(1993) 10 BOM CK 0005

In the Bombay High Court

Case No : Writ Petition No''s. 61, 107, 108, 125, 158, 170, 189, 321, 419, 555, 589, 752, 880 and 3436 of 1992

Irkar D. Shahu and Another APPELLANT

Vs

The Bombay Port Trust and Others RESPONDENT

Date of Decision : 06-10-1993

Acts Referred:

Citation : (1994) 3 BomCR 566

Hon'ble Judges : Sujata Manohar, J

Bench : Single Bench

Advocate : Indira Jaisingh, Anand Grover, Vatsal Varma and Poonam Udeshi, instructed by Halwasia and Co. in W.P. Nos. 108 of 1992, C.U. Singh, instructed by S.S. Pakle, in W.P. Nos. 125, 189, 589 and 321 of 1992, Bhatkal, instructed by R.J. Kochar, in W.P. Nos. 189 and 589 of 1992, V.P. Bobde and S. Satpute, in W.P. No. 752 of 1992, Kiran S. Bapat, in W.P. No. 555 of 1992, R.S. Kulkarni, instructed by I.A. Sayed, instructed by and S.G. Apte, in W.P. Nos. 170 and 880 of 1992, Anand Grover, in W.P. Nos. 107 and 3436 of 1992, Anand Grover, instructed by Halwasia and Co., in W.P. No. 419 of 1993 and K.H. Chopde, in W.P. No. 61 of 1992, for the Appellant; J.P. Cama, instructed by Desai Berjis and Chinoy, U.J. Makhija, instructed by Mulla and Mulla and for respondent Nos. 1, 2, 3 and 4 in W.P. Nos. 61, 107, 108, 125, 158, 189, 321, 555 and 589 of 1992, M.O. Chinoy, Ramaswamy and A. Chandurkar, instructed by Mulla and Mulla and for respondent No. 1 and 2 in W.P. Nos. 107, 108, 125, 158, 170, 189, 321, 555, 589, 752 and 880 of 1992 and W.P. No. 419 of 1993, Shekhar Naphade, instructed by Lata Desai, for respondent Nos. 3, 5, 6 and 9 in W.P. Nos. 61, 108, 158 and 189 of 1992 and W.P. No. 419 of 1993, C.U. Singh, instructed by S.S. Pakle, for respondent No. 5, in W.P. Nos. 125, 189, 321 and 589 of 1992, V.N. Lokur and H.V. Mehta, instructed by S. Sankaramakrishnan, for respondent Nos. 1, 2, 3, 4 and 5 in W.P. Nos. 61, 107, 108, 125, 158, 170, 189, 321, 555, 589, 752, 880 and 3436 of 1992, S.M. Dixit, for respondent No. 4, 5 and 10 in W.P. Nos. 61, 108, 125, 158, 189, 589 and 752 of 1992, D.C. Gomes, Venkateshwaran and T.R. Krishnan for respondent Nos. 3, 5 and 6 in W.P. Nos. 61, 88 and 108 of 1992, J.P. Cama, instructed by H. Mehta, for respondent in W.P. No. 419, S.H. Nazareth, for respondent No. 2, in W.P. Nos. 108, 125, 158, 3436 of 1992 and W.P. No. 419, S. Venkateshwaran, for respondent Nos. 4, 5 and 7 in W.P. Nos. 125, 158 and 555 of 1992, Lata Desai, for respondent No. 5, in W.P. No. 158 of 1992, D.Y. Chandrachud and Umesh Shetty for respondent No. 3, in W.P. Nos. 752 and 880 of 1992 and W.P. No. 419 of 1993, A.V. Bukhari, for respondent No. 3, in W.P. No. 752 of 1992, P. Ramaswamy and 2, in W.P. Nos. 61 and 3436 of 1991, Gandhy and U.J. Makhija, for respondent No. 4, in W.P. Nos. 61 and 3436 of 1992, for the Respondent

Judgement

Sujata Manohar, J.—In 1948, the Dock Workers (Regulation of Employment) Act, 1948 was enacted for regulating the employment of Dock Workers. u/s 2(b) of this Act a dock worker is defined to mean "a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, unloading, movement or storage of cargoes, or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port." u/s 2(c) an "employer" in relation to a dock worker is defined to mean "the person by whom he is employed or to be employed." Section 3 of this Act (hereinafter referred to as the Dock Workers Act) provides for schemes to be framed for registration of dock workers and employers with a view to ensure greater regularity of employment and for regulating the employment of dock workers whether registered or not in a port. u/s 3(2) such a scheme may provide, inter alia, for the application of the scheme to such classes of dock workers and employers as may be specified therein. u/s 3(2)(f) the scheme may also provide for prohibiting, restricting or otherwise controlling the employment of dock workers to whom the scheme does not apply and the employment of dock workers by employers to whom the scheme does not apply.

2. Under the Dock Workers Act, a Dock Labour Board for a group of ports can be established by the Central Government by Notification in the Official Gazette. Accordingly, the Bombay Dock Labour Board has been established under the Dock Workers Act. It is necessary to note that the Dock Workers Act, by itself, does not give any protection to a dock worker. It sets up a machinery for giving such protection through schemes which may be framed under the Dock Workers Act.

3. In 1956, the Bombay Dock Workers (Regulation of Employment) Scheme, 1956 was framed by the Central Government under the Dock Workers Act.

4. Clause 2(2) of this Scheme provides as follows :

"2(2) The scheme relates to the port of Bombay and applies to the classes or description of dock work and dock workers set out in schedule I.

Provided that the scheme shall not apply to any dock worker unless he is employed or registered for employment as a dock worker."

Clause 2(3) states that the scheme shall apply to registered dock workers and registered employers. Schedule I of the scheme gives classes or description of dock work and dock workers to which the scheme applies. Clause 1 of Schedule I describes the dock work to which the scheme applies. This is "stevedoring work other than coal, passenger baggage and mail work." Clause 2 gives categories of stevedoring workers to whom the scheme applies. In 1956, the categories of stevedoring workers covered by the scheme and enumerated in Clause 2 were 8 in number.

5. Clearly, therefore, this scheme (hereinafter referred to as the scheme of 1956) is a scheme which relates to stevedoring work other than coal, passenger baggage and mail work and it applies to certain categories of stevedore workers enumerated in schedule I and the stevedoring work done by them. This is also borne out by Clause 3(i) of the scheme of 1956 which defines "dock work" to mean, "operations at places or premises to which the scheme relates, ordinarily performed by dock workers of the classes or descriptions to which the scheme applies." (Italics ours).

6. The scheme provides for registration of employers as well as workers. The Bombay Dock Labour Board is required to maintain a register of employers as also a register of workers covered by the scheme. Under Clause 17, the Bombay Dock Labour Board in consultation with the Administrative Body is required to determine, before the commencement of registration in any category, the number of workers required in that category. Under Clause 18, as it was then in force, any dock worker who was already registered under the previous Bombay Dock Workers (Regulation of Employment) Scheme 1951 was entitled to be registered under this Scheme.

7. Clause 18(c) provides that registration of workers in any new category shall be done from among workers who have been or were working in the port on any such date as the Board may prescribe and selection for registration shall be made as far as possible on the basis of seniority as determined by the length of service rendered by a worker in that category and notified by the Board. The scheme also lays down provisions for registration with which we are not concerned at present. Under the scheme a registered worker is entitled to certain guaranteed employment wages, attendance allowance and other benefits as set out therein. Clause 39(1) provides as follows:

"39. Restriction on employment:-(1) No person other than a registered employer shall employ any worker on dock work nor shall a registered employer engage, subject to the relaxation given in Clause 18(2), for employment or employ a worker on dock work unless that worker is a registered dock worker."

Therefore, as per Clause 39, a registered employer is required to employ only a registered dock worker for the dock work which is conversed by the scheme subject to certain exceptions which are carved out in that clause.

8. Thereafter, on 23-1-1981 a Notification was issued by the Government of India amending the scheme of 1956 by adding certain new categories of dock workers. As a result five new categories of dock workers were added to the Scheme : (1) Tindel of General Purpose Mazdoor, (2) General Purpose Mazdoor, (3) Cargo Supervisor, (4) Assistant Cargo Supervisor and (5) Dock Clerk. Schedule I was amended accordingly by adding these categories of workers to it. Clause 18 of

the Scheme which relates to the registration of existing/new workers, was also amended. Under the amended clause 18, "Any monthly worker in the categories now set out in Schedule I and employed by a registered employer on the date of enforcement of this Scheme on a permanent basis shall be deemed to have been registered under this Scheme."

9. As a result, a large number of dock workers who fell in these new categories, were registered under the Scheme of 1956 and the work done by them was included in the Scheme of 1956.

10. In 1982, there was a demand from the Transport and General Workers Union that certain casual workers who were doing the same work as the General Purpose Mazdoors should also be registered as General Purpose Mazdoors and be covered by the 1956 Scheme. Ultimately, as a result of a Resolution of the Bombay Dock Labour Board dated 30-12-1982, the Bombay Dock Labour Board resolved that temporary casual workers who were employed by the Stevedores and whose names were in the agreed list should be included in the Scheme of 1956 as General Purpose Mazdoors. As a result, in or around February 1983, about 2000 such casual workers were also registered as General Purpose Mazdoors.

11. The Scheme has been again amended in May 1988 to include 3 new categories of Dock Workers namely (1) Gearman, (2) Godown Khalasi and (3) Carpenter, as per the Government Notification of 4th of May, 1988. Under the directions given by the Central Government to the Chairman of the Bombay Dock Labour Board, only the workers carrying these new designations as given in the Boards Resolution dated 11-7-1986, and in whose case corroborative evidence of Provident Fund was available, were to be considered for registration. Accordingly, around 381 new workers were registered under the Scheme of 1956 as a result of the notification of 4th May, 1988.

12. The other Scheme framed under the said Dock Workers Act, 1948 with which we are concerned in this group of petitions, is the Bombay Dock Clearing and Forwarding (Regulation of Employment) Scheme, 1983 which came into effect as a result of a Notification dated 4-1-1983. Clause 2 of the said Scheme (hereinafter referred to as the Clearing and Forwarding Scheme of 1983) sets out the objects and application of the Clearing and Forwarding Scheme as follows:

"2. Object and application:

(1) The objects of the Scheme are to ensure greater regularity of employment for the dock clearing and forwarding workers and to secure that an adequate number of dock clearing and forwarding workers is available for the efficient performance of dock clearing and forwarding work.

(2) The Scheme relates to the Port of Bombay and applies to all workers engaged in loading, unloading, transport of import and export goods for clearance in the Bombay Docks as set out in Schedule I, but shall not apply to -

(a) Workers engaged in loading and unloading operations of-

(i) Cotton bales and bag cargo exceeding 80 kilos each and above;

(ii) Cargoes landed and cleared from Bunders;

(iii) Hides and skins;

(iv) Bulk Cargo imported loose.

(b) hand cart operators-Transporting cargo outside the dock gates.

(3) ....

(4) .... "

Under Clause 3(h) of the Scheme "dock work" is defined to mean "clearing and forwarding operations at places or premises to which the Scheme relates, ordinarily performed by workers of the classes or description to which the Scheme applies." Clause 3(o) defines "registered dock worker" to mean, "a registered dock clearing and forwarding worker, whose name is for the time being entered in the register or records for carrying out dock work specified in schedule I of this Scheme." Schedule I of the Scheme deals with classes or the description of dock work and dock workers to which the Scheme applies. It is as follows:

SCHEDULE - I

Classes or descriptions of dock work and dock workers to which the Scheme applies.

1) Dock work handling of - Import and Export goods for clearing in Bombay Docks.

2) Dock Workers:

(A) Muccadams;

(B) Clearing & Forwarding Mazdoors.

The other provisions of the Scheme are similar to the Scheme of 1956.

13. Prior to 1991, even in respect of dock work covered by the Stevedoring Scheme of 1956 and the Clearing and Forwarding Scheme of 1983 was carried out not merely by registered dock workers but also by groups of unregistered dock workers who were employed by the registered employers to do this work. It has been the contention of workers that there was sufficient work in the docks not merely for the registered workers but also for unregistered workers and hence the Bombay Dock Labour Board had permitted unregistered workers also to do some of the work falling under the above Schemes.

14. However, with the inauguration of the Jawaharlal Nehru Port at Nhava-Sheva in 1990-91, there was a sharp decrease in the work available in the Bombay

Docks. In 1991, the Bombay Dock Labour Board was unable to pay minimum wages payable under the said Schemes to the registered Dock Workers for the months of September and October. As a result, in October 1991, Writ Petition Nos. 3016/91 and 3028/91 were filed in this High Court by the Transport and Dock Workers Union for payment of requisite benefits to the registered workers in the reserve pool of the said two Schemes. Ultimately meetings were held between the Joint Secretary, Department of Surface Transport, Union of India, the Bombay Dock Labour Board, the Bombay Port Trust as well as the Bombay Stevedores Association, the Transport and Dock Workers Union and the Bombay Transport Dock Workers Union, pursuant to which, an agreement dated 13th December, 1991 was arrived at. In the Preamble to the agreement, the Government''s stand is set out. The Government has insisted that it is essential to make all the Schemes financially viable and this can be achieved only if certain conditions are met by the Unions and their workers. The agreement of 13th December, 1991 provides that henceforth unregistered workers will not be permitted to do any cargo handling work in the Bombay Port Trust Docks, Extended Dock area and Stream. The Bombay Dock Labour Board Scheme would be amended suitably. It was also decided that workers would agree to do the work allotted to them by the Bombay Dock Labour Board and no distinction will be made between separate Schemes as existed hereto. It was decided to merge all Schemes into a single Scheme for cargo handling workers of the Port. Appropriate amendments were to be made in the respective Schemes. Any labour, which in the opinion of the Bombay Dock Labour Board was rendered surplus was to be suitably re-employed after necessary training.

15. The registered workers were to be offered a voluntary retirement Scheme consistent with the Scheme offered by the Food Corporation of India. Certain options would be offered to the workers as set out in that agreement. After the Scheme became viable by implementing the respective changes including the Voluntary Retirement Scheme, all the registered workers would be absorbed by the Bombay Port Trust on monthly wages in their regular time-scale. The agreement also provided that the Bombay Port Trust and the Bombay Dock Labour Board shall ensure strict enforcement of the Scheme and in the case of any violation of the arrangement, like permitting unregistered workers for cargo handling in the Bombay Docks, strict action including cancellation of registration/ license given by the Bombay Port Trust would be taken against the defaulting registered employers. Similar strict disciplinary action would be taken against registered employees for aiding or abetting any violation of arrangement by the registered employers. We are not concerned with the other details of this agreement.

16. As a result of the Voluntary Retirement scheme which was offered, about 1700 registered workers have opted for voluntary retirement and have gone out of the scheme, making the scheme a little more viable.

17. In view of the above agreement of 13-12-1991, the Bombay Port Trust

declined to grant Entry permits to unregistered dock workers. Being aggrieved by the decision of the Bombay Port Trust not to grant Entry permits to unregistered dock workers, these writ petitions have been filed by various categories of unregistered dock workers challenging the decision of the Bombay Port Trust declining to grant them Entry Permits. We have to examine the merit of each of these Petitions.

Writ Petition No. 108/1992:

18. Writ Petition No. 108 of 1992 is filed on behalf of a group of workers numbering around 500 whose names are set our in Exhibit A to the petition. These workers are engaged in the work of loading and unloading bulk cargo (imported loose) consisting of chemicals or Fertilisers. Their work consists of unhooking of bulk cargo of Fertilizers imported loose, on the wharf. It is the contention of the petitioners that this work of unloading bulk cargo of fertilizers imported loose by hooking or unhooking of such cargo either on the wharf or directly in the trucks is work which is not covered either under the Stevedoring Scheme of 1956 or under the Clearing and Forwarding Scheme of 1983. Hence they were not eligible for registration under either of these two Schemes. There is, therefore, no question of their violating any terms and conditions of the Scheme. Since they are not covered by the Scheme, they are entitled to carry on their legitimate work in the docks and the Bomaby Port Trust cannot deny them Entry Permits so long as they comply with the Terms and Conditions under which such Entry Permits are granted by the Bombay Port Trust. They have also pointed out that they are not parties to the agreement of 13th of December, 1991 and the agreement can have no application to them because neither their work nor they are sought to be included in the Scheme.

19. The Bombay Dock Labour Board and the Stevedores Association, on the other hand, contend that the work done by these petitioners is work which should be done by the General Purpose Mazdoors under the Stevedoring Scheme of 1956. According to them, the Stevedoring Scheme of 1956 applies to such workers and hence unregistered workers can be prevented from doing the work which should be done by the registered General Purpose Mazdoors.

20. In this connection, the first contention that we have to examine is whether this work of hooking or unhooking bulk cargo of fertilizers imported loose, which is done on the wharf and not on the ship itself, can be considered as Stevedoring work. It is submitted before us that Stevedoring work is essentially the work of loading and unloading cargo which is done on the ship itself. Any work in this connection which is done on the wharf cannot be termed as stevedoring work.

21. Our attention was drawn to the definition of the word "Stevedore" in Wharton''s Law Lexicon, page 954 : "Stevedore" : (fr. estivar, sp., to stow), a person employed to stow a cargo on board a ship. In Chambers Dictionary at page 22339, "Stevedore" is defined thus: "(Sp. estimator packer, stower, fr. estivar to pack stow); one who works at or one who is responsible for the

unloading of a ship in Port, (2) to work at or undertake responsibility for the loading and unloading of a ship." Maclachlan''s Treatise on the Law of Merchant Shipping, at page 336, in the footnote, states, "Stevedore is a word used to denominate a person whose business is to undertake the stowage or discharge of cargos with a gang of workmen whom he hires and pays and is responsible for." Jowitt''s Dictionary of English Law, Volume - 2 at page 1683, defines "Stevedore" as "a person employed to stow a cargo on board a ship" and makes a reference to the Merchant Shipping (Stevedores and Trimmers) Act, 1911. It further says that a Stevedore is a person whose business is to undertake the stowage or discharge of cargos with a gang of men whom he hires and pays and is responsible for.

22. These definitions undoubtedly refer to stowage or cargo on board a ship. But they also refer to unloading of cargo with the help of a gang of men. None of these definitions state that only the work of loading and unloading done on board a ship will be considered as stevedoring work. The Preamble to the English Merchant Shipping (Stevedores and Trimmers) Act, 1911, states that it is an Act to enlarge the remedies of persons having claims for work done in connection with the stowing or discharging of ships, cargos or the trimming of coal on board ships. It is contended that the last words "on board ships" should be read as restricting the work of discharging cargo only on board ships. There is nothing in the Act to warrant such an interpretation. The Act throws no light on the question which is before us.

23. In Halsbury''s Law of England, Volume 43, paragraph 588, the employment of a stevedore is dealt with. Paragraph 588 states that where the actual work of loading the goods is delegated to a stevedore, he is usually to be regarded as the employee of the ship owner, who, as being the person primarily responsible for the loading, is liable to the shipper, in the absence of an exception covering the stevedores negligence, for the manner in which the stevedore performs his work, and also to the stevedore for his charges. These statements do not carry the case any further.

24. These definitions undoubtedly state that a "Stevedore" is a person who is responsible for stowing cargo on board a ship. But the definitions and description of the work of a stevedore do not restrict the work of a stevedore only to the work on board a ship. The term is defined with reference to the work of loading and unloading of cargo. Whether this work is done on board or a ship or on the wharf will not change the nature of the work. In fact, under the Stevedoring Scheme of 1956 itself, the categories of workmen which are covered by the Scheme clearly include those engaged in work on the wharf also. For example, the work of a Godown Khalasi included in the Stevedoring Scheme by an amendment of 1988 is work in the docks and not on the ship itself. It would not, therefore, be correct to say that the stevedoring Scheme will not apply to work which is done in the Docks. So long as the work is connected with loading and unloading of cargo from the ship, it can be considered as stevedoring work.

25. Our attention was drawn to British Shipping Laws, Volume - 5 dealing with C.I.F. and F.O.B Contracts, and the observations at page 384 to the contract goods cross the ship''s rail at the named port of shipment. The observations of Devlin, J., in Pyrene Co. Ltd. v. Scindia Navigation Co. Ltd. 1954(2) Q.B. 402 , are also reproduced there. "He (the seller) treats the word "on" (in the Carriage of Goods by Sea Act 1924) as having the same meaning as in ''free on board'' ; (namely) goods are loaded on the ship as soon as they are out across the ships rail...." We do not see how these observations carry the matter any further. They deal with the question when delivery f.o.b. is completed. For this purpose, the goods are loaded on the ship as soon as they cross the ship''s rail. But the work of loading and unloading cargo is not confined only to transferring the goods across the ship''s rail. The goods have to be received on the wharf and unhooked. This is as much a part of unloading the cargo from the ship as taking them across the ship''s rail. It is a continuous process which is completed when the goods are landed on the wharf in the case of unloading and stowed on the ship in the case of loading operations. Therefore, the contention that the work done by these petitioners is not stevedoring work because it is done on the wharf, cannot be accepted. It is stevedoring work.

26. The next question which we have to consider is whether the work done by these petitioners is the work done by the registered General Purpose Mazdoors and hence is covered by the Stevedoring Scheme of 1956. In this connection it is necessary to examine the background in which these General Purpose Mazdoors were brought under the Scheme in 1981.

27. By a Memorandum of settlement arrived at between the Bombay Stevedores Association Limited and the Transport and Dock Workers Union, Bombay on 10-4-1970, it was agreed that certain categories of workers who were then classified as daily rated temporary employees, were to be made permanent. They were to be paid certain monthly wages and given benefits as set out in the settlement. The categories of workers so covered were (1) Tindels of the Cleaning Gangs or Sweeping Gangs, (2) Workers of the Cleaning Gangs or Sweeping Gangs, (3) Palawallas (Sweepers) and (4) Sewingmen (Shivnars). An annexure to the settlement describes, inter alia, the duties of the cleaning gangs/ sweeping gangs, Tindels and workers. These include their duties on board a vessel. They also cover certain duties on shore. One of the duties on shore so included was of unhooking the slings on shore for bulk cargos. Palawallas duties were sweeping and collecting spillage of bagged or bulk cargo from the holds or on the deck or on the wharf during the process of loading or discharging of vessels, while the duties of Sewingmen (Shivnars) were described as stitching torn or loose bags whilst discharging or loading either in the holds or on deck or on wharf or in the shed.

28. From 1979 onwards the Transport and Dock Workers Union was demanding that the Bombay Dock Labour Board should register additional categories of dock workers. Those additional categories included Clearing gangs and Sweeping

gangs - workers and tindels. Ultimately, as a result of the Board Meeting held in October, 1979, the Board recommended that certain categories of dock workers may be considered for registration and these included Cleaning and Sweeping gang workers and Tindel. The Board had recommended that the Scheme of 1956 should be amended to enable these workers to be registered.

29. As a result, a Notification of 23-1-1981 was issued. As a result, of that Notification one of the categories of workers added to the Scheme was of a General Purpose Mazdoor. The Cleaning and Sweeping gang workers were included as General Purpose Mazdoors. The General Purpose Mazdoors were therefore expected to do the same work as Cleaning and Sweeping gangs. Now, the settlement of 1970 included the work of unhooking slings of bulk cargo on shore as the work of Cleaning gang workers. But the work of unhooking slings in respect of bulk cargo of Fertilizers imported loose, was, in fact, not done by the General Purpose Mazdoors registered under the Scheme after 1981. Between 1981 and 1983 it seems that this work was got done by the Stevedores through casual workers. These casual workers were registered under the Scheme of 1956 as General Purpose Mazdoors in 1983. But after the registration of these casual workers in 1983 in the category of General Purpose Mazdoors, this work of unhooking slings of bulk cargos of Fertilizers imported loose was again not done by the workers now registered as General Purpose Mazdoors. This is clearly brought out in the duty list of various categories of registered workers prepared by the Bombay Dock Labour Board in 1986 (Exhibit - 4 to the petition). The work on shore which is listed as required to be done by the registered General Purpose Mazdoors is as follows : "All types of jobs which are not carried out either by the registered stevedore workmen or B.P.T. workmen or Chipping and Painting Workers, shall be done by the General Purpose Mazdoor workers including the following :

....

(2) G.P.Ms. shall be engaged for direct delivery on all cargoes except M.O.P., Potash, Rock Phosphate, Urea, Bulk Sulphur, D.A.P. and Clinker as per present practice........"

Therefore, in 1986, it is quite clear that the General Purpose Mazdoors did not do the work of handling the cargo of Fertilizers (Items M.O.P., Potash, Rock Phosphate, Urea, Bulk Sulphur, D.A.P. are Fertilizers).

30. Therefore, in fact, some time prior to 1986 at any rate the General Purpose Mazdoors were not doing the work done by the petitioners, namely, unhooking the slings of bulk cargo of fertilisers imported loose. In fact, there is no material to show that the work done by these petitioners was ever done by any category of registered workers under the said Scheme.

31. It is, however, contended by the Bombay Port Trust and the Bomaby Dock Labour Board as well as the Bombay Stevedores Association that since the General Purpose Mazdoor is required to do any work that may be assigned to him

from time to time, the work done by these petitioners can also be assigned to General Purpose Mazdoors. However, the Scheme of 1956 defines "dock work" covered by the Scheme as meaning, "operations at places or premises to which the Scheme relates, ordinarily performed by dock workers of the classes or descriptions to which the Scheme applies." Clearly the Scheme would cover only such work as is ordinarily performed by dock workers covered by the Scheme - in the present case, by the General Purpose Mazdoors. The words "ordinarily performed" have a clear reference to the work actually being performed by the dock workers and not to work which they may, in future, be called upon to perform. Work which may be assigned to the General Purpose Mazdoors in future, or work which should have been performed by them but is not infact performed by them, cannot be considered as the work ordinarily performed by the General Purpose Mazdoors. Hence, the Scheme of 1956 does not cover the work performed by these petitioners since it is not the work ordinarily performed by the General Purpose Mazdoors registered under the Scheme of 1956.

32. A similar definition of "dock work" under the English Dock Workers Employment Scheme 1967 as applicable to Port Talbot, came up for consideration before the House of Lords in the case of National Dock Labour Board v. British Steel Corporation, reported in 1973 1. All E.R. 305. In the English Dock Workers Scheme also, "dock work" was defined as "operations at places or premises on which the Scheme relates, ordinarily performed by dock workers of the classes or descriptions to which the Scheme applies." This definition is identical with the definition of "dock work" in the present Scheme. The House of Lords held that having regard to this definition, the work must be the work which is ordinarily performed by the dock workers of the classes or descriptions to which the Scheme applies. The House of Lords further held that even if the work in question qualifies as dock work for the purposes of the Scheme, it will not be covered unless it is ordinarily performed at Port Talbot by the registered workers. On facts, it came to the conclusion that the work in question was not ordinarily performed by the registered dock workers at Port Talbot. The registered dock workers had allowed the employees of importers to do this work and the employees of Importers were doing this work all alone, even after the Scheme of 1967 came into operation. These employees were not registered workers. Therefore, in view of the definition of "dock work", the work done by these employees could not be considered as covered by the Scheme. It held, "Any operation which was not, as a matter of fact, being ordinarily performed by dock workers will not be dock work even though it would otherwise answer that description." The same reasoning would apply to the present case also. Since the work of these petitioners was not ordinarily performed by the registered General Purpose Mazdoors, this work will not be covered by the Scheme of 1956.

33. The petitioners have registered themselves under the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969. It is the contention of the Bombay Stevedores Association that once the

petitioners are registered under the said Act (hereinafter referred to as the Mathadi Act), they cannot do any dock work. Hence, the Bombay Port Trust has rightly refused them Entry Permits. In order to examine this contention, it is necessary to look at certain provisions of the Mathadi Act and the Scheme framed under it. Under clause (1) of the Mathadi Act, the Mathadi Act applies to the employments specified in the Schedule thereto. The Schedule to the Mathadi Act sets out 13 categories of employment which are so covered. Category No.3 is as follows:

"3. Employment in docks in connection with loading, unloading, stacking, carrying, weighing, measuring or such other work including work preparatory or incidental to such operations, but does not include employment of a Dock Worker within the meaning of the Dock Workers (Regulation of Employment) Act, 1948."

Under section 2(9), "scheduled employment" means any employment specified in the Schedule or any process or branch of work forming part of such employment. u/s 2(11), "unprotected worker" means a manual worker who is engaged or to be engaged in any Scheduled employment.

34. The purpose of the Mathadi Act is to regulate the employment of unprotected manual workers engaged in these scheduled employments and to make better provisions for their Terms and Conditions of employment and to provide for their welfare. The Mathadi Act which is a State Act is designed to provide protection to workers who are not protected under any existing legislation State or Central. Clause 3 of the Schedule brings this out clearly. It refers to workers employed in the docks in connection with loading, unloading, stacking, carrying, weighing, and other activites specified therein. Since such workers can be given protection under the Dock Workers Act, 1949, Clause 3 provides that it will not cover those Dock Workers who are within the meaning of that term under the Dock Workers Act of 1948. However, if we examine the definition of "dock worker" under the Dock Workers Act of 1948, it would cover every person employed or to be employed in, or in the vicinity of, any port on work in connection with loading, unloading, movement or storage of cargoes. Looking to this comprehensive definition of a dock worker under the Dock Workers Act, 1948, it is difficult to envisage any work in the docks relating to loading, unloading, stacking etc. which will not be the work of a dock worker within the definition of that term under the Dock Workers Act of 1948. Therefore, the entire Clause 3 in the Schedule would become nugatory if it is read in this manner. Mr. Naphade, learned Counsel appearing for the Mathadi Board, has, therefore, submitted that looking to the purpose for which the Mathadi Act was enacted, namely, for giving better protection to unprotected workers, clause 3 should be read as excluding from its ambit those categories of dock workers who are protected under the Dock Workers Act of 1948; i.e. only those dock workers who are covered by any Protective Scheme framed under the Dock Workers Act of 1948. The Dock Workers Act 1948 per se gives no protection to a dock worker. A dock worker gets protection only when a Scheme is framed under this Act to cover him and

the type of dock work he is doing. Once such a dock worker is protected under a Scheme framed under the Dock Workers Act, 1948, he is excluded from Clause 3 of the Schedule to the Mathadi Act. Mr. Naphade also submitted that this does not in any manner restrict the framing of any new Scheme under the Dock Workers Act of 1948. If and when any such new Scheme is framed under the Dock Workers Act of 1948, the dock workers who come under the umbrella of such a new Scheme will be automatically excluded from the Mathadi Act of 1969.

35. We find much to commend this interpretation of Clause 3 of the Schedule. Clause 3 cannot be interpreted in a manner which renders it nugatory. The intention is clearly to give protection to manual workers who are not covered by any Scheme framed under the Dock Workers Act of 1948. Clause 3 also clearly indicates the intention of the legislators not to have any conflict between the Mathadi Act and Dock Workers Act of 1948. Therefore, as soon as the provisions of any Scheme under the Dock Workers Act, 1948 become applicable to a dock worker, such a dock worker will not be covered by the Mathadi Act. The two Acts, therefore, which are both welfare legislation, should be construed harmoniously to further the object for which both have been enacted. Read in this light, the Mathadi Act can cover those workers employed in the docks in connection with loading, unloading etc. so long as such workers are not covered by any of the Scheme framed under the Dock Workers Act of 1948.

36. In view of this interpretation which we have put on Clause 3 of the Schedule to the Mathadi Act, it is not necessary for us to consider the arguments relating to the constitutional validity of the Mathadi Act which is a State Act and/or the effect of the Dock Workers Act, 1948 which is a Central Act on the Mathadi Act and/or the question of paramountcy of the Dock Workers Act which is a Central Act over the Mathadi Act which is a State Act. In our view, there is no conflict between the provisions of the two Acts if Clause 3 to the Schedule to the Mathadi Act is interpreted as we have done.

37. The State Government, by a Notification dated 12-4-1991, has framed a Scheme under the Mathadi Act known as the Clearing and Forwarding Unprotected and other Manual Workers (Regulation of Employment and Welfare) Scheme 1991. Clause 2 of the Scheme also provides that the object of the Scheme is to ensure an adequate supply and full and proper utilization of Unprotected Workers employed in the docks in connection with loading, unloading (including warai), sorting, segregating, cutting, stitching, filling, packing, marking, sealing, stacking, carrying, weighing, measuring or such other work including the work preparatory or incidental to such operations, but "does not include employment of a Dock Worker within the meaning of the Dock Workers (Regulation of Employment) Act, 1948." Once again the phrase in Clause 3 of the Schedule to the Mathadi Act is incorporated in the Scheme also to avoid any conflict between, the Schemes framed by the Dock Workers Act, 1948 and the Scheme framed under the Mathadi Act. If the work of the petitioners is not covered by any of the Schemes under the Dock Workers Act, 1948, it can be

covered by the Clearing and Forwarding, Unprotected and other Manual Workers Scheme of 1991. We are, however, not required to examine this question at any length because the registration of the petitioners under the Scheme of 1991 is not under challenge before us. The said Scheme of 1991 under the Mathadi Act is framed to cover certain categories of dock work. One cannot, therefore, accept the contention of the Stevedores that dock workers registered under the Mathadi Scheme of 1991 cannot do dock work.

38. Mr. Cama learned Counsel for the Stevedores Association contended that the Mathadi Act covered only the work in the docks pertaining to cargo after the cargo was cleared from the customs. He submitted that Clause 3 Schedule I of Mathadi Act did not cover dock workers who were doing stevedoring work or clearing work. According to him, stevedoring work comes to an end when the cargo is unloaded on the docks. The clearing work thereafter begins and it ends when the cargo is cleared from the customs. Thereafter, the forwarding work starts. He has submitted that the Mathadi Act applies only to the work of handling the cargo after the clearance of the cargo from the customs. Presumably this would be so in the case of imported cargo. In respect of cargo meant for export, the Mathadi work under the Mathadi Act, according to Mr. Cama, would stop at the doorstep of the customs. We do not see anything in the Mathadi Act or in Clause 3 of the Schedule to the Mathadi Act which limits the application of the Mathadi Act to work in the docks after the cargo is cleared from the customs and conversely up to the point when the export cargo is brought to the customs. The wordings of Clause 3 of the Schedule to the Mathadi Act is very wide and it covers operations in the docks at all stages so long as such dock work is not covered by any Scheme framed under the Dock Workers Act. The contention of Mr. Cama that the work of loading and unloading bulk cargo of fertilizers cannot be covered by the Mathadi Act, because it is Stevedoring work has no substance.

39. In this view of the matter the petitioners are not dock workers covered by the Scheme of 1956; nor is their work covered by the Scheme of 1956. They are outside the purview of the Bombay Dock Labour Board. They are not parties to the agreement of 13th December, 1991 and their work does not form a part of any of the Schemes framed by the Bombay Dock Labour Board. Hence, in view of the legitimate work performed by them in the docks, they would be entitled to Entry Permits provided they comply with the Terms and Conditions set out by the Bombay Port Trust to regulate the issue of such Entry Permits.

40. It is submitted by Mr. M.O. Chinoy, learned Counsel for the Bombay Dock Labour Board that permitting the petitioners to do the above work would make the functioning of the Bombay Dock Labour Board unviable because the Dock Labour Board is unable to give full work to the existing registered employees under their Stevedoring Scheme of 1956. The Dock Labour Board is under financial stress. On account of a reduction of work in the Bombay Port, the Bombay Dock Labour Board is carrying on its register a large number of workers

who have become surplus because of the shrinking of the work. If workers not covered under their Schemes are prevented from entering the docks, their work can be allotted to registered workers thereby improving the financial position of the Dock Labour Board. The difficulties of the Bombay Labour Board undoubtedly spring from reduction of work in the docks and a surplus of workers on their registers who have to be provided for, whether there is work for them or not. But if this is so, the correct response of the Bombay Dock Labour Board should be to reduce the number of registered workers on its registers in a suitable manner. It has already done this in the case of about 1700 workers by offering them a Voluntary Retirement Scheme pursuant to the agreement of 13th December, 1992. It can further trim its sails after consulting the Unions of Workers concerned in a manner acceptable to all. But the Bombay Dock Labour Board cannot enlarge the ambit of its Scheme by including other work in it without (sic) at the same time including in the ambit of the Scheme the workers who are doing this work. The defination of dock work in the Scheme of 1956 is with reference to workers included in the Scheme who are ordinarily doing this work. The manner in which the Scheme of 1956 has been expanded upto now also clearly shows that whenever new categories of work are sought to be included in the Scheme, new categories of workers who do this work have also been included in the Scheme. The scope work under the Scheme can therefore be enlarged by including the dock workers who are doing the new work which is sought to be covered by the Scheme. The present exercise, however, has been to include the work and give it to registered workers, ignoring the workers who are actually doing the work. Such an exercise is contrary to the provisions of the Scheme of 1956, looking to the definition of "dock work".

41. Hence, in our view, petitioners in this petition are entitled to succeed in so far as they pray for a direction to the Bombay Port Trust to issue to them Dock Entry Permits to perform their duties for their employers in the Bombay Docks, provided the petitioners comply with the necessary requirements prescribed by the Bombay Port Trust, in that connection. The Bombay Port Trust shall not deny them such Entry Permits only on the ground that they are not dockworkers registered under any of the Scheme framed under the Dock Workers Act of 1948 pertaining to the Bombay Docks. The rule is made absolute accordingly.

Writ Petition No. 125 of 1992.

42. The petitioners in this petition are doing the work which is similar to the work of the petitioners in Writ Petition No.108 of 1992. Hence, these petitioners are also covered by the ratio of the judgment in Writ Petition 108 of 1992. Rule is made absolute in the case of these petitioners also in the same manner as in Writ Petition No.108 of 1992.

Writ Petition No. 158 of 1992.

43. The first petitioner in this petition is a Society Registered under the Maharashtra Co-operative Societies Act, 1960. The other petitioners are the

office bearers of this Co-operative Society. The members of petitioner No. 1 Society do the work of cutting, stitching, packing and sealing in the Bombay Port. When the goods arrive at the docks either for the purpose of import or export, they are required to be examined by the Customs Officials. The goods which are packed in packages cannot be examined by the Customs Officials unless the packages are opened. After the goods are examined by the Customs, Officials, the goods are required to be repacked. Work in connection with opening the packages and closing them after inspection, by cutting, stitching, packing and re-sealing the bags in the Bombay Port Trust, is done by the members of the petitioner No. 1 Society.

44. It is an accepted position that the members of the first petitioner are employed by Clearing and Forwarding Agents. The members of the petitioner-society were given Dock Entry Permits on a yearly basis for doing the above work by the Bombay Port Trust. But the Dock Entry Permits are sought to be cancelled after the above agreement of 13-12-1992. Hence the present petition is filed.

45. It is the case of the Bombay Dock Labour Board that the work done by these petitioners is the work of General Purpose Mazdoors under the Stevedoring Scheme of 1956. In the alternative, the work is covered by the Clearing and Forwarding Scheme of 1983 because the work done by the members of the first petitioners is a part of the clearing of goods in the Bombay Docks. To examine the second contention first, the Dock Workers who are covered by the Clearing and Forwarding Scheme of 1983 are Mukadams and Clearing and Forwarding Mazdoors. The work covered under this Scheme is the work ordinarily done by these two categories of workers. None of the workers who are registered under the Clearing and Forwarding Scheme of 1983 are doing the work done by the members of the 1st petitioners. Here the Clearing and Forwarding Scheme of 1983 does not cover the members of the 1st petitioners.

46. It is also contended by learned Counsel for the Bombay Dock Labour Board that this is the work of General Purpose Mazdoors under the Stevedoring Scheme of 1956 because as per the settlement of 1970, Shivnars - sewing men were doing the work of stitching torn or loose bags and these persons have been later included as General Purpose Mazdoors. In the first place, the settlement of 1970 describes the work of sewingmen (Shivnars) as stitching only torn or loose bags whilst discharging or loading the cargo either in the holds or on the dock, or on the wharf, or in the shed. The work of opening bags for Customs inspection and re-stitching them is not mentioned in this settlement. What is more important, this work has not been done at any time by any of the registered General Purpose Mazdoors under the 1956 Scheme.

47. In view of this factual position and looking to the definition of "dock work" under both these Schemes, these workers are also in the same position as the petitioners in Writ Petition 108/1992. They would also be entitled to Dock Entry Permits on the same terms and conditions as the petitioners in Writ Petition No. 108 of 1992. Rule is made absolute accordingly in this petition.

Writ Petition Nos. 189/92 and 589/92

48. The petitioners in Writ Petition No. 189/92 are doing the work of unhooking bulk cargo of Rock phosphate and other Fertilizers. Although the petitioners state that they were also doing similar work in respect of Iron scrap, learned Counsel for these petitioners has stated that the petitioners are not doing the work pertaining to Iron scrap. They are doing work which is similar to the work done by the petitioners in Writ Petition No. 108/92.

49. These petitioners unhook the bulk cargo of Fertilizers imported loose, directly into the lorries for clearance. The petitioners in Writ Petition No. 589 of 1992 are also doing the same work as the petitioners in Writ Petition No. 108/92. According to these petitioners in both these petitions, they have been doing this work for many years. According to them, the work done by them is covered by the Stevedoring Scheme of 1956. They contend that they ought to have been registered under the Stevedoring Scheme of 1956 and they have been wrongly denied such registration. They have, therefore, prayed that they should be granted registration under the Stevedoring Scheme of 1956. They have also asked for a declaration that the Mathadi Act and the Scheme of 1991 framed under it, are not applicable to them.

50. For the reasons which we have set out earlier, the contention of these petitioners that they are covered by the Stevedoring Scheme of 1956 does no appear to be correct. No worker registered under the Scheme of 1956 has, at time, done the work of unhooking the slings of bulk cargo of Fertilizers imported loose either on the wharf or in the lorries. Hence, the Scheme of 1956 does not cover the petitioners. There is no question therefore of the petitioners being registered as General Purpose Mazdoors under the Stevedoring Scheme of 1956. As set out earlier, even the list of duties of General Purpose Mazdoors formulated by the Bombay Dock Labour Board in 1986 expressly excludes these workmen. Therefore, the prayer of these petitioners for registration under the 1956 Stevedoring Scheme cannot be granted.

51. Apart from this, the petitioners claim to have been doing this work since 1971 onwards. If so, they became eligible for registration in 1981, when General Purpose Mazdoors were added to the Scheme of 1956. As they have been denied registration from 1981 onwards, they should have filed the petition much earlier. In any view of the matter, this relief cannot be granted to the petitioners.

52. The contention of the petitioners that the Mathadi Act of 1969 and the Scheme of 1991 framed under the Mathadi Act do not apply to them is a contention which we need not examine because no substantive relief is claimed by the petitioners on the basis of such a contention. We do not see why we should examine this question when a mere declaration is sought without any consequential reliefs. It will be for the petitioners to decide whether they should register themselves under the Scheme of 1991 framed under the Mathadi Act. The challenge of the petitioners to the virus of the Mathadi Act also does not

survive in view of the interpretation which we have put on Clause 3 of the Schedule to the Mathadi Act, 1969. We, therefore, do not propose to grant any relief to the petitioners in these two petitions.

Writ Petition No. 752/1992

53. Petitioner No. 1 is a Society registered under the Societies Registration Act. Its members do the work of loading and unloading cargo from trucks after the goods are cleared from the customs. The members of the 1st petitioners are employed by the clearing agents. They work under the supervision of Mukadams. The petitioners who were, up to 1991, granted Dock Entry Permits by the Bombay Port Trust have been denied the Entry Permits. Hence, they have filed the present Writ Petition.

54. The work done by the petitioners is clearly covered by the Clearing and Forwarding Scheme of 1983. This work is done by the registered Clearing and Forwarding Mazdoors also. These Mazdoors do the work of loading and unloading trucks after the goods are clear and in the case of export cargo, they do the work of unloading trucks before the goods are cleared for export. The petitioners themselves have stated in their petition that even though the work being done by the members of the first petitioners is covered by the Bombay Dock Clearing and Forwarding Workers Scheme of 1983, as the number of registered workers for doing this work under the Scheme was insufficient, they were engaged by the clearing agents to do this work.

55. It was contended by the petitioners that the Clearing and Forwarding Scheme of 1983 will not apply to them because the said Scheme only deals with the work of Clearing while the petitioner''s work can be correctly classified as the work of Forwarding workers which is not covered under this Scheme. This submission has no merit. Under Clause 2 Sub-clause (1) of the said Scheme, the objects of the Scheme are set out. These are to ensure greater regularity of employment of the Dock Clearing and Forwarding workers. This would clearly indicate that the Scheme covers the work done by Dock Clearing and Forwarding workers. It is true that under Clause 2 Sub-clause (2) it is provided that the Scheme applies to all workers engaged in loading, unloading, transport of import and export goods for clearance in the Bombay Docks. But the words "for clearance in the Bombay docks" cannot be read as confining the Scheme only to the work of clearing the goods for customs or clearing them from the wharf and not to the work in the Docks beyond the stage of clearing the goods from the Docks on the customs. The workers with reference to whom the scope of the work under the Scheme is defined, are the Clearing and Forwarding Mazdoors. Looking to the context in which the words "for clearance in Bombay Docks" are used in Clause 2(2), the words cover both Clearing and Forwarding work in the Bombay Docks in relation to the goods which are imported or exported. The very title of the Scheme refers to Clearing and Forwarding work. In fact, in the present case, it is an accepted position that the same work is being done by the registered Clearing and Forwarding Mazdoors.

56. Hence, under the Clearing and Forwarding Scheme of 1983, as under the Stevedoring Scheme of 1956, once the work is covered by this Scheme, the Bombay Dock Labour Board can direct that the work shall be done only through the registered workers. Under Clause 38 of the Scheme, "No person other than a registered employer, shall employ any worker on dock work to which this scheme applies; nor shall a registered employer engage, for employment or employ a worker on dock work to which this scheme applies unless that worker is a registered dock worker." The employment of an unregistered dock worker, therefore, by a registered employer is prohibited. No relief, therefore, can be granted to the petitioners in this petition.

57. The petitioners have submitted that their right to work is being affected by reason of the action taken by the respondents. The petitioners rely upon the decision of the Supreme Court in the case of Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, , where the Supreme Court has said that the scope of Article 21 is wide enough to cover the right to livelihood. However, in the subsequent case of Sodan Singh v. New Delhi Municipal Committee, reported in AIR 1989 S.C. 1988, the Supreme Court has held that there cannot be a fundamental right of a citizen to occupy a particular place or to do a particular work. There is no right to hold a particular job or to occupy a particular post of one''s choice. The right to work or to carry on an occupation is not the same thing as the right to work in a particular post. If a worker is retrenched consequent upon the closure of an industry he can pursue his rights and remedies under the Labour Laws. But the closure of the establishment does not by itself infringe his fundamental rights under Article 19(1)(g).

58. In the case of Delhi Development Horticulture Employees'' Union Vs. Delhi Administration, Delhi and others, , the Supreme Court has clarified the provisions of Articles 21 and 41 in connection with the right to livelihood. It has said that the right to livelihood is not a fundamental right because the country has, so far, not attained the capacity to guarantee it. Advisedly, therefore, this right has been placed in the Chapter on Directive Principles of State Policy under Article 41.

59. Hence, by seeking to enforce the Clearing and Forwarding Scheme of 1983 by prohibiting registered employers from employing workers other than registered workers, the Bombay Dock Labour Board has not violated any fundamental rights of the petitioners. In the premises, no relief can be granted to the petitioners in this petition.

60. Under the Docks Bye-Laws framed by the Bombay Port Trust, Bye-Law 117 provides that no person shall enter any docks area referred to in the Docks Bye-Law No. 2-A or any other area which may be declared as docks by the Board from time to time, without a permit issued to him by or under the authority of the Docks Manager. The Bombay Port Trust, is, therefore, entitled to regulate entry into the Bombay Docks for the purpose of ensuring that the statutory duties imposed upon it are properly carried out and that no person who does not have any legitimate work in the dock area enters the docks. As the petitioners

are not entitled to do the work of registered workers, they can be denied entry permits.

61. It was also submitted on behalf of the Bombay Port Trust that registration of workers under the Mathadi Act will not necessarily imply that the Bombay Port Trust will have to grant Entry Permits to such workers. The argument proceeds on a misconception of the functions and duties of the Bombay Port Trust. If the Bombay Port Trust is satisfied that any person is required to enter the docks for a legitimate purpose or for legitimate work, the Docks Manager of the Bombay Port Trust is authorised to issue Entry Permits to such a person provided that the person complies with all prescribed requirements relating to the issue of such an Entry Permit. The fact that the person is or is not registered under the Mathadi Act is not directly relevant for this purpose. If he has legitimate work in the docks which he is entitled in law to carry out, there is no reason why that person should be denied an Entry Permit if he fulfills all requirements in that connection prescribed by the Bombay Port Trust.

62. We also do not see any force in the arguments advanced on behalf of the Bombay Port Trust that the Mathadi Act will apply only to work in the docks in ports other than major ports. Clause 3 of the Schedule to the Mathadi Act, covers work in the docks whether such docks are in major or minor ports. The Mathadi Act and its provisions do not conflict with the power of the Bombay Port Trust to regulate entry to the docks. Before issuing Entry Permits, the Docks Manager is required to verify whether the worker has work in the docks which he is legitimately entitled to do. The registration under the Mathadi Act or any other such Act is for the purpose of availing of certain benefits which may be extended to a worker under a Scheme framed under the Mathadi Act or any other such Act. We do not see why there should be a conflict between the two rights.

63. In the premises, in the present petition, since the work in question is covered by the Clearing and Forwarding Scheme of 1983 and the registered workers are doing similar work, no relief can be granted to the petitioners.

Writ Petition No. 321/1992.

64. The petitioner''s in this petition are employed to do the work of loading and unloading cotton bales exceeding 80 kilos. These cotton bales are unhooked by the Bombay Port Trust shore workers and are taken to the godowns. After the bags are cleared by the customs, these bags are loaded on the trucks by the petitioners. Similarly, an export cargo of cotton bales exceeding 80 kilos is unloaded from the trucks for being kept in the godowns by the petitioners. From the godowns these bales are handled by the Bombay Port Trust shore workers. As the petitioners have been denied Entry Permits by the Bombay Port Trust from December, 1991, they have filed the present petition.

65. The petitioners are registered under the Cotton Market Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1972 framed under the Mathadi Act, 1969. The Bombay Dock Labour Board has very fairly stated that

the work done by the petitioners is neither covered by the Stevedoring Scheme of 1956 nor is it covered by the Clearing and Forwarding Scheme of 1983. The Clearing and Forwarding Scheme of 1983 expressly excludes under Clause 2(2)(a) workers engaged in loading and unloading operations of cotton bales and bag cargo exceeding 80 kilos each. In this view of the matter, these petitioners are in the same position as the petitioners in Writ Petition No. 108/92 and they are entitled to the same reliefs. The rule is made absolute in their case accordingly.

Writ Petition No. 555/1992

66. The petitioners in this writ petition are an Association of Dock Workers whose members work in the docks in connection with the work relating to unaccompanied baggage. The Customs House Agents do the work of Clearing of all such unaccompanied personal baggage through the Customs. The members of the petitioner No. 1 are employed by the Customs House Agents in the Bombay Docks for the purpose of examination of such baggage by the Customs Officials. The personal baggage which is in packages is required to be opened. This work of opening is done by the carpenters. After the packages are opened, the members of the petitioner No. 1 physically shift the articles from the opened packages and place them before the concerned Customs Officer for examination. The articles are again put back in the packages by the members of the petitioner No. 1. This work is part of the clearing work under the Clearing and Forwarding Scheme of 1983. The same work is being done by the registered Clearing and Forwarding Mazdoors under 1983 Scheme also. This is set out in paragraph 9 of the affidavit of B.K. Abraham, Deputy Docks Manager of 3rd respondents and it is not denied by the petitioners. In these circumstances, since the petitioners are not registered under the Scheme of 1983, no relief can be granted to them in this petition.

Writ Petition No. 170/1992

67. The petitioner is a registered Co-operative Society registered under the Maharashtra Co-operative Societies Act. Its members mainly do "varai" i.e. the work of removing the goods from trucks when they arrived in the docks and passing the goods into the hands of the regular employees of the Bombay Port Turst. The varai workers enter the Port area along with the truck and they pass on the cargo from the truck to the shore workers of the Bombay Port Trust. They break the stack of the cargo on the truck and hand it over from the truck itself to the shore workers. They are normally paid by the truck drivers. Learned Counsel appearing for the Dock Labour Board has very fairly stated that the work done by these petitioners is not covered by either the Stevedoring Scheme of 1956 or the Clearing and Forwarding Scheme of 1983. In these circumstances, these petitioners are entitled to the same relief as petitioners in Writ Petition No. 108/92. Rule is made absolute accordingly.

Writ Petition No. 880/1992

68. The petitioners in this writ petition work in the docks and do the following

work. They do the work of piling Palla (dry leaves and grass) on the Oil Cakes and stitching the same in the gunny bag cloth for export purposes. This work of stitching the gunny bags and piling palla for export of oil cakes is done by 90 workers mentioned in the petition. The petition itself sets out in paragraph 5 that this operation is conducted by the registered workers of the Dock Labour Board as also by the workers of the first respondents.

69. The Dock Labour Board has submitted that this work is covered in the Stevedoring Scheme of 1956 and is being done by the General Purpose Mazdoors. Our attention was drawn to item No. 23 of the list of duties and manning hours of the General Purpose Mazdoors complied by the Board in 1986 which deals with "cutting and bleeding and/or collecting loose pala, filling bags and handling empty bags." He has also drawn our attention to Clause 8 in the list of duties to be performed by the General Purpose Mazdoors which requires them to carry out such other work as may be duly approved from time to time. He has submitted that this work is, in fact, being done by the General Purpose Mazdoors. It is also pointed out on behalf of the Dock Labour Board, that while list of duties set out in 1986 by the Dock Labour Board makes a specific exception in the case of bulk cargo of fertilizers, no such exception has been made in the case of this work and it is a part of the duties which are being carried out by the General Purpose Mazdoors.

70. In these circumstances, since the work is covered by the Stevedoring Scheme of 1956 and is being done by the General Purpose Mazdoors registered under the Scheme, no relief can be granted to the petitioners in this petition.

Writ Petition No. 107/1992

71. This petition is filed on behalf of Gearmen, Godown Khalasis and Carpenters working in the Bombay Docks. These categories of workmen were brought under the Stevedoring Scheme of 1956 by an amendment made to Scheme on 4-5-1988. The grievance of the petitioners is that they have not been registered under the Stevedoring Scheme of 1956 although they were entitled to such registration.

The petitioners rely upon Clause 18(1)(a)(i) of the Scheme as amended in 1981. It provides as follows.

"18. Registration of existing and new workers:-

(1)(a)(i) Any dock worker who on the date of enforcement of the scheme, is already registered under the Bombay Dock Workers (Regulation of Employment) Scheme 1951 or any Monthly Worker in the categories now set out in Schedule I and employed by registered employer on the date of enforcement of this Scheme on a permanent basis, shall be deemed to have been registered under this scheme and allotted to their respective registered employers with continuity of service for all purpose."

According to the petitioners, as of 4-5-1988 any dock worker who was employed as a Gearmen, Godown Khalasi or Carpenter is entitled to registration. The petitioners contend that they have been working in these categories since 1987 and hence they should have been registered under the said Scheme in 1983.

72. The submission proceeds upon a misconception of Clause 18(1)(a)(i). The clause as it originally stood granted registration to "Any dock worker who on the date of enforcement of the Scheme, is already registered under the Bombay Dock Workers (Regulation of Employment) Scheme 1951." Such workers were entitled to registration. When the Scheme was amended in 1981 by adding five new categories of workmen to the Scheme, Clause 18(1)(a)(i) was amended by adding the following words :

"or any Monthly Worker in the categories now set out in Schedule I employed by registered employer on the date of enforcement of this Scheme on a permanent basis shall be deemed to have been registered under this Scheme...."

The word "now set out in Schedule I" have a clear reference to the new categories which were added in the year 1981. It could not have any reference to categories which were to be added in future. Therefore, the deeming registration under the second part of the amended Clause 18(1)(a)(i) has reference only to the categories of workers who were added in 1981. What is relevant in the present case, therefore, is clause 18(c) which deals with registration of workers in any new category. It states, "Registration of workers in any new category shall be done from among workers who have been or were working in the port on any such date as the Board may prescribe on this behalf..........". Therefore, the Board has the power, when any new category of workers is added, to prescribe that those workers who were working in that category on any given date shall be registered. The date has to be fixed by the Board.

73. u/s 5-B(2) of the Bombay Dock Workers (Regulation of Employment) Act, 1948, in the exercise of its powers on the discharge of its functions, a Board shall be bound by such directions as the Government may, for reasons to be stated in writing, give to it from time to time. In exercise of this power u/s 5-B(2), the Central Government has directed the Bombay Dock Labour Board to register the workers under the new category introduced by the amendment of May 1988 with effect from 11-6-1986 which is the date of the Resolution of the Dock Labour Board approving these categories of workmen for registration and giving the particulars of the workers is required to be registered and giving corroborative evidence of Provident Fund available in respect of these workers. Thus, the cut of date for registration was fixed by the Board as 11-6-1986. Since the petitioners were not employed as Gearmen, Godown Khalasis or Carpenters on 11-6-1986, their names have not been registered under the Stevedoring Scheme of 1956 as amended in May 1988. The Bombay Dock Labour Board had asked all Stevedores registered with them to furnish to it the details of their workers engaged in these categories as on 11-6-1986. The names of the petitioners are not to be found in the lists so submitted by the Stevedores.

74. Moreover, the petitioners, although, they were denied registration in 1988, have filed the present petition only in the year 1992. There is, therefore, considerable delay also in filing this petition which would disentitle the petitioners to any relief.

75. It is further pointed out by the Dock Labour Board that the Union of which the petitioners were members had also agreed to the non-registration of these petitioners. It is further pointed out that although the petitioners were aware that they were unregistered and hence not entitled to do the work in question, they have unlawfully carried on this work for 4 years. It is submitted by the Dock Labour Board that looking all these circumstances also, this is not a fit case for exercise of any discretion in favour of the petitioners under Article 226 of the Constitution. These arguments also have considerable weight. The petitioners are, therefore, not entitled to any relief.

Writ Petition No. 3436/1991

76. This petition is filed on behalf of the dock workers employed by the second respondents, namely, Ardeshir B. Cursetjee & Sons as monthly rated dock workers doing the work of palletizing of cargo in the sheds.

77. The contention of the Dock Labour Board that this work is the work of General Purpose Mazdoors does not appear to be correct. The petitioners have taken us through extensive correspondence between the second respondents and the Bombay Dock Labour Board as also the Transport and Dock Workers Union. While the second respondents contended that these workers are doing the work which is identical to the work of cleaning gang workers, the Transport Dock Workers Union as well as the petitioners have throughout contended that the petitioners are doing specialised work in palletizing and container handling jobs. Infact, the Transport and Dock Workers'' Union in their letter of 2-4-1983 addressed to the second respondents, pointed out that no stevedoring firm had such type of specialised workers and precisely for this reason, these workmen were given special status and were extended the benefits of monthly workmen. The Transport and Dock Workers'' Union has been demanding the registration of these specialised workers.

78. Accordingly, the second respondents requested the Bombay Dock Labour Board to register these workers as General Purpose Mazdoors. But the same has not been done. Clearly the work which is being done by these workmen is specialised work which is not covered by the Stevedoring Scheme of 1956. Their long-pending demand for registration under the Stevedoring Scheme of 1956 was finally turned down by the Dock Labour Board in its meeting held on 24th October, 1991. As a result, the second respondents have terminated the services of these petitioners from 20-1-1992. Since the work done by these petitioners is of a specialised nature, it is not covered by the Stevedoring Scheme of 1956 because this is not the work ordinarily done by the General Purpose Mazdoors. The claim of the petitioners, therefore, for registration under the Stevedoring

Scheme of 1956 cannot be accepted. However, if they are engaged by any employer in accordance with law for the purpose of doing this work in the docks, they cannot be denied Entry Permits by the Bombay Port Trust on the ground of their non-registration under any of the Schemes framed by the Bombay Dock Labour Board. In this regard these petitioners stand on the same footing as the petitioners in Writ Petition No. 108/1992. Hence, this petition is partly allowed and the petitioners are given the same reliefs as the petitioners in Writ Petition No. 108/1992.

Writ Petition No. 61/1992

79. The petitioners in this petition are workers engaged in the docks for loading and unloading of Bag Cargo exceeding 80 kilos, cargoes loaded and cleared from Bunders, Bulk cargo imported loose and hand cart operators transporting the cargo outside the dock gates. This is clearly not Stevedoring work. The work would have been ordinarily covered by the Clearing and Forwarding Scheme of 1983. But this work is expressly excluded from the Clearing and Forwarding Scheme of 1983 under Clause 2(2)(a) and 2(2)(b) of the said Scheme. Hence the petitioners are not covered by any of these Schemes framed by the Bombay Dock Labour Board. In these circumstances, these petitioners are entitled to the same reliefs as the petitioners in Writ Petition No. 108/1992. It is ordered accordingly.

Writ Petition No. 419/1992

80. This petition is filed by the Bombay Stevedoring Association Limited praying that the Bombay Dock Labour Board should entertain the request of the petitioners for supply of registered General Purpose Mazdoors for the purpose of hooking and unhooking bulk cargo of fertilizers imported loose, and in the alternative should permit the petitioners to engage their own workers for discharge of bulk cargo of fertilizers and suitably reduce the levy under the Scheme of 1956.

81. The petition is clearly misconceived because the work ordinarily carried out by the General Purpose Mazdoors does not include the work of hooking and unhooking of bulk cargo of fertilizers imported loose. There is, therefore, no question of the Dock Labour Board supplying registered General Purpose Mazdoors to the petitioners for this purpose.

82. The alternative prayer of the petitioners is somewhat disingenious. The petitioners contend that the workers doing this work who are registered under the 1991 Scheme framed under the Mathadi Act, should not be permitted to do this work. In other words, by this backdoor method the petitioners desire that they should not engage the workers who are protected under the Mathadi Scheme of 1991 to do this work but they should be free to get this work done by unregistered and unprotected workers who are not covered by any Scheme either under the Dock Workers Act or under the Mathadi Act and, therefore, presumably, to get the work done more cheaply.

83. In this connection, the petitioners contend that any worker who is registered under the 1991 Scheme under the Mathadi Act ceases to be a dock worker on such registration. Therefore, he cannot be engaged to do any dock work. This submission does not have any merit at all. We have set out the reasons in Writ Petition No. 108/1992. The Mathadi Act clearly applies to employment in the docks in connection with loading, unloading and other work set out in Clause 3 of the Schedule to the Mathadi Act. This is clearly dock work. Dock workers doing such Work can, therefore, be registered under any Scheme framed under the Mathadi Act. In order, however, to avoid any conflict with the Dock Workers Act and any Scheme framed under it, the Mathadi Act expressly excludes from its ambit Dock Workers who are covered by any Scheme framed under the Dock Workers Act. Therefore, so long as any dock worker is not protected by any Scheme under the Dock Workers Act, he can be given this protection under a Scheme framed under the Mathadi Act. The Mathadi Act clearly provides that if he is covered by any Scheme under the Dock Workers Act, he would be excluded from the ambit of the Mathadi Act. Therefore, in a given case, if after registration under a Scheme framed under the Mathadi Act, any Scheme is framed under the Dock Workers Act, which would give protection to such a worker, the Mathadi Scheme would cease to apply to such workmen who would have to obtain registration under the Dock Workers Act. The converse, however, is not true. There is no provision in the Dock Workers Act which excludes a worker registered under the Mathadi Act from its ambit. The argument, therefore, of the petitioner has no merit and the alternative prayer, since it seeks to exclude workers registered under the Scheme framed under the Mathadi Act in 1991 from doing the work of unhooking bulk cargo of fertilizers in the Bombay Docks, is clearly without any justification and must be rejected.

84. Mr. Cama learned advocate for the petitioners in this petition has relied upon a judgment of this Court in Writ Petition No. 119/1979 given by Deshpande and Mody, JJ., on 16-1-1980. We do not see how this judgment helps the petitioners. That judgment does not deal with the question before us.

85. This covers all the writ petitions which were before us for hearing. It has been urged on behalf of the Bombay Dock Labour Board as well as the Bombay Stevedoring Association that there is paucity of work in the Bombay Port. The settlement arrived at by an agreement of 13-12-1991 has been arrived at with considerable difficulty. As a result the Bombay Dock Labour Board is now on the way to financial viability particularly because 1700 registered workers have opted for voluntary retirement as a result of the settlement arrived at on 13-12-1991. They submit that by permitting unregistered workers to do any work in the docks, the settlement may not achieve the results which it was intended to achieve. While we appreciate the difficulties pointed out by the Bombay Dock Labour Board as well as by the Bombay Stevedoring Association, the rights of workers who are doing considerable work in the docks which is not covered by any of the Schemes framed by the Bombay Dock Labour Board also cannot be ignored. The difficulties have arisen for the Bombay Dock Labour Board firstly

because their Schemes left out of their ambit, considerable amount of work which was regularly required to be done in the docks. Therefore, per force, unregistered workers had to be engaged to do the work. Unfortunately, the settlement of 13-12-1991 does not take into account such workers. Secondly, difficulties have arisen for the Bombay Dock Labour Board because the work in the Bombay Docks had shrunk substantially while they have a large number of workers registered under their Schemes which they have been unable to reduce from time to time for reasons which we need not go into. We do not see why workers who are legitimately entitled to do certain types of work not covered by the Schemes of the Bombay Dock Labour Board should suffer for this. It would have been desirable, had the Bombay Dock Labour Board negotiated not merely with the Unions but with these categories of other workers also to make its functioning more viable. They may still do so and we hope that the Central Government will be able to assist the Bombay Dock Labour Board in arriving at a proper negotiated settlement with these workers also in the interest of financial viability of the Schemes framed by the Bombay Dock Labour Board and to effectively implement the negotiated settlement of 13-12-1991. But in the meantime, those workers whose work has always been outside the Schemes framed by the Bombay Dock Labour Board, cannot be denied Dock Entry Permits by the Bombay Port Trust, provided they have legitimate work in the docks. The petitions, therefore, are decided as set out by us hereinabove. In these circumstances except in Writ Petition No. 419 of 92, in all other petitions, there will be not order as to costs.

86. Learned Advocate for the Dock Labour Board applies for leave to appeal to the Supreme Court in those petitions where the decision has gone against the Bombay Dock Labour Board. We do not see any substantial question of law of public importance which requires determination by the Supreme Court. The decision has mainly turned on the facts of the case. Hence, leave is refused.

Certified copy expedited.

Order accordingly.

