

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

WRIT PETITION (LODGING) NO.3088 OF 2019

Modern Mill Kamgar Sahakari Gruh Nirman
Sanstha (Niyojit)

... Petitioners

through :

Shri Madhukar Yashwant Kanade & Others

Vs

The State of Maharashtra & others

... Respondents

Mr.J.P. Kharge for the Petitioners

Ms.G.R. Shastri, Additional Government Pleader with Mr.Amit
Shastri, AGP, for Respondent No.1

Mr.Shaikh Nasir Masih i/b Mr.Mohit Jadhav for Respondent No.3

Mr.Mustafa Doctor, Senior Advocate with Mr.Vishal Kanade,
Ms.S.Ajgaonkar i/b Maneksha & Sethna for Respondent No.4

**CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.**

DATED: JANUARY 10, 2020

P.C.:

1. By this petition under Article 226 of the Constitution of India, the petitioners before this Court are seeking a writ, order or direction to call for the record and proceedings from the office of respondent No.2 – Committee and thereafter to quash and set

aside the Government Resolution dated 20.9.2019.

2. Prayer clauses (a) and (b) of the Petition read as under:

“(a) that by an appropriate writ, order or direction this Hon’ble Court be pleased to call for record and proceedings from the Office of the respondents hereinabove and after scrutiny and perusal as to its legality, validity, propriety and correctness, this Hon’ble Court may be pleased to quash and set aside the part of the Government Resolution: - NTC-2019/PK33/Tex-3 Dated 20.09.2019 passed by Res. No.: -1, that decided the amount of Rs.20.04 Crores and that the Petitioner to Deposit Rs.20.04 Crores within one month from the Date of GR i.e. from 20/9/2019, which is improper, incorrect and unjust.

(b) that by an appropriate writ, order or direction this Hon’ble Court be pleased to fix the liability of the Petitioner to deposit only to the Extent of Rs.1,55,12,376/- vide letter dated 10.12.1996 issued by SICA Modern Mill Ltd. by extending the period of One Year from the Date:- 20/9/2019 of Government Resolution: - NTC-2019/PK33/Tex-3, issued by the Res. No.: -1.”

3. Though by the above two prayers, the entire Government Resolution is under challenge, what prayer clauses (c) and (d) indicate is that the petitioners are aggrieved only by some of the clauses of this Government Resolution and not in its entirety.

4. When this Writ Petition was called out, we specifically asked Mr.J.P. Kharge, appearing for the petitioners, as to how the Writ Petitioners can claim any right to question this Government

Resolution or the proceedings before the Monitoring Committee and all that he would say is that petitioner Nos.1, 2 and 3 were employed in Modern Mills Limited, which was owned by respondent No.4 before this Court. They worked in the Mill from 1964 to November, 2003.

5. Pertinently, in paragraph 2, clause (a) of this petition, petitioner Nos.1, 2 and 3 say that they were the members of Rashtriya Mill Mazdoor Sangh from 1973 to 2003.

6. It is stated that the petitioners have formed a cooperative housing society that is yet to be registered. Despite being an unregistered body or association, the petitioners were allowed to appear before the respondent No.2 – Committee.

7. The petitioners rely upon the fact that respondent No.4 was declared a sick company on 21.9.1987 by the Board for Industrial and Financial Reconstruction ('BIFR' for short) under the Sick Industrial Companies (Special Provisions) Act, 1985. A scheme was framed on 20.12.1993 which was approved by the BIFR. It has directed the promoters of respondent No.4 to reserve 10% of the built-up area forming an undertaking of Modern Mills Limited so

as to be developed as a proposed workers' housing society.

8. Pursuant to this scheme, the Modern Mills Limited by its letter dated 10.12.1996 addressed to the Rashtriya Mill Mazdoor Sangh (for short, 'RMMS') computed the cost of 10% of the land and worked out the net figure at Rs.1,55,12,376/-. That was at Rs.1,200 per sq.ft. prevailing on the date of the order of the BIFR. The Modern Mills Limited requested the Rashtriya Mill Mazdoor Sangh, which was the only recognised union, to communicate with the Modern Mills Limited a date, by which this payment would be made. Though a considerable time had elapsed and correspondence was exchanged, it is common ground that this amount was not paid.

9. Later on, the sum was enhanced to Rs.2,53,84,987/-. This sum is mentioned in the communication of 30.11.1999.

10. The Rashtriya Mill Mazdoor Sangh replied to the letter of respondent No.4 and it accepted that it was obliged to pay Rs.1,55,12,371/- alongwith interest on the cost of the plot and property and that the total sum works out to Rs.3,68,11,892/-. It is categorically stated in the Writ Petition that Rashtriya Mill Mazdoor

Sangh had expressed its inability to pay this amount. The Rashtriya Mill Mazdoor Sangh informed respondent No.4 that its members were not interested in taking the plot and that respondent No.4 was free to utilise it in terms of its own requirements. However, the State Government through the Department of Cooperation and Textiles issued a Government Resolution dated 24.12.2001 constituting a Monitoring Committee to monitor the sale and development of the lands belonging the Cotton Textile Mills as per the Development Control Regulation 58(9) of the Development Control Regulations for Greater Mumbai, 1991. It is claimed that this Monitoring Committee is chaired by a retired Judge of this Court. This Monitoring Committee held its meetings and called upon the Mill (respondent No.4) as also the workers to do something so as to remove injustice to the workers. The petitioners claimed that they appeared before the Monitoring Committee and stated that the 10% of the land reserved for housing the erstwhile textile mill workers should not be allowed to be utilised by respondent No.4 when there is a solemn assurance given by it to both the BIFR as also the Rashtriya Mill Mazdoor Sangh. Today, both are wriggling out of their promises and assurances and this would cause grave and serious prejudice to

the workers like the petitioners. It is claimed that the order of the BIFR was not made known to the petitioners till 2010 and that is why they are not bound by any correspondence between the RMMS and respondent No.4.

11. The petitioners then say that they have ascertained from the Government records that respondent No.4 had handed over the share of Maharashtra Housing Area and Development Authority on 1.3.1996. Thus, the land had to be apportioned for public housing as also the housing of the textile workers. The textile mill workers have to be housed at the very plot of land where the Mill was functioning previously. It is very clear, according to the petitioners, that respondent No.4 has not handed over the land meant for housing the textile mill workers and the RMMS could not have gone ahead and given up the claim of the workers in the manner they purported to do.

12. The petitioners have been unsuccessfully requesting the Authorities not to allow respondent No.4 to utilise this land which is meant for housing the textile workers.

13. Thereafter, the application before the Monitoring Committee was heard and eventually, the State Government resolved the matter by Government Resolution dated 20.9.2019, which is under challenge.

14. The petitioners would submit that the Government Resolution could not have been issued fixing a price of Rs.20 crores. That would make it impossible for the workers to claim the land and to construct the houses thereon so as to rehabilitate themselves.

15. For a proper appreciation of this argument of Mr.Kharge, we must note the Government Resolution and a copy of that Government Resolution has been annexed to the petition. This Government Resolution has been issued by the Department of Cooperation, Marketing and Textiles. The Government Resolution is dated 20.9.2019 and refers to the orders of the Monitoring Committee dated 23.6.2016 and 11.1.2018. Now, the Government Resolution says that in terms of these orders as also that of the BIFR, the Government was obliged to reserve a portion of the plot of land belonging to the erstwhile textile mill (respondent No.4) for housing the members of the proposed cooperative housing society

of workers. The Modern Mills reserved a portion of land admeasuring 1025.85 sq.mtrs. However, the Rashtriya Mill Mazdoor Sangh in a written communication dated 30.8.2002 had communicated to respondent No.4 that it was not interested in tendering the price then fixed. Its members do not wish to pursue their claim of rehabilitation or housing accommodation at the very site. However, there was an independent request made in writing on 20.1.2017 and 16.1.2018 by the proposed housing society of these mill workers. The Monitoring Committee was also requested to make an order of allotment and the Monitoring Committee directed the Government to take appropriate decision. Hence, this issue was under consideration of the Government and thereafter the Government has taken a decision that if an amount of Rs.20.04 crores is tendered within one month from the date of issuance of this Government Resolution, the Government would take appropriate steps so as to implement the scheme of rehabilitation of providing housing accommodation to the ex-mill workers at the very site. In the event, the price is not tendered, then the workers would be given an option of claiming housing accommodation under the Prime Minister's Awas Yojana. They would be offered such an housing accommodation at the rate of

Rs.4,500/- per sq. ft. It is directed in the Government Resolution that the Modern Mills should issue a public notice and all those persons who were on its pay-roll, prior to the closure of the Mill, should be allowed to apply. If the number exceeds 50, then, a lottery should be held.

16. There are several terms and conditions, which have been imposed on the proposed society and in larger public interest.

17. On a perusal of this Government Resolution in its entirety, we do not see how any condition can be read out of context or picked up for challenge *dehors* the main object and purpose in issuing the Government Resolution. The object and purpose underlying it is to ensure provision of reasonable housing accommodation for the ex-textile workers, who have been rendered jobless on account of closure of the Mill. The representative union of the textile workers is Rashtriya Mill Mazdoor Sangh. Even after the Rashtriya Mill Mazdoor Sangh expressed its reluctance to take over the plot of land and develop it for housing of textile workers, still, the ex-textile workers could have formed a society and that cooperative society of ex-textile workers could have obtained the allotment in its favour. Admittedly,

no such housing society has been established or registered. Today, we have a proposed society before us. That is sought to be represented by three petitioners. Pertinently, these three petitioners are members of Rashtriya Mill Mazdoor Sangh and they do not dispute that Maharashtra Industrial Relations Act, 1947 is an enactment in the field. It seeks to regulate the relations of employers and employees, to make provision for settlement of the industrial disputes and to provide for certain other purposes. The Act applies to the industries to which the Bombay Industrial Disputes Act, 1938 applied. The Act can also be applied by a notification to any other industries. The Act contains several definitions including that of the terms 'employee', 'employer' and the relevant definition is of the term "representative union". Section 2, clause (33) defines this expression to mean a union for the time being registered as a representative union under this Act. The representative of employees is a different word or expression than a representative union. The word 'union' is defined separately to mean a trade union of employees which is registered under the Indian Trade Unions Act, 1926. The representative union has been conferred certain rights. These rights and powers of the union are set out in the law itself. It is very clear that what

the Act distinguishes between the employers and employees is that there could be a recognised association of employers but insofar as the representative union is concerned, it has the right conferred by section 33 as also section 33A. Thus, it is a representative of all the members as far as industry is concerned. In the present case, the industry is the textile industry and Rashtriya Mill Mazdoor Sangh represents all the employees of the textile industries. This status and standing of the representative union cannot be taken away nor can it be said to be denuded of its status merely because the petitioners find that such a union has backtracked or resiled from its promise and did not obtain for the textile workers the plot of land meant for their housing. Apart from that and even if Rashtriya Mill Mazdoor Sangh has not pursued the cause of these petitioners and they have a legitimate grievance against the representative union, still, independently through the Monitoring Committee, the petitioners applied for a plot of land and that request made by the petitioners was considered by the Monitoring Committee and it directed the Government to take note of it. The Government took note of it and issued the subject Government Resolution. The Government has considered the pros and cons and it found that it was not proper to continue the

allotment or the ear-marking of the land on the terms and conditions which were prevailing on the date of the order of the BIFR. The date of the order of the BIFR is 20.12.1993. The said order of BIFR and the proceedings subsequent thereto determined a sum of Rs.1,55,00,000/- approximately, which came to be enhanced with interest to Rs.3.68 crores approximately. On 3.8.2002, the Rashtriya Mill Mazdoor Sangh expressed its disinclination to tender this amount or price and, therefore, the allotment in its favour did not fructify at all. Now, nearly after 26 years, the Government has decided that independent of the Rashtriya Mill Mazdoor Sangh, if any proposed cooperative society of textile workers or employees of Modern Mills is interested in obtaining the portion of the land, then, it must tender a price of Rs.20.04 crores. Pertinently, the petitioners do not challenge the quantum or the valuation of the land. All that they say is they have not been taken into confidence by the Rashtriya Mill Mazdoor Sangh and the Rashtriya Mill Mazdoor Sangh has surrendered their rights unilaterally. It is because of the act of the Rashtriya Mill Mazdoor Sangh that they are deprived of their claim. We do not think that the grounds set out in this Writ Petition are enough to quash and set aside the Government Resolution or any clause or

portion thereof. We do not read the clauses thereof in isolation or out of context. If they are read together and harmoniously with the underlying decision and the object and purpose, we do not think that this Government Resolution is either arbitrary, discriminatory or in any manner, interferes with the rights assured to the petitioners by the BIFR scheme or the offer made to the Rashtriya Mill Mazdoor Sangh. In such circumstances, we are not in agreement with Mr.Kharge that this Government Resolution deserves to be set aside.

18. As a result of the above discussion, the Writ Petition fails. It is dismissed but without any order as to costs. Interim order stands vacated.

19. Needless to clarify that the petitioners are not without housing accommodation. On par with others including some of their members, they can approach the Government, the respondent No.4 and seek the benefits of the housing accommodation in Palghar district and which accommodation is provided by respondent No.4 at a cost of Rs.4,500/- per sq.ft. If the petitioners are interested in obtaining such housing accommodation for themselves or other members of the proposed

society, they can approach respondent No.4 even now and seek the requisite benefits. Respondent No.4 has filed an affidavit clarifying that the members of the representative union, textile workers including some of the associates of the present petitioners, have approached them and obtained such benefits which they will extend even now to the present petitioners. We accept this statement made on behalf of respondent No.4, in its affidavit, as an undertaking to this Court. Let the petitioners or the interested persons approach the concerned respondents within two months from today after which period, their rights will stand forfeited.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)

**Vishwanath
S. Sherla**

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Vishwanath S. Sherla
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