

(2018) 04 BOM CK 0176

In the Bombay High Court

Case No : 3 WRIT PETITION NO. 9100 OF 2013

NISAR AHMED KHAN

APPELLANT

Vs

THE STATE OF MAHARASHTRA AND OTHERS S.

RESPONDENT

Date of Decision : 16-04-2018

Acts Referred:

Constitution Of India, 1950 — Article 12, 15, 19(1)(g), 25, 226

Citation : (2018) 04 BOM CK 0176

Hon'ble Judges : T.V. NALAWADE, SUNIL K. KOTWAL

Bench : Division Bench

Advocate : Pradnya Talekar, S.B. Talekar??AGP, P.G. Borade, N.B. Suryawanshi, M.S. Karad, P.P. Mandlik, Amol Gandhi, V.D. Salunke

Final Decision : Dismissed

Judgement

T.V. NALAWADE, J.

1.The petition is filed under Articles 12, 15, 19 (1)(g), 25 r/w. Article 226 of the Constitution of India for relief of quashing and setting aside the order

dated 3.8.2012 made by the Aurangabad Mathadi and Unprotected Workers Board and Deputy Labour Commissioner, Aurangabad (hereinafter

referred to as 'the Board' for short) created under the Maharashtra Act No. XXX 1969 (the Maharashtra Mathadi, Hamal and Other Manual

Workers (Regulation and Employment and Welfare) Act, 1969 (hereinafter referred to as 'the Act' for short). By this order, the Board has revised

wages for the period 1.6.2012 to 31.5.2014. The rates are increased by 24% in respect of workers working at the Maharashtra State Warehousing

Corporation, Aurangabad and the rates are increased by 18% in respect of the workers working at railway rake point. Both the sides are heard.

2.The petitioner is a proprietor of one concern and is also a contractor in

transport business. The petitioner transports goods from railway rake point Aurangabad to godowns of the Maharashtra State Warehouse Corporation. For that purpose, he is required to use the labour force at both the points.

3.The petitioner had entered into a contract with Warehouse Corporation initially for the period of two years starting from 1.9.2010. The period was extended from time to time.

4.It is contended that as per the provisions of the Act, the Board is expected to hear all the concerns before revising the rates of wages. It is

contended that hike in the wages proposed in May 2012 was not acceptable even to Warehouse Corporation and that was intimated to the Board. It is

contended that without considering the objections of concerned like the petitioner, the rates came to be revised and the rate was increased by 24% for

Warehouse Corporation and 18% at railway rake point.

5.It is the case of petitioner that twelve members were expected to constitute the Board, but at the time of hearing, only nine members were present

and out of them, only five members have accepted the hike of aforesaid nature and further, many members had expressed that the hike should be for

future i.e. after 16.4.2013. It is contended that the hike is made applicable with retrospective effect i.e. for the aforesaid period. On these grounds, the

order of the Board is challenged. There is also challenge to the order on the ground that only one member took the final decision.

6.During arguments, it was submitted that after making some interim order by this Court, the matter was taken to the Hon'ble Minister and the Hon'ble

Minister had advised the Board to see that matter is reconsidered. It is contended that accordingly, the Hon'ble Minister had given direction, but again

decision is informed that the parties are to act as per the previous fixation of wages.

7.The submissions made and the record show that the present petitioner, the contractor felt it difficult to pay the wages at revised rates as he had

entered in to contract with Warehouse Corporation well back in the year 2010 and the period of contract was extended on the previous terms and

conditions. Thus, he was getting the rates as per the contract made with Warehouse Corporation in the year 2010, but the rates of labour wages came

to be increased even when he had accepted the contract on the basis of previous rates. This cannot be a ground to challenge the revision in rates. If

the contractor had not anticipated such revision of rates, he needs to blame himself and he cannot blame the Board for that. The circumstance that even Warehouse Corporation had informed about the probable objection, cannot be considered in view of the powers of the Board and the object behind creation of the aforesaid Act.

8. Though in the past, interim order was made by this Court and this Court had expressed that it was advisable to constitute full-fledged Board for

taking decision on such matters, the decision is already taken by the Board. Due to this circumstance, this Court has carefully gone through the

scheme of the aforesaid Act. The purpose of the Act is mentioned in preamble and it shows that it is made to regulate the employment of unprotected

manual workers engaged in employments like present one, to make better provisions for their terms and conditions of employment and to provide for

their welfare.... The provision of section 6 of the Act shows that the State Government is expected to establish the Board by issuing notification in the

Official Gazette for any area and each Board shall be a body corporate, having perpetual succession and common seal etc. The provision shows that

the Board shall consist of members nominated from time to time by the State Government representing the employers, the unprotected workers and

the State Government. The provision of section 6 (5) shows that the Chairman of the Board shall be one of the members appointed to represent the

State Government, nominated in this behalf by the State Government. Section 6 (8) provides that the procedure for the meeting of the Board shall be

regulated by the Board itself. The provision of section 6-A, which allows one member Board to function is as follows :-

6A. POWER OF STATE GOVERNMENT TO APPOINT BOARD CONSISTING OF ONE PERSON.-

(1) Where by reason of employers or unprotected workers in any scheduled employment refusing to nominate persons for representing them on the

Board or for any reason whatsoever, it appears to the State Government that it is unable to constitute a Board for such scheduled employment in

accordance with the provisions of section 6, the State Government may, by notification in the Official Gazette, appoint a person who shall hold office

until a Board is duly constituted under section 6 for such scheduled employment.

(2) The person so appointed shall be deemed to constitute the Board for the time being, and shall exercise all the powers and perform and discharge all

the duties and functions conferred and imposed upon the Board by or under this Act. He shall continue in office until the day immediately preceding the date of the first meeting of such Board.

(3)The persons constituting the Board shall receive such remuneration from the fund of the Board, and the terms and other conditions of service shall be such as the State Government may determine.

9.The provision of section 24 (2) of the Act shows that supersession of the Board is possible and after the supersession of the Board and until it is reconstituted, the powers, duties and functions of the Board shall be exercised and shall be performed by the State Government through such officer of the State Government who can be appointed by the State Government. The provision of section 25 shows that contracting out is not permissible and such agreement is to be treated as void.

10.The order made by the Board dated 3.8.2012 shows that it was a Board consisting of one person as provided in section 6-A of the Act. The submissions made show that one member Board was functioning since the year 2005. The order made by one member Board shows that the board had published notice in respect of proposed rates in newspaper 'Loksatta' and the proposed rates were informed to Warehouse Corporation, Unions of Transport and Dock Workers, Unions of Contractors, Unions of Labours and even to individual contractors. The order shows that the objections were to be submitted up to 13.7.2012. The rates were declared by this order for the period 1.6.2012 to 31.5.2014. Thus, it cannot be said that the rates were fixed with retrospective operation as process was started in the year 2012 itself and the proposed rates were advertised.

11.In view of the aforesaid contents of the order, it cannot be said that the contractors or representatives of association of contractors were not informed about the process of revision which was going on. It appears that Writ Petition No. 980/2012 was filed by another contractor, but no relief was granted by this Court and by order dated 6.8.2012, this Court had advised the said contractor to approach the State authorities. It appears that representation was made to the Labour Commissioner by many such contractors including the present petitioner and they had prayed for reducing the hike and allowing the hike only to the extent of 10% to 12%. It was submitted by them that the Associations of Labours were ready to work at lower

rate also and that circumstance ought to have been considered at the time of fixation of rates. Thus, it was submitted that the lower rates would not have affected the labour force. This circumstance or the proposition or the ground by the contractors could not have been considered in view of the aforesaid object behind the Act. The purpose of the Act is to prevent exploitation of the unprotected workers. It is clear that the contractors were getting big amount in between and reasonable portion of money which Warehouse Corporation was giving, was not reaching to the labour.

12.If the present petitioner had objection to the aforesaid rates, he could have stopped to work which he had taken under the contract, but that was not done and he continued to make representations. He had approached the Corporation for increasing the rates given to him under the contract. But, it appears that it was not accepted. The submission was made by the learned counsel for Corporation that due to other circumstances like increase of the distance of transportation, some hike was given by the Corporation.

13.The record shows that the Hon'ble Minister had arranged a meeting to consider the say of all concerned on 26.2.2013 and separate intimation was given to the present petitioner. It appears that notification was issued on 6.2.2013 to appoint representatives of principal employers, representatives of unprotected workers and also the Chairman. The meeting of this newly constituted Board was held on 26.2.2013. In the meeting, the representatives of the contractors expressed that they were not ready to accept the rates fixed by one member Board. There are minutes of the meeting dated

16.4.2013. But, no subject was placed for reconsideration of the rates fixed by one member Board. Representation was made to Labour

Commissioner and he made a report to the State Government, the Principal Secretary, Labour and Industry that one member Board has considered everything and after considering increase in the prices of essential commodities etc., the rates were fixed. It was also informed that different rates at

different places were fixed by different Boards, but that cannot be a ground for grievance as the nature of work at every place is different. This

report was sent on 2.8.2013 and on that basis, the Government communicated the previous order on 26.9.2013 and it declared that the rates fixed

were proper and there was no possibility of change of those rates.

14.The aforesaid record and circumstances show that only after following proper

procedure, one member Board constituted as provided under section 6A of the Act had fixed the rates and the representatives of concerned parties were given an opportunity to have their say. The parties like contractors, like the present petitioner are bound to oppose the hike in rates as the hike in the rates will reduce their margin, profit. If the contractors like the present petitioner had continued to work on the basis of previous rates with Warehouse Corporation, that cannot be a ground for challenging the rates fixed by the Board. That circumstances cannot be considered against the labour force for whose protection the Act is made. It appears that the petitioner has raised another dispute with Warehouse Corporation with regard to increase of distance of transportation due to the order made by the authority from Aurangabad city that the transport vehicles are not allowed to enter the city during the day time and due to that, they are required to use the other route which is of longer distance. Such contentions also cannot be considered in the matter like present one. In the matter like present one, the Board is expected to consider as to what can be fair rate. On the basis of possibility of revision of rates, the contractor can quote rates in contract with other parties like Warehouse Corporation, but he cannot challenge the rate itself on such ground. Further, the contention that at other places rates are different, cannot be a ground as at other places the nature of work is different and the goods which are lifted and carried out may be also different.

15. During arguments, the learned counsel for petitioner drew the attention of this Court to one application made by a representative of the labours to newly constituted Board. This Court was really surprised to see that the said member has supported the contentions of the contractors when the representatives of the labours are expected to work for the interest of labourers. This circumstance shows as to how the exploitation of the labour force takes place. The Government needs to be cautious and the labours also need to be careful in selecting their representatives, who are to work as members of the Board. Due to all these circumstances, this Court holds that it is not possible to interfere in the decision taken by the single member Board which was properly constituted at the relevant time and which followed the procedure which it was expected to follow. There is one more circumstance in the present matter like the cheques given by the present

petitioner for making payment to the Board had bounced and due to that, Warehouse Corporation was required to make payment to the Board directly. The writ jurisdiction cannot be exercised in favour of person like the present petitioner due to aforesaid circumstances. In the result, the petition stands dismissed. Civil Applications are disposed of.