(1994) 03 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 560 of 1986

Vaz Forwarding Pvt. Ltd. and another — APPELLANT

Vs

State of Maharashtra and others — RESPONDENT

Date of Decision : 31-03-1994

Acts Referred:

Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 — Section 18, 3, 3(2), 6, 7

Citation : (1995) 1 BomCR 9 : (1994) 96 BOMLR 949 : (1994) 2 MhLj 1611

Hon'ble Judges : P.S. Patankar, J;M.L. Pendse, J

Bench : Division Bench

Judgement

M.L. Pendse, J.—The petitioner No. 1 are a Company and are working as clearing and forwarding agents. The Maharashtra Legislature enacted the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (hereinafter referred to as the ''Act'') and the preamble sets out that the Act was for regulating the employment of unprotected manual workers employed in certain employments in the State of Maharashtra, to make provision for their adequate supply and proper and full utilization in such employments, and for matters connected therewith. Section 3 of the Act confers power upon the State Government to frame schemes in respect of unprotected workers in any schedule employment or employments and the scheduled employments and the scheduled employments are set out in the Schedule to the Act. The first item in the Schedule is in respect of employment in iron and steel market or shops in connection with loading, unloading, stacking, carrying, weighting, measuring or such other work including work preparatory or incidental to such operations. In exercise of powers conferred u/s 3 of the Act, the Government of Maharashtra had framed scheme known as "The Bombay Iron and Steel Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1970.

2. Section 6 of the Act provides for constitution of Board for any scheduled employment in any area. The section provides that such Board shall be a body

corporate having perpetual succession and common seal, with power to acquire, hold and dispose of property, and to contract and can sue or can be sued in the name of the Board. The Board consists of members - representing the employers and unprotected workers in equal number. The State Government also nominates one-third of the total number of members representing employers and unprotected workers and one of the nominees of the State Government is appointed as Chairman of the Board. The powers and the duties of the Board are set out in section 7 of the Act. The Board is responsible for administering scheme and has to exercise powers and to discharge the functions as directed by the State Government from time to time. In accordance with the provisions of section 6, the Government of Maharashtra has constituted board known as "The Bombay Iron and Steel Labour Board". The Board was constituted in year 1970 and is discharging the functions from that year onwards. The scheme framed by the State Government, inter alia, provides by Regulation 6(11) (v) that the Board shall determine the wage, allowances and other conditions of service including age of retirement of the registered workers. It is required to be stated at this juncture that every workman is required to file an application for being registered under the scheme in accordance with section 18 of the Act. It is also necessary for the employer to be registered with the Board and the wages payable to the workmen registered are those determined by the Board from time to time. It is not in dispute that the wages payable to the workmen are revised after every six months right from the date of commencement of the scheme and the scheme demands that both the employers and the workmen will be bound to accept the determination of the wages. The wages are revised in consultation with the members of the Board and as mentioned hereinabove, the members are representing both the employers and the workmen.

3. The petitioners filed present petition under Article 226 of the Constitution of India on March 16, 1986 and the reliefs sought in the petition are in respect of certain bills which the employer is required to pay for the work carried out by the workmen supplied by the Board. The grievance of the petitioners is that the bills which are prepared in accordance with rates of wages determined by the Board are exorbitant and the rates are fixed without any nexus to the work undertaken by the workmen.

Shri Singh, learned counsel appearing on behalf of the petitioners, submitted that under the provisions of section 3(2)(d) of the Act, it is the duty of the State Government to provide in the scheme the terms and conditions of employment including rates of wages and the State Government cannot abdicate powers conferred by the Legislature by permitting the Board to revise the rates of wages from time to time. The learned counsel urged that the Legislature has delegated powers to the State Government to prepare a scheme and provide for the terms and conditions of employment including rates of wages and the State Government, to whom the powers are delegated, cannot further delegate the said powers of the Board constituted under the Scheme. The learned counsel also urged that the rats of wages settled by the Board are exorbitant and has no relation to the nature of duties performed by the workmen. It was further submitted that for the same kind of work, the rates of wages fixed by Bombay Dock Labour Board are considerably less and the respondents are unable to explain the rationale fixing rates which are far in excess. Miss Desai, learned counsel appearing on behalf of the Board and Shri Dixit, learned counsel appearing on behalf of State Government, controverted the submissions urged by the learned counsel. It was pointed out that the rates of wages are determined by the Board right from year 1970 onwards and the rats are revised in accordance with guidelines issued by the State Government. It was further contended that the petitioners have accepted the rates all along and it is not open to challenge the powers of the Board to revise the rates merely because in respect of certain work already carried out, the petitioners feel that the rates are exorbitant. It was contended that it is impossible to compare the rates of wages with the work carried out by the workers under the provisions of some other Acts and the grievance that the Board lacks the power to revise the rates is without any substance.

4. In view of the rival submissions, the short question which falls for determination is whether the Board constituted u/s 6 of the Act has power to determine rates of wages of the unprotected workmen. The legislation was enacted with a view to protect the unprotected workmen who were exploited over several years. The unprotected workmen undertake very strenuous physical work and the power to determine the rates of wages was conferred with a view to ensure that the workmen receive reasonable rates for the work carried out. The scheme framed by the State Government u/s 3 of the Act specifically provides by Regulation 6(11) (v) that it is function of the Board to determine the wages, allowances and other conditions of service. The scheme also provides the guideline to determine the rates of wages. Regulation 33 demands that for the purpose of fixing rates of wages, the Board shall call upon the associations of employers and trade unions of workers covered by the scheme to make such representation as they may think fit, as regards the conditions of service which may be fixed or revised under the scheme. Regulation 33(5) provides that the Board while modifying the conditions of service shall have regard to the cost of living, the prevalent conditions of service in comparable employments in the local area, the capacity of the registered employers to pay and any other circumstances which may seem relevant to the Board. The perusal of the regulations frame under the Scheme leaves no manner of doubt that the rates of wages are settled or revised from time to time by taking the consideration all relevant factors and after considering the representation made by both the employer and the workmen. The exercise carried out by the Board obviously cannot be faulted.

Shri Sing submits that it is not open for the State Government to delegate powers conferred by Section 3(2)(d) of the Act in respect of regulating the terms and conditions of employment, including rates of wages. The submissions is that the Legislature has conferred power upon the State Government while framing scheme to determine the terms and conditions of employment including rates of wages and that delegated power cannot be further transferred to the Board constituted u/s 6 of the Act. The submission overlooks that the power to determine the rates of wages is not one time exercise but the rates of wages are to be revised from time to time. The State Government is not required to undertake such exercise after every six months and the Board which is constituted under the Act is entitled to undertake exercise for revising the wages after every six months by taking into consideration the guidelines settled by the State Government under the scheme. We are unable to accede to the submission of Shri Singh that the State Government had delegated powers to the Board of determination of rates of wages. It also cannot be overlooked that the Board consists of representative of the State Government and the Chairman is always that nominee of the State Government. The provisions of section 7 of the Act make it clear that the Board has to exercise the power and discharge the function in accordance with the direction issued by the State Government from time to time. The various provisions of the Act leave no manner of doubt that the State Government keeps absolute control over the working of the Board as well as the manner of implementation of the scheme. In these circumstances in our judgment, the contention of the petitioners that the State Government has delegated powers and thereby abdicated the powers is without any substance and is required to be turned down. In our judgment, the Iron and Steel Board has ample powers, both under the Act and the scheme to revise the wages payable to the unprotected workers from time to time and the grievance of the petitioners on that count cannot be acceded to.

5. It is not necessary to examine the grievance of the petitioners that the rates payable under the bills are exorbitant when it is found that the challenge to the fixing of rates of wages is without any merit. The petitioners had submitted the bills in accordance with the rates of wages settled by the Board and the petition was filed only after securing the work from the unprotected workmen. The petitioners are not entitled to challenge payment to the workmen after securing the work. The petitioners also cannot compare the rates of wages payable by Bombay Dock Labour Board as it is not possible to determine what are the conditions of service of that Board and how far they are comparable with the service conditions of the unprotected employees registered under the Scheme. In our judgment, conditions of service two sets of workmen can never be identical. It is also required to be noted that the workmen registered under the Scheme perform various kinds of duties and separate rates of wages are settled for different categories of workmen. In our judgment, the petition is entirely misconceived and is required to be dismissed.

Shri Singh referred to the observations made by the Supreme Court in Bar Council of Delhi and Others Vs. Surjeet Singh and Others, , to urge that even assuming that the rates of wages settled by the Board are approved by the State Government, that fact itself will not make any difference. In our judgment, it is not necessary to examine the question as to whether the approval by the State

Government is sufficient compliance because the provisions of the Act and the scheme confer ample power on the Board to revise the rates of wages.

6. Accordingly, petition fails and rule is discharged with costs. The respondent No. 3 is entitled to enforce the Bank guarantee furnished by the petitioners in pursuance of interim order passed by this Court. The respondent No. 3 - Board - is entitled to recover the amount along with interest at the rate of 15% per annum payable from the date when the amount becomes due till realisation. It is made clear that interest is payable only in respect of amount which is still recoverable.

7. Rule discharged.

