

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11560 OF 2016
(Crompton Greaves Limited, Aurangabad Vs. The State of
Maharashtra)

Mr.A.S.Shelke, Advocate for the petitioner.
Mr.P.P.Mandlik, Advocate for respondent No.2.
Mr.N.T.Bhagat, AGP for respondent No.1/State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 18/01/2017

PER COURT :

1. I have heard the submissions of the learned Advocates for the respective sides.

2. On 28/11/2016, this Court had passed the following order :-

“1. The petitioner is aggrieved by the order dated 22.9.2016 passed by the Secretary-cum-Government Labour Officer - respondent herein under the Maharashtra Mathadi, Hamal and other manual Workers (Regulation of Employment and Welfare) Act, 1969.

2. The grievance strenuously voiced by Shri Shelke, learned Advocate for the petitioner can be summarized as follows:-

(a) The petitioner has two industrial establishments at D-2

and K-148, both in the Waluj Industrial Area.

(b) The present proceedings are with regard to the establishment at K-148.

(c) Om Sai Services, an independent Contract Labour Supplier was engaged in 2010 and the said entity was registered under the provisions of the 1969 Act and was granted registration certificate bearing No.630/5/6/09.

(d) Only 7 mathadi workers were deployed by Om Sai Service.

(e) The petitioner closed down it's operational / manufacturing activities on 25.8.2010 at K-148.

(f) A termination notice dated 20.7.2010 was issued to Om Sai Services.

(g) Om Sai promptly submitted a letter dated 26.8.2010 to the Mathadi Board requesting for deregistering it's establishment due to termination of contract.

(h) A notice of hearing was issued by the respondent / Board on purported unpaid wages and levy.

(i) Responding to the notice, the petitioner submitted a detailed reply dated 30.5.2012 indicating that a registered entity

had deployed the 7 Mathadi workers and as such, the scheme applicable would not cover the petitioner and the petitioner would not be liable for any payments.

(j) For four years, the Mathadi board was totally silent, thereby creating an impression that they had accepted the reply of the petitioner and had closed the proceedings.

(k) After four years, a notice was issued on 27.7.2016, reopening the hearing.

(l) A further notice dated 18.8.2016 was issued by the Board contending that the petitioner was absent on an earlier date.

(m) The petitioner submitted a detailed reply dated 18.8.2016 and 23.8.2016, bringing it to the notice of the Board that it's representative had appeared on 18.8.2016. On 4.8.2016 also the representative was present, but as there was nobody in the office of the Board, the petitioner gathered an impression that the meeting was postponed.

(n) By order dated 22.9.2016 impugned in this petition, the petitioner has been directed to pay an amount of Rs.47,97,612/- as dues under Section 13 of the Act.

(o) Shri Shelke strenuously submits that the impugned order could not have been passed without hearing the petitioner. Section 13(3) prohibits the respondent Board from determining

any sum due from an employer until a reasonable opportunity of hearing is given.

3. *In the light of the above, issue notice before admission to the respondent returnable on 14.12.2016. Matter shall appear in the supplementary board. Learned AGP waives service for the sole respondent.*

4. *By way of ad-interim relief, the respondent shall not proceed to execute the impugned order on the condition that the petitioner shall deposit an amount of Rs.24,00,000/- which would be 50% of the assessed amount in this Court, on/or before 14.12.2016, failing which this ad-interim protection shall stand vacated without reference to the Court and the respondent would be then at liberty to cause recovery of the same."*

2. In a somewhat similar set of facts and circumstances arising in WP No.9555/2015 with WP Nos.9556/2015, 9564/2015, 3407/2016, 3408/2016 and 10217/2016 in the matter of M/s United Breweries Limited, Aurangabad Vs. The State of Maharashtra and Others, this Court had passed the following order on 25/10/2016 :-

"1 *I have heard the learned Advocates for the respective sides and have gone through the orders passed by this Court on the previous occasions in these matters. 50% of the assessed amount in each of these petitions have been deposited in this Court by the Petitioner/ Establishment.*

- 2 *Considering the order that I intend to pass, I do not think it necessary to advert to the entire submissions of the learned Advocates for the respective sides. Suffice it to say that the issue of an opportunity of hearing and proper calculations of the purported legal dues, needs to be revisited.*
- 3 *In my view, I deem it appropriate to remit the the matter to the Aurangabad Mathadi and Unprotected Labour Board so as to enable the Petitioners to tender their Written Say as well as the documents if any and in order to cause a hearing in the matter afresh so as to enable the Board to recalculate the amounts that have been assessed towards the unpaid dues of wages, levy and 10% tax under the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969.*
- 4 *Considering the above, all these petitions are disposed of by setting aside the impugned orders of recovery in each of these petitions and the matters are remitted to the Aurangabad Mathadi and Unprotected Labour Board as noted above for a rehearing on the following conditions :-*
- (a) *The litigating sides shall appear before the Board on 02.12.2016.*
- (b) *Considering the fact that this matter is between the Petitioners and the Board, an opportunity of hearing would be extended to the Petitioners.*

- (c) *Unconnected persons and the persons who are not members of the Board, shall not be permitted to be a part of such hearing.*
- (d) *The Petitioners are at liberty to submit their written say with all such documents on which they intend to place reliance and assist the Board to decide the issue after giving a reasonable opportunity of hearing to the Petitioners.*
- (e) *The Board shall endeavour to decide the issue as expeditiously as possible and preferably on or before 28.02.2017.*
- (f) *Notwithstanding the decision of the Board pursuant to the said hearing, the amounts deposited in this Court shall not be permitted to be withdrawn by any of the litigating sides till 31.03.2017.*
- (g) *The Registry of this Court shall invest the deposited amounts with regard to each of these Petitioners with the nationalized bank initially for a period of six months.*
- (h) *Needless to state, the orders that would be passed by the Board after hearing the Petitioners, would be subject to the legal rights of the litigating sides.*
- (i) *Needless to state, the amounts deposited in this Court would then be apportioned with regard to the dues as would be freshly assessed. The litigating sides would be at liberty to move this Court for such apportionment and withdrawal of amount."*

3. Considering the above, I deem it appropriate to pass the same

order. Mr.Shelke, learned Advocate for the petitioner has strenuously tried to persuade this Court to refund the amount deposited under the order of this Court dated 28/11/2016.

4. However, I am not inclined to entertain his request for the reason that in the other petitions referred to above, 50% amount deposited was not refunded to the petitioner / Industry.

5. In the light of the above, this petition is disposed of by setting aside the impugned order of recovery and the matter is referred to the Aurangabad Mathadi and Unprotected Labour Board for a rehearing on the following conditions :-

- (a) *The litigating sides shall appear before the Board on 17/02/2016.*
- (b) *Considering the fact that this matter is between the Petitioners and the Board, an opportunity of hearing would be extended to the Petitioners.*
- (c) *Unconnected persons and the persons who are not members of the Board, shall not be permitted to be a part of such hearing.*
- (d) *The Petitioners are at liberty to submit their written say with all such documents on which they intend to place reliance and assist the Board to decide the issue after giving a reasonable opportunity of hearing to the*

Petitioners.

- (e) The Board shall endeavour to decide the issue as expeditiously as possible and preferably on or before 31/05/2017.*
- (f) Notwithstanding the decision of the Board pursuant to the said hearing, the amounts deposited in this Court shall not be permitted to be withdrawn by any of the litigating sides till 30/06/2017.*
- (g) The Registry of this Court shall invest the deposited amounts with regard to each of these Petitioners with the nationalized bank initially for a period of six months.*
- (h) Needless to state, the orders that would be passed by the Board after hearing the Petitioners, would be subject to the legal rights of the litigating sides.*
- (i) Needless to state, the amounts deposited in this Court would then be apportioned with regard to the dues as would be freshly assessed. The litigating sides would be at liberty to move this Court for such apportionment and withdrawal of amount.*

(RAVINDRA V. GHUGE, J.)