

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

901 WRIT PETITION NO. 7969 OF 2014
WITH CA/13628/2015 IN WP/7969/2014 WITH CA/13629/2015 IN
WP/7969/2014

M/S COSMO FILMS LTD, AURANGABAD
VERSUS
AURANGABAD MATHADI AND UNPROTECTED LABOUR BOARD,
AURANGABAD AND ANOTHER

...

Advocate for Petitioner : Mr. Prabhakaran T.K.
AGP for Respondents/State : Mr. S.B. Yawalkar
Advocate for Respondents : Mr. P.S. Paranjape
Advocate for Respondents : Mr. P.P. Mandlik h/f. Amol Gandhi

...

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**
DATE : 21.06.2017.

P.C. :-

. By this petition under Article 226 of the Constitution of India, the petitioner is challenging the process by which the first respondent-board determined that the petitioner is liable to deposit from the month of January 2010 to April 2010 the wages of such Mathadi workers and 42 in number, who were allegedly deployed in the loading, packing department of the petitioner. The amount which is due and payable according to the first respondent-board has been determined by the order dated 24.02.2014, copy of this order is at page 19 of the paper book.

2. Thereafter, the added respondents have proceeded to issue notices, so as to recover this amount as arrears of land revenue.

3. Mr. Prabhakaran has raised several contentions in support of this petition and one of which is that the determination has to be made by the board. The objections raised go to the root of the matter. He would invite our attention to Section 13 which is titled as determination of monies due from employers and workers. He would first submit that the determination of any sum due from any employer or worker under the Act or any scheme made thereunder is the process and for the purpose of which the inquiry has to be held by board or such officer. Assuming without admitting that such determination is permissible still, that envisages determination by the board or such officer as may be specified by the board in this behalf. The Secretary in assuming the power to determine has passed the impugned order, there is no authority produced in favour of the Secretary. Mr. Prabhakaran, therefore, would submit that the Secretary was not empowered to issue any notices and determine the dues, this is assuming that the dispute is limited, however, according to Mr. Prabhakaran, the dispute is much larger and that is about the applicability of the Act and the scheme itself. It is not a case where mere absence of the petitioner at one hearing would enable the

Secretary to pass the impugned order. More so, when there was correspondence with the board and in writing certain objections going to the root of the case were raised by the petitioner, there is no application of mind nor are any reasons assigned in arriving at the conclusion noted above. On this ground alone he would submit that the writ petition should succeed and the impugned order be set aside.

4. On the other hand, the learned Advocate appearing for the board would submit that there was an authorisation and empowerment in favour of the Secretary and only technical objections are raised. Secondly, the Secretary has arrived at the conclusion in the impugned order on the basis of record maintained by the board. It is in these circumstances that we should not interfere with the impugned order in writ jurisdiction.

5. Mr. Paranjpe, appearing for the second respondent supported the impugned determination.

6. After we have heard both sides for some time and invited the attention of the board's advocate to a communication, copy of which is at annexure 'A' page 13 dated 24.09.2013 referring to prior letters and a complaint, the written objections of the petitioner thereto, copy of which

is at annexure 'B' page 16 and finally to a notice of hearing dated 27.01.2014 to which also written reply was given on 31.01.2014 annexure 'D' and inquired from the board's advocate as to how these disputed issues were considered and the objections of the petitioner company rejected, the learned Advocate could not point out from the impugned order any reasons which much less cogent and satisfactory so as to support the ultimate conclusion. In fact there is no reference to any of these communications and/or the objections in the impugned order.

7. When such position was brought to the notice of the board's Advocate on taking instructions, he fairly states that the board would withdraw the impugned orders / communications and would determine the issues afresh. The board would consider all the objections raised by the petitioner. It would, then, pass a fresh order assigning reasons and without being influenced by any contents of the impugned order or the prior communications.

8. Once such statement is made on instructions and which we accept as an undertaking given to this Court, the Writ Petition succeeds. The impugned order is quashed and set aside. We clarify that we have expressed no opinion on the rival contentions. It is only to impress upon

the board, its duty and functions and its powers set out in law that we adverted to the objections raised by the petitioner. Our exercise should not be construed as acceptance of the stand of the petitioner or the respondent no.2. All contentions of both sides in regard to the merits of the dispute are kept open.

9. At this stage, a request was made by the Advocate for board to secure the demand in the sense he would submit that at least 50% of amount determined should be deposited with the board and for the balance this Court may stay the implementation and execution of the impugned order.

10. We have heard both sides on this point as well. When the legal flaws in the impugned order have been admitted by the board, then, we do not think that it will be proper, just and fair to secure the demand and in the manner sought by the board. The request in that behalf is refused. We expect the board or its duly authorized officer to pass an order in accordance with law as expeditiously as possible and within a period of six months from today. Under no circumstances this time would be extended. The petitioner must co-operate with the board in adhering to this time schedule so also the union. Needles to clarify

that if despite reasonable opportunity of being heard and in person has been accorded to the petitioner before us but it does not avail of the same, then, there is no obligation on the board to wait for the company or its representative to appear. The board can thereafter proceed on the basis of the objections raised in writing and take due note of the same in accordance with law. The writ petition is accordingly disposed of. All the pending civil applications are also disposed of.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]