

JVS

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

WRIT PETITION NO. 9743 OF 2009

Shree Hari Chemicals Export Ltd. } Petitioner
vs.
Grocery Markets and Shops }
Board for Greater Mumbai & anr. } Respondents

Mr. J.P. Cama, Senior Advocate a/w Mr.
Avinash Jalisatgi for Petitioner.

Mr. Rahul D. Oak for respondent no.1.

Mr. P. P. Kakade Government Pleader a/w
Mr. B.V. Samant AGP with Ms. R.A.
Salunkhe AGP a/w Mr. M.M. Pabale AGP for
respondent no. 2.

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

**RESERVED ON : AUGUST 29, 2022.
PRONOUNCED ON : SEPTEMBER 29, 2022**

JUDGMENT: [Per the Chief Justice]

FACTS AND PROCEEDINGS BEFORE THE COURT:

1. This writ petition dated 17th November 2009 is at the instance of a company engaged in the manufacture of hazardous chemicals. It was incorporated under the provisions of the Companies Act, 1956, years after the Mathadi Hamal and other Manual Workers (Regulation of

Employment and Welfare) Act, 1969 (hereafter "the Mathadi Act", for short) was enacted.

2. Challenge in this writ petition is to show-cause notices dated 20th November, 2006 (Ext. G) and 27th February, 2008 (Ext. S) issued by an Inspector and Secretary of the Grocery Markets and Shops Board, Greater Mumbai (hereafter "Board", for short), respectively, alleging non-compliance on the part of the petitioner to comply with clauses 14, 30 and 31 of the Grocery Markets or Shops Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1970 (hereafter "Grocery Scheme", for short). Also, under challenge are a letter of allotment dated 5th April, 2007 (Ext. M) and demand letter dated 14th September, 2009 (Ext. U), both issued by the Secretary of the Board.

3. The aforesaid challenge primarily rests on the ground that neither the Mathadi Act nor the Grocery Scheme are applicable to the petitioner's factory.

4. The pleaded case in the writ petition, in brief, reveals this:

- a. An Inspector visited the factory of the petitioner and prepared a report. It recorded that the employer has not registered the establishment and that there were mathadi workers working for him.
- b. The petitioner replied to this vide letter dated 11th June 2001 pointing out that the workers engaged

by them were all regular permanent workers of the petitioner and that the workers engaged for loading and unloading operations were the regular fully protected workers of the company.

- c. Thereafter, for 5 years, the Board did not visit the petitioner's establishment nor made any comment on its workers. Suddenly, there was a visit by the Inspector on 8th November 2006 and he filed a visit report. It was alleged that the workers engaged by the petitioner are employed through a contractor and that they were not receiving wages and other benefits to which they are entitled.
- d. Vide letter dated 17th November 2006, the petitioner denied the allegations issued in the above notices and indeed denied that they were engaging the workers purported to be listed by the said Inspection report.
- e. On 20th November 2006, the Board issued a show cause notice to the petitioner for alleged breach of clauses 14, 30 and 31 of the Grocery Scheme. The clauses referred to the need for registration of the employer and a further requirement that the petitioner should only engage mathadi workers.
- f. By letter dated 2nd December 2006, the petitioner replied to the said show cause notice.

- g. By demand letter dated 2nd December 2006 the Board wrote to the petitioner insisting that registration under the Mathadi Act was necessary. By letter dated 17th January 2007, the petitioner pointed out that most of the materials handled by it was in liquid form and was transferred mechanically through pipes and tankers. Further that any work of minimum loading/unloading work was being done by the petitioner's regular workers.
- h. On 5th April 2007, the Board wrote to the petitioner alleging that many workers had complained regarding non-registration of the workmen. It was further alleged that 18 out of 37 complaining workers were registered with the Board and a demand was now made to pay wages as fixed by the Board together with levy.
- i. By a letter dated 17th April 2007, the petitioner replied to the Board's letter dated 5th April 2007 pointing out *inter alia* that they were dealing with hazardous chemicals and, therefore, needed their own workers having necessary training in handling such hazardous products. It was also pointed out that at a meeting with the representatives of the Board, the petitioner's officers were pressurized to write "we have asked the contractor to get registration". At the foot of the letter, the petitioner recorded its anguish at the fact that while there was

no need to be registered, the conduct of the Board in treating the petitioner as deemed registered *suo motu* was not legal and binding on it. It was also requested that the mathadi labourers which were forced upon the petitioner should be withdrawn.

- j. By a letter dated 26th June 2007, the Chairman of the Board wrote to the petitioner stating *inter alia* that the requirement for registration of the workmen with the Board was proper and that the petitioner was liable to now pay Rs. 2,85,506/- towards wages and levy. They were further threatened that if this was not done, action would be taken against the petitioner.
- k. On 27th February 2008, the Board issued a further show cause notice to the petitioner. The petitioner replied by its letter dated 8th March 2008.
- l. The Board thereafter took no further action until their letter dated 14th September 2006 (after 19 months), where it unilaterally demanded payment of a sum of Rs. 44,20,538/- as wages and levy.

5. Based on the grounds urged under paragraph 27 of the petition memo, the original and amended reliefs claimed by the petitioner read as follows: -

“(a) That this Hon’ble Court be pleased to quash and or set aside the extension of the Grocery Scheme to factories.

(b) That this Hon'ble Court be pleased to declare that the provisions of the said Act and the said Scheme do not apply to the Petitioner's establishment.

(ba) That this Hon'ble Court be pleased to quash and set aside the Notifications dated 15th September, 1973 bearing No. UWA-1472(GR)185946-LAB-IV and 1st July, 1983 bearing No. UWA.1482/CR-8005/LAB-5 which are at page Nos. 3 to 10 and 16 to 32, respectively, of the Respondent No. 1's compilation of Notifications produced before this Hon'ble Court.

(c) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction under Article 226 of the constitution of India striking down the Show Cause Notices dated 20th November, 2006 and 27th February, 2008, the allotment letter dated 5th April, 2007 and the demand letter dated 14th September, 2009 being **Exhibits- "G", "M", "S" and "U"** hereto.

(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 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 Directors and Managers of the Petitioner Company.

(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 Petitioner.

(g) That, this Hon'ble Court be pleased to issue ad-interim and interim relief in terms of prayer clauses (d) to (f) above.

(h) For costs.

(i) For such further and other reliefs as the nature and circumstances of the case may require.

(j) The Petitioner raising substantially the same issue i.e. Writ Petition No. 538 of 2005 which have been filed in this Hon'ble High Court, admitted and Interim Relief granted."

6. We found from endorsements made on the left margin of page 23 of the petition memo that prayer (ba), which we have italicized above, and paragraphs 27(na) to (nc) being part of the Grounds, at pages 22A to 22C, were inserted subsequently by way of amendment of the petition memo as if the petitioner was permitted to do so by an order of Court dated 25th March, 2010. However, looking at the said order, what we find is a limited amendment that was permitted to be incorporated in the petition memo.

7. For facility of understanding and appreciation, the order dated 25th March 2010 in its entirety is quoted below:

"1. Heard counsel for the parties.

2. During the course of arguments, learned counsel Mr. Cama has raised a new point in the context of provisions of Section 28(2) of the Maharashtra Mathadi Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969. That being a factual matter, the Respondents will have to put in reply. Besides, the Petitioners will have to implead State of Maharashtra as party respondents. The Petitioners to carry out amendment within a period of one week from today.

3. Issue notice to the newly added respondents, returnable on 26th April 2010. In addition, the Petitioners to serve the newly added respondents by

Advocate's notice either personally or by speed post/e-mail/fax and file affidavit of service on or before the returnable date. Liberty to serve the said notice in the office of the Government Pleader is granted.

4. Reply be filed within three weeks from today.

5. Office to circulate the papers of Writ Petition No. 538 of 2005 along with this Petition."

8. Having read the aforesaid order, it appears to be clear that a new point having been raised on behalf of the petitioner in course of hearing, permission was granted to the petitioner to bring on record the State of Maharashtra as an additional respondent (respondent no.2). However, apart from permitting impleadment of the State as a party, no leave was either sought for by the petitioner nor did the Bench grant any leave for incorporation of additional grounds in the body of the petition memo or for insertion of an additional prayer clause.

9. We were absolutely clear in our minds that the records of the Court have been tinkered with by the petitioner, which should have constituted the sole reason for dismissal of the writ petition as well as recommending initiation of disciplinary action against the advocate-on-record for the petitioner who made such amendments without express leave having been granted by the Bench. However, since the registry has been remiss in not bringing such an act to the notice of the Court earlier and such tinkering with the records have not been noticed till such time we commenced

hearing of the writ petition, we decided to proceed with the matter accepting the plea of Mr. Cama, learned senior advocate, that the petitioner was under an impression that leave to amend, granted by the order of the Bench dated 25th March, 2010, included leave to incorporate amendments in the body of the petition memo and to add a prayer. Taking a view against technicalities and having regard to the lapse of time since such amendments were incorporated, albeit without authority, we proceeded to hear Mr. Cama as well as learned advocates for the respondents purely on the merits of the claim raised by the petitioner.

10. After the said order dated 25th March, 2010, the next order was passed on the writ petition on 26th April 2010. It reads as follows:

1. According to the Petitioner, the issues raised in the present Petition are similar to one which are pending consideration before the Court in Writ Petition No.538 of 2005. Counsel for the Respondent however, submits that the grievance in the said Writ Petition No.538 of 2005 was limited to the fact that the Petitioner in that case claimed to be Plastic Industries and not Chemical industries, so as to be covered by the scheme propounded in notification dated 15th September, 1973. Prima facie, this argument does not commend to us. The question raised by the Petitioner in this Petition additionally is that even if notification dated 15th September, 1973 is to be taken as it is, that will be of no avail for the simple reason that there is nothing to indicate that procedure under section 28 of the Act of 1969 has been fulfilled so far. In absence thereof, even if scheme is formulated by the State Government, the same cannot be given

effect to. In the circumstances, even this Petition deserves to be admitted. Hence, Rule, to be heard with Writ Petition No.538 of 2005.

2. Insofar as Interim relief is concerned, we are inclined to grant the same in terms of the interim relief granted in Writ Petition No.538 of 2005. Accordingly, Interim relief in terms of prayer clause (d), (e) and (f) shall continue till disposal of this petition.

3. Counsel for the Respondents was at pains to persuade us to issue direction to grant interim relief on condition that the Petitioner shall deposit the wages of the workers for the relevant period in this court in terms of order passed under section 13 of the Act. As, *prima facie*, we are in agreement with the argument of the Petitioner that, as mandatory procedure under section 28 has not been complied with, it would necessarily follow that scheme propounded in terms of notification dated 15th September, 1973, which has been pressed into service will have no application. In that case, the question of Petitioner requiring to abide by the said scheme does not arise. Accordingly, the request made by the Respondent to direct the Petitioner to pay wages as per the order passed under section 13 cannot be countenanced.

4. However, as it is stated that quite large number of workers are involved, it may be appropriate to expedite hearing of this Petition. Counsel for the concerned Respondent have waived notice. If the present Petition as well as companion Writ Petition are ready in all respects, it will be open to the parties to apply for early hearing of the present Petition as well as connected matter, which request will be considered on its own merits.

11. Reading of the aforesaid two orders dated 25th March and 26th April 2010 would leave none in doubt that the Court was, *prima facie*, impressed by the contention that

the Grocery Scheme prepared under the Mathadi Act had not been placed before the Legislature in terms of the statutory mandate in section 28(2) thereof and thus such scheme cannot be given effect.

PETITIONER'S CONTENTIONS:

12. Appearing on behalf of the petitioner, Mr. Cama made the following introductory submissions.

13. The Mathadi Act was enacted pursuant to the report of three committees set up by the State Government to make recommendations in respect of a particular class of workers. Earlier, this Court had taken the view that the kind of workers to whom the Mathadi Act applied were essentially casuals. The last of such decisions was in **Century Textiles & Industries Ltd. vs. State of Maharashtra**, reported in 2000 II CLR 279 Bom (DB). A subsequent Division Bench doubted the correctness of this conclusion and thus made a reference to the then Chief Justice for placing the question before a larger bench. A Full Bench of 3 (three) Judges thereafter considered the matter in detail in **Kay Kay Embroideries (P.) Ltd vs. Cloth Markets and Shops Board**, reported in 2006 (6) Mh. L. J. 377. The Full Bench concluded that the earlier Benches were in error. It concluded that the error in the previous decisions of this Court lay in the fact that they limited the application of the Mathadi Act only to casuals. Nevertheless, the Full Bench

concluded that mathadis were a distinct class of employees. In paragraph 31, it was held as under:

*".....if the definition of 'unprotected worker' and 'worker' in the Act is read along with Section 21 and Section 22 of the Mathadi Act, **there remains no doubt** in one's mind as to the intention of the legislature that the Act was to protect the interest of unprotected workers as a **distinct class of workers** and they have in plain and simple words defined who is 'unprotected worker' and such 'worker' as defined in Section 2(12) of the said Act who are manual workers **employed in scheduled employment.***

(emphasis supplied by Mr. Cama)

14. Having now identified who were the persons covered by the Mathadi Act, the Full Bench in **Kay Kay Embroideries (P.) Ltd** (supra) concluded that the Mathadi Act must of necessity also apply to monthly rated workers and that too whether or not they are in enjoyment of the benefits of other labour statutes.

15. The question then would arise, what kind of employer does the Mathadi Act contemplate. This was answered by the Supreme Court at paragraph 71 of **Bhuwalka Steel Industries Ltd. vs. Bombay Iron & Steel Labour Board**, reported in (2010) 2 SCC 273, as under:

"We must express here that while rejecting the arguments of the appellants, we have in our minds, those thousands of workers who are otherwise exploited by toliwalas, mukadams and at times, the employers. The enactment is a beneficial enactment, providing the protection to such

workers, who do not have the honest representation and it is with this lofty idea that a progressive State like the State of Maharashtra has brought about this legislation."

16. Further, it was held at paragraph 83, *inter alia*, as under:

*".....this legislation, which came way back in 1969, has in its view those **poor workmen**, who were **neither organized** to be in a **position to bargain** with the employers **nor** did they have the **compelling bargaining power**. They were mostly dependent upon the toliwalas and the mukadams. They were not certain that they would get the work everyday. They were also not certain that they would work only for one employer in a day. Every day was a challenge to these poor workmen. It was with this idea that the board was created under Section 6 of the Mathadi Act."*

(emphasis supplied by Mr. Cama)

17. This last passage, Mr. Cama submitted, has been quoted with approval by the Supreme Court in **Pepsi India Holding (P) Ltd. vs. Grocery Markets and Shops Board**, reported in (2016) 4 SCC 493 (paragraph 18).

18. Thus, the class of mathadi workers and the class employers who employ them was clearly specified. It does not apply to all manual workers in organized industries who are governed by the Industrial Disputes Act, 1947 (hereafter "ID Act", for short) and other labour legislations.

19. Significantly, in **Krantikari Suraksha Rakshak Sanghatana vs. Bharat Sanchar Nigam Limited & Ors.**, reported in (2008) 10 SCC 166, the Supreme Court

considered the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981. It is significant that this Act also provides for allotment of workers by a statutory board. The terms of the scheme created under the aforesaid Security Guards Act is almost identical to the present scheme created under the Mathadi Act. Both schemes clearly demonstrate that appointment, allotment for work, condition of service of the concerned workers including fixing of wages, disciplinary action, promotions, etc., are entirely within the control of the concerned board. The Court therefore concluded at paragraph 19 (a) that the Security Guards Act was a complete and self-contained code; (b) that the board had all necessary powers under the Security Guards Act to regulate all aspects of employment and all service conditions of private security guards; (c) that there was no need under the Security Guards Act and the scheme to identify the employer of security guards as all conditions of their employment were governed by such Act.

20. Moving on to the facts of the case, Mr. Cama contended that the Mathadi Act is also a complete and self-contained code. The class employees contemplated by the Mathadi Act are employees of the Board which appoints them and they are allotted to employers of the category/class mentioned in paragraphs 71 and 83 of the decision in **Bhuwalka Steel Industries Ltd.** (supra). They are a class apart.

21. Further, unless, the workers covered by the Mathadi Act are treated as a class apart, section 2(s) of the ID Act would require to add the word “unprotected” to the definition of “workmen” employed in any industry to do “... any manual work for hire or reward.....”. At present the ID Act has no connection with the word “unprotected”. If now the respondents are right, i.e., that the Mathadi Act covers every manual employee, employed in schedule employments, that would be a deemed amendment of section 2(s) aforesaid and would then be in direct conflict with the aforesaid Central legislation. In that event, definition of “unprotected worker” in the Mathadi Act would stand impliedly repealed, under Article 254 of the Constitution of India.

22. Also, it must be remembered that under sections 18 to 20 of the Mathadi Act, only three labour statutes apply to Mathadi workers. This is clear from the decision of the Supreme Court in **Krantikari Suraksha Rakshak Sanghatana** (supra) wherein, at paragraph 26, the Court noted that even in the Security Guards Act only 3 (three) labour legislations were applicable. By analogy, it follows that if, as contended by the respondents, all regular workers in factories etc. who are in enjoyment of a large number of labour welfare legislations would *ipso facto* lose that coverage. That cannot be and is not, the intent of the Mathadi Act.

23. It is also necessary to note that any attempt to apply the Mathadi Act in a universal mode to all manual workers would mean that every manual worker, even one engaged in a proper factory establishment duly regulated by the Factories Act and all other labour statutes, would have to be removed from that factory, get himself registered as an “unprotected worker” and then suffer the uncertainty of allotment to the same or other employer as and when work is available. It is significant that this argument was raised in the earlier litigation also and, it is clear that, this was in the mind of the Courts while declaring that the Mathadi Act related to a specific class of workman engaged or employed by a specific class of employers. Any other construction would be arbitrary and entirely opposed to the interest of the overwhelming majority of manual workers employed in scheduled industries in the State of Maharashtra. It would then make section 2(11) and 2(12) of the Mathadi Act *ultra vires* Article 14 of the Constitution of India and in breach of the workers’ Fundamental Right to livelihood under Article 21 of the Constitution of India. It would also cause overwhelming industrial unrest in the State.

24. It follows from the above that the Mathadi Act does not apply to organized industries like the petitioner. It is thus not permissible for the Board to coerce the petitioner into registering with it and then compulsorily allocating as many as 27 (or any) Board workers to the petitioner’s factory. The petitioner employs its own regular workers for

this work and thus has no use for them. Since the date of filing this petition, the petitioner is not employing registered mathadis and is able to run its operation smoothly and effectively.

25. Next, Mr. Cama referred to sections 3 and 4 of the Mathadi Act and submitted that an analysis thereof indicates the following:

- a. Section 3 of the Mathadi Act permits the State to create a specific scheme for any one of the specific employments set out in the Schedule thereto. Such scheme is intended for the benefit of the workers of that particular employment and is therefore tailored to their needs. Thus, there is one scheduled employment and one statutory scheme tailored to that particular employment.
- b. Section 4(1) permits the Government, when it considers it necessary, to frame a composite scheme applicable to mathadi workers engaged in two or more specific scheduled employments. Of necessity, this indicates that the Government must be satisfied that the scheme as framed will be able to deal with the needs and aspirations of the workers of each of these schemes. There is then due application of mind to the needs of unprotected manual workers in the two or more scheduled

employments concerned. Action under section 4(1) is subject to previous publication.

- c. Section 4(2) specifies that the provisions of section 24 of the Bombay General Clauses Act, 1904 (hereafter "BGC Act", for short) will apply to schemes created under section 4(1) aforesaid. It relates to the procedure for previous publication. It, then, confers statutory finality to the due completion procedure of such pre-publication once it is notified in the Gazette. Thus, sub section (1) of section 24 requires pre-publication and section 24 of the BGC Act lays down the procedure for such prior publication and confers finality to the said procedure on its being gazetted.
- d. On the other hand, the proviso to section 4 prescribes that the State Government may *suo motu* or in consultation with the employers and employees apply the provision of any particular scheme or part thereof to another scheduled employment. Once this is done, it has to be independently gazetted.

26. Mr. Cama contended that from the above, it would follow that section 4 of the Mathadi Act permits the Government to create a composite scheme in the first instance. The proviso permits the Government to create a composite scheme subsequently. However, there is nothing

in section 4 or its proviso which contemplates adding into a specific scheme relating to a specific scheduled employment, another scheduled employment by a simple amendment. A scheme once created is confined to the kind of employment for which it has been created. It cannot by a simple amendment incorporate into itself the subject matter of another form of scheduled employment. There is no such power of amendment in section 4.

27. Therefore, it is *ex facie* clear that all subsequent notifications governing the Grocery Scheme was as and by way of amendments and not by way of merger of two or more schemes. This, *ex facie*, is not permissible under section 4 aforesaid.

28. The precise argument made is that absence of power under section 4 to amend a scheme was never argued in the Supreme Court or indeed, to the best of the petitioner's knowledge, in any other legal proceedings.

29. The next contention of Mr. Cama revolved around section 28(2) of the Mathadi Act. It was submitted that the contents of section 28(2) are mandatory and that in the absence of laying of the Grocery Scheme before both Houses of the State Legislature and that too "as soon as possible", the present scheme is not valid and indeed, being contrary to the statutory mandate of section 28(2) is, as held by the Supreme Court, vitiated and non-operational.

30. Mr. Cama endeavoured to show that in support of the respondents' case of due laying, the Deputy Secretary to the Government, Mr. B. S. Wankhede filed an affidavit on 8th July 2011. At paragraph 2 of this affidavit, he has simplicitor stated that the Notification of 6th April 1970 was placed before both Houses on 22nd December 1970. Further, he admitted that what has followed constitutes regular "amendments". At the foot of paragraph 2, he has further stated in a table indicating the dates on which the subsequent amendments were made.

31. It was also pointed out that on 22nd August 2022, the Under Secretary, Additional Charge of Deputy Secretary (Law) Maharashtra Legislature Secretariat has filed an affidavit wherein, at paragraph 6, it is contended that the aforesaid affidavit of Mr. Wankhede was not accurate. He has thereafter given separate dates on which, according to him, the aforesaid scheme and its amendments were made and placed before the Houses. There is, therefore, an element of confusion in the Government itself as to the dates on which the said original scheme and "amendments" were laid before the State legislature.

32. Further, a perusal of the last Government affidavit clearly records from paragraph (c) onwards that all that has been produced in the said affidavit are alleged extracts of a "Brief Report" of various sessions of the State Legislature. These "Brief Reports" purport to demonstrate actual laying. According to Mr. Cama, this is legally not acceptable.

33. In the decision of the Supreme Court in **Veneet Agrawal vs. Union of India & Ors.**, reported in (2007) 13 SCC 116, the Court at paragraph 7 *inter alia* specified the kind of proof of laying that was expected from the Government:

***"Copies of the proceedings** in both Houses showing tabling of the rules and regulations in both Houses has been annexed."*

(emphasis supplied)

34. Thereafter, in **Quarry Owners Association vs. The State of Bihar & Ors.**, reported in (2000) 8 SCC 655, the Supreme Court has in paragraphs 49 to 53 clearly concluded that merely filing administrative records of what transpired before the Legislature is clearly not enough.

35. Strong reliance was placed by Mr. Cama on the Constitution Bench of seven learned Judges of the Supreme Court in **Krishna Kumar Singh vs. State of Bihar**, reported in (2017) 3 SCC 1, in support of the contention that laying is mandatory.

36. This imperative need for a proper record of the actual laying, according to Mr. Cama, is further borne out by the fact that in **Steel Re-Rollers Association of Maharashtra vs. The Secretary, Bombay Iron and Steel Labour Board & Ors.** in Writ Petition No. 4351 of 2010, which is also pending before this Court, there is an order of this Court passed on 8th June 2011 showing that on the respondents' own admission therein the scheme

contemplated therein, was only laid before one House of the Legislature.

37. The further contention was that the Board has been continued for several years as a One-Man Board. This is not contemplated by or permitted by section 6A of the Mathadi Act. There is, therefore, no valid Board on the date of the cause of action and even today. It follows that the impugned orders have not been validly passed.

38. Mr. Cama concluded his address with the submission that the following legal position is clear in the present case:

1. The regular workers of the petitioner employed in the organized sector cannot be called unprotected mathadis.
2. Consequently, the petitioner need not be registered under the Mathadi Act and cannot be coerced into employing mathadi workers.
3. Factories cannot unilaterally be introduced into the Grocery Scheme, by amendment simplicitor.
4. The geographical extension of the statutory scheme by simple amendment is equally illegal and without jurisdiction.
5. There is no substantive proof that either the original scheme nor the so called "amendments" have been laid before both Houses of the Stage

legislature. This vitiates and/or makes them not applicable.

6. For an indefinite period, no One-Man Board is contemplated by the Mathadi Act.

39. Apart from the legal challenge set out hereinbefore, Mr. Cama invited our attention to prayer clause (c) and sought striking down of the specific show cause notices/letters referred to therein.

40. It was further submitted by Mr. Cama that since it is not a kind of establishment referred to in paragraphs 71 and 83 of the decision of the Supreme Court in **Bhuwarka Steel Industries Ltd. (supra)** and since the petitioner employs its own direct fully protected workmen for its own industry, the Board had no jurisdiction to demand that the petitioner should register itself and further employ only workers who are registered under the Mathadi Act. This ultimately is the question of the jurisdiction of the Board.

41. Mr. Cama also submitted that this attempt to coerce and/or force the petitioner to engage 27 mathadi workers is patently illegal. Since grant of stay, these workers are not coming to the petitioner's establishment. But it is apprehended that might be in the future.

42. It was, thus, prayed that reliefs as prayed may be granted.

RESPONDENTS' CONTENTIONS:

43. Mr. Oak, learned advocate for the Board and Mr. Samant, learned Additional Government Pleader led by Mr. Kakade, learned Government Pleader for the State, contended that the issues raised by the petitioner are without merit. Whatever has been argued by Mr. Cama on non-applicability of the Mathadi Act and/or the Grocery Scheme to the petitioner is no longer *res integra*. That apart, the contention of the Grocery Scheme and its amendments not being operative and effective [in view of section 28(2)] is wholly misconceived having regard to the affidavit dated 22nd August 2022, of the Under Secretary, Additional Charge of Deputy Secretary (Law) Maharashtra Legislature Secretariat. The documents annexed thereto bear testimony of the Grocery Scheme and its amendments having been laid before the Legislature. Further, section 6-A of the Mathadi Act enables appointment of a Board consisting of one person. The vires of section 6-A has not been challenged. There is, therefore, no illegality. Also, the Court ought not to enter into the merits of the impugned show cause notices since the same do not suffer from any want of jurisdiction. Accordingly, it was prayed that the writ petition be dismissed.

CONSIDERATION:

44. Any discussion on the contentious issues would be incomplete without reading the relevant provisions of the Mathadi Act.

45. Definitions of a few terms used in the Mathadi Act are important to understand what the controversy is all about. They read as follows:

2.(2) 'contractor', in relation to an (sic) unprotected workers, means a person who undertakes to execute any work for an establishment by engaging such workers on hire or otherwise, or who supplies such worker either in groups, gangs (tollis) or as individuals; and includes a sub-contractor, an agent, a mukadam or a tolliwala;

2.(3) 'employer' in relation to any unprotected workers engaged by or through contractor, means the principal employer and in relation to any other unprotected worker, the person who has ultimate control over the affairs of the establishment, and includes any other person to whom the affairs of such establishment are entrusted, whether such person is called an agent, manager or is called by any other name prevailing in the scheduled employment;

2.(4) 'establishment' means any place or premises, including the precincts thereof, in which or in any part of which any scheduled employment is being or is ordinarily carried on;

2.(7) 'principal employer' means an employer who engages unprotected workers by or through a contractor in any scheduled employment;

2.(9) 'scheduled employment' means any employment specified in the schedule hereto or any process or branch of work forming part of such employment;

2.(10) 'scheme' means a scheme made under this Act;

2.(11) 'unprotected worker' means a manual worker who is engaged or to be engaged in any scheduled employment;

2.(12) 'worker' means a person who is engaged or to be engaged directly or through any agency, whether for wages or not, to do manual work in any scheduled

employment and, includes any person not employed by any employer or a contractor, but working with the permission of, or under agreement with the employer or contractor; but does not include the members of an employer's family.

46. The significant provisions of the Mathadi Act, which would engage our consideration, are quoted below: -

"3. SCHEMES FOR ENSURING REGULAR EMPLOYMENT OF UNPROTECTED WORKERS. – (1)

For the purpose of ensuring an adequate supply and full and proper utilization of unprotected workers in scheduled employments, and generally for making better provision for the terms and conditions of employment of such workers, the State Government may by means of a scheme provide for the registration of employers and unprotected workers in any scheduled employment or employments, and provide for the terms and conditions of work of registered unprotected workers, and make provision for the general welfare in such employments.

(2) In particular, a scheme may provide for all or any of the following matters that is to say –

(a) for the application of the scheme of such classes of registered unprotected workers and employers, as may be specified therein;

(b) for defining the obligations of registered unprotected workers and employers subject to the fulfillment of which the scheme may apply to them;

(c) for regulating the recruitment and entry into the scheme of unprotected workers, and the registration of unprotected workers and employers, including the maintenance of registers, removal, either temporarily or permanently, of names from the registers, and the imposition of fees for registration;

(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;

(d-i) for providing the time within which registered employers should remit to the Board the amount of wages payable to the registered workers for the work done by such workers; for requiring such employers who, in the opinion of the Board, make default in remitting the amount of wages in time as aforesaid, to deposit with the Board, an amount equal to the monthly average of the wages to be remitted as aforesaid; if at any time the amount of such deposit falls short of such average, for requiring the employer to make good the amount of such average, and for requiring such employers who persistently make default in making such remittances in time to pay also by way of penalty, a surcharge of such amount not exceeding 10 per cent of the amount to be remitted as the Board may determine;

(e) for securing that, in respect of period during which employment or full employment is not available to registered unprotected workers though they are available for work, such unprotected workers will, subject to the conditions of the scheme, receive a minimum wage;

(f) for prohibiting, restricting or otherwise controlling the employment of unprotected workers to whom the scheme does not apply, and the employment of unprotected workers by employers to whom the scheme does not apply;

(g) for the welfare of registered unprotected workers covered by the scheme in so far as satisfactory provision therefor, does not exist,

apart from the scheme;

(h) for health and safety measures in places where the registered unprotected workers are engaged, in so far as satisfactory provision therefor, is required but does not exist, apart from the scheme;

(i) for the constitution of any fund or funds including provident fund for the benefit of registered unprotected workers, the vesting of such funds, the payment and contributions to be made to such funds, (provision for provident fund and rates of contribution being made after taking into consideration the provisions of the Employees' Provident Funds Act, 1952, XIX of 1952 and the scheme framed thereunder with suitable modifications, where necessary, to suit the conditions of work of such registered unprotected workers), and all matters relating thereto;

(j) for the manner in which, the day from which (either prospective or retrospective) and the persons by whom, the cost of operating the scheme is to be defrayed.

(k) for constituting the persons or authorities who are to be responsible for the administration of the scheme, and for the administration of funds constituted for the purposes of aforesaid;

(k-i) for specifying the powers and duties which the persons or authorities referred to in clause (k) may exercise or perform, for providing appeals and revision applications against the decisions or orders of such persons and authorities; and for deciding such appeals and applications and for matters incidental thereto;

(l) for such incidental and supplementary matters; as may be necessary or expedient for giving effect to the purposes of a scheme;

(3) The scheme may further provide that a

contravention of any provision thereof shall be punished with imprisonment for such term as may be specified (but in no case exceeding three months in respect of a first contravention or six months in respect of any subsequent contravention) or with fine which may extend to such amount as may be specified (but in no case exceeding five hundred rupees in respect of the first contravention, or one thousand rupees in respect of any subsequent contravention) or with both imprisonment and fine and if the contravention is continued after conviction, with a further fine which may extend to one hundred rupees for each day on which the contravention is so continued.

4. MAKING, VARIATION AND REVOCATION OF SCHEME. – (1) The State Government may, after consultation with the Advisory Committee, by notification in the Official Gazette and subject to the condition of previous publication, make one or more schemes for any scheduled employment or group of scheduled employments, in one or more areas specified in the notification; and in like manner add to, amend, vary or substitute another scheme for, any scheme made by it:

Provided that, no such notification shall come into force, unless a period of one month has expired from the date of publication in the Official Gazette:

Provided further that, the State Government may –

- (a) if it considers necessary, or
- (b) if a demand or request is made by a majority of the employers or workers in any other scheduled employment, that the provisions of any scheme so made for any scheduled employment or any part thereof should be applied to such other scheduled employment, after consulting the employers and workers in such scheduled employment by notification in the Official Gazette, apply the provisions of such

scheme or part thereof to such scheduled employment, with such modifications, if any, as may be specified in the notification.

(2) The provisions of section 24 of the Bombay General Clauses Act, 1904, (Bom. III of 1904) shall apply to the exercise of the power given by sub-section (1) as they apply to the exercise of a Power given by a Maharashtra Act to make rules subject to the condition of previous publication.

5. DISPUTES REGARDING APPLICATION OF SCHEME. - If any question arises whether any scheme applies to any class of unprotected workers or employers, the matter shall be referred to the State Government and the decision of the State Government on the question, which shall be taken after consulting the Advisory Committee constituted under section 14, shall be final.

28. RULES. - (1) The State Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) Every scheme under this Act and rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the scheme or rule or both Houses agree that the scheme, any provision thereof or rule should not be made, the scheme or such provision or rule shall from the date of publication of a notification in the Official Gazette of such decision have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that scheme, provision, or as the case may be, rule.

47. The Mathadi Act contains a Schedule, as referred to in sub-section (9) of section 2 thereof. Entries 4 and 5 of the Schedule read as follows: -

SCHEDULE.

[See section 2(9)]

4. Employment in Grocery Markets or shops, in connection with loading, unloading, stacking, carrying, weighing, measuring, filing, stitching, sorting, cleaning or such other work including work preparatory or incidental to such operations.

5. Employment in markets, and factories and other establishments, in connection with loading, unloading, stacking, carrying, weighing, measuring, filing, stitching, sorting, cleaning or such other work including work preparatory or incidental to such operations carried on by workers not covered by any other entries in this Schedule.

48. Before we proceed to deal with the contentions urged by Mr. Cama, the two decisions of the Supreme Court referred to by him need to be taken note of. Significantly, these are decisions wherein the entire gamut of the Mathadi Act came up for consideration of the Court and by drawing guidance therefrom our task of deciding the contentious issues would be rendered relatively easy.

49. The first one is **Bhuwalka Steel Industries Ltd.** (supra), where the Supreme Court was called upon to decide whether the Full Bench decision of this Court in **Kay Kay Embroideries (P.) Ltd** (supra), under challenge in the civil appeals, laid down the correct law upon proper interpretation of the Mathadi Act.

50. In paragraph 3, the Court noted the question arising for decision before the Full Bench, reading as follows:

“In view of the statutory definition of the expression ‘unprotected worker’ in Section 2(11) of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 is the interpretation placed by the Division Bench in *Century Textiles & Industries Ltd. v. State of Maharashtra*, (2000) 2 CLR 279 (Bom), on the aforesaid expression that it is only the casually engaged workers who come within the purview of the Act, correct and proper?”

51. While the conclusion recorded in the lead judgment authored by the presiding Judge of the Full Bench, appearing in paragraph 4, reads:

“For the aforesaid reasons, we find that the interpretation placed by the Division Bench in *Century Textile and Industries Ltd. v. State of Maharashtra* on the definition of the words ‘unprotected worker’ and ‘worker’ for the purpose of applicability to the Mathadi Act, 1969 that it is only the casual workmen who come within the purview of the Act, is not correct and proper and it is erroneous which deserves to be ignored and is overruled.”

Paragraph 5 quoted the conclusion recorded in the concurring judgment authored by one other member Judge of such Bench. Such conclusion reads as follows:

“To conclude, therefore, to my mind it is clear that within the meaning of Section 2(11) of the Act ‘unprotected worker’ means every manual worker who is engaged or to be engaged in any scheduled employment, irrespective of whether he is protected by other labour legislations or not and ‘unprotected

workers' within the meaning of the Act are definitely not only those manual workers who are casually engaged."

52. The contention raised by the aggrieved appellants were recorded immediately thereafter. For a better appreciation of what precisely the Court was seized of, it is considered appropriate to quote hereinbelow paragraph 6:

"6. The above two judgments are challenged basically on the contention that the judgment in *Century Textiles & Industries Ltd. v. State of Maharashtra* is essentially a correct judgment, while the view taken by the Full Bench and the interpretation put forth by the same of Sections 2(11) and 2(12) of the Mathadi Act, is erroneous inasmuch as the impugned judgments have ignored to take into account the context in which these provisions have been enacted and they also ignored the intention of the legislature, which is reflected from the Preamble and the other provisions of this Act."

53. While so considering, the Court had the occasion to trace the history of the Mathadi Act. We find from paragraphs 8 to 11 thereof how and why the Mathadi Act came to be enacted. It would be profitable to quote the said paragraphs hereinbelow:

"8. Before taking up the issue, the short history of the legislation is a must. A Bill was introduced in the Maharashtra Legislature, being Bill No. 99 of 1968 for regulating the employment of unprotected manual workers employed in certain employments in the State of Maharashtra to make provision for their adequate supply and proper and full utilisation in such employments and for matters connected therewith. This Bill was first introduced in the Winter Session of the Maharashtra Legislature at Nagpur. It was then

referred to the Joint Committee for its report. The basic idea behind bringing this legislation, as it is reflected in the Statement of Objects and Reasons, was that persons engaged in occupations like mathadis, hamals, fishermen, salt-pan workers, casual labour, jatha workers and those engaged in similar manual work elsewhere, were not receiving adequate protection and benefits within the ambit of existing labour legislation. Therefore, with a view to studying the conditions of the work of the persons engaged in these occupations, the Government had appointed a Committee on 15-7-1965 to examine whether relief could be given to these workers within the ambit of the existing labour legislation and make recommendation as to how such relief could be given.

9. The Statement of Objects and Reasons mentions that report was made by the Committee to the Government on 17-11-1967. In that report, it was mentioned that the persons engaged in vocations like mathadis, hamals, casual workers employed in docks, lokhandi jatha workers, salt-pan workers and other manual workers mostly work outside the fixed premises in the open and are mostly engaged on piece-rate system in a number of cases. They are not employed directly, but are either engaged through mukadum or toliwalas or gangs as and when there is work and they also work for different employers on one and the same day. The volume of work is not always constant. In view of the peculiar nature of work, its variety, the precarious means of employment and the system of payment and the particular vulnerability to exploitation of this class of labour, the Committee had come to the conclusion that the application of the various labour laws to such workers was impracticable and regulation of their working and other conditions by introducing amendments to the existing labour laws was not possible. Therefore, the Committee recommended that the working and the employment conditions of such unprotected workers should be regulated by a special enactment.

10. The Statement of Objects and Reasons further mentions that after holding a series of meetings with the representatives of the interests affected by the proposed legislation and after considering all these suggestions and examining the recommendations of the Committee, the Government had decided to bring the Bill which seeks *to regulate the employment of mathadis, hamals and other manual workers employed in certain employments, to make better provision for their terms and conditions of employment, to provide for their welfare, for health and safety measures, where such employments require those measures, to make provision for ensuring an adequate supply to, and full and proper utilisation of such workers in such employments, to prevent avoidable unemployment and for such purposes to provide for the establishment of Boards in respect of these employments and (where necessary) in the different areas of the State and to provide for purposes connected with the matters aforesaid.*

(emphasis supplied in original)

11. Ultimately, the Act came on the legal anvil vide Act 30 of 1969 after it received assent of the Vice-President, acting on behalf of the President on 5-6-1969. It was extended to the whole State of Maharashtra. It was clarified in Section 1 that it applies to the employments specified in the Schedule and that it shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different areas, and for different provisions of the Act. The Act was amended from time to time by Maharashtra Acts 27 of 1972, 40 of 1974, 27 of 1977, 62 of 1981, 28 of 1987 and 27 of 1990. To begin with, it came into force in Thane District in various areas."

54. The Court, after threadbare consideration of the Mathadi Act and upon hearing extensive arguments advanced by senior counsel on either side, which included

Mr. Cama leading the group of appellants, ultimately held as follows:

“82. Thus, in our considered opinion, the Full Bench was absolutely correct in coming to the conclusions that it did.”

55. Significantly, this decision had been rendered on 17th December 2009, i.e., prior to admission of this writ petition. We shall dwell on the significance thereof at a later part of this judgment.

56. The other decision is **Pepsi India Holding (P) Ltd.** (supra), which involved an interpretation of the provisions of the Mathadi Act read with the Grocery Scheme itself. Incidentally, in this case too before the Supreme Court, submissions on behalf of the appellant were advanced by Mr. Cama.

57. Paragraphs 4 and 5 of the decision capturing the principal arguments of Mr. Cama read as follows:

“4. Shri J.P. Cama, learned Senior Advocate appearing on behalf of the appellants has argued that the 1969 Act only applies to employments that are specified in the Schedule. Inasmuch as grocery markets or shops are mentioned in Item 4 of the Schedule, according to the learned counsel, employment in factories which occurs only in Item 5 of the said Schedule could not possibly be attracted as Item 5 only speaks of establishments which are not covered by any other entries in the Schedule. Inasmuch as the 1970 Scheme in the present case is a scheme dealing with employment in grocery markets or shops, Item 5 of the Schedule is not attracted, and the 1970 Scheme is ultra vires the 1969 Act insofar as

it provides for employment in factories which manufacture chemical products and are covered by Entry 5 of the Schedule to the said 1969 Act. He also referred to Section 1(4-A) of the 1969 Act to state that insofar as employment in factories in District Raigad is concerned, Item 5 in Column 4 of the Table appended to Section 1(4-A) speaks of 'colour chemicals' and 'products including fertilizers', and not 'chemical products'. This being so, chemical products in any case are outside Section 1(4-A), and the 1970 Scheme insofar as it purports to include within it under Clause 2(1)(f) 'chemical products', is therefore ultra vires Section 1(4-A).

5. Further, according to the learned counsel, what is allegedly manufactured in the appellant's factory are petrochemicals and not chemicals. He has referred to a number of documents which include various licences and letters from authorities clearly stating that what is manufactured in the appellant's factory are only petrochemicals. For that reason also, petrochemicals not being chemicals would not be within the coverage of the 1969 Act or the 1970 Scheme. He further argued, referring to Section 4(1)(b) of the 1969 Act that if the 1970 Scheme is to be made applicable to petrochemicals manufactured in factories, the only method of doing so is if a demand or request is made by a majority of the employers or workers that the provisions of the grocery markets or shops scheme should be applied to another scheduled employment — that is, manufacturing petrochemicals in factories, and it is only after consultation with the employers and workers that the State Government may apply the provisions of the 1970 Scheme to the appellant's factory manufacturing petrochemicals. This not having been done, the 1970 Scheme cannot apply to the appellant. The learned counsel further argued that in point of fact there is no work of transportation undertaken by the employer from the employer's factory to the purchaser's premises. He argued that the factory was by and large mechanised and that the

petrochemical products manufactured at the factory were picked up by purchasers by employing contract labour that was arranged by the purchasers themselves. This being so, the 1969 Act and the 1970 Scheme would have no application to the appellant's factory."

58. The Court made an extensive survey of the statutory provisions. Unfortunately, the aforesaid arguments of Mr. Cama do not appear to have weighed in the mind of the Court commending acceptance. This is evident from the following discussions:

"10. The first contention of Shri Cama, that the 1970 Scheme, insofar as it provides for employment in a factory manufacturing chemical products, is ultra vires the Schedule to the 1969 Act, has to be rejected. We agree with the learned counsel for the respondent that Clause 5 of the Schedule to the Act is a residuary clause which would rope in employment in factories in connection with loading, unloading, etc. carried on by workers not covered by any other entries in the Schedule. Admittedly, manufacture of petrochemicals in factories is not covered by any other entry including Entry 4 of the Schedule. For this reason, we are of the view that the provisions of the 1970 Scheme dealing with manufacture of petrochemicals in factories would be within the coverage of the residuary entry i.e. Item 5 of the Schedule to the 1969 Act. This being so, no part of the 1970 Scheme is ultra vires the 1969 Act.

11. The second submission of the learned counsel for the appellant has also to be rejected for the reason that Clause 2(1)(f) of the 1970 Scheme is intra vires Section 1(4-A) Table Column 4 Item 5 of the 1969 Act. It is clear that the expression 'products including fertilizers' is wider than 'chemical products including fertilizers'. The 1969 Act's terminology being wider than the terminology of the impugned 1970 Scheme,

obviously the 1970 Scheme when it speaks of 'chemical products' manufactured in factories and covered by Entry 5 in the Schedule to the 1969 Act would be intra vires the expression 'products including fertilizers'.

12. The further submission of Shri Cama, learned Senior Counsel, that the appellant allegedly manufactures petrochemical products and not chemical products has been correctly repelled by the Division Bench of the Bombay High Court by stating that 'petrochemical products' would be a species of the genus 'chemical products'.***"

15. Another submission made by the learned Senior Counsel appearing on behalf of the appellant is that the 1970 Scheme deals with grocery markets or shops as its title suggests and cannot therefore include within its scope petrochemicals manufactured in factories without following the drill of Section 4(1)(b) of the 1969 Act. This argument again has to be rejected for the reason that both Sections 3 and 4 of the Act refer to a scheme which provides for registration of unprotected workers '*in any scheduled employment or employments*' [as per Section 3(1) of the 1969 Act]. Further, Section 4(1) of the 1969 Act also makes it clear that the State Government may make *one or more schemes for any scheduled employment or group of scheduled employments*. On a reading of these provisions it becomes clear that there can be a composite scheme which takes within its ken various employments which may be contained in more than one entry of the Schedule to the 1969 Act. This being so, it is clear that merely naming a particular composite scheme as a grocery market or shop scheme does not carry the matter further. It is clear that the present scheme specifically takes within its ken factories manufacturing chemical products covered by Entry 5 in the Schedule to the 1969 Act, and would therefore be a scheme which provides for

registration of unprotected workers in different scheduled employments and/or a group of scheduled employments. This being the case, it is clear that the attack based on nomenclature of the 1970 Scheme as a grocery market or shops scheme must fail.”

(emphasis in original)

59. The aforesaid decision examined the vires of the Grocery Scheme and rejected the contention of Mr. Cama to the contrary. We place on record that Mr. Cama was fair enough to place this decision before us knowing fully well that it lays down law sufficient to negate his contentions.

60. This writ petition at one point of time was being heard with other writ petitions involving similar issues. One of the learned advocates appearing for the Board had invited our notice that in **Veneet Agarwal** (supra), before parting with the matter, the Supreme Court had the occasion to observe as follows:

“20. Although the writ petitioner in the present case is different but the repeated attempts are being made to get the Rules/Regulations invalidated. This has been adversely commented upon by the High Court of Delhi. Once the Regulations are declared to have been validly made then it is not open to the counsel for the appellant to argue that the same was not examined from a particular angle and the court should re-examine it again. It is especially so, when the counsel who is appearing before us had appeared in the earlier cases as well.”

61. Though the hint was clear, we do not attach much importance to it because, after all, law is never static but dynamic. It is open to a learned counsel to persuade us not

to follow a decision of the Supreme Court having regard to the settled law that each decision is an authority for what it decides. This has exactly been Mr. Cama's attempt. However, for the reasons that we wish to assign hereafter, we need not be too weighed down by what has been observed in paragraph 20 of the decision in **Veneet Agarwal** (supra) to discredit the contentions advanced on behalf of the petitioner.

62. The first contention of Mr. Cama must fail in view of the Supreme Court's decision in **Bhuwarka Steel Industries Ltd.** (supra) upholding the decision of the Full Bench of this Court, *a fortiori*, also upholding the conclusion reached by the third member Judge of the Full Bench. We have quoted paragraph 5 where the conclusions reached by the learned Judge were recorded to the effect that 'unprotected worker' means every manual worker who is engaged or to be engaged in any scheduled employment, **irrespective of** (emphasis ours) whether he is protected by other labour legislations or not and 'unprotected workers' within the meaning of the Mathadi Act are definitely not only those manual workers who are casually engaged. This finding is sufficient to dislodge the claim of the petitioner that the expression 'unprotected workers' means such persons who are totally unprotected by any labour legislation or that labour engaged by the petitioner being protected by all the labour legislation in the field of industrial disputes, payment of bonus, provident fund, etc.

are not mathadi workers and, hence, the petitioner is not covered under the Mathadi Act or the Grocery Scheme.

63. We may only add that it is not the legislative intent behind enactment of the Mathadi Act that its application should be restricted or that the terms thereof would not apply to organized industries like the petitioner. In whichever establishment scheduled employment is being carried on and wherever an unprotected worker is engaged in scheduled employment, the Mathadi Act and the schemes framed thereunder would apply. The distinction sought to be made by Mr. Cama by referring to 'organized industries' is too tenuous to commend acceptance. The Mathadi Act and its provisions make no differentiation between 'organized industries' or non-organized industries. The text of the statute, in the context in which it is set, unmistakably point to the conclusion that the same applies to the petitioner being an 'establishment' where 'scheduled employment' is carried on within the meaning of the terms as defined in the Mathadi Act. It seems, on a conspectus of the facts and circumstances and the manner in which the petitioner has been seeking to avoid coverage of the Mathadi Act, that it is opposed to the idea of having within its factory premises mathadi workers registered with the Board. It is, however, a question of fact in each case whether the factory in question is engaging any worker for manual work. From the writ petition, it does not appear that the petitioner never engages such workers. The petitioner's factory answers all

the conditions for applicability of the Mathadi Act and, therefore, we have no hesitation to overrule the first contention of Mr. Cama.

64. Mr. Cama has spared no effort to convince us that there can be merger of two schemes but by a simple amendment the subject matter of another form of scheduled employment cannot be incorporated into a scheme since there is no such power of amendment in section 4.

65. This contention, in our clear view, is squarely answered by the Supreme Court in **Pepsi India Holding (P) Ltd.** (supra) and requires no elaborate discussion. Suffice it to hold, section 4 of the Mathadi Act does enable the State Government to apply the provisions of any scheme made thereunder to any other scheduled employment, with or without modification, as specified in a notification to be issued in this behalf. We, therefore, see no reason to fault the application of the Grocery Scheme, which has entry 4 of the Schedule appended to the Mathadi Act as its origin, to factories included in entry 5 of such Schedule.

66. The decision in **Bhuwalka Steel Industries Ltd.** (supra) and **Pepsi India Holding (P) Ltd.** (supra) have been sought to be distinguished by contending that such decisions were not rendered on consideration of the point urged before us. This course of action, in our opinion, is

impermissible having regard to the decision in **Director of Settlements, A.P. vs. M. R. Apparao**, reported in (2002) 4 SCC 638. We may profitably quote paragraph 7 of such decision hereinbelow:

"7. So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has 'declared law' it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An 'obiter dictum' as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its

decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court. ***"

(emphasis ours)

67. Therefore, it is not open to Mr. Cama to urge us distinguish the decisions in **Bhuwalka Steel Industries Ltd.** (supra) and **Pepsi India Holding (P) Ltd.** (supra) based on his reasoning that he has argued a new point which was not argued before the Supreme Court.

68. The other related contention of Mr. Cama that the procedure prescribed by section 4 of the Mathadi Act (which is the condition precedent to apply one scheme applicable for a scheduled employment to another employment) has not been followed, is equally without merit. The contention raised in Ground (h) of the petition memo is found to be vague. There is no clarity as to which of the procedures laid down in section 4 have not been followed. There is no specific statement that the requisite statutory notifications have not been issued. The penultimate sentence of the Ground under consideration is sufficient to prove that it is based on a surmise. No Court, far less this Court, would proceed to invalidate any action on such vague statements made in the petition memo.

69. What would remain for our consideration is subsection (2) of section 4 involving compliance of the provisions of section 24 of the BGC Act. What it ordains has been extracted above.

70. We have held, in course of the preceding discussion, that applicability of one scheme of a scheduled employment to another scheduled employment is permitted by the Mathadi Act. In terms of sub-section (2) of section 4 of the Mathadi Act, the provisions of section 24 of the BGC Act would apply to the exercise of power given by sub-section (1) as they apply to the exercise of a power given by a Maharashtra Act to make rules subject to the condition of previous publication.

71. Section 24 of the BGC Act provides as follows: -

“24. Where, by any Bombay Act or Maharashtra Act a power to make rules or by-laws is expressed to be given subject to the condition of the rules or by-laws being made after previous publication, then the following provisions shall apply, namely: -

- (a) The authority having power to make the rules or by-laws shall, before making them, publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby;
- (b) The publication shall be made in such manner as that authority deems to be sufficient or, if the condition with respect to previous publication so requires, in such manner as the Central Government, or as the case may be, the State Government prescribes;
- (c) There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
- (d) The authority having power to make the rules or by-laws, and, where the rules or by-laws are to be made with the sanction,

approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified;

- (e) The publication in the *Official Gazette* of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made."

72. To succeed on a contention that the prescribed procedure has not been followed, it is not sufficient without anything more to only aver that the procedure has not been followed. What the statute requires and what has been done or not done should appear to enable the respondents to meet the point raised and answer it. If the procedure is in parts, there has to be a specific pleading that either in its entirety the procedure has been observed in the breach or that part of the procedure has not been followed, so that the nature and extent of challenge can be ascertained. This is more so in a case to which section 24 of the BGC Act is expressly applicable, which has several parts requiring compliance [clauses (a) to (d)]. Clause (e) of section 24 makes the position absolutely clear that "*publication in the Official Gazette of a rule or bye-law ... shall be conclusive proof that the rule or bye-law has been duly made*" would be clinching, if it were alleged that either of or all the

clauses, i.e., (a) to (d), have not been followed. Once there is a publication in the Official Gazette, that would in terms of the mandate in clause (e) amount to proof of compliance, and not deemed compliance, of clauses (a) to (d). It is not the case of the petitioner that the Grocery Scheme has not been published in the Official Gazette. We, therefore, see no reason to hold that there has been breach of section 4(2) of the Mathadi Act.

73. The further contention of there being a One-Man Board contrary to the provisions of the Mathadi Act is further not well substantiated. Section 6-A enables the State Government to appoint a Board consisting of one person. Without a challenge being mounted to section 6-A, it is indeed difficult to accept the contention of Mr. Cama that such One-Man Board is *ultra vires*.

74. Finally, the contention based on sub-section (2) of section 28 of the Mathadi Act is taken up for consideration. We were wondering why this new point was raised on behalf of the petitioner before the coordinate Bench on 25th March 2010 leaving aside all other legal points, which have been so elegantly argued by Mr. Cama. The answer to it, we are inclined to believe, is the emergence of the decision in **Bhuwalka Steel Industries Ltd.** (supra) by then. The coordinate Bench, without being told of such decision, was persuaded to examine a point that required factual assertions but which were not there in the first place and no leave was asked for to incorporate such point.

75. Be that as it may, we have noted at an earlier part of this judgment, how this point was sought to be incorporated in the petition memo. We have decided to overlook technicalities because, on merits too, the contention wholly lacks substance.

76. Our attention has been invited by the learned advocates for the respondents to several authoritative decisions of the Supreme Court and a coordinate Bench of this Court relevant to decide the point, viz.

- (i) **Jan Mohammad Noor Mohamad Bagban vs. State of Gujarat** reported in AIR 1966 SC 385;
- (ii) **M/s. Atlas Cycle Industries Ltd. & Ors. vs. State of Haryana**, reported in (1979) 2 SCC 196;
- (iii) **Prohibition and Exercise Supdt. A. P. & Ors vs. Toddy Tappers Co-op. Society, Marredpally & Ors.**, reported in (2003) 12 SCC 738;
- (iv) **Veneet Agrawal** (supra); and
- (v) **Anil Govindrao Kale vs. Maharashtra Academy of Engineering & Education Research**, reported in 2017 (3) Bom C.R. 511

Relying thereon, it has been contended that in view of the language in which sub-section (2) of section 28 of the Mathadi Act is couched, the provision has to be construed as directory. We do agree, based on the aforesaid decisions, that the Grocery Scheme, even if the same were not laid before the Legislature, would not have made the same non-operational.

77. Mr. Cama had placed reliance on **Krishna Kumar Singh** (supra) to contend that the provision regarding

laying has been held to be mandatory by the Supreme Court. Indeed, it is so, but in respect of laying of an Ordinance and not a subordinate legislation. The Court held that an Ordinance is made in the exercise of legislative power by the Governor which cannot be equated with the laying of a subordinate legislation (paragraph 99). The said decision does not, therefore, assist the petitioner.

78. On the contrary, we would draw guidance from the decisions in **Jan Mohammad Noor Mohamad Bagban** (supra) and the others referred to above dealing with *pari materia* provisions to hold that section 28(2) is not mandatory.

79. However, notwithstanding our conclusion as above, we prefer to decide this contention based on the facts presented before us. From the affidavit dated 22nd August 2022, the Under Secretary, Additional Charge of Deputy Secretary (Law) Maharashtra Legislature Secretariat and its annexures, we have little hesitation in concluding that the Grocery Scheme, as well as amendments made thereto, were duly laid before the two Houses of the Legislature and that there has been faithful compliance with the terms of sub-section (2) of section 28.

80. Having held against the petitioner on all the legal points argued by Mr. Cama, what remains is the factual allegations on the merits of the show-cause notices and orders, impugned in this writ petition. Law is well-settled

that at the stage of show-cause, a writ court does not ordinarily entertain a writ petition because no right is infringed at that stage. This writ petition was entertained because a jurisdictional point was raised. Now that contentions on all legal points have failed, law must be allowed to take its own course.

81. Rule stands discharged. Interim order(s) stand(s) vacated forthwith. The writ petition is dismissed.

82. The Board is granted liberty to proceed against the petitioner in accordance with law, even in respect of the period when the stay order was operative.

83. We would have been justified in imposing costs on the petitioner but refrain from doing so.

SALUNKE
JV
Digitally
signed by
SALUNKE JV
Date:
2022.09.30
15:15:51
+0530

(M. S. KARNIK, J.)

(CHIEF JUSTICE)