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

WRIT PETITION NO. 7475 OF 2021

Bhartiya Janata Mathadi General
Kamgar Sangh thr. its General Secretary ..Petitioner

VS.

VS.

The State of Maharashtra & ors. ..Respondents

Mr. R. M. Haridas a/w. Mr. Mahadev P. Ghadge for the
petitioner.

Mr. B. V. Samant, AGP for State.

Mr. Sanjay P. Shinde for respondent no.5.

Mr. Nitin V. Gangal a/w. Mr. Ashok D. Kadam a/w. Ms.
Prerna Shukla, for respondent no. 7 – CIDCO.

Mr. Arshad Shaikh a/w. Mr. Prashant S. Goyal for
respondent no.6.

Mr. Ranjit A. Agaste a/w Mr. Vinsha Acharya a/w. Mr.
Krishnan Iyer i/b. Ms. Namrata Agaste for respondent no.8.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE : FEBRUARY 22, 2022.

P.C. :

1. By this petition filed under Articles 226 and 227 of the
Constitution of India, the petitioner takes an exception to
the order passed by the respondent no.2, Hon'ble Minister
of Labour, Maharashtra State granting exparte stay to the
orders dated March 2, 2021, March 25, 2021 and May 12,
2021 passed by the respondent no. 5-Board.

2. The petitioner-union claims to represent the workers of gut nos. 42 to 51 registered with respondent no.5-Mumbai Iron and Steel Labour Board under the provisions of the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (hereafter "the said Act", for short). Pursuant to the order of allotment passed by respondent no. 5-Board, the members of the petitioner-union (gut nos. 42 to 51) have been working at the premises of the respective employers mentioned in the allotment order.

3. The respondent no. 6 is a union representing some workers registered with respondent no. 5-Board. The respondent no. 6 raised dispute about non-application of the scheme namely Bombay Iron and Steel unprotected Workers (Regulation of Employment and Welfare) Scheme 1970 (hereafter "the Scheme", for short) to the employers to whom workers of gut nos. 42 to 51 have been allotted by respondent no. 5-Board. Suffice it to observe that the applications were made by the workers of gut nos. 42 to 51 to the respondent no. 5-Board for allotment to the concerned employers. Vide orders dated March 2, 2021 at page 27, March 25, 2021 at page 32 and May 12, 2021 at page no. 39, the applications made by the members of the petitioner-union came to be allowed by the respondent no. 5-Board and they were allotted the work/employment with the employers mentioned in the said orders. The application made by workers of gut no. 545 was rejected.

4. The respondent no. 6 -Maharashtra Rajya Mathadi and General Kamgar Sena which claimed to represent the workers adversely affected by the orders dated March 2, 2021, March 25, 2021 and May 12, 2021 passed by the Board in favour of members of the petitioner-union, filed an appeal under the provisions of the said Act before the respondent no. 2, the Hon'ble Minister. By the impugned order, the Hon'ble Minister stayed the orders dated March 2, 2021, March 25, 2021 and May 12, 2021 passed by respondent no. 5-Board. According to the learned counsel for the petitioner, the impugned order is an exparte order passed without impleading the petitioner as a party, though the orders impugned in the appeal were in favour of the petitioner, made on applications filed at their instance before the respondent no. 5-Board.

5. We have heard learned counsel for the parties, perused the copy of the petition and the exhibits. We have also gone through the affidavit-in-reply filed on behalf of the respondent no. 6.

6. That the workers of gut nos. 42 to 51 are the members of the petitioner-union is not controverted by the contesting respondent no. 6. The respondent no. 6 filed an appeal before the Hon'ble Minister challenging the orders dated March 2, 2021, March 25, 2021 and May 12, 2021 passed by the respondent no.5- Board, which order was in favour of the workers of gut nos. 42 to 51. Perusal of appeal memo at page 122 reveals that the respondent no. 6

challenged the order passed by respondent no. 5 - Board without impleading the petitioner/workers of gut nos. 42 to 51. The exparte interim order passed by the Hon'ble Minister deserves to be set aside on this ground alone.

7. Mr. Shaikh, learned counsel on behalf of respondent no. 6 contended that the allotment of the work by respondent no. 5-Board in favour of workers of gut nos. 42 to 51 is illegal as the scheme itself is not applicable to the workers/employer to whom workers of gut nos. 42 to 51 have been allotted. The appeal before the Hon'ble Minister is at the instance of respondent no.6. This contention can well be raised and decided in the appeal which is pending before the Hon'ble Minister.

8. The impugned order passed by the Hon'ble Minister came to be stayed by this Court on November 3, 2021 and interim relief so granted continues to remain in operation even as of today. Since we expressed our inclination to set aside the impugned order, Mr. Shaikh learned counsel for respondent no. 6, states on instructions, that the respondent no. 6 would implead the petitioner as party respondent in the appeal before the Hon'ble Minister. He, however, requests that respondent no. 6 may be allowed to renew its prayer for grant of interim relief which the Hon'ble Minister may consider on its own merits after hearing the petitioner. He also requested expediting the hearing of the appeal itself.

9. Learned counsel for the petitioner submitted that the appeal filed by the respondent no. 6 before the Hon'ble Minister itself is without jurisdiction and that the Hon'ble Minister has no power under section 7(4) of the said Act to entertain an appeal against the orders passed by the respondent-Board. In our opinion, this is a contention which can be raised by the petitioner before the Hon'ble Minister in the course of hearing of the appeal.

In this view of the matter, we pass the following order.

ORDER

- (i) The petition is allowed.
- (ii) The impugned order passed by the respondent no.2, Hon'ble Minister (Labour), in appeal no. 2021/Pra-Ka 293-Kamghar-5 communicated to the petitioner by respondent no. 4 vide order dated October 20, 2021 is quashed and set aside.
- (iii) The statement made by learned counsel, Mr. Shaikh on behalf of respondent no. 6 that the petitioner will be impleaded as a party-respondent in appeal no. 2021/Pra-Ka 293-Kamghar-5 is accepted. The respondent no. 6 to take steps in that regard.
- (iv) In the event the respondent no. 6 applies for grant of ad-interim/interim relief, the respondent no. 2 may consider the same expeditiously on its own merits after due notice to all concerned and upon hearing the petitioner.

(v) The respondent no. 2 is requested to decide the appeal bearing no. 2021/Pra-Ka 293-Kamghar-5 itself as expeditiously as possible and in any event, within a period of 16 weeks from today.

(vi) The parties undertake to co-operate with the respondent no. 2, the Hon'ble Minister in the expeditious disposal of the appeal and not seek unnecessary adjournments.

(vii) We have not expressed any opinion on merits. All contentions are left open.

10. The writ petition is disposed of. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)