

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6635 OF 2014

ADF Foods Ltd. and another. ... Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

Mr.Abhishek Sawant with Manish Mirpuri i/b. M/s.Premier Legal
Practice for the petitioners.
Mr.P.P.More, AGP for respondent No.1.
Ms.Pallavi Divekar with Ms.Sayali Gharpure and Mr.Rohan Karande
for respondent Nos.2 to 4.
Ms.Bharati Patil for respondent No.5.

CORAM : A.S.OKA AND SANDEEP K. SHINDE, JJ.

DATE : 27th November 2018.

ORAL JUDGMENT : (Per A.S.Oka, J.)

Heard the learned counsel appearing for the parties. Considering the narrow controversy involved in this writ petition under Articles 226 of the Constitution of India, we have taken up this petition for final disposal. We issue rule. The learned AGP waives service for the first respondent. The learned counsel appearing for the second to fourth respondents waives service and the learned counsel appearing for the fifth respondent waives service.

2. The second respondent is a statutory board constituted under the provisions of the Maharashtra Mathadi, Hamal and Other Manual

Workers (Regulation of Employment and Welfare) Act, 1969 (for short “the said Act”). In exercise of powers conferred by section 4 of the said Act, the Government of Maharashtra has framed Nashik District Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Scheme, 1987 (for short “the said Scheme”).

3. In this petition under Article 226 of the Constitution of India, the challenge is to the decision of the second respondent which is communicated to the petitioner by the communication dated 2nd April 2014 (Exhibit-D to the petition). By the said decision, minimum wages payable to the Mathadi workers were fixed at Rs.220/- per day. This amount was fixed for the period from 1st April 2013 to 31st March 2015. This decision of the second respondent is challenged essentially on the ground that though the said decision is sought to be enforced against them, the petitioners were not given an opportunity of being heard before the said decision was taken.

4. The submission of the learned counsel appearing for the petitioners is that the last meeting which took place was on 6th December 2013 before the Chairman of the second respondent in the presence of the Deputy Commissioner of Labour. Inviting our attention to the minutes of the said meeting (Exhibit-11 to the affidavit-in-reply of the second to fourth respondents), he submitted that the minutes specifically records that a proposal was submitted by the petitioners on 11th November 2013 and that after hearing the parties, the Chairman will take appropriate decision which will bind the parties. He urged that the minutes recorded on 6th December 2013 will show that the petitioners were to be heard

before fixing the wages. He submitted that the petitioners never agreed to accept the decision of the Chairman as final.

5. The learned counsel appearing for the second to fourth respondents on a query made by the Court stated that there is no material on record to show that after 6th December 2013, the Chairman heard the petitioners. She further submitted that after considering the written say of the petitioners that the Chairman passed the order which is impugned herein and, therefore, no interference is called for. The learned counsel appearing for the fifth respondent submitted that the amount fixed under the impugned decision was for a period of two years from 1st April 2013 to 31st March 2015 and, therefore, no interference be made.

6. We have considered the submissions. We have perused the impugned communication dated 2nd April 2014. In the impugned communication, it is specifically mentioned that the power to fix wages and other terms and conditions has been exercised on the basis of clause (32) of the said Scheme. It appears from the record that several meetings were held to consider the issue of fixing of wages from 1st April 2013 onwards. In the writ petition, there is a reference to the said meetings and the petitioners have set out their own version of what transpired in the meetings. In clause (g) of paragraph-3, it is specifically averred that there was a meeting held on 6th December 2013. In clause (h), it is averred that the fifth respondent by letter dated 15th February 2014 submitted a final demand to the second respondent demanding daily wages at the rate of Rs.350/-. The specific contention raised in the petition is that there was no opportunity granted to the petitioners of

being heard on the demand raised by the fifth respondent in the letter dated 15th February 2014.

7. Perusal of Exhibit-11 to the reply of the second to fourth respondents which is a copy of minutes of the meeting held on 6th December 2013 shows that it specifically records that on proposal given by both the parties, the Chairman of the second respondent will hear the parties. There is nothing placed on record to show that any further hearing was conducted.

8. Perusal of the impugned order/ communication dated 2nd April 2014 shows that the specific reliance was placed by the second respondent on the demand dated 15th February 2014. The impugned communication does not record that any opportunity was granted to the petitioners to deal with the said demand. We are not entering into the wider controversy whether clause (32) of the said Scheme requires personal hearing to be given to the parties. But under clause-32 of the Scheme, surely, the second respondent could not have fixed the terms and conditions of service without even allowing the petitioners to make a representation against the demand submitted by the fifth respondent on 15th February 2014. Therefore, the contention raised in the petition regarding violation of principles of natural justice will have to be accepted.

9. Therefore, we have no option but to direct reconsideration by the second respondent of the terms and conditions of employment of the Mathadi workers for the relevant period. Considering the fact that the said period expired on 31st March 2015, necessary priority will have to be

given by the second respondent. To avoid any further controversy, in the facts of the case, we direct the second respondent to give an opportunity of being heard to the petitioners.

10. Accordingly, we pass the following order;

- (i) The impugned order/communication dated 2nd April 2014 is hereby quashed and set aside;
- (ii) It will be open for the petitioners to submit their response in writing to the demand dated 15th February 2014 made by the fifth respondent. Such response in writing shall be submitted to the second respondent within a period of two weeks from the date on which this judgment and order is uploaded;
- (iii) After the response as aforesaid is filed, the second respondent after giving an opportunity of being heard to the petitioners and fifth respondent and other concerned persons/ parties shall take an appropriate decision as expeditiously as possible, and in any event, within a period of three months from the date this judgment and order is uploaded;
- (iv) We make it clear that we have made no adjudication on the merits of the matter;
- (v) Rule is, accordingly, made partly absolute in terms of this order;
- (vi) All concerned to act on an authenticated copy of this order.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)