

(2009) 07 BOM CK 0156

In the Bombay High Court

Case No : Writ Petition No's. 1585 of 2005, 1192 of 2006 and 837 of 2008

Mohan Sampatrao Torsale and Others

APPELLANT

Vs

The Railway Goods Clearing and Forwarding Estb., Labour Board, Mr. Jaywant Vitthal Bhandilkar, Mukadam of Toli No. 1B and Maharashtra Mathadi and General Kamgar Union

 Mr. Jaywant Vitthal Bhandilkar, Mukadam of Toli No. 1B and Maharashtra Mathadi and General Kamgar Union Vs
Mohan Sampatrao Torsale and Others
 Akhil Bhartiya Mathadi, Transport and General Kamgar Union, A registered Trade Union Vs Railway Goods Clearing and Forwarding Estb., Labour Board and Others

RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 — Section 3(3), 4, 7, 7(1), 7(4)

Citation : (2010) 1 LLJ 746

Hon'ble Judges : R.S. Mohite, J; Ferdino I. Rebello, J

Bench : Division Bench

Advocate : R.V. Desai, Pramod Kathane, S.R. Nargolkar, Gunyan Shah, Sachin Kamble, S.A. Sawant and H.V. Kode, in Writ Petition No. 1585 of 2005, J.P. Cama, Kiran Bapat and S.P. Kadam, in Writ Petition No. 1192 of 2006 and S.S. Pakale, in Writ Petition No. 837 of 2008, for the Appellant; Lata Desai, in Writ Petition Nos. 1585 of 2005 and 837 of 2008 and for Respondent No. 21 in Writ Petition No. 1192 of 2006, S.P. Kadam, for Respondent Nos. 2 and 3 in Writ Petition No. 1585 of 2005, R.V. Desai, Pramod Kathane, S.R. Nargolkar, S.A. Sawant and H.V. Kode for Respondent Nos. 1 to 20 in Writ Petition No. 1192 of 2006 and for Respondent Nos. 3 to 22 in Writ Petition No. 837 of 2008 and Rahul Poojari, instructed by S. Mohamedbhai and Co. for Respondent No. 2 in Writ Petition No. 837 of 2008, for the Respondent

Judgement

Ferdino I. Rebello, J.—Rule had been issued in Writ Petition No. 1855 of 2005 and Writ Petition No. 1192 of 2006. Rule in Writ Petition No. 837 of 2008. By consent of all parties represented before us, heard forthwith. The matters were heard and

reserved for Judgment on 18.12.2008. Before Judgment could be dictated, Petitioners in W.P. No. 1192/2006 by their Precipe dated 5.02.2009 sought to place on record Government Notification dated 21.1.2009. In view of this, all the Petitions were again listed for hearing and parties heard. Some of the parties filed written submissions on 6th April, 2009.

2. As the controversy arises from the resolution passed by the Railway Goods Clearing & Forwarding Establishment Labour Board for Greater Bombay (hereinafter referred to as "the Board") and as the reliefs sought are based on that resolution, all the Petitions are being disposed of by this common Judgment. The facts as set out in Writ Petition No. 1585 of 2005 are being referred to the extent relevant. Reference will also be made to the additional documents and pleadings in the other two Writ Petitions to the extent necessary.

3. The Board has been constituted under the provisions of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (hereinafter referred to as "the Act"). In terms of Section 4 of the Act, a Scheme has been framed known as "The Railways Goods Clearing & Forwarding Un-protected Workers (Regulation of Employment and Welfare) Scheme, 1976 (hereinafter referred to as "the Scheme"). Writ Petition No. 1585 of 2005 is by 20 registered workers registered with the Board, presently with Toli No. 37 and earlier with Toli No. 1-B. Writ Petition No. 1192 of 2006 is by the Mukadam of Toli No. 1B and Maharashtra Mathadi and General Kamgar Union purporting to represent the registered workers of Toli No. 1B. Writ Petition No. 837 of 2008 is by Akhil Bhartiya Mathadi, Transport and General Kamgar Union purporting to represent the workers of Toli No. 37, who numbered about 151.

4. In Writ Petition No. 1585 of 2005, the principal prayer is to give effect to the Board Resolution taken at its 115th Board Meeting held on 15.10.2004 and consequent thereto, to repatriate the 20 petitioners to their original Toli No. 1B. In Writ Petition No. 1192 of 2006, the petitioners seek a prayer directing the Board to withdraw or cancel the Resolution dated 15.10.2004 taken at its Board Meeting. In Writ Petition No. 837 of 2008, the principal prayer is to stay the impugned order dated 19.6.2007 issued by the Secretary of the Board whereby the 20 workers, who are petitioners in Writ Petition No. 1585 of 2005, have been asked to work in Toli No. 37 with effect from 29.6.2007 until further orders.

5. During the pendency of this petition, on an application for interim relief, an order came to be passed on October 19, 2007. The relief sought was that the Board Resolution taken at its 115th Meeting be enforced. A learned Bench of this Court in its order observed as under:

It is not necessary for us to discuss the merits and demerits of the contentions raised before us as we are concerned, at this stage, with prima facie what interim arrangements should be made. The Secretary of the Board has directed that the Petitioners in Writ Petition 1585 of 2005 be continued on the strength of Toli No. 37. We direct that the same interim order shall continue, but subject to

the condition that if finally Writ Petition No. 1192 of 2006 is dismissed, in that event, all payments that have been made by Toli No. 37 shall be reimbursed by Toli No. 1B with effect from the date of the order. This order is without prejudice to the rights and contentions of the parties.

6. We may now set out a few relevant facts from the pleadings of the parties.

The petitioners in Writ Petition No. 1585 of 2005, during the period 1984-85, were working at the Mulund Railways Yard within the jurisdiction of the Board as registered Mathadi workers in Toli No. 1B. Those allotted to Toli No. 1A were doing the work at the Container Yard of Container Corporation of India Ltd. (for short "Concar") in August 1994. As per the demand of workers of Toli No. 1A and 1B, the Board permitted the workers of Toli No. 1A and 1B to work in the said Yard in rotation upto December, 1995. As there was increase in work, Concar requested for more registered workers. A meeting was held on 2.12.1995 wherein representatives of Maharashtra Rajya Mathadi Transport & General Kamgar Union as also Maharashtra Mathadi and General Kamgar Union were represented and it was decided that 16 workmen each from Toli Nos. 1A and 1B as selected by the respective Unions as per the seniority, would be formed into a new Toli No. 37. It was also decided that Mathadi workers of newly formed Toli No. 37 be given a chance to go back to their original Toli. In terms of the translation of the minutes as placed before us the workers had to exercise the option of going back within 3 months from the date of the minutes being recorded. On such option and after such workers went back to their original toli, a decision was to be taken by the Board to fill in the ensuing vacancies. This was agreed to by the representatives of the Toli Nos. 1A & 1B. On 8.7.1996, considering the availability of work in the Container Yard, Toli No 37 was constituted, consisting of 16 Mathadi workers each from Toli No. 1A and 1B. On 30.7.1996, the Board issued an order of allotment to CONCAR As there was increase in the volume of work in the Container Yard, the Board transferred another 66 Mathadi workers from Toli No. 1A and 1B to Toli No. 37, by issuing an order of allotment to M/s. Shreenath and Sons, a registered employer.

7. By 2004, the work in the Container Yard was drastically reduced. Concar also started unloading at Dronagiri Terminal. In response to the query from the Board, the Board was informed that the Dronagiri Rail Terminal and Mulund are different entities. Though the nature of work at both yards was the same, but there was no shifting of work from Mulund to Dronagiri. While passing the order dated 27.7.2000, it was informed to the employer that a majority of workers in Toli No. 37 had given their consent to work in cement yard and 66 workers from Toli Nos. 1A and 1B were transferred to Toli No. 37. On 27th August, 2004, about 22 workers of Toli No. 37 had been transferred to Toli No. 1A & 1B as there was increase in work in cement yard. The work in Toli No. 37 though started diminishing considerably whereas there was increase of work of Toli Nos. 1A and 1B. As a result, the Workers in Toli No. 37 were getting less wages, whereas the workers of Toli Nos. 1A and 1B were getting higher wages. There were 66 posts

which had become vacant on account of transfer of the workers to Toli No. 37 from Toli Nos. 1A and 1B. As no worker was employed against those vacancies, some workers of Toli No. 37 requested that they be transferred back to Toli No. 1A and 1B. By letter dated 30.8.2004, three other workers also made a request to be transferred from Toli No. 37 to Toli Nos. 1A and 1B.

8. On 21.9.2004, 142 workers of Toli No. 37 made a representation that as the work of Toli No. 37 had decreased considerably since the last one or two years and as there was no possibility of improvement in the near future, they requested the Board, that those workers who were willing to go to Toli Nos. 1A and 1B should be sent to their old Tolis. Board was reminded of the fact that 82 vacancies were still available as not a single worker had been recruited in the place of the transferred workers. Further correspondence was also exchanged.

9. At the 115th Meeting held on 15.10.2004, the Board noted the contentions raised by Shri Gulabrao Jagtap that work at Mulund Container Yard is extremely less and also noted why Toli No. 37 had been created and that vacancies created by transfer of workers from Toli No. 1A and 1B were still vacant. 30 workers from Toli No. 1A and 1B had submitted a proposal for transfer. It was also noted that there was less work at Mulund Container Yard. The Minutes mentioned that all the members present discussed the issue and the Board passed the following Resolution:

Since there is less work in Mulund container yard where toli No. 37 is working, in which Toli in the year 2000, from Toli No. 1-A & 1-B, 82 workers were transferred, of which 30 workers have asked for their transfer again in their original toli, the Board should take action according to their demand.

One of the registered contractors were M/s. Vijay and Co. They also made a grievance to the Respondent-Board that due to inadequacy of manpower, their work is not completed as per the schedule and on account of that they have to pay heavy penalties to the Railways and, therefore, there was necessity of increasing workers in the tolis. Though the resolution was passed, no action was taken.

10. A representation was made to give effect to the resolution. On 9.7.2005. The Secretary passed an order which noted that the Board had passed a resolution whereby 30 workers have been transferred from Toli No. 37 to their previous Toli Nos. 1A and 1B. A joint meeting had been held with the concerned authorities to implement the resolution. However, the workers of Toli No. 1B had taken strong objection and had created a tense situation amongst the workers. As a result, in order to resolve the dispute by persuasion, the implementation of the resolution was kept pending. Reference was made to the petition filed and it was set out that since there was sufficient work in the cement yard, 20 registered Mathadi workers out of the 66 workers of Toli No. 37 transferred from cement yard earlier, are transferred back to their original Toli No. 1B with effect from 12.7.2005. Until further orders the workers should be included in the Toli as per

the aforesaid directions.

11. On 19.6.2007, an order was passed noting the order of the Board dated 9.7.2005 transferring 20 workers of Toli No. 37 to Toli No. 1B to which workers in Toli No. 1B had objected. It further stated that though the Board had tried to sort out the matter, no solution was arrived. As the workers of Toli No. 1B had not allowed the 20 transferred workers of Toli No. 37 to give them work they were without any work from July 2005. As they were not getting salary, their families were not getting two square meals and these workers had requested that pending the hearing and final disposal of the petition, they be sent back to Toli No. 37. In view of the situation, until further orders, the workers were sent back to Toli No. 37 with effect from 29.6.2007.

12. On behalf of the workers of Toli No. 1-B who are objecting to the transfer of workers from Toli No. 37, numbering 20, their principal contention is that the 66 workers from Toli No. 1A and 1B had voluntarily opted to be transferred from Toli No. 37 and that their transfer was covered by Board Circular dated 22.11.1995, which is a complete guideline for transfer of workers. Reference is then made to the meeting that took place on 5.2.1997 and also to the order of voluntary transfer dated 27.7.2000. It is mentioned that before transferring, the consent of majority of workers in Toli No. 37 was obtained. In the instant case, neither consent was obtained from Toli No. 1B nor any opportunity was given to them to submit their objections before Resolution dated 15.10.2000 was passed. On the contrary, the letters submitted by the workers of Toli No. 1B dated 7.10.2004 and 8.10.2004 registering objections for transfer of any worker from Toli No. 37 to their toli have been overlooked. It is pointed out that there was no vacancy in Toli No. 1B and that there is no demand from workers of Toli No. 1B for any new of workers. The salary earned by respondents 1 to 20 would further clearly show that they cannot be termed as unemployed registered workers. The average salary earned by the members of the Toli No. 37 for the last several months is ranging between Rs. 7000/to Rs. 9,000/-. These are based on averments made in the Petition on 20.8.2005 involving reduction of work in Toli No. 37. All this has happened on account of the willful negligence on the part of workers of Toli No. 37. The Board ought to have sent workers from Toli No. 37 to the Dronagiri Container Yard earlier, which would have increased the salary of Toli No. 37 considerably. However, instead, for ulterior motives of Toli No. 37, the Board officials allowed registration of 254 new workers.

13. We may now refer to some of the resolutions passed by the Board as that would be relevant for considering the controversy in issue. On 30.9.1995, a direction was issued u/s 7(4) of the Act. In terms of the directions if the workers registered with the Board were jobless and there was increase of work elsewhere and if it was necessary to increase the number of workers at that place, then first priority shall be to give jobs to jobless workers registered with the Board. Till such time those workers on given option refused to work at the said place, no new worker should be registered and be given jobs. At a meeting held on

5.2.1997 in terms of the minutes recorded before the Minister (Labour), certain decisions were taken, the relevant portion of one such decision reads as under:

While making registration on vacant post if ` Mathadi" worker"s son, real brother, nephew (real brother"s son) or son-in-law (daughter"s husband), out of these relations if anyone is not available then registration of the person suggested by that worker shall be made on that post by taking written permission of minimum 2/3 workers of the toli.

Insofar these minutes are concerned even if assuming they are held to be binding on the Board, it is only for registration of a new worker in a vacant post where permission of 2/3 workers of the toli was required.

14. The next direction issued u/s 7(4) of the Act is dated 21.2.2001. The direction pertained to registration of new workers if the work at any place increased. There is no direction that in such a case permission of 2/3rd workers is required. However, the proposal of the Mathadi Board was to be forwarded along with the justification to the Labour Commissioner for his approval and only after his approval, the new worker should be registered.

15. A further direction was then issued u/s 7(4) of the Act on 25.9.2006, wherein while referring to the earlier directions, it was noted that those directions have been modified. On there being increase in work load, first priority should be given to the jobless worker registered with the Board. Instead of the proposal being submitted to the Labour Commissioner, the approval ought to be sought of the Government. On 8.1.2008, another direction was issued u/s 7(4) of the Act. Reference was made to the earlier direction of 25.9.2006 and the modifications to that order. It was set out that registration of new workers in five districts should be sent for approval to the Government and in respect of the rest of the districts, the proposal would be as per the earlier order dated 22.1.2001. On 19.3.2008, the next direction was issued u/s 7(4) of the Act. After referring to the earlier orders, it was mentioned in supersession of earlier Government Resolutions dated 25.9.2006 and 8.1.2008, in case there is increase in work, it is necessary to increase the strength of the workers with the consent of the workers of the concerned toli and if registration of the labourers should be made on the compassionate basis and in respect of others i.e. in place of the worker who tendered resignation and it was required to transfer the labourers of the toli, then the concerned Mathadi Board should take action at their level. The direction was applicable only to the Mathadi Boards of five districts as set out therein.

16. Then comes the order dated 21.1.2009 after filing of the Petitions wherein it is mentioned that there is a need to modify the earlier orders. The Government, therefore, in supersession of the order dated 19.3.2008, was issuing a fresh resolution. This covers both registration of new Mathadi workers as also Mathadi workers transferred from one toli to another toli. One of the requirements is condition No. 5 which reads as under:

5) If mathadi Workers are to be exchanged from one Toli to another Toli, then

Mathadi Workers should be registered after complying with below mentioned things.

1. If a Mathadi Worker is to be transferred . from one Toli to another Toli, then demand and consent of 2/3rd (Two third) of the workers of the Toli to which he is to be transferred should be obtained and thereafter, he should be registered.

17. Before answering the issue, we would like to advert to some of the provisions of the Scheme. Let us examine the powers of the Board to effect transfers of mathadi workers, from one Toli to another and also to grouping and re-grouping the said workers. They are as follows:

a) u/s 7(4) of the Maharashtra Mathadi Hamal & Other Manual Workers (Regulation of Employment & Welfare) Act 1969, the Board is responsible for administering the Scheme and shall exercise such powers and perform such functions as may be conferred on it by the Scheme.

b) In exercise of powers vested in it u/s 3(3) of the Mathadi Act, the State Government has framed a Scheme known as The Railway Goods Clearing & Forwarding Unprotected Workers (Regulation Of Employment & Welfare) Scheme 1976 (hereafter referred to as the Scheme). The mathadi workers involved in the present petition are registered under the above Scheme.

c) Clause 6 of the Scheme reads as under:

6. Functions of the Board:

1) The Board may take such measures as it may consider desirable for carrying out the objectives of administering the Scheme set out in Clause 2 including measures for:

i)....

ii) regulating the recruitment and entry into, and the discharge from, the Scheme of workers and allotment of registered workers in the pool to registered employers.

iii) determining and keeping under review the number of registered workers from time to time, on the registers or records and the increase or reduction to be made in the number of registered workers;

iv)....

v)....

vi) grouping or re-grouping of all registered workers into such groups as may be determined by the Board, and reviewing the grouping of any registered worker on the application of a registered worker;

....

The Board may-

- i) fix the number of workers to be registered under the various categories;
- ii) increase or decrease the number of workers in any category on the register from time to time, as may be necessary after a periodical review of the register and anticipated requirements;

d) Clause 8 of the Scheme reads as under:

Responsibilities and duties of Chairman: Without prejudice to the powers and functions of the Board, the Chairman shall be generally responsible for satisfactory execution of this Scheme and shall have powers to execute the decisions of the Board subject to its directions and in particular-

a) to ensure that the decisions of the Board in regard to the adjustment of the registers of workers are carried out expeditiously;

b)....

c) to supervise and control the working of this Scheme;

d)....

e) to ensure that the provisions of this Scheme in regard to transfer and promotion of workers are carried out;

e) Clause 9 of the Scheme reads as under:

Functions of Secretary: Without prejudice to the powers and functions of the Board and the Chairman, the Secretary, shall perform duties imposed on him by this Scheme in discharge of his duties and in particular be responsible for

a)....

b) keeping, adjusting and maintaining from time to time, such registers or records as may be necessary, of workers, including any registers or records of workers who are temporarily not available for work and whose absence has been approved by the Board and where the circumstances require removing from any registers or records the name of any registered worker, either at his request or in accordance with the provisions of this scheme;

c)....

d) the grouping or re-grouping of registered workers in suitable pools, in accordance with the instructions received from the Board in such groups as may be determined, by the Board.

e) The allotment of registered workers in the pool who are available for work to registered employers and for this purpose, the Secretary shall-

i) make the fullest possible use of registered workers in the pool;

ii) keep the record of attendance at all stands or control points of registered workers;

iii) provide for the maintenance of records of employment and earnings or registered worker;

iv) make or cause to be made the necessary entries in the attendance cards, and the wage slips of the workers in the reserve pool as laid down in Clause 23.

18. Another relevant fact set out in the Written Submissions of the Board is a comparison of the average earnings of the two Toli. We are considering these figures as they come from official records. For the period January 2004 to December, 2004, the average earning of Toli No. 37 was Rs. 7,101/-while the average earning of Toli No. 1B was Rs. 15,330/-. From May 2007 to October 2007, the average earning of Toli No. 37 was Rs. 6,848.71, while the average wages of the workers of Toli No. 1B for the same period was Rs. 18,753/-. For the year 2006-2007,each worker of Toli No. 37 has received bonus of Rs. 15,083/-,while each worker of Toli No. 1A & 1B has received bonus of Rs. 41,394/-. For the period October 2007 to September 2008, the average earnings of Toli No. 1B was Rs. 17,937/- while that of Toli No. 37 was Rs. 9,496.39.

19. With the above background, the questions for consideration would be:

(1) Whether the Respondent-Board considering the resolution dated 15.10.2004 taken at its 115th Meeting is bound to implement the resolution in absence of the said resolution, being recalled and the subsequent order dated 9.7.2005 giving effect to the resolution.

(2) Have the workers of Toli No. 1B established that there has been a practice whereby before transferring a worker from one toli to another toli, consent of 2/3rd workers is required and as in the instant case, as permission was not taken, the resolution of the Board transferring workers from Toli No. 37 to Toli No. 1B is arbitrary and consequently ought not to be enforced?

(3) Though the workers of Toli No. 1B had filed the objections, they were neither heard nor their objections considered. Does the resolution of the Board to transfer workers from Toli No. 37 to Toli N.1B without hearing or considering their objections suffers from violation of the principles of natural justice and non-application of mind and, consequently, is the resolution illegal and ought not to be enforced?

(4) Is The Resolution dated 21.1.2009 issued u/s 7(4) of the Act clarificatory as contended on behalf of the existing workers of Toli No. 1B and as such would also be applicable to the Resolution of 15.10.2004 and or as submitted on behalf of the transferred workers of Toli No. 37, the said resolution being prospective is not applicable to the resolution of 15.10.2004.

20. We may first answer questions Nos. 2, 3 and 4 as that would be relevant for answering question No. 1.

21. In support of their submission that there has been a practice of seeking consent of workers of Toli No. 1B, workers of Toli 1B have firstly relied on the

Circular dated 22.11.1995 issued on behalf of the Board and signed by the Secretary of the Board. By that Circular, the attention of workers working in Toli No. 1A and 1B was invited to give their consent for being allotted to a separate toli to be formed for work in the container yard. It was set out therein that after the workers who give their consent were allotted to the independent toli, no complaint would be considered about change of any working conditions, the terms of employment, salary, etc. The worker would also not be allowed to give resignation for one year nor could claim transfer to earlier toli. Similarly, once there was transfer from toli, such worker could claim for new appointment. In the minutes of the meeting called by the Minister (Labour) on 5.2.1997, reference is made to consent of majority of 2/3rd workers. Considering the minutes of this meeting, it is submitted that decision was taken to incorporate changes in the direction issued by the Government on 30.9.1995 whereby it was noted that the toli in which the strength of Mathadi workers is required to be increased then in such toli while making registration, consent of minimum 2/3rd workers of toli must be taken. Firstly, the minutes of the meeting called by the Labour Minister is not a direction u/s 7(4) of the Act nor did the Committee have jurisdiction to override and/or add to the direction issued u/s 7(4). The only way was to modify the notification issue a further direction u/s 7(4). That was not done. Secondly, the matter pertained at the time of registration of new workers in tolis and when there was no need to increase the workers strength. This does not deal with workers who are already registered and to be transferred from one toli to another toli. It was then pointed out that in the order of transfers dated 27.7.2000, it was mentioned that workers in toli No. 37 have given their consent as per the directions received by the Board. This was pointed out to contend that there is a practice of taking consent of workers while transferring workers from one toli to another toli. Reference is also made to the minutes of the meeting held on 2.12.1995 wherein proposal to transfer workers of Toli No. 1A and 1B to newly created Toli No. 37 and wherein it was also stated that workers who have been transferred to Toli No. 37 had the option of three months to return to the original toli. In other words, if they had not exercised their right, then they would not be entitled to go back to their original toli. Then at the highest would be applicable to those workers who had been transferred initially. Under the Right to Information Act, pursuant to the information sought by the Maharashtra Mathadi and General Kamgar Union on 24.2.2006 in answer to question No. 5 which was - "Whether board is obtaining the consent of the workers of the tolis, of worker is to be sent/transferred from one toli to another toli" The answer given was "Yes. If worker is to be sent from one toli to another toli, as per requirement and situation, Board is obtaining consent of workers of the toli. Generally in this connection it is necessary to have consent of 75% workers of the respective tolis in this connection."

Is this material sufficient to establish a practice for the purpose of holding that before transferring worker from one toli to another toli, consent of 2/3rd workers of the toli to which they have been transferred is required. It is true that when

those workers were transferred from Toli No. 1A and 1B, it is mentioned that consent of majority of workers in Toli No. 37 (then numbered 60) was taken. This does not speak about 2/3rd consent. At the highest, this would indicate that the consent of workers of toli No. 37 was taken. The next relevant document is under the Right to Information Act. That really cannot be said to establish practice. The opinion of the RTI Officer is irrelevant as no material has been provided in support of the information. In our opinion, to establish practice, it must be shown that it must be in existence for an appreciable period of time and not contrary to the provisions of the Act and the Rules framed thereunder. We have already quoted the provisions of the Scheme. The power to transfer and re-transfer is of the Board depending on increase of work or decrease of work and the like. If in order to avoid labour dispute consent of workers of the toli was sought to which other registered workers were to be transferred that would not amount to establishing a practice warranting this Court to hold that the workers of the toli No. 1B have established a practice of taking consent of 2/3rd workers. Once there is a power to transfer and/or allot that would include the power to re-allot. This issue, in our opinion, is settled by the Judgment of the Supreme Court in *Krantikari Suraksha Rakshak Sanghatana v. Bharat Sanchar Nigam Ltd. and Ors.* 2008 III CLR 949. The Court there was dealing with the issue under the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981. The Court held that the board's power of allotment carries with it the implicit and inherent power to recall, re allot and transfer a guard from one principal employer to another. In *Maharashtra Rajya Mathadi Transport and General Kamgar Union v. The Bombay Iron and Steel Labour Board and Ors.* 2007 I CLR 800, this Court had noted that once there be an Act and Scheme framed thereunder, the respondent/authorities are bound to give effect to the scheme and not allow extraneous considerations, unconnected with the scheme to interfere with the functioning of the Statutory Board and powers conferred on it. In that case, this Court noted that the Ministers who had intervened could not have done so and that was clearly contrary to the Act and the Schemes. A meeting here before called by the Minister and when minutes may be recorded cannot overrule the directions issued u/s 7 of the Act. . In our opinion, therefore, no practice has been established and even assuming practice has been established that would be contrary to the provisions of the Act and the Scheme and consequently cannot be enforced.

22. We now deal with the objections that before the Board could pass a resolution, there was a need for hearing the workmen of toli No. 1B. We may note that the power to transfer and/or allot or regroup is a power conferred on the Board pursuant to Clause 6(VI) of the Scheme. The power includes allotment of registered workers in pool to registered employers. Grouping or re-grouping of registered workers into such groups has to be determined by the Board. It would thus be clear that it is the power of the Board to decide the number of workers to be maintained on the register, the grouping or re-grouping and reviewing grouping of any registered worker on the application of a registered worker. This

power, apart from being administrative, is a managerial function of the Board. While exercising this managerial function, unless there be any statutory provision, to give a hearing to any registered worker or group of workers of workers in the pool would not arise. In the instant case, apart from the direction issued u/s 7(4) in January 2009, earlier, there was no other direction issued. The resolution which we have referred to earlier, would not be a direction u/s 7(4). Apart from that the minutes recorded, really do not speak about transfer from one toli to another toli of workers but filling of vacancies in the original toli which were not filled in. It cannot be contended on behalf of the workers of toli No. 1B that they have an unfettered right to continue to be the same group, whether there be increase or decrease of work or for that matter, increase or decrease of work in some other toli. The right being managerial, it is the power of the Board to consider all relevant aspects including wages. Though the wage return is uniform it is the number of days and the extra overtime if any that results in higher wages. Wages are paid in terms of the work load. In the instant case, the record would clearly show that work in toli No. 37 has decreased. This is also evident from the fact that though the wage rate for every registered worker is the same, the workers in Toli No. 1B on an average are getting double the wages of what was in toli No. 37 depending on the hours and days of working. If the Board on considering this aspect and the representation by registered worker and considering Clause (vi) has passed the resolution, in our opinion, the question of hearing workers of Toli No. 1B would not arise. The Court would also not interfere as long as the action is not malafide or arbitrary, considering that the Board would be State within the meaning of Article 12 and considering Article 14. The resolution based on relevant material is an exercise of managerial right which in our opinion, cannot be assailed. The second contention therefore also will have to be rejected.

23. We now deal with the question as to whether the resolution of 21.2.2009 is clarificatory in nature and consequently, consent of 2/3rd of the workers ought to have been taken. As we have already noted, the direction dated 21.1.2009 was issued in supersession of the Government Order dated 19.3.2008 and is a fresh direction u/s 7(4). By its very language therefore the G.R. dated 21.1.2009 cannot relate back. What has been superseded is the Government Resolution of 19.3.2008 in the matter of appointment of workmen where there is a need to increase the strength of the workers. Even the resolution of 19.3.2008 was in supersession of Government Resolutions dated 25.9.2006 and 8.1.2008. It would thus be clear that the direction issued pursuant to the G.R. dated 21.1.2009 cannot be said to be retrospective in absence of any similar provision in the earlier G.Rs. The direction as contained in para 5 of G.R. Of 2009 have been introduced for the first time and was absent in the earlier G.Rs. This also would indicate that there is a new direction to be complied with hereinafter. It is needless to say that if the G.R. was clarificatory, then the position in law would be that the law always was what the G.R. indicated and what has been done is merely by way of clarification. In *S.S. Grewal v. State of Punjab and Ors.* 1993 II

CIR 274, it was held that the power to issue a direction with retrospective effect must be a power conferred on the delegate. Section 7 only sets out that power has been conferred on the delegate to issue directions. That power does not include to issue directions with retrospective effect as the plain language of Section 7(4) itself would indicate. Section 7(4) if properly read, sets out that the Board shall be bound by such directions as the State Government may, for reasons to be stated in writing and given to it from time to time. In other words, the power is of the State Government to issue resolution from time to time. In our opinion, the law on the subject is covered by the Judgment of the Supreme Court in the case of Vice Chancellor, M.D. University, Rohtak Vs. Jahan Singh, where the Supreme Court considering specific statutory provisions, made it clear that the Act does not confer any power on the Executive Council to make a regulation with retrospective effect. The regulations could not have been given retrospective effect or retroactive operation in the absence of any provision contained in the legislative Act. A delgatee cannot make a delegated legislation with retrospective effect. The learned Counsel for the petitioners has drawn our attention to the Judgment of this Court in the case of M.H. Shete v. State of Maharashtra 1998 II Clr 674. The facts in that case itself disclose that it does not support the contention urged on behalf of the petitioners. In that case, G.R. dated 19.9.1975 had been issued whereby temporary workers who had rendered continuous service for not less than three yeas in a post or posts included in a cadre, were to be deemed to be a permanent Government servant for all purposes. Pursuant to a G.R. issued on 8.1.1976 the employees in the Industries Centres were absorbed in Leather Industries Development Corporation. During the relevant time when the resolution was passed the petitioner was not working with the Leather Industries Development Corporation. He was however working there from 1964 to 1972. During 1972 to 1976, he served in different departments of the State Government and was treated as temporary. He had rendered 15 years of continuous service. The Court noted that the resolution of 19.9.1975 had not incorporated any cut-off date and considering the peculiar facts and circumstances, the Court held that the petitioner was entitled to pensionary benefits. In our opinion, this authority is of no aid to the workers of Toli No. 1B to contend that the G.R. dated 21.1.2009 was retrospective. In our opinion, that contention must therefore be rejected.

24. Once the contentions raised on behalf of the workers of Toli No. 1B are rejected and as there was power in the Board to pass a resolution to transfer workers from one toli to another, and or to group or regrouping, in our opinion, the resolution of 15.10.2004 which was sought to be given effect to by the Board decision dated 9.7.2005 will have to be implemented. The Board was bound to give effect to its own resolution which was subsisting.

25. In the light of that, these petitions can now be disposed of.

(1) In the light of the above, in Writ Petition No. 1585 of 2005 Rule made absolute in as much as the Respondent-Board is directed to forthwith implement

the decision taken at the 115th meeting of the Board held on 15th October, 2004 and further discharge all its statutory obligations and duties under the Mathadi Act and the Scheme framed thereunder.

(2) In Writ Petition No. 1192 of 2006, Rule discharged.

(3) In view of the order passed in Writ Petition No. 837 of 2008, no relief need be given in Writ Petition No. 837 of 2008.

26. We may further note that there is an interim order of this Court dated October 19, 2007. We may note that the Board could not give effect to this Resolution and its order on account of opposition of workers of present Toli No. 1B. The decision to be given effect to within fifteen days from today. If the implementation of the Board decision is resisted by the workers of Toli No. 1B, then in that event interim order of this Court dated October 19, 2007 be given effect to. Further, the wages of the transferred workers be recovered from the workers who are presently working in Toli 1B and be paid to them every month till such time as they allow the transferred workers to join Toli No. 1B. In case there are any difficulties in implementation of the Judgment of this Court, liberty to the Board to move this Court.

27. Learned Counsel seeks status quo of the order. In or opinion, considering what we have set out in the Judgment, no case made out for status quo. Hence oral application for status quo rejected.