

Balak Vs. State of Maharashtra and Others

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Court : Mumbai Nagpur

Decided On : Sep-11-2014

Judge : A.P. Bhangale & C.V. Bhadang

Appeal No. : Writ Petition No. 3380 of 2001

Appellant : Balak

Respondent : State of Maharashtra and Others

Judgement :

Oral Judgment: (A.P. Bhangale, J.)

1. By this petition, the petitioner has prayed to declare that respondent no.2 erroneously discriminated amongst the project affected persons. It is further prayed to quash and set aside order dt.1.6.2001 and to direct respondent no.2 to absorb the petitioner in their plant at Butibori as per it's undertaking given in clause 3(p) of agreement.

2. The learned Counsel for the petitioner invited our attention to the format of agreement between the Maharashtra Industrial Development Corporation, Nagpur and license/lessee. As such, no concluded contract between the M.I.D.C. and the petitioner is brought to our notice. The petitioner relied upon the copies of correspondence between the Regional Manager, Bharat Petroleum Corporation Ltd. and the Manager, Bharat Petroleum Corporation Ltd., Butibori, Industrial area, Tq. Highna, District Nagpur and the Regional Officer, M.I.D.C., Nagpur and the

petitioner whereby recommendation was made regarding employing the petitioner as per his eligibility and suitability on priority. It appears that the petitioner through Counsel issued notice dt.5.5.2001 whereby he called upon respondent/Bharat Petroleum Corporation Ltd. to appoint him within ten days from the date of receipt of the notice, failing which he shall be constrained to take legal action in the Court of law. It appears that the notice was replied by the Manager (Employment relations) (West) on behalf of Bharat Petroleum Corporation Ltd. whereby regret was expressed that the petitioner cannot be appointed as demanded by him. Under these circumstances, the petition with the above prayer is filed.

3. We have heard the learned Counsel for the petitioner with reference to Annexures in the petition. The petition is opposed on the ground that the petitioner cannot be appointed directly by the respondents without the advertisement being issued and published as per rules by the Recruitment Authority on behalf of the respondents and unless the petitioner competes with the similarly situated candidates seeking appointment to the post if an advertisement is issued accordingly to fill up the post available with the respondents. It is submitted that the petitioner is a project affected person and he ought to have been appointed by the respondents from the category of project affected persons.

4. Our attention is invited in this regard to the legal position stated in the ruling in the case of Rajendra Pandurang Pangare and another vs. State of Maharashtra and Others by the Full Bench of this Court, which is reported in 2009 (4) Mh.L.J. 961. The said ruling is in respect of filling up of vacancies of project affected persons. The Full Bench of this Court considered the same subject regarding rehabilitation of project affected persons and their appointment sought by them. It is observed by the Full Bench as under:

"We are, therefore, of the considered view that the directions given by the Division Bench in Sunil's Case, that the project affected persons should be appointed strictly according to the seniority list maintained by the Collector and that, they are not required to compete between themselves and that they are entitled to be appointed without any competitive examinations, are inconsistent with the mandate of the Constitution of India under Articles 14 and 16. We find, that the

same is also not permissible under the said Act and the relevant Government Resolutions. As we have already held, the quota of 5 % fixed for project affected persons is nothing but a horizontal reservation provided for project affected persons and the candidates from that category will have to compete amongst themselves under the recruitment rules and the best amongst them would be entitled to be appointed."

5. Making reference to Articles 14 and 16 of the Constitution of India, therefore, the conclusion was recorded that in order to ensure equality of opportunity which is guaranteed under the Constitution of India, it would be necessary that the posts reserved for project affected persons are advertised so that all the eligible candidates can submit their applications and get an opportunity to compete with each others in their category. Thus, it was concluded that the project affected persons cannot be appointed without advertising the posts ignoring their qualifications and merits.

6. Our attention is also invited to the order passed by this Court in the case of Sunil s/o. Mansaram Shende vs. State of Maharashtra and Others in Writ Petition No.123 of 2002, dt.14.8.2014, wherein reference is made to identical Writ Petition No.546 of 2002, Shivram Lalaji Shende vs. State of Maharashtra, through its Secretary, Industries and Labour department, Mumbai, decided on 28.7.2005. Thus, it appears to be a settled position that if the petitioner is a project affected person, he need to apply along with other project affected persons and compete with them after advertisement is issued and when the posts are reserved for the project affected persons. In other words, the respondents cannot be directed to directly grant employment to the petitioner on the basis of the Certificate that he is project affected persons.

7. After having considered the rulings cited before us, we cannot allow this petition merely because the petitioner is a project affected person, unless he competes with the other project affected persons from the same category for seeking appointment to the post, as desired by him. The petition is, therefore, dismissed. Rule is discharged. No order as to costs.