persons with disabilities', no appointment was made on the post of Executive Engineer but all the appointments were made from the category of persons with disabilities for the post of Additional Executive Engineer. Thus, the said alleged illegality is under challenge in this petition.

Brief facts of the present case are as under :

4. The Petitioner is a permanently physically disabled person holding a valid medical certificate. He is suffering from locomotor disability, with the extent of disability assessed at 46% in relation to his left lower limb.

5. The respondent No.3-Executive Director published an advertisement inviting applications for the post of Executive Engineer (TECH 01), Additional Executive Engineer (TECH 02) and Deputy Executive Engineer (TECH 03) for filling 73, 154 and 103 vacancies, respectively, through direct recruitment. Since the cadre of Executive Engineer and Additional Executive Engineer is one and the same, total 9 seats were shown to be reserved for 'Persons with Disabilities', which is 4% of total combined seats advertised for Executive Engineer (TECH 01) and Additional Executive Engineer (TECH 02), as per the mandate of Section 34 of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as "the Act of 2016").

6. The petitioner being eligible for the post of Executive Engineer (TECH 01) applied for the said post claiming horizontal reservation of 4% for the Persons with Disability. The petitioner had applied in Scheduled Caste Category.

7. The Assessment Centre Test of eligible candidates for the post of Executive Engineer (TECH 01) was conducted on 23/12/2023 and subsequently list of shortlisted candidates for personal interview was published on 26/02/2024. In the said list the name of the petitioner is

mentioned at Sr.No.1 of the Scheduled Caste Candidates, with remark of 'shortlisted against women reservation'.

8. Respondent No.3 vide its notification dated 05/12/2023 published a final select list for the post of Additional Executive Engineer (TECH 02), wherein all 09 vacancies jointly reserved for 'physically challenged' candidates for the post of Executive Engineer (TECH 01) and Additional Executive Engineer (TECH 02) were entirely allocated to the post of Additional Executive Engineer (TECH 02), thereby depriving physically challenged candidates eligible for the post of Executive Engineer (TECH 01) of their rights. Hence, this petition.

9. We have heard the learned counsel for the respective parties.

10. It is argued by the learned counsel for the petitioner that, in the event of segregation of the reservation quota for Persons with Disabilities for the posts of Executive Engineer and Additional Executive Engineer, 03 seats out of the total vacancies for the post of Executive Engineer and 06 seats out of the total vacancies for the post of Additional Executive Engineer ought to have been reserved for candidates belonging to the Persons with Disabilities category.

11. The learned counsel for the petitioner argues that filling of 9 posts reserved for Persons with Disabilities after combining the post of Executive Engineer (TECH 01) and Additional Executive Engineer (TECH 02), exclusively from the pool of Additional Executive Engineer (TECH 02) and denying the appointment to the post of Executive Engineer (TECH 01) is malafide and contrary to the purpose and object of the Act of 2016. It is argued that failure to allocate vacancies for Executive Engineer (TECH 01) despite the eligible Persons with Disabilities candidates, would result in lack of representation across the required post undermines fairness and equal opportunity.

12. It is argued that as per the provisions of the Act of 2016, more particularly, as per Rule 11 of the Right of Persons with Disabilities Rules, 2017 (hereinafter referred to as “the Rules of 2017”) the reservation for Persons with Disabilities is to be computed cadre-wise. It is submitted that the Executive Engineer (TECH 01) and Additional Executive Engineer (TECH-02), both the posts fall in one cadre and thus, there is no illegality to the extent of showing total 9 posts reserved for persons with disability. However, in peculiar facts of this case, where examination and selection procedure for both the posts, namely, Executive Engineer (TECH 01) and Additional Executive Engineer (TECH 02), was totally

different, and the assessment done for both the merit lists is arbitrary and amounts to denial of benefit of the Act of 2016.

13. On the other hand, Shri Ghare, learned counsel appearing for the respondent No.3 argues that since it is a settled law that vacancies for the persons with disabilities to be computed on the basis of cadre and as the posts of Executive Engineer (TECH-01) and Additional Executive Engineer (TECH-02) are falling in the same cadre, no error has been committed by the respondent in not determining the seats for both the above referred posts. It is further argued that once the petitioner has participated in the selection process, he cannot be permitted to raise a challenge to the advertisement or to the selection process.

14. The learned A.G.P. reiterates the submission of the learned counsel for the respondent No.3 and submits that there is no error committed in determining combined 9 seats for persons with disabilities for the cadre of Executive Engineer (TECH-01) and Additional Executive Engineer (TECH-02).

15. Having heard the respective counsel and considering the rival submissions, a question which arises for determination is, whether the

denial of appointment from the category of ‘persons with disabilities’ on the post of Executive Engineer is just and proper and is in accordance with the scheme of the Act of 2016?

16. To answer the above referred question, it would be relevant to refer to the certain relevant provisions of the Act of 2016.

17. Section 33 enjoins the appropriate government to identify the post which could be reserved for persons with bench mark disability and Section 34, which provides for statutory reservation for not less than four percent of the total number of vacancies in the cadre strength in each group to be filled by persons with bench mark disabilities. Sections 33 and 34 read thus :

“33. Identification of posts for reservation. -The appropriate Government shall-

(i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;

(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

This clause seeks to provide for the appropriate Government to identify posts in establishments to be reserved for the persons with benchmark disabilities. (Notes on Clauses).

34. Reservation.-(1) Every appropriate Government shall appoint in every Government establishment, not less than four percent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:-

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

This clause seeks to provide for reservation of vacancies in establishments meant for persons with disabilities and also provides for the manner of recruitment to fill up such vacancies. (Notes on Clauses)."

18. From the language of the above referred provisions, the legislative scheme which is discernible, it is evident that the Act has provided a minimum reservation of four percent for the persons with disabilities. Out of the said four percent, one percent each is made for the disabilities mentioned in clauses (a), (b) and (c) in sub-section (1) of Section 34 of the Act of 2016. The remaining one percent is collectively meant for the persons mentioned in Clauses (d) and (e) of the same provision.

19. In the present matter, as we have seen that the whole controversy is about the computation of reservation, it is pertinent to note that sub-section (1) of Section 34 of the Act of 2016 stipulates that the vacancies shall be reserved against "total number of vacancies in the cadre strength in each group of posts."

20. Admittedly, the post of Executive Engineer and the Additional Executive Engineer are of the same cadre. The total vacancies shown for the post of Executive Engineer were 73, whereas, for Additional Executive Engineer were 154, total of which comes to 227 and four percent of the same comes to 9. Thus, total 9 seats were shown as reserved for persons with disabilities.

21. The method of computation is given in Rule 11 of the Rights of Persons with Disabilities Rules, 2017 (hereinafter referred to as “the Rules of 2017”), which reads thus :

*“11. **Computation of vacancies.** (1) For the purposes of computation of vacancies, four percent of the total number of vacancies including vacancies arising in the identified and non-identified posts in the cadre strength in each group of posts shall be taken into account by the appropriate Government for the persons with benchmark disabilities:*

Provided that the reservation in promotion shall be in accordance with the instructions issued by the appropriate Government from time to time.

(2) Every Government establishment shall maintain a vacancy based roster for the purpose of calculation of vacancies for persons with benchmark disabilities in the cadre strength as per the instructions issued by the appropriate Government from time to time.

(3) While making advertisement to fill up vacancies, every Government establishment shall indicate the number of vacancies reserved for each class of persons with benchmark disabilities in accordance with the provisions of section 34 of the Act.

(4) The reservation for persons with disabilities in accordance with the provisions of section 34 of the Act shall be horizontal and the vacancies for persons with benchmark disabilities shall be maintained as a separate class.”

22. Sub-rule (1) of Rule 11 of the Rules of 2017 categorically provides that the computation of four percent vacancies shall be done on both identified and non-identified posts collectively. Sub-rule (2) of Rule 11 imposes an obligation to maintain the vacancy based roster for the purpose of calculation of vacancies.

23. It is thus, evident that the total vacancies, as per the cadre strength relating to group of posts namely Executive Engineer and Additional Executive Engineer, are shown as 9 for the total 227 vacancies which is 4% of the vacancies in the cadre strength. Therefore, in sharing total 9 vacancies in the said cadre no error can be attributed to the respondents.

24. However, in the peculiar facts and circumstances of the case, particularly when the selection processes for both the posts were entirely distinct, it requires consideration whether the assessment of merit for both posts has been undertaken through a separate list, as it can be seen in this petition that two separate select lists were published. The select list of Additional Executive Engineer (TECH-02) was published on 27/12/2022 and the select list for Executive Engineer (TECH-01) was published on 07/05/2023.

25. Admittedly, for the post of Executive Engineer (TECH-01) the selection procedure includes In-basket Exercises, Group Discussions and Case Studies. Whereas, the selection procedure for Additional Executive Engineer (TECH-02) is based on a standard Multiple Choice Questions (MCQ) Test.

26. In-basket exercise, group discussion and case studies, these type of tests are simulations and for behavioural assessments for the candidates that measures the overall behaviour and application of mind by the candidate. These tests build in a very high pressure for the candidates performing as there is a very limited time to perform the task in various formats. It measures how they handle stress, priorities tasks and make decisions.

27. The MCQ test involves objective based questions and are easy to score on marks, in which the results are quantifiable in order to analyze the candidate's achievement in each question.

28. Thus, it is apparent that the selection procedure for Additional Executive Engineer (TECH-02) was much easier than the selection procedure for the post of Executive Engineer (TECH-01). It is noted by

the Hon'ble Supreme Court that the discrimination occurs due to arbitrary denial of opportunities for equal participation. The selection based on merit, tested impartially and objectively, is essential foundation of any useful and efficient public service. (*Lila Dhar .v..State of Rajasthan*, (1981) 4 SCC 159).

29. If there is a vast difference in the selection and assessment of merit for both the posts, and separate select lists were published for Executive Engineer (TECH-01) and Additional Executive Engineer (TECH-02), which were merged since both posts belong to the same cadre, the respondent ought to have considered the meritorious candidates also who applied for the Executive Engineer (TECH-01) post.

30. Section 33 of the Act of 2016 does not permit to compute the vacancies against the identified posts only, but, it mandates to compute the vacancies on the basis of total vacancies in the strength of cadre i.e. including 'identified posts' and 'not identified posts'.

31. Thus, once such computation is made, as provided under Section 33 of the Act of 2016, at the time of appointment, such appointment shall be made against the respective posts identified as suitable for the respective categories of persons with disabilities.

32. We are surprised that in the present matter, the appointment was denied to first three meritorious candidates for the post of Executive Engineer (TECH-01). After computation of 4% seats for persons with disabilities on the basis of the strength of cadre, the respondents at the time of appointment ought to have considered both the posts as separate, according to separate merit list for appointment from the category of 'persons with disabilities'. Thereupon, considering the total number of vacancies, i.e., 73 for the post of Executive Engineer, the first three meritorious candidates (4% of 73 vacancies) ought to have been appointed as Executive Engineer. Similarly, in respect of the post of Additional Executive Engineer, having regard to the total vacancies of 154, six meritorious candidates (4% of 154 vacancies) ought to have been appointed on the post of Additional Executive Engineer, so as to achieve the object of the Act of 2016.

33. Since, the respondent Nos.2 to 5 have failed to do so, a great injustice has been caused to the candidates who applied under the category of 'persons with disabilities' for the post of Executive Engineer. Hence, we have no hesitation to hold that the action of the respondent Nos.2 to 5 making all the appointments from the category of 'persons with disabilities' on the post of Additional Executive Engineer is arbitrary

and not fulfilling the legislative intent, as envisaged under the Act of 2016.

34. As regards the submission made by the respondents that once the petitioner participated in the selection process, he is precluded from challenging the advertisement, the said contention cannot be accepted. In the present case, the reservation indicated in the advertisement was cadre-wise, i.e., combined for both the posts of Executive Engineer and Additional Executive Engineer. The select list for the post of Executive Engineer (TECH-01) was published after the issuance of select list for Additional Executive Engineer (TECH-01), i.e., within the gap of four months. It was only upon issuance of the appointment order for the post of Executive Engineer (TECH-01), the petitioner came to know that no candidate has been selected for the said post. The first occasion therefore, for the petitioner to approach this Court arose only after the appointment order dated 07/05/2023 was issued. In such circumstances, the principle that 'a candidate, having participated in the selection process, cannot subsequently challenge the advertisement or the selection process', would not be applicable to the facts of the present case.

35. Having held so, we pass the following order :

- i) The Writ petition is allowed.
- ii) Respondent Nos.2 to 5 are directed to appoint the first three meritorious candidates to the post of Executive Engineer (TECH-01) and first six meritorious candidates to the post of Additional Executive Engineer (TECH-02) from the merit lists separately prepared for the said posts, under the category of 'persons with disabilities'.
- iii) The appointments made under the category of Persons with Disabilities to the post of Additional Executive Engineer (TECH-02), in excess of the six posts, shall stand cancelled.

The Rule is made absolute accordingly. No order as to costs.

(RAJ D. WAKODE, J)

(ANIL S. KILOR, J)

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