

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7804 OF 2018

M/s Cosmo Films Ltd.
B-14/8 and 9, M.I.D.C., Waluj IA,
Aurangabad
through Head HR & IR

... PETITIONER

VERSUS

1. Aurangabad Mathadi and
Unprotected Labour Board,
Behind Dhanwantari Medical,
Opp. Amjad Bhavan,
Khadkewshwar, Aurangabad
through its Secretary
2. Shri Shriram Bhausahab Gaikwad,
Proprietor, Papa Services,
Bachate Niwas, Near Deogiri
Nagari Bank, Aurangabad – 431 136
3. Shri Sakharam Bashiram Dhangar,
Proprietor, Sai Services,
Chatrapati Nagar, Galli No.2,
Bajaj Nagar, Aurangabad – 431 136
4. Shri Mahato Ramsingasan Lakhindar,
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
5. Shri Sayyad Taufik Biram
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
6. Shri Sayyad Rafiq Biram
Age major, Occ. Service,

R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105

7. Shri Sanjay Nathrao Shinde
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
8. Shri Dinesh Kumar khoweal
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
9. Shri Sanjay Pandhrinath Parkhe
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
10. Shri Sanjay Balaji Kulkarni
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
11. Shri Arun Giridhar Paithane
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
12. Shri Durwas Tarachandji Meshram
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
13. Shri Ajay Omprakash Borkar
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105

14. Shri Mukesh Arun Borkar
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
15. Shri Sandeep Devraj Barsagade
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
16. Shri Shrikant Prabhakar Ramteke
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
17. Shri Dhamadeep Suresh Ramteke
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
18. Shri Chatrawal Bhajandas Meshram
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
19. Shri Jagdish Bhilan Meshram
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
20. Shri Laxman Labaji Dhule
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
21. Shri Kamlesh Madhukar Shejwal
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,

Aurangabad – 431 105

22. Shri Vinod Narayan More
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
23. Shri Prafull Dudhramji Borkar
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
24. Shri Ambade Shahadeo Pandurang
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
25. Shri Sampat Sahebrao Jaybhaye
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
26. Shri Tribhuwan Deepak Changdeo
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
27. Shri Ambade Chandrakant Manohar
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
28. Shri Babu Bapurao Sarkale
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
29. Shri Landge Banan Sampat
Age major, Occ. Service,

R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105

30. Shri Tarkase Deelip Buwaji
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
31. Shri Kulkarni Shashikant Shamsunder
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
32. Shri Chavan Bharat Govindrao
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
33. Shri Chavan Shriram Somnath
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
34. Shri Patil Kishor Hilal
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
35. Shri Pautekar Rajendra Bhanudas
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
36. Shri Subhash Baburao Mule
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105

37. Shri Gajare Yogesh Sheshrao
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
38. Shri Futmali Laxman Rangnath
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
39. Shri Babhale Sham Shankar
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
40. Shri Dube Yogesh Manohar
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
41. Shri Devidas Ramdas Paithane
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
42. Shri Dhobale Prabhakar Trimbakrao
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
43. Shri Mote Kisan Ranghnath
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105
44. Shri Datta Karbhari Jadhav
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,

Aurangabad – 431 105

45. Shri Arun Wamanrao Gawali,
Age major, Occ. Service,
R/o C/o Adv. Prakash Shankar Paranjape,
G-7, Chanakyapuri, Phase-II,
Aurangabad – 431 105

... RESPONDENTS

.....
Shri T.K. Prabhakaran, Advocate for petitioner
Shri P.P. Mandlik, Advocate for respondent No.1.
Shri A.S. Kulkarni, Advocate for respondents No.2 and 3
Shri P.S. Paranjape, Advocate for respondents No.4 to 45
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 1st February, 2021

Date of pronouncing judgment : 30th July, 2021

J U D G M E N T :

Rule. Rule made returnable forthwith and taken up for final hearing with the consent of learned counsel for the parties.

2. The challenge in this Writ Petition is to the order dated 31/8/2018, passed by the respondent No.1 Aurangabad Mathadi and Unprotected Labour Board (for short the Mathadi Board), directing the petitioner Company (for short the employer) to deposit a sum of Rs.5,54,80,346/- within three days of the impugned order, lest the District Collector would be requested to recover the said amount as an arrears of land revenue. The said amount is said to have been due towards

wages of 42 Mathardi workers (respondents No.4 to 45) together with amount of levy and 10% surcharge.

3. Facts giving rise to the present Writ Petition are as follows :-

The employer, is a Company, incorporated under the Companies Act, 1956. It has its factory at Plot No.B-14/8 and 9 in Waluj Industrial Area, Aurangabad. It is a registered employer within the meaning of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (for short the Mathadi Act). The employer had engaged the respondents No.4 to 45 as contract labours through the respondent No.2 and 3 (labour contractors). Due to shortage of work, the services of respondents No.4 to 45 came to be terminated on 8/1/2009. These workers got themselves registered with the Mathadi Board w.e.f. 8/1/2010 and made a claim for their reinstatement and wages. The employer resisted the said claim. The Mathadi Board, however, passed orders in the year 2011, 2014 and 2015, directing reinstatement – payment of wages. The employer filed Writ Petition challenging the said orders. The Division Bench of this Court, vide order dated 21/6/2017, passed in Writ Petition

No.7969/2014, set aside the said order, remitting the matter back to the Mathadi Board to decide it afresh after giving the employer an opportunity of hearing. The Mathadi Board thereafter gave opportunity of hearing to the employer and Mathadi workers as well. The impugned order then came to be passed.

4. Heard. Mr. T.K. Prabhakaran, learned counsel for the employer took exception to the jurisdiction of the Mathadi Board to hold enquiry and pass the order impugned in the Writ Petition. According to him, the Act has no application to the facts and circumstances of the case. The Mathadi workers cannot have any claim of wages from month to month. They did not have a right of employment on the petitioner as if they are permanent workers. There is no employer – employee relationship. Such relationship could exist only between the Mathadi Board and the Mathadi workers. Services of Mathadi workers are available to the employer only when they are deputed on the request of the employer by the Mathadi Board. The Mathadi workers are to work in any of the registered establishments as per the need of the employer, in the local area and as per the directions of the Mathadi Board. The only exception is of monthly worker. On termination of services of monthly workers, the Mathadi

Board has a duty to take them as pool workers. The so called Mathadi workers did not perform any work for the employer since 8/1/2009. In view of the principle of no work no pay, the employer has no liability to pay any amount towards wages. The amount said to have been due from the employer has no basis for arriving at a particular figure. The learned counsel took me through the provisions of the Act and the Scheme framed thereunder to ultimately submit the impugned order to have not been sustainable on facts and in law as well.

5. Mr. P.P. Mandlik, learned counsel representing the Mathadi Board reiterated the averments made in the affidavit-in-reply. According to learned counsel, there is an alternate efficacious remedy available under Section 5 of the Act. There are several questions of facts involved in this Writ Petition. According to him, the work of loading and unloading with the employer is done by Mathadi workers. The State of Maharashtra has framed a scheme for Aurangabad region. The employer was under statutory obligation to get the respondents No.4 to 45 registered as Mathadi workers. With a view to avoid payment of wages at a fixed rate, the employer did not get them registered as Mathadi workers. These workers, therefore, applied to the Mathadi Board for

their registration through Marathwada Labour Union. The Inspector paid visit to the manufacturing unit on 15/11/2008 and found the respondents No.4 to 45 to have been working there as Hamals. After having got knowledge of the visit by the Inspector, the employer terminated the services of these workers.

6. The scheme framed by the State Government authorizes the Board or its Chairman and Secretary to settle the dispute between registered employer and registered Mathadi workers. In exercise of the said powers, the Mathadi Board held an enquiry and directed the employer to pay the amount under the impugned order. In a meeting held in January 2009, the employer agreed to reinstate the Mathadi workers, but went back on its words. It was found during enquiry that the employer had engaged some unregistered workers as Hamals when it was obligatory on the part of the employer to engage only registered Mathadi workers. Before holding the enquiry, the employer had been supplied with all the relevant documents. Learned counsel would support the impugned order.

7. Mr. P.S. Paranjape, learned counsel for the workers took me through the relevant provisions of the Act

and the scheme framed thereunder. An affidavit-in-reply has also been filed by one of the workers. According to learned counsel, it is the duty of the employer to employ only those workers who have been registered as employees with the Mathadi Board. The employer never told these workers to get themselves registered as Mathadi workers. On the contrary, it was the design of the employer not to get them registered as Mathadi workers, otherwise it would have been required to pay them wages at certain rate. The workers, after having realized of being exploited, approached the Marathwada Labour Union and then got themselves registered as Mathadi workers. During the enquiry, for their registration as Mathadi workers, an Inspector had paid visit to the employer's Company to find these workers to have been working there as Hamals. The Act and the scheme framed thereunder for Aurangabad gives ample powers to the Mathadi Board to hold enquiry and pass necessary orders. The learned counsel also took me through the relevant provisions of the Act and the scheme in justification of his submissions. The workers were illegally terminated. They, therefore, moved the Mathadi Board. The Board, in turn, called the employer. The employer's representative agreed to reinstate the respondent workers. Basically it was a dispute between registered

employer and registered Mathadi workers. On hearing both of them, the Mathadi Board passed the impugned order. The learned counsel ultimately urged for dismissal of the Writ Petition.

8. Before adverting to appreciate the factual matrix, it is desirable to refer to relevant provisions of the Act and the scheme framed thereunder.

The Act has been passed for regulating the employment of unprotected manual workers employed in certain employments in the State of Maharashtra and to make provision for their adequate supply and proper and full utilization in such employments with further object to make better provision for their terms and conditions of employment to provide for their welfare. Sub-section (3)(12 & (13) of Section 2 of the Act define the term employer, work and wages respectively. Section 3 of the Act authorizes the State government to frame a scheme for registration of employers, and unprotected works in any scheduled employment and provide for the terms and conditions of work of registered unprotected workers and make provisions for general welfare in such employments. The scheme may provide interalia for (b) defining the obligations of registered unprotected workers

and employers subject to the fulfillment of which the scheme may apply to them; **(d)** for regulating the employment of registered unprotected workers, and the terms and conditions of such employment, including rates of wages hours of work, maternity benefit, overtime payment, leave with wages provision for gratuity and conditions as to weekly and other holidays and pay in respect thereof; **(k)** for constituting the persons of authorities who are to be responsible for the administration of the scheme, and for the administration of funds.

9. Section 5 of the Act speaks of the matter to be referred to the State Government in case of a question whether scheme applies to any class of unprotected workers or employees. Section 6 speaks of constitution of Board. Section 6(1) reads thus :

“6(1) The State Government may, by notification in the Official Gazette establish a Board to be known by such name as may be specified in the notification for any scheduled employment in any area. One or more Boards may be appointed for one or more scheduled employments, and for one or more areas.

10. Section 6-A empowers the State Government to appoint Board consisting of one person. Section 13 of the Act authorizes the Board to hold enquiry for determination of

money due from employers and workers.

11. In exercise of powers under Section 3 of the Act, the State Government has framed the scheme for Aurangabad way back in September 1992. Since the multi-member Board has not been constituted, the Deputy Commissioner (Labour), Aurangabad was entrusted with the responsibilities of the Board constituted under Section 7 of the Mathadi Act.

12. I have perused the scheme framed for Aurangabad. Clause 6 of the scheme speaks of functions of the Board. Clause vi, viii and x thereof are as under :-

- (vi) grouping or re-grouping of all registered workers into such groups as may be determined by the Board, and receiving the grouping of any registered worker on the application of a registered worker;
- (vii)
- (viii) recovering from registered employees contribution in respect of these cases of this Scheme, wager, levy and any other contributions under this Scheme.
- (ix)
- (x) maintaining and administering the workers' welfare fund and recovering from all the registered employers contribution towards the fund when such fund is constituted in accordance with the rules of the fact;

13. Clause 9 authorizes the Board to settle disputes between registered employer and registered workers. Clause

8(k) authorizes the Chairman of the Board to take disciplinary action against registered workers and registered employer in accordance with the provisions of the scheme. Clause 9 speaks of functions of Secretary. Sub-clause (c) and (e) thereof read as under :

- (c) the employment and control of registered workers who are available for work when they are not otherwise employed in accordance with this scheme.
- (d)
- (e) the allotment of registered workers in the pool who are available for work in registered employers and for this purpose the Secretary shall –
 - (i) make the fullest possible use of registered workers in the pool;
 - (ii) keep the record of attendance at call stands or control points of registered workers;
 - (iii) provide for the maintenance of records of employment and earnings of registered workers;
 - (iv) make or cause to be made the necessary entries in the attendance cards and the wage slips of the workers in the reserve pool as laid down in clause 23.

Clause 15 speaks of registration of existing and new workers. Clause 24 speaks of employees of registered workers.

14. It is an obligation of registered employer not to employ worker other than a worker who has been allotted to him, by the Secretary in accordance with provisions of clause 9(c). Clause 13 imposes restriction on employees. It reads :

“No employer shall engage for employment a worker unless than worker is a registered worker.”

15. The employment of a registered worker in the pool shall not be terminated except in accordance with the provisions of the Scheme.

16. The Act and the Scheme framed thereunder undoubtedly indicate the authority of the State Government to constitute a Board even consisting of one person. The Scheme indicates the Board to have authority to decide dispute between registered employer and registered Mathadi workers. Admittedly, the petitioner Company is a registered employer within the meaning of the Mathadi Act. Undisputedly, the respondents No.4 to 45 were engaged by the employer through labour contractors, respondent No.2 and 3. It is the case of the employer that their services were terminated in January 2009 for want of work. It is not in dispute that the employer had also engaged 92 registered

Mathadi workers. It is only on 8/1/2010 i.e. one year after the termination of respondents No.4 to 45, they came to be registered with the Mathadi Board as registered workers. On their registration as Mathadi workers, the Board got jurisdiction to decide the dispute between the petitioner Company (employer) and the registered workers. It appears that, the Mathadi Board held some enquiry into the matter. The proceeding of the enquiry is, however, not forthcoming. There is no data indicating how the figures regarding amount due towards wages, levy and surcharge have been worked out. Initially the Board worked out the figure of Rs.7,88,42,457/- as due from the employer on these three counts. In the impugned order itself the Board reduced the said amount to Rs.5,54,000/-, as according to it, the earlier figure was arrived at on miscalculation. The amount said to be due from the employer towards wages of the respondents No.4 to 45 is said to be for the period from the date of termination of their services i.e. 8/1/2009 to the end of December 2015. Admittedly, during this period, none of the respondents No.4 to 45 have worked with the employer. It is all along the contention of the employer Company that services of these workers were terminated on account of shortage of work.

17. The rival contentions are the disputed questions of facts. Since the proceedings of the enquiry are not forthcoming there is nothing to suggest as to whether really the Inspector had paid visit and made inspection of the employer's factory and gave his report. No further report is also forthcoming to suggest that the employer, in addition to 94 registered Mathadi workers, had engaged workers other than the respondents No.4 to 45 during the period post termination of services of the respondents No.4 to 45. If at all the petitioner Company had really engaged workers other than the registered Mathadi workers, it may be liable for disciplinary action. The Mathadi Board may do well in that regard. The fact remains that, on the date of termination of the services of respondents No.4 to 45, they were not registered Mathadi workers. They were admittedly employed through contract labour. Their services are said to have been terminated for shortage of work. A year thereafter, they came to be registered as Mathadi workers. For not a single day thereafter, none of them has worked for the petitioner employer. There is nothing to indicate that, all or any of them were not gainfully employed during the period for which the employer is directed to pay them their wages. The services of registered Mathadi workers are to be availed on demand by

the employer. As such, the registered Mathadi workers do not have a right to work with registered employer.

18. A stray document has been placed on record along with the affidavit-in-reply filed on behalf of the workers. The said document is said to be the report of inspection dated 15/11/2008. The said report should have been part of the proceeding of enquiry held by the Mathadi Board. There is another document in the nature of minutes of the meeting dated 6/1/2009 held between representative of the workers and the employer. What can be gathered from the said document is that, it was the contention of the employer that there was no sufficient work, raw material was not available, transporters were on strike. In case the workload is increased, the workers will be re-employed. While it was a case of the workers that, some new persons were employed instead of 42 terminated employees. True, the representative of the employer appears to have agreed to re-employ the terminated workers. It is reiterated that, the said document is dated 7/1/2009. No proceedings of the enquiry that has been held after remand of the matter vide order dated 21/6/2017 passed in Writ Petition No.7969/2014 is forthcoming. In short, the Board did not hold the judicial or quasi-judicial enquiry. The question remained unanswered as

to whether really the respondents No.4 to 45 were terminated for want of work. These workers did not have a right to work with the employer Company itself. Admittedly, none of them has worked even for a day during the period from 9/1/2009 to December 2015. As such, it would be a case of directing the employer to pay wages for no work done. It is not known as to how the figure of Rs.5,54,80,346/- has been worked out. For all these reasons and more particularly for the reason that the amount directed to be paid by the employer Company is towards no work done, by any of the workers (respondents No.4 to 45), and there being no evidence that during the relevant period all or any of them were/ was unemployed, interference is called for with the impugned order.

19. The Writ Petition thus succeeds. The same is, therefore, allowed in terms of (c). Rule made absolute accordingly.

(R. G. AVACHAT)
JUDGE

fmp/-