

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 6029/2006.

Shri Gajanan Maharaj Sansthan
Shegaon, through its Manager,
At and PO : Shegaon, Tahsil Shegaon,
District Buldhana.

..... **PETITIONER.**

-VERSUS-

1.State of Maharashtra
Department of Industries, Energy
and Labour, through its Principal
Secretary, Mantralaya, Mumbai – 32.

2.Maharashtra Labour Welfare Board
Through Welfare Commissioner,
Hutatma Babu Genu Mumbai Girni
Kamgar Kreedha Bhavan, Senapati
Bapat Marg, Elipha Stone,
Mumbai – 13.

3.Assistant Welfare Commissioner,
Maharashtra Labour Welfare Board,
Lalit Kala Bhavan, Dabki Road,
Bhim Nagar, Akola.

4.Inspector under the Labour
Welfare Board Fund Act,
Akola Division, c/o. Lalit Kala
Bhavan, Dabki Road, Bhim Nagar,
Akola.

..... **RESPONDENTS.**

Shri A.R. Patil, Advocate for the Petitioner.

Shri U.P. Deopujari, Advocate for Respondent Nos. 2 to 4.

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CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.

DATE : 27 JANUARY 2021.

ORAL JUDGMENT :

Heard the learned Counsel for the Parties.

2. By this petition filed by a religious Trust, challenge is raised to the orders dated 2 November 2006 passed by the Respondent No.4 Inspector under *the Bombay Labour Welfare Fund Act, 1953*.

3. The Petitioner is a Math, at Shegaon, District Buldhana, which looks after the temple within its premises. The Petitioner Trust is registered under Bombay Public Trust Act and Societies Registration Act. According to the Petitioner for providing better facilities to the devotees, various activities such as free transportation, free medical check up, educational facilities etc., are carried out. According to the Petitioner, the said

activities are carried out assisted by devotees called as “Mansevis” who offer their services to the Maharaj as their Guru, and they are paid certain honorarium which is not salary or wages.

4. On 2 November 2006, the Inspector under the Act of 1953 visited the premises of the Petitioner and noted that the Petitioner is in arrears of Employees and Employer’s contribution for the period from 1996 to June 2006 to the tune of Rs.2,68,800/-. A demand was raised on the Petitioner which led the Petitioners to approach this Court in the present Petition challenging the demand.

5. We have heard Shri A.R. Patil, Advocate for the Petitioner and Shri U.P. Deopujari, Advocate for Respondent Nos. 2 to 4.

6. The learned Counsel for the Petitioner contended that no opportunity of hearing was given to the Petitioner and on the same day demand has been raised. It is contended that various factors such as nature of employment could not be placed before the Respondent Inspector for want of any opportunity. It is also contended that there is no employment as such with the Petitioner Trust, but, only voluntary services are offered and therefore, provisions of 1953 Act are not attracted.

7. The learned Counsel for the Respondent Nos. 2 to 4 submitted that the Inspector visited the Trust and upon

inspection found that the Petitioner was liable to pay contribution and a demand has been raised. The learned Counsel submitted that the case of the Petitioner itself is not clear as regards employment, as at some place the Petitioner had admitted there are certain number of employees.

8. The Act of 1953 mandates Employers contribution in terms of its employees. The Act is a beneficial legislation. The word '*employee*' is defined in Section 2[2] to mean a person employed for hire or reward to do any work, skilled or unskilled, [manual, clerical, supervisory, or technical] in an establishment, but does not include a person employed mainly in a managerial capacity, or in a supervisory capacity, drawing above stipulated wages wages or doing functions mainly of a managerial nature. '*Employer*' is been defined in Section 2[3] to mean any person who employs either directly or through another person either on behalf of himself or any other person one or more employees in an establishment and includes - [i] in a factory, any person named under Section 7 [i][j] of the Factories Act, 1948 as the manager; [ii] in any establishment, any person responsible to the owner for the supervision and control of the employees or for the payment of wages. The term '*wages*' is defined in Section 2[11] to mean wages as defined in section 2[vi] of the Payment of Wages Act, 1936, and includes bonus payable under the Payment of Bonus Act, 1965. '*Establishment*' is defined under Section 2[4] of the Act to mean – [i] a factory, [ii] a tramway or motor omnibus

service, and [iii] any establishment within the meaning of the Bombay Shops and Establishments Act, 1948, which employs or on any working day during the preceding twelve months, employed ten or more persons.

9. In this case the fundamental issue would be the nature of employment carried out in the Petitioner Trust and whether it is an Establishment. According to the Petitioner, there is no employment or wages paid and what is offered is purely voluntary and spiritual services. This aspect must be explained to the Inspector, and therefore, in the facts of the present case we are of the opinion that the Inspector should give an opportunity to the Petitioner Trust to place documents and explain the nature of employment.

10. The Authority will have to determine whether the persons rendering their services can be called as 'employees' and whether the Petitioner can be called as an 'employer' and whether the premises of Petitioner can be an 'establishment' and the 'honorarium' paid are wages. Upon these facts being established, a demand can be raised under the 1953 Act.

11. It is informed that the amount of demand has already been deposited with the Registry of this Court in terms of orders dated 16 December 2008. This amount along with the accrued interest shall be transferred to the Fund, subject to the outcome

of the fresh enquiry that the Respondent Nos. 2 to 4 will carry out in terms of our directions.

12. Writ Petition is disposed of with following directions.

- (i) The demand made on 2 November 2006 shall be considered as a show cause notice to the Petitioner. The Petitioner will appear before the Inspector under the 1953 Act within 4 weeks from today.
- (ii) The Respondent Inspector shall thereafter give an opportunity of hearing to the Petitioner and take a decision as per the law and facts.

(ANIL S. KILOR, J)

(NITIN JAMDAR, J)

Rgd.

Rakesh
Dhuriya

Digitally signed
by Rakesh
Dhuriya
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