

(2002) 12 BOM CK 0034
In the Bombay High Court
Case No : O.O.C.J. W.P. No. 2089 of 2002

Precious Gas Service and Another

APPELLANT

Vs

Chairman, Goods Transport Labour Board for Greater Bombay
and Another

RESPONDENT

Date of Decision : 05-12-2002

Acts Referred:

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

Citation : (2003) 2 LLJ 398

Hon'ble Judges : R.M. Lodha, J;D.B. Bhosale, J

Bench : Division Bench

Advocate : J.P. Cama, instructed by Ashok Pande, for the Appellant; Lata Desai, for Respondent No. 1, S.M. Dixit, for Respondent No. 2, Smita Telang and M.S. Topkar, for the Respondent

Judgement

1. Rule. Returnable forthwith.

2. Ms. Desai, learned counsel waives service for respondent No. 1, Mr. Dixit, learned counsel waives service for respondent No. 2, Ms. Telang, learned counsel waives service for respondent No. 3 and Mr. Topkar, learned counsel waives service for respondent No. 4.

3. By consent of the learned senior counsel appearing for the petitioners and the learned counsel for the respective respondents, rule is heard finally at this stage.

4. The issue raised in the writ petition pertains to whether the petitioners are liable to get registered under the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 and/or under the scheme framed therein. Section 5 of the Act of 1969 reads thus:

"5. If any question arises whether any scheme applies to any class of unprotected workers or employers, the matter shall be referred to the State Government and the decision of the State Government on the question, which

shall be taken after consulting the advisory Committee constituted u/s 14, shall be final."

5. It would be thus seen that in the event of any question arising whether a scheme is applicable to any class of unprotected workers or employers, the matter is required to be referred to the State Government. The State Government arrives at the decision on the said issue after consulting the Advisory Committee constituted u/s 14. In our considered view, therefore, the issue raised in writ petition needs to be first decided by the State Government as provided in Section 5 of the Act of 1969. However, the learned senior counsel appearing for the petitioners invited our attention to the communication dated October 5, 2000 (Exhibit A-1). The said communication though records that in the meeting held on April 11, 2000 with the Minister (Labour) wherein the Workers Associations were also present, it was agreed that the distributors of Gas Cylinders and the Transporters will be registered with the Malvahatuk Kamgar Mandal and the jobs in their godowns will be given to the outside Tolis (group of workers) and further decision was taken that the workers of outside Tolis will be given 60% labour charges and workers of inside Tolis will be given 40% labour charges. Yet, we find the said decision is not as per the requirement of Section 5 of the Act of 1969.

6. We accordingly dispose of writ petition by following order:

(i) The question whether the petitioners are liable to get registered under the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 and the scheme framed therein is referred for decision to the State Government. We direct the State Government to decide the aforesaid question in accordance with law particularly with reference to Section 5 by consulting the Advisory Board before any decision is taken.

(ii) If the said decision by the State Government is adverse to the petitioners, same shall not be enforced for a period of two weeks from the date of communication of the said order to the petitioners.

7. We expect the State Government to take decision on the aforesaid issue as expeditiously as possible and in no case later than four months from the date of receipt of this order.

8. Ad-interim order passed by this Court shall remain operative till the decision is taken by the State Government.

9. No costs.

10. All contentions of the parties are kept open to be agitated and considered by the State Government.