
(2000) 10 BOM CK 0020

In the Bombay High Court

Case No : O.O.C.J.W.P. No"s. 1065 and 1066 of 1998

Kapus Kamgar Sena

APPELLANT

Vs

Rashtriya Cotton Kamgar General Union and Others

RESPONDENT

Date of Decision : 19-10-2000

Acts Referred:

Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 — Section 2(9)

Citation : (2002) 4 LLJ 450

Hon'ble Judges : S.K. Shah, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Shah, J.—Both these writ petitions are disposed of by a common judgment as the order impugned in both the writ petitions is one and the same i. e. the one passed by the Member, Industrial Court Maharashtra, Mumbai, on February 19, 1998, partly allowing Complaint (ULP) No. 445 of 1991 declaring original respondent Nos. 1, 2 and 5 to 26 have been engaged into unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as MRTU & PULP Act) and restraining them from engaging into unfair labour practice by way of refusing to allot the work of Number Marking to the members of the complainant-union in violation of the term of the settlement dated June 16, 1988 and directing them to implement the said settlement.

2. Respondent No. 1 i.e. Rashtriya Cotton Kamgar General Union is the union of the workers doing 11 categories of work described in Annexure "A" on page 65, including the work of Number Marker. Respondent No. 2 being the Bombay Cotton Merchants & Muccadums" Association Limited is the union of the employers in the cotton market area in Mumbai. Respondent No. 25 being the Cotton Markets Labour Board for Greater Bombay is the Board established under the scheme framed under the Maharashtra Mathadi Hamal & Other Manual

Workers (Regulation of Employment and Welfare) Act, 1969 (hereinafter referred to as Mathadi Workers Act). Respondent No. 2 is the petitioner in Writ Petition No. 1066 of 1998.

3. The petitioner in Writ Petition No. 1065 of 1998 is the union of Mathadi workers, excluding the union of the 11 categories of workers as stated above.

4. On July 16, 1988 there was a settlement arrived at between respondent No. 1 employees' union and respondent No. 2 employers' association. The settlement incorporated Term 9 which was as under:

"It is hereby agreed that Number Marking shall be done by company's Number Marker, wherever the company has not employed their Number Marker for want of sufficient work, the Number Marking shall be got done by any eleven categories, Number Marker, who is unemployed and available for work",

5. In the complaint, which was made to the Industrial Court by Respondent No. 1 it was alleged that despite the aforesaid term incorporated in the settlement there were complaints from number of workmen and the members of the complainant-union that in breach of the aforesaid agreement some of the members of the respondent association and traders had not employed their own Number Markers in spite of the fact that there remained sufficient work for them and instead of they getting the work of the Number Marking done by 11 categories Number Markers who were unemployed and available for work, had started getting the work done from the outsiders such as Mathadi Workers, etc. The names of such members were described in Annexure "B" to the complaint.

6. The complaint was mainly contested by the Board-respondent No. 25. They contended that there was long practice of engaging the workers registered with the Board for doing this work. They further contended that the complainant-union cannot snatch away the work of the Mathadis by incorporating such clause in the settlement defeating the provisions of Mathadi Workers Act. They also contended that the agreement which is arrived at between the 11 category workers and the employers is violative of the provisions of the Mathadi Workers Act, and therefore, the complainant-union cannot enforce Term 9 of the Agreement.

7. The learned Member of the Industrial Court took into consideration the nature of work done by the Number Markers, also took into consideration Term 9 of the settlement arrived at between employees' union and the employers' association and held that original respondent No. 1-association and its members had been practising unfair labour practice in terms of Clause 9 of Schedule IV of the MRTU & PULP Act, and therefore, granted the aforesaid relief. It is this order which has been assailed in these writ petitions.

8. It is an undisputed fact that there was a settlement between the 11 category workers-union and the employers- association and the aforesaid Clause 9 was added in the settlement. As a result of the addition of that clause, it was

necessary for the employers to get the Number Marking work done by any of the workers of 11 categories who were unemployed and available for work, where the company had not employed their own Number Markers for want of sufficient work. The unfair labour practice adopted by the employers' association was that instead of getting the work done from any of the 11 categories of workers, they started giving the work to the Mathadi Workers who were not included in the 11 categories of workers. This being the position, it was clearly against the provision of clause of the settlement arrived at between the employees-union and the employers-association.

9. The only point that is urged before me is that the term of Clause 9 was in violation of the provisions of the Mathadi Workers and the Scheme framed therein. It is contended that the work of Number Marking is the scheduled employment, included in Item 2 of the Schedule appended to the Mathadi Workers Act, and; therefore, it was necessary to get the work of Number Marking done only through the registered Mathadi Workers. Thus, it would be necessary to see whether the Number Markers could be said to have been covered by the provisions of the Mathadi Workers Act. Section 2(12) of the Mathadi Workers Act defines worker as under:

"2(12) "worker" means a person who is engaged or to be engaged directly or through any agency, whether for wages or not, to do manual work in any scheduled employment, and includes any person not employed by any employer or a contractor; but working with the permission of, or under agreement with the employer or contractor: but does not include the members of an employer's family."

Now, this would mean that the worker who is engaged to do manual work in any scheduled employment would be a worker.

Section 2(9) reads as under:

"2(9) "scheduled employment" means any employment specified in the Schedule hereto or any process or branch of work forming part of such employment."

Para 2 of the Schedule reads as under:

"2. Employment in Cloth and Cotton Markets or shops in connection with loading, unloading, stacking, carrying, weighing, (measuring, filling, stitching, sorting, cleaning or such other work) including work preparatory or incidental to such operations."

10. What is contended on behalf of the petitioner in Writ Petition No. 1065 of 1998 is that the work of Number Marking is included in the work preparatory or incidental to the operation mentioned in Item 2 of the Schedule particularly "sorting". It would therefore be necessary to see as to what is the nature of work required to be done by the Number Marker. It is undisputed that the Number Marker is required to do the work as has been specified by witness Dilip Ananda Garge. His evidence indicates the work to be done by Number Marker as under:

After taking the entries of the weight by Akdewala the work of Number Marking and gradation to the cotton bales starts. The work is done by Number Marker on the basis of chart supplied by the office of the merchants wherein the details regarding lot number, press number, running number, quality contact number, ship number, etc. is recorded alongwith the name of the company. The witness further clarifies that the Number Marker has to write on the cotton bales lot number, running number, quality, press running number, name of the company from where the cotton is purchased, contract number, name of the village from where the cotton is purchased and name of the company to whom it is sold. This marking is done by colour brush and ink. The witness has also given other details as to recording of number in English and that such system is in existence since time immemorial.

11. It is submitted on behalf of the petitioner in Writ Petition No. 1065 of 1998 that considering this nature of work it is a work preparatory to the work of sorting of bales, as described in Item 2 of the Schedule to the Mathadi Workers Act. He further submits that by doing this work the bales are sorted out and not otherwise and, therefore, it is preparatory to the operation of sorting out the bales and, therefore, it is covered under the provisions of the Mathadi Workers Act.

12. As against this, it is submitted on behalf of respondent No. 1-employees union that the work of Number Marking is being done since time immemorial. The 11 categories of work have been gazetted in the Maharashtra Government Gazette, April 14, 1966 which includes Number Marker also. The learned counsel for respondent No. 1 further submits that in Item 2 of the Schedule to the Mathadi Workers Act, the nature of work has been described as loading, unloading, etc, but in this description the work of Number Marking has not been specified. He submits that the work of Number Marking being in vogue since time immemorial and if the legislature intended to add that work in Item 2 being the Mathadi work, there was no difficulty for the legislature to include the same in the various types of work detailed in Item 2 of the Schedule. But non-inclusion thereof is obviously showing the intention of the legislature not to include that work in the type of work contemplated under Item 2 of the Schedule. The help of the words "such other work" cannot be taken for including the work of Number Marking in Item 2 of the Schedule. It is also submitted on behalf of respondent No. 1 that basically the Act was provided for the welfare of the Mathadi workers, namely, the unprotected manual workers employed in certain employments of the State of Maharashtra. The nature of work done by Number Marker cannot be said to be a manual work and, therefore, it cannot be said to have been included in the various types of work specified in Item 2 of the Schedule.

13. The title and preamble of Mathadi Workers Act indicate that the Act was intended for regulating the employment of unprotected manual workers employed in certain employments in the State of Maharashtra, specifying the employment of the manual workers such as Mathadi, Hamal, etc. engaged in

certain employment. The definition of worker given in Clause (12) of Section 2 of the Act also clearly indicates the meaning thereto a person who is engaged to do manual work. Thus, the intention of the legislature was to make provisions for the protection of the workers doing the manual work, as could be indicated from the use of the words loading, unloading, sacking, carrying, weighing, measuring, filling, stitching, soiling, cleaning or such other work. This description of various types of work as such indicated in Item 2 of the Schedule clearly indicates the involvement of the manual work like loading, unloading and other activities involved in lifting or moving the load. The nature of the work the Number Marker is required to do, as indicated above, does not anywhere indicate that the Number Marker is required to do such type of work. I As submitted on behalf of respondent No. 1, it is also clear that in case such work of Number Marker was intended to be included in Item 2 of the Schedule, then there was no difficulty for the legislature to specify the same, as the work of the Number Marker is known since time immemorial and there could have been no difficulty for the legislature to specify the same in the details of variety of work given in Item 2 of the I Schedule. Under these circumstances, I do not find any substance in the submission made on behalf of the petitioner that the Number Marker work is the work included in Item 2 of the Schedule to be called as one of the types of work specified in Item 2 of the Schedule. Therefore, the petitioner cannot succeed in this petition for challenging the settlement arrived at between the employees-union and the employers-association being in contravention of the provisions of the Mathadi Workers Act.

14. In fact, the petitioner in Writ Petition No. 1065 of 1998 has no locus standi to file a writ petition. The petitioner-union was not a party to the settlement nor a party before the Industrial Court. Even for the sake of arguments the locus is held in favour of the petitioner, the petition cannot succeed for the aforesaid reasons.

15. The second petition being Writ Petition No. 1066 of 1998 being filed by the Board cannot succeed as their ground for challenging the order passed by the Industrial Court is the same i. e. the settlement arrived at between respondent No. 1 and respondent No. 2 being violative of the provisions of the Mathadi Workers Act.

16. Under these circumstances, I do not find any substance in both the writ petitions and the same deserves to be dismissed. Both writ petitions are dismissed.