

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2295 OF 2018

Hindusthan National Glass &]
Industries Limited,]
Plot No.F-1, MIDC Sinnar, Malegaon,]
District Nashik - 422 103.] Petitioner

Versus

1. Nashik Mathadi & Unprotected Labour]
Board, Nashik,]
Ratnamanohar Sakul, 1st Floor,]
Opp. Sunder Narayan Mandir,]
Ravivar Peth, Nashik - 1.]
2. Chairman, Nashik Mathadi & Unprotected]
Labour Board, Nashik,]
Ratnamanohar Sakul, 1st Floor,]
Opp. Sunder Narayan Mandir,]
Ravivar Peth, Nashik - 1.]
3. Maharashtra Rajya Mathadi Transport]
General Kamgar Union (Registered),]
45/46, Sterling Tower,]
Near Hotel Mathura,]
New Mumbai-Agra Road, Dwarka,]
Nashik - 422 001.]
4. State of Maharashtra,]
Through the Secretary,]
Labour Industries & Energy Department,]
Mantralaya, Mumbai] Respondents

Mr. V.P. Vaidya, I/by Mr. Mahendra M. Agavekar, for the Petitioner.

Mrs. Lata Desai, a/w. Dr. Pallavi Divekar, I/by M/s. Divekar & Co., for Respondent Nos.1 and 2.

Ms. Bharati Patil for Respondent No.3.

Mrs. Mansi Bane, A.G.P., for Respondent No.4.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 21ST NOVEMBER, 2018.

PRONOUNCED ON : 24TH NOVEMBER, 2018.

JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Vaidya, learned counsel for the Petitioner; Mrs. Desai, learned counsel for Respondent Nos.1 and 2; Ms. Patil, learned counsel for Respondent No.3; and Mrs. Bane, learned A.G.P., for Respondent No.4-State.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is invoking the writ jurisdiction of this Court to quash and set aside the orders dated 18th December 2017, passed by Respondent No.2, thereby granting the rise in the pay-scale of the Mathadi Workers engaged on contractual basis in Toli Nos.76 and 79.

3. Petitioner is an 'Industrial Establishment', engaged in manufacture of glass bottles. Petitioner employs about 325 permanent employees and

700 employees on the contract basis. Permanent employees are associated with Nashik Workers' Union, affiliated to CITU. It is a registered Union and Petitioner has signed several settlements in respect of service conditions of its employees with the said Union. Last such settlement was terminated on 30th January 2015. Thereafter, Petitioner has signed a separate settlement with the permanent employees. As regards the contractual employees, though Respondent No.3-the Union has submitted a 'Charter of Demand' dated 1st October 2015, seeking revision in the service conditions of those Mathadi Workers, Petitioner found that the demands made by Respondent No.3-Union were exorbitant, seeking nearly double the wages that were prevailing in the erstwhile settlement. Hence, the Petitioner could not accept the same. The several meetings were held by the Petitioner with Respondent No.3-Union to arrive at some settlement. In those meetings, the Petitioner has pointed out as to how the Company was facing accumulated losses over the last four years to the extent of Rs.647 Crores, which has resulted in the erosion of more than 50% of the net-worth of Rs.140 Crores. It was also informed to Respondent No.3-Union that, the Petitioner-Company was, therefore, likely to be declared as a potentially sick Company under the Sick Industrial Companies Act, 1985.

4. It is the grievance of the Petitioner that, despite this precarious financial position of the Company being brought to the notice of

Respondent No.3-Union, the Union has granted 6% to 10% of the increase in the wages of the contractual employees from the first year, i.e. 1st October 2015 to 1st October 2016, and similar increases thereafter for a period of three years, vide its impugned orders dated 18th December 2017. According to learned counsel for the Petitioner, the said wage increase is, without considering the financial condition of the Company and the provisions of the Minimum Wages Act. Moreover, the wage rise is given retrospectively and with interest. It is, therefore, submitted that, the impugned orders, being arbitrary and capricious, are required to be quashed and set aside.

5. Per contra, Respondent Nos.1 and 2 have, vide their affidavit-in-reply, supported the said wage increase by pointing out to the rates of inflation and the hard manual work, which the Mathadi Workers of Toli Nos.76 and 79 are required to undertake. It is submitted that, the Petitioner has already entered into the 'Memorandum of Understanding', dated 28th April 2017, with the direct and permanent workers, thereby accepting its liability to pay the wages at the enhanced rate. However, as regards the contractual workers of Toli Nos.76 and 79, the Petitioner is avoiding to do so; though they also require the same increase in their wages. It is submitted that, Respondent No.3-Union, having regard to the alleged financial condition of the Petitioner-Company, has granted increase, only to the extent of 6% to 10% and, that too, on graded basis.

Even the arrears of one year, out of the three years, have not been granted. Thus, it is submitted that, the increase granted by Respondent No.3-Union in the wages of these workers being fair, reasonable and at par with the permanent workers, no interference is warranted in the impugned orders.

6. Respondent No.3-Union has also, vide its affidavit, supported its own order by contending that, compared to the similarly placed workers, a very less wage rise has been given to these workers. Moreover, the arrears of wages are not granted for the first year of the 'Agreement'. Despite that, the Petitioner-Company is avoiding its liability and treating these workers differently from the permanent and the direct employees, without making any distinction in the nature of their work. Therefore, it is submitted that, there is no substance in this Writ Petition and the same is liable to be dismissed.

7. In the light of the rival submissions advanced at bar by learned counsel for the respective parties, a very short issue arising for consideration in this Writ Petition is, *'whether the increase in the wages granted by Respondent No.3-Union to these employees is just, fair and reasonable?'*

8. Needless to state that, earlier settlement was executed between the

Petitioner and these workers in the year 2014, which came to an end in September, 2015. Thereafter, a fresh 'Charter of Demand' was submitted by the Respondent No.3-Union, which was not accepted by the Petitioner on the count that, its financial position is not sound. The impugned order passed by Respondent No.3-Union goes to reveal that, several joint meetings were held between the office bearers of the Petitioner and Respondent Nos.1 and 2; but, despite that, no 'Consent Terms' could be arrived at and hence, Respondent No.3-Union was constrained to take the decision on the basis of the material placed before it.

9. If one considers the earlier rates and the increased rates suggested by Respondent No.3-Union, then it can be clearly seen that the wage rise suggested is very marginal to the extent of not more than 6% to 10%. It is pertinent to note that, the employees in Toli No.76 are doing the manual work of loading and unloading of the lorries. Earlier they were getting the rate of Rs.200/- per lorry, which is increased for the year 2016-17 to Rs.212/-; whereas, for the year 2017-18, to Rs.226/-; and for the year 2018-19 to Rs.242/-. Similar is the enhanced rate given as regards the other vehicles like Container. Thus, it can clearly be inferred that, the enhancement granted is only to the marginal extent, which is definitely warranted; considering the inflation rate and the rising prices of the essential commodities. These workers are the manual labourers, who are dependent for their maintenance totally on the wages earned by

them. Hence, in proportionate to the rise in the inflation rate, they are required to be compensated, by enhancing their wages. Hence, the wage rise was definitely justified and it cannot be said in any way that it is inflated or exorbitant.

10. Even in respect of the workers from Toli No.79, who are doing the work of packaging, shifting and stocking, the earlier rate was 00.32 paise per box; whereas, the rate suggested for the year 2015-16 was 00.34 paise; for the year 2016-17 was 00.37 paise; and for the year 2017-18 was 00.40 paise. The rate per bag was earlier Rs.01.04; thereafter Rs.01.11 for the year 2015-16; Rs.01.20 for the year 2016-17; and Rs.01.30 for the year 2017-18. Thus, a very marginal increase of 2 paise, 3 paise or 10 paise per box and per bag, respectively, is granted.

11. Even the arrears in respect of the employees of both these Tolys is granted only from 1st October 2016 and not from 1st October 2015. The amount of difference is also directed to be paid in three equal installments and not lump-sum. Therefore, it has to be held that, the order passed by Respondent No.3-Union is, in that respect, very fair, reasonable and proper.

12. As regards the grievance of the Petitioner that its financial condition is not sound and it is incurring the losses and which aspect,

according to learned counsel for the Petitioner, is not considered by Respondent No.3, in my considered opinion, the very fact that the increase granted is at a very marginal rate, it has to be held that, it was done so, having regard to the financial condition of the Petitioner-Company. Moreover, it is a matter of record that the Petitioner has, despite such financial condition, voluntarily entered into the settlement of wages with the permanent and direct employees, granting them rise in their wages. Therefore, the Petitioner cannot distinguish between the permanent employees and the contractual employees. Secondly, even if the rates under the Minimum Wages Act, 1948, are considered, the increase, which is granted, can hardly be called as beyond the rates prescribed under the Minimum Wages Act, 1948.

13. As regards the contention that Petitioner is suffering losses in its business, as rightly pointed out by learned counsel for Respondent No.3-Union, the maximum losses suffered by the Petitioner were in the year 2014-15, as per the chart given by it. Despite that, for the said period, the Petitioner has entered into wage settlement with the direct and permanent employees. The reason for entering into such voluntary settlement with direct and permanent employees may be, as submitted by learned counsel for the Petitioner, that they had threatened to go on strike; but, in that case, merely because these workmen cannot take such a coercive measure and they are proceeding by conciliatory

methods, they cannot be deprived of the benefits, which the direct and permanent employees are receiving or getting by adoptive coercive methods. The nature of the work done by the direct employees and contractual employees is same. The workers of both these categories are affected by the same rate of inflation and rising prices of the essential commodities.

14. Apart from that, it has to be stated that, now on account of ban on the use of the plastic, the business of the Petitioner, that of producing glass bottles and containers, is bound to increase. Even assuming that the business is in losses, as these are the contractual workers, they will be employed only when the Petitioner is having the business. Therefore, it can hardly be said that, by allowing the pay rise to them, the Petitioner is going to suffer any more losses.

15. As a matter of fact, these workers being on contract basis and deprived of all the perks, benefits and privileges, which the permanent or direct employees are getting, they need to be compensated. Therefore, if Respondent No.3-Union has, taking into consideration this aspect also, granted increase to them in their wages, no case is made out for interference in the reasoned order passed by Respondent No.3-Union. It has to be held that, the increase or rise in the wages given by Respondent No.3-Union, vide its impugned orders, being just, fair and

reasonable, no interference is warranted therein. The Writ Petition, therefore, being without merits, stands dismissed.

16. Rule is discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.]