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

**CIVIL APPLICATION NO.14649 OF 2018
IN
WRIT PETITION NO.3724 OF 2017**

Hindustan Petroleum Corporation Limited,
(A Government of India Enterprise),
Having its office at H-1, MIDC,
Chikalthana, Aurangabad – 431210
Through Senior Regional Manager ..APPLICANT

VERSUS

The State of Maharashtra,
Through its office at Government
Pleader, High Court, Aurangabad & ors. ..RESPONDENTS

Smt. Anjali Dube (Bajpai), Advocate for applicant;
Smt. G. L. Deshpande, A.G.P. for respondent No.1;
Mr P. P. Mandalik, Advocate for respondent Nos.2 & 3

**CORAM : PRASANNA B. VARALE
AND
MANGESH S. PATIL, JJ.**

DATE : 14th December, 2018

ORAL ORDER:

Heard learned Counsel appearing on behalf of the applicant.

2. By the present application, the applicant/petitioner Hindustan Petroleum Corporation Limited, prays for reliefs in terms of prayer clause (B) and (C).

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3. Smt. Dube, learned Counsel for applicant submitted before us that on 17th July, 2017, on the backdrop of the fact that a similar controversy is raised in Writ Petition No.6588 of 2010 and the said petition is pending before the Principal Seat of this Court, time was granted to the parties to ascertain factual position. Subsequently, on 31st July, 2017, Rule was issued and it was observed by the Division Bench of this Court that the present petition would be heard after the petitions at Principal Seat are disposed of. At that point of time, the petitioner had not pressed for any interim relief. As such, the Division Bench further observed that presently no interim relief is granted and the petitioner was granted liberty to file appropriate application.

4. Smt. Dube, learned Counsel then submitted that subsequently it came to the knowledge of the present applicant that in the identical petitions, the Division Bench at Principal Seat was pleased to grant interim relief. Our attention was invited to the order of the Principal Seat, dated 7th July, 2010. Para 4 of the order shows that Rule on interim relief was granted, making the same returnable on 4th August, 2010 and in the meantime ad interim relief was also granted in terms of prayer clause (g). Smt. Dube, learned Counsel for the applicant/petitioner also invited our attention to para 2 of the said order to submit that a specific ground was raised before the Principal Seat that as per the provisions of Section 28(2) of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare)

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Act, 1969 (for short 'Mathadi Act') it is mandatory that every scheme and/or amendments thereto made under the Act has to be placed before each House of the State Legislature and it is only thereafter publication of the Notification in the Official Gazette shall have effect as stated therein. It was submitted that these mandatory provisions are not followed. The Division Bench at Principal Seat was of the opinion that the issue raised needs consideration and accordingly the petition was admitted by issuing Rule. It was also the submission of learned counsel for the applicant that in the very petition, namely, Writ Petition No.6588 of 2010, of which reference was made in the order dated 17th July, 2017 an undertaking was filed before the Principal Seat submitting that in case the petition fails, the petitioners shall compensate the respondents if so directed by this Court, on such terms and conditions, as may be directed by the Court.

5. Learned Counsel then invited our attention to the very ground which was considered for admission of the petition by the Division Bench at Principal Seat is also raised in the present petition and the said ground is “I”, which reads thus:-

“The Maharashtra Mathadi, Hamal & Other Manual workers (Regulation of Employment and Welfare) Scheme, 1992 framed under Mathadi Act, has no legal sanctity or binding value as the same has not been passed in accordance with the procedure as set out under the Mathadi Act. Section 28(2) of the Mathadi Act clearly states that any Scheme formulated

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under the provisions of the Mathadi Act is required to be placed before both the houses of the Legislature. However, the said Scheme does not comply with the said statutory requirement. Thus, the said Scheme cannot be construed as a Scheme under the Mathadi Act and the same cannot have any application.”

6. Learned Counsel for the applicant then submitted that as all these facts came to the knowledge of the applicant thereby contact with the authorities and by receiving necessary orders. As such, in view of the liberty granted by the Division Bench, the applicant/petitioner is before this Court by way of present application praying for reliefs in terms of prayer clauses (B) and (C). Learned Counsel also fairly submitted that in view of an undertaking filed before the Principal Seat in Writ Petition No.6588 of 2010, the applicant/petitioner would file a similar undertaking in this Court.

7. Mr Mandalik, learned Counsel appearing on behalf of respondent Nos.2 and 3 vehemently opposed the application. He placed heavy reliance on the order passed by the Honourable the Apex Court in the matter of **PEPSICO (India) Holdings Private Limited Vs. Grocery Markets and Shops Board and others**, reported in **2016 DGLS(SC) 114**. It is the submission of Mr Mandalik that the Honourable the Apex Court permitted the appellant before it to make an application by taking recourse to the provisions of Section 5 of the Mathadi Act within a stipulated period. He then submitted that there is an efficacious alternate remedy for this

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petitioner and in view of the order of the Honourable the Apex Court, nothing prevents the applicant/petitioner to take recourse to that remedy. The another ground raised for opposition in the reply is, the petitioner has failed to add necessary parties and thus the petition suffers from non-joinder of necessary parties. The another ground raised for opposition is that the petitioner can also raise its grievance before the Labour Court, where the proceedings between the Mathadi Board and the petitioner is pending.

8. Insofar as the grounds raised by Mr Mandalik are concerned, first ground on the backdrop of the order of the Honourable the Apex Court of having an efficacious alternate remedy, certainly can be considered if the applicant/petitioner is ready to undertake this exercise.

9. Learned Counsel for the applicant/petitioner, at this stage was not ready to make any such statement for want of instructions and she submitted that this statement can be made by her at the later stage on seeking instructions and further submitted that in the fact situation and the ground raised in the petition, the remedy under Section 5 of the Mathadi Act would not be available for the petitioner to take recourse.

10. The other ground is raised by Mr Mandalik that the applicant/petitioner can raise his grievance before the Labour Court. Now, if non-compliance of a statutory mandatory provisions is a ground raised

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and if the petition is admitted with such ground by the Principal Seat, on the backdrop of these fact, we are not inclined to accept this ground of Mr Mandalik, learned Counsel. We are also of the opinion that in an identical fact situation, if the present applicant/petitioner is placed with other petitioners, who are before the Principal Seat and if the Principal Seat, considering the ground of non-compliance of the mandatory provisions granted interim relief to the petitioners at Principal Seat and the Division Bench of this Court permitted the applicant/petitioner to apply for interim relief and accordingly the application is filed, we see no reason to take any other view than the view taken by the Principal Seat while granting interim relief. The interest of the respondent can certainly be taken care by directing the applicant/petitioner to file an undertaking in this Court on the lines of undertaking filed by the petitioners at Principal Seat and the Counsel for the applicant/petitioner was fair enough to submit before this court that the applicant/petitioner is ready to file an undertaking.

11. Considering this aspect of the matter, the civil application is allowed in terms of prayer clauses (B) and (C), subject to filing an undertaking in this Court within a period of three weeks from today.

12. Mr Mandalik then submitted that in case, if this Court is of the view to grant interim relief, the applicant/petitioner be directed to deposit certain amount in this court and further the applicant/petitioner be directed to file an

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undertaking thereby stating that they would not terminate/remove the mathadi workers working at present with the petitioner Company and they would deposit the amount of levy and wages of subsequent periods during the pendency of this writ petition. Though Mr Mandalik insisted for such condition as condition for grant of interim relief, as we are inclined to pass interim order on the lines and on the basis of order passed at Principal Seat, we do not propose to add any other condition as prayed by Mr Mandalik for opposing the interim relief.

The civil application is disposed of.

(MANGESH S. PATIL, J.)

(PRASANNA B. VARALE, J.)

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