



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9099 OF 2021

JivanVipin Hiwrale & ors.

....Petitioners

VERSUS

M/s Ambaji solutions & ors.

....Respondents

.....

Mr. Joslyin Menezes, Advocate holding for
Mr. P.S. Paranjape, Advocate for petitioners
Mr. A.S. Sakhare, Advocate for R.No.1

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 28th APRIL, 2026

PER COURT :

1. Heard learned counsel for the respective parties.
2. By way of present Writ Petition, the petitioners assail the order dated 4/2/2021, passed by the learned 13th Civil Judge, Senior Division, Aurangabad below Exh.21 in Regular Civil Suit No.452/2020, whereby the application filed by the petitioners/ original defendants No.3 to 5 for dismissing the plaint for want of

jurisdiction came to be rejected.

3. Learned counsel for the petitioners submits that, the respondent No.1 is the principal employer Company under Section 2(7) of the Maharashtra Mathadi Hamal and Other Manual Workers Regulation of Employment and Welfare) Act, 1969 (for short the Act). The respondent No.2 and 3 are the Chairman and Inspector respectively of the Scheme framed under the Act and, therefore, they have been added in their personal capacity. Learned counsel for the petitioners submits that, the petitioners are working on the establishment of respondent No.1 as Mathadi, carrying out the work of loading and unloading of goods and as per the Scheme introduced for the Mathadi workers in Aurangabad, it is mandatory for the Mathadi workers to register themselves with the Mathadi Board constituted as per Section 6 of the Act.

4. Learned counsel for the petitioner further submits that, the very object behind enacting of the Act and the Scheme is to regulate the employment of unprotected manual workers from exploitation at the hands of the employers and for regulating their service conditions. He submits that, the respondent No.1 herein

filed Regular Civil Suit No.452/2020 seeking declaration that the report dated 29/9/2018 filed by the respondent No.3 as per the provisions of the Act is illegal and not binding upon the respondent No.1 and so also the letter dated 20/7/2020 be declared as illegal and further sought permanent injunction restraining the petitioners/ defendant Nos.3 to 5 from entering the premises of the plaintiff/ respondent No.1 and in any manner creating obstruction.

5. After receipt of the notice, the petitioners appeared and filed an application raising preliminary objection as to the jurisdiction of the learned Civil Judge, Senior Division, Aurangabad to entertain the suit. He submits that, as the Act is a special enactment, the only remedy provided under the Act to be exhausted and the provisions of Specific Relief Act are not applicable. He invited my attention to the preamble of the Act. Section 6 – constitution of the Board, Section 7 – powers and duties of the Board and more particularly he invited my attention to Section 17-E and also Section 27-A of the Act, by pointing out that, considering the pleadings in the suit, jurisdiction of the Civil Court is barred. He submits that, though the petitioner had pointed out this to the Civil

Court, but the Civil Court rejected the application. He relied upon the law laid down by the Hon'ble Apex Court in the matter of **Krantikari Suraksha Rakshak Sanghatana Vs. Bharat Sanchar Nigam Limited & ors. (AIR 2009 SC 1118)** and more particularly paragraph No.25, which reads as under:

“25. As has been rightly contended by learned counsel for the respondents, Sections 19, 20 and 21 of the Act specifically provide for application of certain Act to Security Guards. In other words, these specific statutes have application. Other statutes are dealing with employer and employee relationship and the rights thereunder which are made applicable to Security Guards. To put it differently, only the statutes clearly indicated are applicable to Security Guards. Other statutes are clearly excluded.”

6. Learned counsel for the petitioners further submits that, the application filed by the petitioners needs to be allowed by setting aside the order passed by the learned Trial Court.

7. Per contra, learned counsel for the respondent No.1 submits that, the order passed by the learned Trial Court is legal and proper by contending that, as there is no bar created under the Act, therefore, considering the pleadings of the parties, the suit is maintainable. He, therefore, prayed to dismiss the Writ Petition.

8. Having heard learned counsel for the respective parties it is necessary to refer the object and provisions of the Act. The preamble of the Act provides an Act for regulating the employment of unprotected manual workers employed in certain employments in the State of Maharashtra to make provisions for their adequate supply and proper and full utilization in such employments and for matters connected therewith and, therefore, the Act was enacted in the State of Maharashtra. Section 2(1) "Board" means, a Board established under Section 6. Sub-section (10) of Section 2 prescribes the Scheme means the scheme made under the Act. Sub-section (11) defines the term "unprotected worker" means a manual worker who is engaged or to be engaged in any scheduled employment. Sub-section (12) deals with "worker", means a person who is engaged or to be engaged directly or through any agency, whether for wages or not, to do manual work in any scheduled employment and includes any person not employed by any employer or a contractor, but working with the permission of, or under agreement with the employer or contractor, but does not include the members of an employer's family. Sub-section (13) of

Section 2 provides ‘wages’ means all remunerations expressed in terms of money or capable of being so expressed which would, if the terms of contract of employment, express or implied were, fulfilled, be payable to an unprotected worker in respect of work done in any scheduled employment, but does not include (I) the value of any house accommodation, supply of light, water, medical attendance, or any other amenity or any service excluded from the computation of wages by general or special order of the State Government; (ii) any contribution paid by the employer to any pension fund or provident fund or under any scheme of social insurance and the interest which may have accrued thereon, (iii) any travelling allowance or the value of any travelling concession, (iv) any sum paid to the worker to defray special expenses entailed on him by the nature of his employment; or (v) any gratuity payable on discharge.

9. Section 3 reads as under :

“3. Schemes for ensuring regular employment of unprotected workers:

(1) For the purpose of ensuring an adequate supply and full and proper utilization of unprotected workers in scheduled employments, and generally for making better provision for the terms and conditions of employment of such workers the State Government may by means of a scheme provide for the registration of employers and

unprotected workers in any scheduled employment or employments, and provide for the terms and conditions of work of registered unprotected workers, and make provision for the general welfare in such employments. (2) In particular, a scheme may provide for all or any of the following matters that is to say –

(a) for the application of the scheme of such classes of registered unprotected workers and employers, as may be specified therein;

(b) for defining the obligations of registered unprotected workers and employers subject to the fulfillment of which the scheme may apply to them;

(c) for regulating the recruitment and entry into the scheme of unprotected workers, and the registration of unprotected workers and employers, including the maintenance of registers, removal, either temporarily or permanently, of names from the registers, and the imposition of fees for registration;

(d) for regulating the employment of registered unprotected workers, and the terms and conditions of such employment, including rates of wages, hours of work, maternity benefit, overtime payment, leave with wages, provision for gratuity and conditions as to weekly and other holidays and pay in respect thereof; (d-i) for providing the time within which registered employers should remit to the Board the amount of wages payable to the registered workers for the work done by such workers; for requiring such employers who, in the opinion of the Board, make default in remitting the amount of wages in time as aforesaid, to deposit with the Board, an amount equal to the monthly average of the wages to be remitted as aforesaid; if at any time the amount of such deposit falls short of such average, for requiring the employer to make good the amount of such average, and for requiring such employers who persistently make default in making such remittances in time to pay also by way of penalty, a surcharge of such amount not exceeding 10 per cent. of the amount to be remitted as the Board may determine;

(e) for securing that, in respect of period during which employment or full employment is not available to registered unprotected workers though they are available

for work, such unprotected workers will, subject to the conditions of the scheme, receive a minimum wage;

(f) for prohibiting, restricting or otherwise controlling the employment of unprotected workers to whom the scheme does not apply, and the employment of unprotected workers by employers to whom the scheme does not apply;

(g) for the welfare of registered unprotected workers covered by the scheme in so far as satisfactory provision therefor, does not exist, apart from the scheme;

(h) for health and safety measures in places where the registered unprotected workers are engaged, in so far as satisfactory provision therefor, is required but does not exist, apart from the scheme;

(i) for the constitution of any fund or funds including provident fund for the benefit of registered unprotected workers, the vesting of such funds, the payment and contributions to be made to such funds, (provision for provident fund and rates of contribution being made after taking into consideration the provisions of the Employees' Provident Funds Act, 1952, and the scheme framed thereunder with suitable modifications, where necessary, to suit the conditions of work of such registered unprotected workers) and all matters relating thereto;

(j) for the manner in which, the day from which (either prospective or retrospective) and the persons by whom, the cost of operating the scheme is to be defrayed

(k) for constituting the persons or authorities who are to be responsible for the administration of the scheme, and for the administration of funds constituted for the purposes aforesaid;

(k-i) for specifying the powers and duties which the persons or authorities referred to in clause (k) may exercise or perform, for providing appeals and revision applications against the decisions or orders of such persons and authorities; and for deciding such appeals and applications and for matters incidental thereto;

(l) for such incidental and supplementary matters, as may be necessary or expedient for giving effect to the

purposes of a scheme;

(3) The scheme may further provide that a contravention of any provision thereof shall be punished with imprisonment for such term as may be specified (but in no case exceeding three months in respect of a first contravention or six months in respect of any subsequent contravention) or with fine which may extend to such amount as may be specified (but in no case exceeding five hundred rupees in respect of the first contravention, or one thousand rupees in respect of any subsequent contravention) or with both imprisonment and fine and if the contravention is continued after conviction, with a further fine which may extend to one hundred rupees for each day on which the contravention is so continued.”

10. Section 4 provides making variation and revocation of Scheme. Section 5 deals with the disputes regarding application of scheme.

11. As regards Section 6 is concerned, it deals with the constitution of Board. Section 6A provides the powers of State Government to appoint Board consisting of one person. Section 7 provides powers and duties of the Board. Section 13 deals with determination of moneys due from employer and workers. Section 17 provides offence to be tried by Labour Court. It needs to be considered that, Section 17-E, which provides decision of Labour Court and Industrial Court not to be questioned in any Civil or Criminal Court. Section 17(C) provides appeal from Labour Court

to Industrial Court. Section 27-A provides protection of action taken under this Act, which provides, no suit, prosecution or other legal proceedings shall lie against the State Government or the Board or the Chairman, Secretary or any member of the Board or Advisory Committee, or any Inspector or any other officers of the Board for anything which is in good faith done or intended to be done in pursuance of this Act, or any scheme or any rule or order made thereunder.

12. After going through the Scheme of the Act and referring some provisions, it reveals that, as far as Section 17 is concerned, it reveals that, no decision, conviction, acquittal, sentence or order passed by or of Labour Court shall be called in question in any Civil or Criminal Court; and Sub-section (2) of Section 17-E provides that no decision given or order passed by the Industrial Court shall be called in question in any Civil or Criminal Court. Therefore, as far as going by Section 17-E, it is clear that, any decision or order passed by the Labour and Industrial Court cannot be questioned by filing a proceeding before Civil or Criminal Court. But here in this case, considering the facts involved, no any decision of Labour

Court or Industrial Court was challenged before the Civil Court by the respondent No.1.

13. I have also gone through the copy of the plaint, wherein the plaintiff/ respondent No.1 challenged the report dated 29/9/2018 as well as the letter dated 28/7/2020 to be declared as illegal.

14. As regards Section 27-A is concerned, it provides no suit, prosecution or other legal proceedings shall lie against the State Government or Board or Chairman, Secretary or any member of the Board or Advisory Committee or any Inspector of the Board, which in good faith done or intended to be done pursuant to this Court. Therefore, Section 27 deals with any action taken by the above referred authority constituted under this Act, taken in good faith, then the proceedings are not maintainable before the Civil Court to institute the suit. Here in this case, it is not the case of the respondent No.1 as well as the petitioners that any action taken by these authorities in good faith was challenged by filing the Civil Suit and, therefore, even Section 27 cannot be considered to accept the contention of the petitioner that the Civil Suit is maintainable. As

regards the judgment on which the learned counsel for the petitioner relied, the said judgment delivered by the Hon'ble Apex Court is under the Security Guard Board constituted by the Maharashtra Security Guards (Regulation and Employment and Welfare) Act, 1981 arose. Considering the provisions under the said Act, the Hon'ble Apex Court held that, the issue before the Hon'ble Apex Court was, regarding once the Security Guard Board constituted under the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1991 allots Guards to the principal employer, it loses the power to recall, re-allot or transfer such guard as the guard so allotted becomes employee of the principal employer. The Hon'ble Apex Court, while recording findings in paragraph Nos.14 and 25, held that, once a specific statute has been enacted, other statutes dealing with the employer-employee relations and the rights thereunder are to be considered under the special enactment only. But considering the issue involved in the present petition, with due respect, the judgment on which the petitioners are relying, is not applicable to the present case.

15. Therefore, considering the above, I find that, the learned Trial Court has not committed any error while rejecting the application and, therefore, I am not inclined to entertain this Writ Petition.

16. Hence, the Writ Petition is hereby dismissed. No order as to costs.

(SIDDHESHWAR S. THOMBRE, J.)

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