

Vidya Amin

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

WRIT PETITION NO. 4697 OF 2021

Ullengal Brothers Textile Pvt. Ltd.

... Petitioner

V/s.

Maharashtra Mathadi Shramjeevi Kamgar
and General Union & Anr.

... Respondents

**WITH
INTERIM APPLICATION NO. 1164 OF 2021
IN
WRIT PETITION NO. 7627 OF 2019
WITH
WRIT PETITION NO. 7627 OF 2019**

Navrang Dyeing Pvt. Ltd.

**... Applicant/
Petitioner**

V/s.

Maharashtra Mathadi Shramjeevi Kamgar
and General Union & Anr.

... Respondents

**WITH
INTERIM APPLICATION NO. 1163 OF 2021
IN
WRIT PETITION NO. 7626 OF 2019
WITH
WRIT PETITION NO. 7626 OF 2019**

Ullengal Brothers Textile Pvt. Ltd.

**... Applicant/
Petitioner**

V/s.

Maharashtra Mathadi Shramjeevi Kamgar
and General Union & Anr.

... Respondents

**WITH
INTERIM APPLICATION NO. 1162 OF 2021
IN
WRIT PETITION NO. 7625 OF 2019
WITH
WRIT PETITION NO. 7625 OF 2019**

Navbharat Industries

**... Applicant/
Petitioner**

V/s.
Maharashtra Mathadi Shramjeevi Kamgar
and General Union & Anr. **... Respondents**

WITH
WRIT PETITION NO. 3253 OF 2021

Agrawal Dyeing **... Petitioner**

V/s.
Maharashtra Mathadi Shramjeevi Kamgar
and General Union & Anr. **... Respondents**

WITH
WRIT PETITION NO. 4700 OF 2021

Neelkantha Process Pvt. Ltd. **... Petitioner**

V/s.
Maharashtra Mathadi Shramjeevi Kamgar
and General Union & Anr. **... Respondents**

WITH
WRIT PETITION NO. 4698 OF 2021

Nilamber Dyeing and Bleaching Mill Pvt. Ltd. **... Petitioner**

V/s.
Maharashtra Mathadi Shramjeevi Kamgar
and General Union & Anr. **... Respondents**

WITH
WRIT PETITION NO. 4420 OF 2021

Piyush Fabrics Pvt. Ltd. **... Petitioner**

V/s.
Maharashtra Mathadi Shramjeevi Kamgar
and General Union & Anr. **... Respondents**

WITH
WRIT PETITION NO. 4699 OF 2021

Ullengal Brothers Textile Pvt. Ltd. **... Petitioner**

V/s.
Maharashtra Mathadi Shramjeevi Kamgar
and General Union & Anr. **... Respondents**

**WITH
WRIT PETITION NO. 4696 OF 2021**

Gurudev Processors

... Petitioner

V/s.

Maharashtra Mathadi Shramjeevi Kamgar
and General Union & Anr.

... Respondents

Mr. A.V. Bukhari, Senior Advocate a/w. Mr. Avinash Jalisatgi i/b. Vaibhav Jagdale for the petitioners in Writ Petition Nos. 7625/2019, 7626/2019 and 7627/2019.

Mr. Avinash Jalisatgi i/b. Vaibhav Jagdale for the petitioners in all other Writ Petitions.

Mr. A.S. Peerzada along with Mr. Iqbal Shaikh for respondent no. 1.
Mr. Rahul Oak i/b. Mr. B.S. Mahamulkar for respondent no. 2.

CORAM : G.S.KULKARNI, J.

DATE : 13 October, 2021

P.C.:

1. These petitions raise common questions of law and fact. Writ Petition No. 7625 of 2019, Writ Petition No. 7626 of 2019 and Writ Petition No. 7627 of 2019 in which Interim Applications are filed are already admitted by an order dated 12 December, 2019 passed by this Court (S.C. Gupte, J as His Lordship then was) as also interim orders are passed. There are seven other petitions which are pending admission. All these petitions are being disposed of by this common order.

2. The challenge as raised in these petitions is to the orders passed by the learned Member of the Industrial Court at Thane, on an application filed by the petitioner/employer refusing to frame a preliminary issue, on maintainability of the Complaints (ULP). The

orders are similar in all these matters, although passed on different dates. It is appropriate to reproduce one of such orders, which reads thus:

“ORDER

Perused Application and written statement of the respondent no. 1 at Exh. No. C-9.

Perused say/reply to this Application by Complainant at Exh. V-7.

Heard, Id. Advocate of both sides. Perused the copies filed by Id. Advocate of both sides.

Record shows that, issues are framed in the matter on 03.08.2017 and the first issue is, “Whether the complaint is maintainable?” In view of case laws relied by the Complainant and considering the fact that, the complaint is of the year 2012 and this kind of Application not moved by the respondent at the earlier stage of the proceeding, it can be said that, instead of deciding issue no. 1 as preliminary issue, it would be just and proper that all issues are decided. Hence, the Application is rejected. Matter is fixed for evidence.”

3. The relevant facts are required to be noted:

Respondent no. 1 filed the Complaint’s (ULP) in question under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short “the MRTU & PULP Act”) before the Industrial Court at Thane against the petitioners in these writ petitions praying for reliefs primarily in regard to the alleged unfair labour practice of being adopted by the petitioners under Section 28 read with Items No. 9 and 10 of Schedule IV of the Act. The basis of such complaint being that the petitioners-employers were violating the provisions of the

Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment & Welfare) Act, 1969 (for short **"the Act"**) and the Cloth Markets or Shops Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1971(for short **"the Scheme"**) as asserted in paragraphs 3 and 4(i) of the complaint.

4. Written statement was filed on behalf of the petitioners (respondent-employer therein). It is at the stage, when the issues were being framed, an application came to be moved on behalf of the petitioners-employers raising a preliminary objection to the maintainability of the complaint as also to the jurisdiction of the Industrial Court on the ground of applicability of the said Act and the scheme to the complainant workmen. The petitioners' application was dismissed by the impugned order as noted above, the Industrial Court observing that such issue would be considered as one of the issues on which the complaint would be finally adjudicated and cannot be framed as a preliminary issue. Being aggrieved by such orders on the different complaints, passed by the learned Member of the Industrial Court, the petitioners are before this Court.

5. Mr. Bukhari, learned senior counsel for the petitioners would submit that the very issue in regard to the applicability of the said

scheme to the textile processing units situated in Thane district is an issue, subject matter of challenge before the Division Bench in a writ petition filed by the Maharashtra Textile Processors' Association & Ors. (Writ Petition No. 3398 of 2010). It is submitted that all the petitioners/employers are members of the said Association. Mr. Bukhari has drawn my attention to an order dated 26 April, 2010 passed by the Division Bench of this Court on the said Writ Petition. The Division Bench while admitting the Writ Petition has granted interim reliefs to the said petitioners in terms of prayer clauses (d), (e) and (f) of the Writ Petition. Mr. Bukhari has submitted that the benefit of such order enures to all the petitioners/employers in these petitions. The said interim order passed by the Division Bench of this Court and the reliefs so granted is required to be noted. The said order reads thus:

"ORDER

1. Leave to amend to urge additional ground to the effect that mandatory formalities under section 28 has not been completed, as prayed for, granted. Amendment be carried out within one week from today.
2. Since the issue raised in the present petition is common to two writ petitions admitted today, Rule. To be heard with Writ Petition No. 9743 of 2009, Writ Petition No. 3030 of 2010 and Writ Petition No. 538 of 2005.
3. Insofar as Interim relief is concerned, Interim relief is granted on the same terms as per prayer clauses (d), (e) and (f) of the present writ petition."

Prayer

"d) That, pending the hearing and final disposal of this

writ petition, this Hon'ble Court be pleased to restrain the respondents from compelling the petitioners and the members of petitioner no. 1 to engage Mathadi Labour in its factory establishment at District, Raigad.

e) That, pending the hearing and final disposal of this writ petition, this Hon'ble Court be pleased to restrain the respondents from initiating criminal prosecutions/recovery proceedings against the petitioners and the members of petitioner no. 1.

f) That, pending the hearing and final disposal of this writ petition, this Hon'ble Court be pleased to restrain the respondents from proceeding further with the proceedings under Section 13 of the said Act initiated against the petitioners and the members of petitioner no. 1."

6. Mr. Bukhari submits that the petitioners in Writ Petition Nos. 7625 of 2019, Writ Petition No. 7626 of 2019 and Writ Petition No. 7627 of 2019 in challenging similar orders passed by the learned Member of the Industrial Court, had relied on the pendency of the said proceedings before the Division Bench of this Court, to submit that the issue which was subjudice before the Division Bench went to the root of the proceedings before the Industrial Court. The learned Single Judge of this Court (S.G. Gupte, J. as His Lordship then was) in an interim order passed on the said three petitions, noted the pendency of the said proceedings before the Division Bench and granted interim reliefs on the said petitions by an order dated 12 December, 2019. The said order reads thus:

"WRIT PETITION NO.7625 OF 2019

Heard learned Counsel for the parties. The writ petition involves a challenge to the Industrial Court at Thane entertaining a complaint of unfair labour practice at the

instance of a Union of Mathadi workers, presumably on the footing that the Mathadi Act applies to the Petitioner Industry when the question of application of the Act of the Petitioner and other members of Mathadi Textile Processors Association is subjudice before a Division Bench of this Court in a companion writ petition and where stay has been granted qua application of the Act to textile processors such as the Petitioner. Since the matter involves a debatable issue, there will be Rule and also interim relief in terms of prayer clauses (b) and (c). In case the Respondent Union is aggrieved by continuation of the stay granted by this Court in the pending writ petition of Mathadi Textile Processors Association, it is for them to apply to the Division Bench for appropriate reliefs.”

7. From a perusal of the orders passed by the Division Bench dated 26 April, 2010 (supra) as also the order dated 12 December, 2019 (supra) passed by the learned Single Judge of this Court on the three Writ Petitions as noted above, it appears that unless the issue as to whether the statutory scheme in question is applicable to the petitioners processing units, which is the very basis of the complaint of unfair labour practice as filed by respondent no. 1 is resolved, which is subject matter of consideration before the Division Bench in the said Writ Petition No. 3398 of 2010, the proceedings before the Industrial Court in the complaint's (ULP) in question filed by Respondent no. 1 cannot effectively and meaningfully proceed. It is for such reason that the learned Single Judge by an order dated 12 December, 2019 passed on the three writ petitions (supra) has stayed the proceedings of the Complaint's (ULP) subject matter of the proceedings in the said petitions.

8. The Industrial Court in passing the impugned order has overlooked that an issue which goes to the very root of the adjudication being undertaken by the Industrial Tribunal and having a material bearing on the adjudication of Complaints(ULP) filed by respondent no. 1 is the subject matter of consideration before the Division Bench of this Court. The learned Member of the Industrial Court also did not consider the consequences which were brought about by the interim relief granted by the Division bench in Writ Petition No 3398 of 2010 by its order dated 26 April, 2010.

9. In my opinion, it would not be meaningful and/or it would be difficult for the Industrial Court to adjudicate the complaints when the issue of the very applicability of the Act and Scheme to the textile units in Thane District is a question which would determine whether the complaints as filed by respondent no. 1 were at all maintainable and in that case as to whether the Industrial Tribunal would have jurisdiction to entertain such complaint would be dependent on the outcome of the proceedings pending before the Division Bench.

10. It was thus not proper for the Industrial Court to observe that the issue of jurisdiction and/or maintainability of the complaint on the ground as raised by the petitioner shall be

decided along with the other issues and it would not be considered as a preliminary issue. Thus, an order which may not be an effective order and which may lead the parties to an uncertainty in the proceedings, could not have been passed by the learned Member of the Industrial Court.

11. In the aforesaid circumstances, these petitions on such issue ought not to remain pending and they can be conveniently disposed of by directing that the impugned orders passed by the learned Member of the industrial Court remain suspended, till the Division Bench decides pending Writ Petition No. 3398 of 2010. The effect of such suspension obviously would be that it would not be possible for the Industrial Court to proceed further to adjudicate the complaint, in the absence of the basic issues of the applicability of the scheme is resolved before the Division Bench

12. At this stage, learned counsel for respondent no. 1 has pointed out that respondent no. 1 is not a party to the proceedings before the Division Bench, if that be so, in the circumstances the parties stand, as also fairly suggested by Mr. Bukhari, they are not precluded in intervening in the proceedings before the Division Bench, if it is their case that the interim orders passed in the said petition are prejudicially affecting the workers who are seeking benefit under the Act and the scheme. This would be an issue

subject matter of consideration before the Division Bench.

13. The Writ Petitions are accordingly disposed of by the following order:

(i) The impugned orders passed by the Industrial Court passed in each of the respective complaints and subject matter of these petitions, shall remain suspended till the adjudication of the proceedings of Writ Petition No. 3398 of 2010 by the Division Bench of this Court;

(ii) After Writ Petition No. 3398 of 2010 is decided by the Division Bench of this Court, liberty to the parties to approach the Industrial Court if the need so arises for passing appropriate orders on re-framing of issues. All contentions of the parties in that regard are expressly kept open;

(iii) Needless to observe that all contentions of the parties also on merits of their respective pleas are kept open;

14. Rule is discharged in the aforesaid terms, in Writ Petition Nos. 7625 of 2019, 7626 of 2019 and 7627 of 2019.

15. The other seven Writ Petitions are also disposed of in the above terms.

16. Interim Applications would also not survive and stand disposed of.

17. No costs.

(G.S.KULKARNI, J.)