

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10034 OF 2014

Asian Paints Limited,
Plot No. A-1, Khandala, MIDC,
Satara.

.... Petitioner

Vs.

1 Shivilaksha Mathadi,
Transport & General Kamgar Union,
Off. At Near Reliance Petrol Pump,
Gat No.391, Khandala Lonand Road,
Khandala, Tal. Khandala,
Dist. Satara

2 Khandala Bavda Taluka Hamal
Kamgar Panchayat,
At Post Bavda, Tal. Khandala,
Dist. Satara.

3 Satara Mathadi & Unprotected Labour
Board, 168, Raviwar Peth,
Gramoddhar Building, Powai Naka,
Satara.

.... Respondents

Mr. Vijay Vaidya i/by Mahendra Agvekar, Advocate for the Petitioner.
Mr. Kiran Bapat i/by Mr. Atul Kore, Advocate for Respondent no.1.
None for respondent no.2.
Mr. Shailesh Pathak, Advocate for respondent no.3.

WITH
WRIT PETITION NO.2628 OF 2015

Satara Mathadi & Unprotected Labour
Board, 168, Raviwar Peth,
Gramoddhar Building, Powai Naka,
Satara.

.... Petitioner

Vs.

1 Shivilaksha Mathadi,
Transport & General Kamgar Union,
Near Reliance Petrol Pump,
Gat No.391, Khandala Lonand Road,
Khandala, Tal. Khandala,
Dist. Satara

2 Khandala Bavda Taluka Hamal
Kamgar Panchayat,
At Post Bavda, Tal. Khandala
Dist. Satara.

3 Asian Paints Limited,
Plot No. A-1, Khandala, MIDC,
Satara.

.... Respondents

Mr. Shailesh Pathak, Advocate for the Petitioner.

Mr. Kiran Bapat i/by Mr. Atul Kore, Advocate for Respondent no.1.

None for respondent no.2.

Mr. Vijay Vaidya i/by Mahendra Agvekar, Advocate for Respondent no.3.

Coram : Smt. R.P. SondurBaldota, J.

Date : 16th June, 2015

PC.

1 Since the above to petitions challenge the same interim order passed by the Industrial Court, Satara, they are being finally disposed off together at the stage of admission. Heard the counsel.

2 The complaint in question is Complaint (ULP) No.5 of 2014 filed alleging unfair labour practices under Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act (“MRTU & PULP Act” for short. It is filed by the Union along with 31 workmen. Respondent no.1 to the complaint is Hamal Kamgar Panchayat. Respondent no.2 to the complaint is the Satara Mathadi Board and respondent no.3 is the Company/employer. The first petition above is by the Company and the second petition is by the Mathadi Board.

3 The brief statement of the facts involved in the complaints is as under :

 During the period January, 2011 to January, 2013, the Company was in the process of erecting and commissioning it's factory. It had entrusted the contract of erection and commission of the factory to various contractors. The fabrication work at the project site was entrusted to H'Reck Engineers Private Limited and the civil erection work to Shapoorji and Pallonji Pvt. Ltd.. The contractors had independently employed the 31 workmen for loading and unloading of sand, cement, khadi, steel and building material. The workmen, however, claimed that they had been engaged for the work of the company and after completion of commission of the factory, they did the work of loading and unloading of empty packets, raw material and other things used for preparing paints until 30th January, 2013 without any break. As such they claim to have completed more than 240 days

continuous work in each calendar year with the Company. According to them, the wages to them were deliberately paid by the Company through the Hamal Kamgar Panchayat. It was with intention to avoid liabilities and payment of better benefits to the workmen. The workmen alleged that since the loading and unloading is essential part of the manufacturing activity of the Company and since there was and is continuous work till date, the Mathadi Board ought to have registered the Company as a registered employer and the 31 workmen as registered workmen. According to them, in fact the 31 workmen are deemed registered workmen of the Mathadi Board and as such seek employment with the Company. The union and the workmen alongwith the declaration of unfair labour practice on the part of the Company, Board and Hamal Panchayat seek declaration that the 31 workmen are a registered employees with the Mathadi Board w.e.f. 30th January, 2013 and are entitled to all the benefits with arrears since 30th January, 2013. The second direction sought was to direct the Mathadi Board and the Company to register the workmen and provide them work and wages regularly. The third direction sought was for payment of wages as if the workmen are in continuous employment since 30th January, 2013 with all the consequential benefits.

4 In the complaint, the Union filed interim application under Section 30(2) of MRTU & PULP Act seeking six reliefs, out of which four reliefs are of declarations which cannot be considered at the interim stage. The remaining two reliefs are (i) direction to the Company and the Board to allow the 31 workmen to work at their original posts and

pay wages to them pending the complaint and (ii) direction to them not to employ and register any new or junior employee without employing and registering the 31 workmen.

5 The Company has contested the proceeding contending that there is no relationship of employer and employee between it and the members of respondent no.1. As a consequence, the complaint filed against it is not maintainable. It had requested the Industrial Court to frame a preliminary issue as regards the maintainability of the complaint. The Industrial Court is yet to frame the preliminary issue and decide the same. Mathadi Board had also taken up the contention of maintainability of the complaint against it. Since it is neither an industry nor the employer of the 31 workmen. As a consequence, the Industrial Court had no jurisdiction to hear any complaint against the Board. Mr. Vaidya for the Company points out that the complaint has been signed and verified only by the Union and not by the workmen. The complaint therefore must be treated as only by the Union.

6 The Industrial Court, in the impugned order though acknowledges the preliminary objections of the Company and the Board does not deal with the same properly. It notes that the Union has not produced evidence of continuous work with the Company and that in fact it is admitted by it that after 30th January, 2013, the workmen have not worked with the Company but relies upon the visit notes of Inspector of the Board. It then observes that visit notes signed by some of the workers and the Inspector cannot take place of even prima facie

proof of continuous work of two years, but nonetheless accepts the same giving following reasons.

“9) However, the visit note appears to have been signed by somebody from respondent no.3 also. Subsequently, respondent no.3 informed, disputing the contents of the visit note. Prima facie, however, it appears that some of the complainants, atleast, were working on 31.1.2013. Now, my learned predecessor had passed an ad-interim order directing respondents no.2 and 3 not to employ and register any new or junior employees without employing or registering the complainants no.2 to 31 and the said order was to remain in force till next date. The order continuous till this day.

10) Actual work with respondent no.3 cannot necessarily be a proof of employer-employee relationship. I say so because there is no documentary evidence establishing or showing relationship with respondent no.3 and secondly, it is also possible that the work was performed, but through contractors, as contended by respondent no.3.”

7 As regards the preliminary objections raised, the Industrial Court at paragraph 11 of the impugned order has the following to observe:

“11) It appears, prima facie, that other workers have also laid claim over the work, and some workers are already working with respondent no.3. The respondent no.3 has contended that it does not require any more workers. It is true that, prima facie, respondent no.3 cannot be said to be an employer. The Board is also not an employer as such, as is ordinarily understood. However, having regard to the object of the Mathadi Act and the

provisions of the scheme, workers as well as the employers are required to be registered with the Board. The Board allots the worker to the employer depending upon the requirement. The prescribed wages alongwith levy or deposited by the employer with the Board. The grievances of the complainants is that they were working with respondent no.3 and others, who are now working are juniors or freshers. The scheme contemplates that existing workers should also be registered. If the complainants were really working, may be through contractors, they are justified in claiming the said work in preference to the new workers.”

8 The Industrial Court next acknowledges the possibility of the complaint being barred by limitation, but does not decide the question. Further while specifically noting it's own limitations as regards implementation of the provisions of the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (“Mathadi Act”), the Industrial Court has given directions to the Board to examine claim of the workmen, decide their registration and allotment of work to them. With a further direction to complete the entire exercise within one month.

9 The order of the Industrial Court clearly cannot be sustained. It does not deal with the preliminary objections raised by the Company and Board which go to the root of the matter. It does not decide the question of limitation raised. It's appreciation of the material on record to arrive at the prima facie findings is far from satisfactory. It has also exceeded it's jurisdiction in giving directions to the Board for

implementation of the Mathadi Act. The impugned order therefore deserved to be set aside and directions given to the Industrial Court to frame preliminary issues on the preliminary objections raised by the Company and Board.

10 Hence, the order.

- i) Petition No.10034 of 2014 is allowed in terms of prayer clause (a),
- ii) Petition No.2628 of 2015 is allowed to the extent of challenge to the interim order.
- iii) The Industrial Court shall frame preliminary issues as regards it's jurisdiction, maintainability of the complaint and of limitation and decide the same, preferably within a period of six months from today.

(Smt. R.P. SondurBaldora, J.)