

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3954 OF 2019

The Commissioner,
Pimpri Chinchwad Municipal Corporation. ,
Add.: Pimpri, Pune- 411 018. ... Petitioner.

V/s.

1. The State of Maharashtra
Through its Secretary, Industries, Energy
& Labour Through the Government Pleader
High Court (A.S.), Mumbai.
2. The Additional Commissioner of Labour,
Pune Division, Pune,
Pune-Mumbai Road, Shivaji Nagar,
Bungalow No.5, Pune- 411 005.
3. The President,
Rashtriya Shramik Aghadi,
Shri Yashwant Bhosale,
212/2604, Sant Tukaram Nagar,
Pimpri, Pune- 411 018.
4. The Hon'ble Chairman- Coordination,
Sulabh International, 52-B, Sindhi Society,
Chembur, Mumbai- 400 071.
5. The Proprietor Vishal Enterprises,
432/2335, Tukaram Nagar,
Pimpri, Pune- 411 018.
6. The Partner M.P. Enterprises,
Chiranjiv Apartment, Karve Road,
Erandwane, Pune- 411 038. Respondents.

Mr.S.R.Nargolkar with Mr.Arjun Kadam, Ms.S.Rebello
i/b. Aumkar Joshi for the Petitioner.

Ms.Rupali Shinde, AGP for Respondent Nos.1 and 2.

Mr.Rajiv Patil, Senior Advocate with Mr.Vishal Kolekar
for Respondent No.3.

Mr.Vishal Talsania with Ms.Pooja Bhaidkar i/b. Aagam J. Doshi
for Respondent No.4.

Mr.Kiran Bapat with Mr.Avinash Fatangare for Respondent No.5.

Mr.Suhas Inamdar for Respondent No.6.

CORAM : **NITIN JAMDAR AND
M.S. KARNIK, JJ.**

DATE : **24 January 2020.**

P.C. :

The Pimpri Chinchwad Municipal Corporation has challenged the order dated 28 February 2019 passed by the Additional Commissioner of Labour, Pune directing the Corporation to pay the difference of wages amounting to Rs.16,09,79,646/- along with 9% interest to the workers working on a contract basis.

2. The Petitioner is a Municipal Corporation (referred to as the Corporation). The Respondent No.2 is the Additional Commissioner of Labour, Pune Division (referred to as the Labour Commissioner). The Respondent Nos.4, 5 and 6 are the Contractors (referred to as the Contractors). The Respondent No.3 is the Union

(referred to as the Union) espousing the cause of its members who, on a contract basis, are doing the sanitation work.

3. The Union filed Writ Petition No.2193/2001 in this Court seeking a direction to the Corporation and the Contractors to make the members of the Union permanent and to pay them the scale of the Class IV employees and not to terminate the services of the members of the Union. This writ petition was disposed of by the Division Bench (Coram: A.P.Shah and D.G.Karnik, JJ.) on 24 September 2003. The Division Bench directed the Union to make a representation and the Labour Commissioner to hold an enquiry regarding the nature of work. The Division Bench observed that the services of the workers in the list of workers provided by the Union (annexed Exhibit-A to that petition) would not be terminated without the prior permission of the Labour Commissioner. The Corporation could change the contractor provided the new contractor engage the same workers. The Corporation challenged this order by filing Special Leave to Appeal (Civil) No.20102/2004 in the Supreme Court which was dismissed on 6 November 2006.

4. The Union approached the Labour Commissioner with a representation. The representation was considered in detail by Labour Commissioner, and a decision was given on 28 June 2004. The Labour Commissioner had held that as per Rule 25(2)(iv)(b) of the Maharashtra Contract Labour (R & A) Rules, 1971 wages payable to the workmen of Contractors (sweepers and scavengers)

shall be the same as wages payable to the employees of the Corporation as they do the same kind of work. The Corporation filed a review of the order dated 28 June 2004 passed by the Labour Commissioner and the Labour Commissioner dismissed the same by order dated 31 August 2004. The Corporation, after that filed Writ Petition No.5214 of 2005 challenging the orders passed by Labour Commissioner dated 28 June 2004 and 31 August 2004. The Division Bench (Coram: F.I.Rebello and S.J.Vazifdar, JJ.) dismissed this writ petition by order dated 2nd March 2007. The Corporation thereafter filed Special Leave to Appeal (Civil) No.10197/2007 in the Supreme Court which was dismissed by order dated 12 January 2016.

5. Since the Corporation took no steps, the Union filed Contempt Petition No.58/2017. The contempt petition came up on board on 16 April 2018 when the Division Bench (Coram: Shantanu Kemkar and M.S.Karnik, JJ.) passed the following order:

“Parties through their counsel.

2. This contempt petition has been filed alleging non-compliance of the order passed by this court on 2nd March 2007 in W.P. No. 5214 of 2005. Few last lines of paragraph no.7 of the said order read thus :

“.....Before passing the order the petitioners and respondents were directed to furnish information about names of the cleaners, their wages, total of employees doing cleaning, their place of appointment, hours of work, wages paid to them and other amenities given to them. Respondent nos. 2 to 4 failed to produce the

records or material. It is this order which is the subject matter of challenge by the principal employer, the petitioner.

The three contractors have chosen not to challenge the order though appearance has been put up on behalf of the respondent no. 2.”

The other relevant paragraphs of the said order read thus:

“8. The only question urged before us was, that by the impugned order Respondent no. 5 had wrongly come to the conclusion that the members of respondent no.1 were performing the same or similar work at the permanent employees of the petitioner.

12. It is important to note, as recorded in paragraph 26 of the impugned order dated 28.6.2004, that the union had submitted the list of workers of the contractors showing their names, designations, duty hours, wages etc. It is further important to note that during the course of the hearing before Respondent No.5, the Petitioner and Respondent Nos.2 to 4 were given an opportunity to produce their muster roll and other necessary details. However, only the Petitioner produced the same.

15. We do not agree. Respondent Nos.2 to 4 are the Petitioner’s contractors. It is not the petitioner’s case that there was any animosity between the Petitioner and Respondent Nos.2 to 4. The Petitioner could always have called upon Respondent Nos.2 to 4 to produce the documents. It is not their case that they in fact called upon them to produce the records and that despite the same Respondent Nos.2 to 4 refused to do so.

16. In these circumstances, an adverse inference must justifiably be drawn against the Petitioner and Respondent Nos.2 to 4 that had they produced the relevant records, the same would have established the case of Respondent No.1 and militated against their

case.

18. The primary liability for payment is that of Respondent Nos.2, 3 and 4. It is only if they fail to pay the wages that the same may be recovered from the Petitioners.”

3. Having regard to the fact that the said order has been passed on 2.3.2007 and till date the same has not been complied with and the contempt petition is pending since 2017 and as on date no reply has been filed by the respondents, we direct the respondents nos. 3 5 and 7 to remain personally present before this court on the next date of hearing. As regards Municipal Corporation, the learned counsel for the Municipal Corporation submits that the Corporation shall make sincere endeavour to call upon the contractors and settle the dispute between them and shall take all efforts to make the payment either through the contractors or by itself as expeditiously as possible. In case the payments are not being made either by the contractors or the Municipal Corporation, we shall be constrained to order for personal presence of the Commissioner.

4. List on 20th June, 2018.”

Thereafter the contempt petition was finally disposed of by the Division Bench (Coram: Shantanu Kemkar and N.W.Sambre, JJ.) on 17 July 2018 by passing the following order:

“ By filing this Contempt Petition, the Petitioner has alleged non compliance of the order dated 2nd March, 2007 passed by the Division Bench of this Court in Writ Petition No. 5214 of 2005.

2. The Respondents have filed reply. The matter was heard at length.

3. Having heard the matter at length, during the course of hearing, the learned counsel for the parties have stated that since

many issues in regard to number of workers, to whom the payment is to be made, quantum of the amount which is payable qua their period of employment and the working hours, are not yet been decided by any Competent Authority. They submits that the matter can be resolved and the order passed by the High Court in Writ Petition No. 5214 of 2005 dated 2nd March, 2007 can very well be complied with by all the parties, if there is adjudication in regard to the aforesaid issues. They submits that the Additional Labour Commissioner, Pune may be directed to decide the controversy involved in this Contempt Petition in regard to the aforesaid issues i.e. ascertaining and confirming the number of workers who are entitled for the payment, quantum of the amount, the difference between the wages already paid by the P.C.M.C. and the amount payable etc.

4. In the circumstances, we direct the parties to submit their representation along with supported documents to the Additional Labour Commissioner, Pune within two weeks from today. The Respondents to submit response to the said representation within ten days thereafter.

5. On receipt of the said representation from the parties, the Additional Labour Commissioner shall give opportunity of hearing to all concerned and shall adjudicate the issues as above within a period of three months from the date of appearance of the parties before him.

6. The parties to appear before the Commissioner on 7th August, 2018 at 11.00 am.

7. The parties shall not seek unnecessary adjournments and shall cooperate with the Commissioner for deciding the matter within time limit.

8. The Contempt Petition stands disposed of as such.”

Under the directions issued in the contempt petition, the parties appeared before the Labour Commissioner. The notices were given

to the parties. After giving opportunity to the parties and verifying the records, the Respondent No.2- Labour Commissioner passed the impugned order holding that out of 572 workers, whose list was submitted by the Respondent No.3- Union, three names were entered twice, 31 workers expired during the pendency of the case and legal heirs had filed affidavit, some of the individuals' names were changed and thereafter found that 469 workers were eligible and their names tallied as per the list and concluded that these 469 workers are entitled to get their dues that are same wages and as paid to them and similarly situated workers of the Petitioner- Corporation working on permanent basis. This order is challenged by way of this writ petition by the Corporation.

6. We have heard Mr.S.R.Nargolkar for the Corporation, Mr.Rajiv Patil, Senior Advocate for Union. Mr.Vishal Talsania for Respondent No.4, Mr.Kiran Bapat for Respondent No.5, Mr.Suhas Inamdar for Respondent No.6, the Contractors and Ms.Rupali Shinde, Assistant Government Pleader for Respondent Nos.1 and 2. The learned AGP has produced the record maintained by the Labour Commissioner.

7. The Corporation, in short, submitted that the Labour Commissioner did not have jurisdiction to undertake exercise and merely because, in the contempt petition, the corporation had agreed that the exercise be carried out by the Labour Commissioner that does not confer jurisdiction over the Labour Commissioner. No

jurisdiction can be conferred only by consent of parties. The mandate of the Labour Commissioner is specified in the order passed by this Division Bench dated 17 July 2018 in the contempt petition, wherein the issues were: ascertaining and confirming the number of workers entitled for the payment, quantum of the amount, the difference between wages and the date from which they should be paid. In the year 2001, only 318 workers' names were given in the list while in the list before the Supreme Court, the numbers were increased to 572 and there is, therefore, great doubt about the identity of the list. The question whether the persons in the list actually worked or not, did not arise for consideration in the earlier adjudication and, therefore, it cannot be said that the Petitioner is precluded from raising this issue before the Labour Commissioner. The Union, except submitting a list provided no details necessary for carrying out the basic exercise of identifying the workers who had actually worked and only if this burden was discharged by the Union that could not have been shifted to the Corporation to draw an adverse inference. The Contractors also pointed out various aspects of the matter, such as the number of workers; however, these aspects have not been looked into. The contract was only for 84 months and that the Labour Commissioner has proceeded on surmises. The Union produced no wage slips or record. The date of entitlement to be decided by the Labour Commissioner has also not been decided. Even if the amounts are directed to be paid, it ought to have been from the date of the impugned order or the date of the first order passed by the Labour Commissioner, i.e. in the year 2004

and without any reason, the amounts have been directed to be paid from the period much prior to that. Instead of ascertaining whether the workers had worked, the exercise of physical verification was only to find out whether the persons in the list given by the Union are the same and this verification of identification is entirely different. Once the Labour commissioner had to undertake an exercise of fact-finding, it ought to be done on a proactive basis. The Labour Commissioner ought to have issued notice to get the record and not to accept the list given by the Union without questioning the same. There is no warrant for grant of interest at 9% as no statute or contract had warranted grant of such interest. The order being perverse and without fulfilling the mandate, even assuming that the Labour Commissioner had jurisdiction. There is no reason, when the Contractors were also the parties in the adjudication, why the entire liability has been fastened on Corporation, and there is no discussion regarding the same. Hence the impugned order be set aside.

8. The Contractors contended as follows. As regards the Respondent No.5, various aspects have been glossed over by the Labour Commissioner such as work of two types- one of cleaning of toilets and other of maintenance. Different wage-structure applies for both. This aspect has not been considered. Only 50 workers had worked, and the liability of payment of minimum wages was discharged. Since October 2004, the Respondent No.5 ceased to be the contractor with the Corporation and no liability can be fastened

on Respondent No.5. The claim itself of being 2007, the Labour Commissioner could not have granted relief before that date. As regards other contractors, i.e. Respondent Nos.4 and 6, they have taken a stand that they have discontinued their contract since long. It is contended that the present is not a case of nonpayment of minimum wages, but it is a case of the Petitioner- Corporation failing to extend equal pay for equal work and, therefore, these Contractors cannot be held liable to pay the amount under the impugned order.

9. The Union opposed the petition submitting as follows. The list of workers was on record right from the beginning, including special leave petition filed in the Supreme Court and the issue that the Corporation seeking to raise now regarding the identity of the persons who actually worked was never raised. The observations of this Court in three orders passed in writ petitions make it abundantly clear that the only issue raised was whether the workers should be paid equal pay equal to that of permanent workers. Therefore, the only issue referred for the adjudication of the Labour Commissioner was to ascertain the identity of the workers included in the list and this exercise has been carried out by the Labour Commissioner by giving liberty to all to produce documents. Earlier, the Labour Commissioner had also visited the working place of the workers to ascertain the liability. It is not open for the Corporation now to rake up an issue which was never taken up earlier. By delaying the proceedings, the Corporation is seeking to deny the benefits to the workers. Therefore, this is a fit case where not only a writ petition be

dismissed, but it should be dismissed with costs.

10. The learned AGP relying upon the Roznama sought to point out that the Labour Commissioner undertook a detailed procedure. Notices were given to all. Adequate opportunities were given. The Corporation and the Contractors produced no contrary material, and there is no error in the view taken by the Labour Commissioner.

11. We have considered the rival contentions and the record. We are not inclined to interfere with the impugned order in our extraordinary original jurisdiction under article 226 of the Constitution of India for the following reasons.

12. First and foremost, the exercise carried out by the Labour Commissioner cannot be seen in isolation. There have been orders passed by the Supreme Court, this Court and the Labour Commissioner. The impugned order must be seen in the light of the earlier orders passed. The impugned order is a culmination of the proceedings which started as far back as in the year 2001. The exercise before the Labour Commissioner will have to be seen in the light of these orders.

13. It is, therefore, necessary to narrate how the matter progressed. The Division Bench by order dated 24 September 2003, directed the Corporation to continue the same workers who

were in service and granted liberty to change the contractor. The Union had filed representation regarding Safai Kamgars who were listed in Exh.A to that petition. The Union made a grievance that the Contractors were merely paper contractors. The workers were engaged on a meagre salary even below the minimum wages. Noting this fact, the Union was permitted to make a representation to the Labour Commissioner, and the Labour Commissioner was directed to decide the representation. The Labour Commissioner called all the parties for hearing and, as seen from the order, that the hearing went for almost four months on different dates. Before the Labour Commissioner also the names of the members of the Union were submitted by way list. The Petitioner as a Corporation and the Contractors opposed the application. The Union had asked for payment to the workers whose names were mentioned in the application. The reply of the Municipal Corporation to this application before the Labour Commissioner is encapsulated in the order of the Labour Commissioner. In short, the contention was that the specialized contractual services are obtained through different agencies which are engaged as contractors. The salary of the contractor's employees can never be compared with the regular employees as the work performed by these two sets of employees is entirely different; the Union has brought no material on record to show as to how the work done by both the set of employees is similar; and direct relationship between the Corporation and contract workers is denied. No specific stand was taken by the Corporation that the persons whose names have been mentioned in

the list of employees were never working and their identity must be ascertained.

14. When the Municipal Corporation challenged the order passed by the Labour Commissioner in Writ Petition No.5214/2005, the only question raised by the Corporation was referred to in paragraph-8 of the order, which reads thus:

“8. The only question urged before us, was, that by the impugned order Respondent No.5 had wrongly come to the conclusion that the members of Respondent No.1 were performing the same or similar work as the permanent employees of the Petitioner.”

To this question, the Corporation argued that the employees of the Contractor could not be compared with the employees of the Corporation as there would be a difference in their duties and the period of their work. Before dealing with this submission, the Division Bench noted that it is pertinent to note, as recorded in paragraph 27 of the order, that the Deputy Commissioner of Labour, Pune along with other officers, to ascertain the position, visited various zones where the workers were actually working and interrogated some. The report submitted stated that the workmen of the contractors were performing work mainly as sweepers and scavengers, which was the same as the work performed by the employees of the Corporation. The Division Bench also noted in the order dated 28 June 2004 that the Union had submitted the list of workers of the Contractors showing their names, designations,

duty hours, wages etc. It was further noted by the Division Bench that during the hearing before the Labour Commissioner, the Corporation and the Contractors were given an opportunity to produce their muster roll and other necessary details. However, only the Petitioner produced the same. The Division Bench also took note of the fact that the members of the Union were sweepers and scavengers and they produced whatever the documents they had. After rejecting the arguments of the Corporation, the Division Bench also observed that in the circumstances, an adverse inference must justifiably be drawn against the Corporation and the Contractors that had they produced the relevant records, the same would have established the case of Union and militated against their case. The Supreme Court rejected a Special Leave Petition filed by the Corporation against this order. Then two orders were passed in the contempt petitions which we have already referred to earlier. Here also we do not find a specific contention raised regarding the identity of the workers whether they had worked.

15. When the issue was directed to be decided by the Labour Commissioner, notices were given to the parties of the hearing before Respondent No.2- Labour Commissioner. The first date assigned was 7 August 2018, and after that, the matter was kept on 8 August 2018. At that time, the representatives of the parties were present, and the representative of the Corporation was directed to produce the details of the workers (Safai Kamgars) on a permanent basis in respect of their wages. The next date given was 20 August 2018.

On this date, at the request of the Corporation, the Labour Commissioner adjourned the proceedings to 26 August 2018. Since one of the contractors submitted an affidavit, the others sought time, and the proceedings were adjourned to 3 September 2018. The Union gave a representation and the proceedings were adjourned to 17 September 2018. The Corporation agreed to give names of the workmen working with Contractor- Sulabh Enterprises. On 17 September 2018, the Corporation submitted an additional representation in respect of Contractors- Vishal Enterprises and M.P. Enterprises. After noting that some of the Contractors have not submitted documents despite repeated directions, the proceedings were adjourned to 6 October 2018 and then to 19 October 2018. Thereafter proceedings began for physical verification of the workers. This verification continued on several dates and, after that, the impugned order was passed. This is a backdrop to the impugned order. At this stage, the Corporation cannot raise an issue of jurisdiction of the Labour Commissioner.

16. The main contention of the Corporation is that in the earlier rounds of litigation, the question of the identity of the workers did not arise for consideration and, therefore, it was not questioned. There is no merit in this argument. Nothing stopped the Municipal Corporation from taking a basic stand at the inception that the persons in the list submitted by the Union are not working. The argument would have been that the names in the list are bogus and based on such a list no relief should be granted. If such a

fundamental opposition existed, it would have been immediately taken up by the Corporation. If the persons in the list given by the Union did not actually work, then the entire exercise of determining parity and pay would be an academic exercise. No such ground was taken. We, therefore, find merit in the contention of the Union that the objection is now being taken after the fourth round of litigation with a sole intent to delay the proceedings.

17. One of the main contentions of the Corporation was that the burden of proof lay on the workers to produce the documents. On this issue, the Division Bench in the order dated 2 March 2007, has already expressed its opinion. The Division Bench has observed that adverse inference must be drawn against the Corporation and the Contractors that they did not produce documents because it would go against their case. The Division Bench quoted the observations of the Apex Court in *T.S.Murugesam Pillai v. M.D.Gnana Sambandhya Pandara Sannadhi & Ors.*¹ We quote the said passage from the said decision. The Apex Court has observed:

" A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing accordingly to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough : they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is, in their Lordship's opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition."

¹ AIR 1917 PC 6

The Division Bench also observed that it is not the case of the Corporation that there was any animosity between the Corporation and the Contractors and that the Contractors deliberately withheld the documents. The contention of the Corporation that the burden of proof lay on the Union to produce the record is, therefore, advanced without considering the orders passed by this Court and the Labour Commissioner earlier. In any case, during the enquiry, the Labour Commissioner has verified the identity of each worker with relation to the documentary evidence. A perusal of the grounds taken in the Petition shows that the Corporation is seeking to expand the scope of the enquiry now narrowed down to three points as has been done in the order of the Labour Commissioner. This limited enquiry has been carried out by the Labour Commissioner after considering the material available. We are not inclined to re-open those issues which were never questioned by the Corporation in this two decade old litigation.

18. The Labour Commissioner has rightly understood the purport of the order dated 17 July 2018 as of ascertaining and confirming the number of workers entitled to the payment, quantum of the amount and difference to be paid. If the earlier orders of this Court and the Labour Commissioner are to be seen, the dispute had narrowed down to ascertaining these three aspects. The Labour Commissioner called the Applicant and the Respondents and heard

the parties. The Labour Commissioner noted that when his predecessor has passed an order on 28 June 2004, a list of workers showing a total of 572 workers was before the authority. This list was not specifically challenged, and therefore, for the next 16 years, the Court proceedings went on that basis. What was, therefore, remained to be decided were the three issues highlighted in the order passed in the Contempt Petition on 17 July 2018. The contention of the Corporation that there should be a mini-trial to find out whether each worker has actually worked would be starting the process all over nullifying earlier orders and putting the clock back by almost 20 years. Therefore, the Labour Commissioner correctly took the list submitted by the Union, not challenged since 2004, as a basis to ascertain the identity of each workers. For that purpose, he conducted a personal identification process which went on from 19 November 2018 till 13 December 2018. Earlier also the Labour Commissioner had visited the site and had conducted a field enquiry. After due investigation wherein signatures, thumb impression, copy of photo ids, such as Aadhar Card and PAN Card were considered, and ultimately 469 workers were held to be eligible. Thus, there was no error in the scope of enquiry by the Labour Commissioner.

19. The Corporation sought to contend that the workers had not worked for the eight hours a day. This Court in the very same litigation, at the earlier stage, had emphasized that it is the Corporation and the Contractors to produce the documents and the workers cannot be expected to produce proof of them having worked

for eight hours. No such proof was produced and, therefore, the Labour Commissioner rightly accepted the case of the Union. Whatever records the Contractors had produced were some computer-generated copies without signature or stamps. The Contractors have clarified before this Court they have since long ceased to have any connection with the Corporation and whatever material they had, was produced by them. This Court, in the earlier order, has stated that if the amount cannot be recovered from the Contractors, then it shall be the liability of the Corporation.

20. There is also no merit in the argument of the Corporation as regards the date from which the claim was granted. The contract documents related to April 1998. First writ petition was filed by the Union in the year 2001, and the claim was, thus, rightly understood by the Labour Commissioner as having been made from the inception. The contention of the Corporation that it should be restricted from passing of the impugned order has to be rejected. The litigation commenced in the year 2001, the contract is of 1998 and the workers are yet to get the difference in their wages.

21. This Court had passed an order on 24 September 2003 regarding the decision to be taken on the representation. The Deputy Commissioner of Labour in the year 2003-04 itself had visited various zones of the Corporation where the workers were working, interrogated the workers and had submitted a report. This report has been a part of the record since long and therefore, the

Labour Commissioner in the impugned order has referred to the same. The impugned order contains an annexure wherein against each worker so identified the name of Contractor is given and the total number of the months involved is also mentioned, and for each year the difference is worked out. Therefore, the Labour Commissioner has carried out this exercise after ascertaining the material available on record and had determined the amount payable by a fair and transparent process. The Corporation, besides objecting, did not aid this decision-making process.

22. The contention of the Corporation and the Contractors that the order is bad in law because the Labour Commissioner proceeded on surmises, cannot be accepted. An objection is raised to the reference by the Labour Commissioner to the number of toilet blocks mentioned in the contract agreement dated 16 April 1998. The Labour Commissioner has noted that the contract agreement dated 16 April 1998 showed cleaning and maintaining of 234 toilet blocks and 2152 seats and, therefore, the case of the Corporation that only 50 workers were working for 234 toilet blocks should not be believed. Though the Contractors sought to make a distinction between maintenance and cleaning works, the Contractors did not produce cogent record such as attendance, muster-roll, payment vouchers. There is nothing wrong with this interference.

23. Replies have been filed on behalf of the Contractors. Having asked as to how the impugned order affects the Contractors, a unanimous reply was that the impugned order does not direct them to pay any amount and it does not affect them. Their contentions therefore, must be understood in the said context. None of the Contractors have produced a satisfactory record of the muster-roll, etc. The Labour Commissioner, thus, drew correct inference against them. The contention of the Corporation that it is the Contractors who must pay the amount cannot be accepted. Not only the same is advanced at the belated stage, the Contractors are admittedly no longer connected with the Corporation and this Court has already ruled that the primary responsibility is of the Corporation. The Corporation has not the parity in pay and this is not a case of non-payment of minimum wages by the Contractors.

24. The Corporation has questioned the grant of 9% interest by the Labour Commissioner. According to Corporation, this figure is drawn arbitrarily. The contract document relates back to April 1998. The litigation commenced in the year 2001. This is the fourth round of litigation. The workers are yet to get the difference in their wages, even though it is held that they are doing the same work as that of regular employees. Their entitlement has been long since established. On non-germane grounds and without aiding the decision-making process if the Corporation is denying the benefit of the principle of equal work equal pay then, in our equity jurisdiction,

we are not inclined to interfere with the grant of 9% interest which, according to us, meets the ends of justice.

25. The Labour Commissioner employed the correct criteria and ascertained the difference payable based on material produced. The Labour Commissioner was right in drawing an adverse inference up the chart. The Labour Commissioner is not expected to write a judgment in the case of each worker. The discussion in the order supplemented the chart where the entitlement of each worker was drawn up. Since overall exercise has been judiciously conducted, at the behest of the Corporation who did not aid the decision-making process, we are not inclined to interfere with the ultimate conclusion reached.

26. No case is made out for interference in the writ jurisdiction. Rule is discharged. The writ petition is dismissed.

27. This is a fit case where a mandate should be given to the Corporation, a public body to implement the impugned order. We direct that the Petitioner- Corporation will give effect to the order of the Labour Commissioner within three months from the date this order is uploaded on the server.

(M.S. KARNIK, J.)

(NITIN JAMDAR, J.)