

(2016) 09 BOM CK 0201
In the Bombay High Court
Case No : Writ Petition No.9302 of 2016

M/s. Saint Gobain India Pvt. Ltd, Palghar	APPELLANT
Vs	
Secretary, Maharashtra Rajya Mathadi Transport, General Kamgar Union	RESPONDENT

Date of Decision : 19-09-2016

Acts Referred:

Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 — Section 14, Section 5

Citation : (2017) 1 CLR 944

Hon'ble Judges : R. M. Savant, J.

Bench : Single Bench

Advocate : Mrs. N. R. Patankar i/by Shri P. M. Jadhav, Advocate, for the Petitioner; Mrs. Pavitra Manesh, Advocate, for the Respondent No. 1 in Writ Petition No. 9302 of 2016; Mr. A. K. Jalisatgi a/w Mr. Satish C Hegde, Advocates, for the Respondent No. 1 in Writ Pe

Final Decision : Allowed

Judgement

R.M. Savant, J.—Rule in both the above Writ Petitions, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2. The above Writ Petitions take exception to the identical orders both dated 02/08/2016 passed by the learned Member of the Industrial Court (Court Camp), Thane by which orders the applications for interim reliefs being Application (Exhibit U-2) in Complaint (ULP) No.25 of 2016 and Application (Exhibit U-2) in Complaint (ULP) No.22 of 2016 are made absolute. By the said orders the directions which are common in nature were issued to the Respondent Nos.1 and 2 in Complaint (ULP) No.25 of 2016 and the Respondent No.1 Complaint (ULP) No.22 of 2016 i.e. the Petitioners here in. The directions were to the effect that the Respondents i.e. the Petitioners herein were required to provide loading and unloading work of their Wada Factory to 46 Mathadi workers of Toli No.2369 in Complaint (ULP) No.25 of 2016 and 41 Mathadi workers of Toli No.2305 in Complaint (ULP) No.22 of 2016 and pay wages and levy to the Respondent No.5

Board within one week from the date of the said orders. The Mathadi workers involved in both the Complaints were also directed not to go on illegal strike without notice to the Respondents i.e. the Petitioners herein. The Respondent No.5 Mathadi Board was directed to regulate the work between the Mathadi Workers and the Respondents i.e. the Petitioners herein

3. It is not necessary to cite unnecessary details having regard to the final directions to be issued. The contentious issue which arose whilst considering the applications for interim relief was the applicability of the Scheme framed under the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (for brevity's sake herein after referred to as "the said Act"), to the Petitioner herein. It appears that the Petitioner herein had vide letter dated 30/04/2015 sought for various information which was mentioned in the said letter. It seems that the Petitioner had engaged the Respondent No.3 herein i.e. GJN Logistics Company for carrying out the work of loading and unloading in its factory and prior thereto there was another agency which was engaged by the Petitioner. It seems that the Respondent No.3 herein had engaged the Tolies (group of mathadi workmen) in question till 17/12/2015 and the Respondent No.3 had thereafter discontinued such engagement leading to the filing of the complaints by the Respondent No.1 in both the Petitions. It is in the background of the said facts that the applications for interim relief were adjudicated by the learned Member of the Industrial Court.

4. The parties were therefore at issue as regards the applicability of the Scheme framed under the said Act. In so far as the said aspect is concerned, the following judgments of this Court were cited before the learned Member of the Industrial Court :-

1. Shree Cloth Market Maratha Kamgar Sangharsh Samiti v. Baba Transport Company & ors, reported in 2002-I-CLR-359;
2. Precious Gas Service & Anr. v. Chairman, Goods Transport Labour Board for Greater Bombay & Anr, reported in 2003 -I-CLR- 85;
3. West Coast Paper Mills Ltd. v. State of Maharashtra, through Collector of Mumbai & ors. reported in 2010-II-CLR-148.

The learned member of the Industrial Court having regard to the said judgments appreciated the Scheme encompassed within the said Act however proceeded to adjudicate upon the said applications for interim relief without making a reference of the dispute as regards applicability of the Scheme framed under the said Act to the State Government. In terms of Section 5 of the said Act, if there is any dispute raised as regards applicability of the Scheme framed under the said Act, the said dispute has to be resolved by the State Government after consulting the Advisory Committee constituted under Section 14 of the said Act. Admittedly, this procedure was not followed and the learned Member of the Industrial Court, took upon himself to adjudicate upon the said aspect.

5. Having regard to the said legal position, the learned counsel appearing for the parties i.e. Mrs. N R Patankar for the Petitioner Mrs. Pavitra Manesh for the Respondent No.1 in Writ Petition No.9302 of 2016, Mr. A. K. Jalisatgi for the Respondent No.1 in Writ Petition No.9303 of 2016 and Mr. S.K. Talsania, Senior Advocate for the Respondent No.2 are agreeable to the impugned orders being set aside and the following directions being issued:-

A. The learned counsel appearing on behalf of the Respondent No.1 in Writ Petition No.9302 of 2016 Mrs. Pavitra Manesh, and in Writ Petition No.9303 of 2016 Mr. A.K. Jalisatgi, on instructions, make a statement that the said Unions i.e. the Respondent No.1 in both the Petitions who are the complainants in the said two complaints would not press both the applications (Exhibit U-2) filed for interim relief in the said two complaints, the said applications are accordingly allowed to be withdrawn as not pressed. In view of the said statement, it is not necessary to go into the merits of the impugned orders. The impugned orders would accordingly stand set aside.

B. The issue as regards the applicability of the Scheme framed under the said Act is referred to the State Government for its decision in terms of Section 5 of the said Act. However, it would be open for the Petitioner to contend as regards applicability of the said Act itself.

C. The Petitioner would file an appropriate application before the concerned department of the State Government within four weeks from date with copies furnished to the respective Unions as also to the Board. In the event the application is not filed within four weeks by the Petitioner then the statement of the learned Counsel for the Unions would stand withdrawn and consequently the impugned orders would stand revived.

D. The State Government is directed to decide the said dispute within a period of two months of the application being filed by the Petitioner and latest by 31/12/2016 by giving proper opportunity to the parties.

E. Contingent upon the decision that would be rendered by the State Government, the respective Unions would be entitled to re-apply for interim relief in the pending complaints which applications would undoubtedly be decided on their own merits and in accordance with law uninfluenced by the earlier adjudication.

F. Needless to state that the contentions of the parties on merits are kept open for being urged before the appropriate forum at the appropriate time.

G. The above Writ Petitions are allowed in terms of the above. Rule in both the Petitions is accordingly made absolute with parties to bear their respective costs of the Petitions.