
(1993) 08 BOM CK 0027

In the Bombay High Court

Case No : Writ Petition No. 1475 of 1987

Rajaram Bapu Pawar and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-08-1993

Acts Referred:

Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 — Section 2(3)

Citation : (1994) 1 BomCR 274 : (1994) 1 LLJ 954

Hon'ble Judges : Sujata Manohar, J;M.G. Chaudhari, J

Bench : Division Bench

Advocate : Milind Sathe and G.B. Kedia, for the Appellant; N.H. Gursahani, S.M. Dandekar and Lata Desai, for the Respondent

Judgement

Sujata Manohar, J.—Writ Petition No. 1475 of 1987 is filed by the petitioners who are carrying on business as Hundekaris in various vegetable markets in Bombay. The second petitioner is a registered body of such Hundekaris. The petition is filed in a representative capacity on behalf of all the Hundekaris for a direction that the decision of the State Government contained in letter dated February 16, 1987 as a result of which the petitioners were refused registration as "employers" under the Vegetable Markets Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1985 (hereinafter referred to as the said Scheme), should be set aside and that they should be permitted to register themselves as employers under the said Scheme.

2. At the stage of granting interim reliefs in the petition, the learned single Judge of this Court, in his order dated February 16, 1987 directed that as and by way of an interim arrangement the petitioners should be registered under the said Scheme as Mukadams or Tolli Pramukhs and they should be permitted to carry on their work as Mukadams or Tolli Pramukhs under the said Scheme. An appeal was carried from this interim order before the Division Bench. The Division Bench by its order dated July 27, 1987 allowed the appeal and set aside the interim

order of the learned single Judge except in regard to the direction for an expeditious hearing. The Division Bench directed the Bombay Vegetable Markets Unprotected Labour Board constituted u/s 6(1) of the Maharashtra Mathadi Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (hereinafter referred to as the said Act) who are the second respondents, to consider the application of Hundekaris for registration independently of the letter of the State Government dated February 16, 1987. The Division Bench further directed that in case there was any dispute regarding the application for such registration, the State Government should decide the same in accordance with the provisions of Section 5 of the said Act and after giving to the Hundekaris an opportunity of being heard. Pursuant to the order of the Division Bench, the application of the Hundekaris for registration under the said Scheme as "employers" was considered by the said Board. The applications were rejected by the Board by its order dated October 30, 1987. In view of the dispute relating to registration, provisions of Section 5 of the said Act were attracted. Section 5 of the said Act provides that 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. 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. Accordingly, the question was put before the Advisory Committee. The Advisory Committee by its decision dated August 26, 1988 held that Hundekaris were not entitled to be registered as employers under the said Scheme. The State Government thereafter took into account the opinion of the Advisory Committee as also the views put forward by the Hundekaris and ultimately passed an order dated January 6, 1989 u/s 5 of the said Act directing that the Hundekaris should be registered by the said Board as employers under the said scheme. In view of this decision, Writ Petition No. 1475/1987 does not now survive as the prayers of the petitioners in this petition have been granted.

3. The decision of the State Government, however, of January 6, 1989 is now challenged by the Maharashtra Rajya Mathadi Transport and General Kamgar Union (hereinafter referred to as the Union) in Writ Petition No. 510 of 1989. It is the contention of the Union that the Hundekaris are not entitled to be registered as employers under the said Scheme. They have, therefore, prayed that the order of January 6, 1989 of the State Government should be set aside and Hundekaris should be restrained from registering themselves as employers under the said Scheme with the Board.

4. The first contention raised in this connection by the Union is that the order of the Government dated January 6, 1989 is passed without; consulting the Advisory Committee or without taking into account the views of the Advisory Committee. This contention does not appear to be sustainable. The decision of the Government dated January 6, 1989 sets out, first of all, the nature of the work done by Hundekaris. In paragraph 4, there is an express reference to the dispute being referred to the Advisory Committee for its opinion, and there is a reference therein to the effect that on August 4, 1988 Hundekaris were given an

opportunity to be heard. The order also sets out that the opinion submitted by the Advisory Committee was taken into consideration by the Government and only thereafter the decision of the Government was arrived at. This decision is in supersession of the Government orders of February 16, 1987. In the operative part of the decision there is a reference to S. 5 of the said Act. Therefore, it cannot be said that the decision of the Government of January 6, 1989 is without consulting the Advisory Committee.

5. It is pointed out by Mr. Sathe, learned counsel for the Hundekaris who are the second respondents in the said writ petition, that consultation does not imply that the views of the Advisory Committee must be accepted by the Government. The Government must take into account the views expressed by the Advisory Committee before it arrives at its decision. He has referred in this connection to *S.P. Gupta Vs. President of India and Others*, , where the Supreme Court has said that full and effective consultation implies that the Government while taking the decision, should have for its consideration all the facts bearing upon the question before it and should have the views expressed by the bodies required to be consulted on identical facts and material. This has been done in the present case.

6. The second contention raised on behalf of the Union is to the effect that looking to the definition of the term "employer" u/s 2(3) of the said Act, Hundekaris cannot be considered as employers under the said Act and the said Scheme (which is framed under the Act) and, therefore, they cannot be registered as employers. In this connection, it is necessary to refer to certain facts. The Maharashtra Mathadi Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 was enacted in order to regulate the employment of unprotected manual workers such as Mathadi, Hamal, etc. engaged in certain employments, to make better provision in their terms and conditions of employment and to provide for their welfare and for health and safety measures and for other benefits to such workers which are set out in the Preamble of the said Act. Under a Government Notification dated January 22, 1985 being Government Notification No. UWA/ 1484/CR/10507/LAB-5, the State Government established a Board known as the Bombay Vegetable Markets Unprotected Labour Board in exercise of powers conferred under the said Act for scheduled employment in vegetable markets and other establishments in connection with loading, unloading, stacking, carrying, weighing, measuring and such other work, in the area of Greater Bombay. On the same date the State Government also framed a Scheme u/s 4(1) of the said Act, namely, the Vegetable Market Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1985 (herein referred to as the said Scheme). Under the said Scheme the Board is required to maintain, inter alia, a register of employers as also a register of workers. Clause 14 of the Scheme provides for registration of employers. The question is, who are to be considered as employers of these workers under the said Act and the said Scheme framed under it.

7. u/s 2(3) of the said Act an employer is defined as follows:

"2(3), "employer", in relation to any unprotected worker engaged by or through contractor, means the principal employer and in relation to any other unprotected worker, the person who has ultimate control over the affairs of the establishment, and includes any other person to whom the affairs of such establishment are entrusted, whether such person is called an agent, manager or is called by any other name prevailing in the scheduled employment."

A contractor on the other hand is defined u/s 2 Sub-section (2) as follows:

"2.(2). "contractor", in relation to an unprotected worker, means a person who undertakes to execute any work for an establishment by engaging such workers on hire or otherwise, or who supplies such workers either in groups, gangs (tollis), or as individuals; and includes a sub-contractor, an agent, a mukadam or a tolliwala."

It is the contention of the petitioner Union that Hundekaris do not fall within the definition of "employer" because they are not the principal employers of Mathadi Kamgars but are merely agents. This contention is denied by the State Government as also by the Hundekaris. The State Government in its affidavit of the Assistant Secretary, Industries, Energy and Labour Department dated April 4, 1989, has described the nature of the work done by the Hundekaris. It is pointed out in this affidavit that in the vegetable markets in Bombay both commission agents as well as clearing agents have been operating for several years. Clearing agents are generally known as Hundekaris. The goods which are sent by the agriculturist or Vegetable Produce Market Committees are sent to the Hundekaris who personally remain present at odd hours of the night and receive vegetables and fruits which come to the city by railway, trucks and other modes of transport. Hundekaris engage labour for the work of loading and unloading of such goods. After receipt of the goods, Hundekaris despatch these goods to the concerned commission agent or trader in the market. If the goods are stolen or spoiled or are not delivered in time, the Hundekaris are responsible for the loss. They hold professional licenses of the Municipal Corporation and also pay professional tax. They also hold a license from the Agricultural Procedure Market Committee. They also have their own independent establishment and they act as clearing agents between the farmers at the village level and the traders in the vegetable markets. Hundekaris have themselves described the nature of their work in Writ Petition No. 1475/1987 in the affidavit filed by Balvantrao Salunke dated July 29, 1987. The Hundekaris also claim that they are the direct employers of manual workers who are engaged in the fruit, vegetable and flower markets for the work of loading and unloading produce. They have pointed out in support of their contention, that the transport receipt in respect of the goods brought into the city is directly addressed by the farmers to the Hundekaris. The receipt also mentions the name of the agent and/or trader to whom the goods are to be delivered. The transport receipt which is addressed only to the Hundekaris clearly indicates that he alone is responsible for the receipt of the

goods and their effective despatch in the market. For this work the Hundekaris engages the services of the manual workers. On arrival of the vehicles carrying the produce, the Hundekaris pays necessary taxes to the Municipal Corporation of Greater Bombay for weighing the goods and also pays all other charges. In their affidavit the Hundekaris have annexed a copy of one such receipt for payment of weighment charges issued by the Municipal Corporation to a Hundekari. It is also pointed out that the transport brings a letter addressed to the Hundekari from the farmer containing the transport receipt as well as other documents in respect of the goods which are addressed to the Hundekari and to the agents. The Hundekari has to check whether the goods mentioned in the transport receipt and the goods in the vehicle tally and are according to the description. He has to sort out these goods and despatch them to the respective traders or commission agents. When there is more influx of goods, Hundekaris have to engage additional workers for which they alone are responsible. The crates which are re-usable are required to be re- despatched to the farmers. This work is also done by the Hundekaris. Looking to all these documents as well as the description of the work done by these Hundekaris, their contention that they directly engage manual workers for the work of loading and unloading appears to be correct. The State Government is also supporting this stand as set out earlier. Hundekaris, therefore, cannot be considered as contractors within the definition of that term u/s 2 Sub-section (2) of the said Act. The workers are not engaged by Hundekaris on behalf of anybody else. They are directly engaged by the Hundekaris for their own work. Therefore, Hundekaris fall within the definition of the term "employer" u/s 2(3)

8. Under Clause 14 of the said Scheme, it is provided as follows:

"14. Registration of employers. - Every employer including a Mukadam, commission agent, clearing agent, purchaser, importer, exporter engaged in selling, purchasing or trading or acting as agent in vegetable market and other establishments in the areas to which this Scheme applies shall get registered with the Board by applying in Form "A" appended to this Scheme within fifteen days from the date of coming into force of this clause. Provided, however, that an employer of any establishment coming into existence after the commencement of this Scheme shall apply for a registration simultaneously on the commencement of his business."

It was contended on behalf of the Union that the description of the employer under Clause 14 of the said Scheme is much wider than the definition of employer under the said Act and hence Clause 14 should either be struck down or should be interpreted in a manner consistent with the definition of employer under the said Act. In view, however, of the fact that a Hundekari falls within the definition of an employer under the said Act, he, in any event, would be covered by the said Scheme. Therefore, it is not necessary for us to consider whether Clause 14 of the said Scheme is wider than the definition of an employer under the said Act. Even if Clause 14 is read down in a manner consistent with the

definition of an employer u/s 2(3) of the said Act, Hundekaris would nevertheless be covered by the definition of "employer". The contention, therefore, of the Union of workers that the Hundekari would become an employer only if the term is interpreted widely, does not appear to be justified.

9. Learned advocate appearing for the Union of workers very fairly pointed out that the Union of workers was concerned basically with the manual workers receiving proper wages as prescribed by the Board and with a proper record being maintained of the work done by the manual workers; and not with whether Hundekaris were registered as employers or not. We do not see how the interest of manual workers will be adversely affected by the decision which is taken by the State Government to register Hundekaris as employers. Under the said Scheme, in the first place, every employer has to furnish the address of his establishment and his telephone number. Secondly, the record of work done by such workers is also required to be furnished to the Board by the employer. An employer is also bound to pay to the workers wages as prescribed by the Board. Once the Hundekaris are registered as employers in accordance with the said Scheme, they will be bound to maintain and furnish to the Board proper records of the work done by the manual workers employed by them and will also be bound to pay these workers wages as prescribed by the Board in the manner laid down under the Scheme. Therefore, the protection which is given to the manual workers under the said Scheme is in no way whittled down if Hundekaris are registered as employers.

10. In the premises, we do not see any reason for setting aside the decision of the State Government dated January 6, 1989. Writ Petition No. 510/89 is, therefore, dismissed. In the circumstances, however, there will be no orders as to costs. Writ Petition No. 1475/87 does not now survive for the reasons which we have already set out. Hence, there will be no orders on the said writ petition.

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