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

WRIT PETITION NO.1860 of 2019

M/s. Vidarbha Distillers
Kamptee Road, Nagpur-26.
Through its Factory Manager
Shri Manohar Prataprai Asudani. .... **PETITIONER**

...V E R S U S...

1. The State of Maharashtra,
Ministry of Industries, Energy and Labour
Department, Mantralaya, Mumbai-32.
Through its Chief Secretary.

2. The Chairman,
Nagpur and Wardha District Mathadi Board,
Office of Additional Commissioner of Labour,
Bhonsala Chambers, Civil Lines,
Nagpur.

3. Vidarbha Shramik Mathadi Sanghatna,
Shanti Nagar, Nagpur.
Through its President - Shri Manoj Choure. .... **RESPONDENTS**

Shri V.P.Marpakwar, Advocate for petitioner.
Ms S.S.Jachak, Assistant Government Pleader for respondent no. 1.
Shri N.S.Rao, Advocate for respondent no.2.
Shri S.D.Shukla, Advocate for respondent no.3.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE :- SEPTEMBER 06, 2022.

<u>JUDGMENT</u> **(Per A.S.CHANDURKAR, J.)**

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in this writ petition is to the order dated 14.08.2018 passed by the respondent no.2-Nagpur and Wardha District Mathadi Board, through its Chairman under the provisions of the Maharashtra Mathadi, Hamal and Other Manual Workers' (Regulation of Employment and Welfare) Act, 1969 (for short, the Act of 1969). By the said order the petitioner has been directed to pay increased wages for the period from 01.06.2017 to 31.05.2018 and thereafter with an additional increase for the period from 01.06.2018 to 31.05.2019.

3. Shri V. P. Marpakwar, learned counsel for the petitioner submitted that on 02.05.2015 there was an agreement entered into between the petitioner and the members of the respondent no.3-Sanghatna whereby increased wages for the period from 01.06.2016 to 31.05.2017 had been agreed. According to him in the agreement it had been stated that for the subsequent periods the rates of wages would be fixed after necessary discussion. Though initially there were about sixteen labourers engaged, their number had reduced to nine in June, 2017. While effecting the wage

revision under the impugned order the respondent no.2 failed to take into consideration Clause 33(5) of the Nagpur Grocery Markets or Shops, Railway Yards and Vehicles, Khoka Making Establishments, Timber Markets and Shops, Steel Markets or Shops, Factories and Other Connected Establishments, Unprotected Workers (Regulation of Employment and Welfare)(Amendment) Scheme, 1990 (for short, the Scheme) as framed in the year 1990 inasmuch as while revising or fixing the wages the Board was required to consider the cost of living, prevalent conditions of service in comparable employments in the local area alongwith other relevant aspects. It was stated that while passing the impugned order these factors had not been considered though the petitioner had sought consideration of the same. The learned counsel placed reliance on the decision in *Steel Authority of India Ltd. Vs. Nagpur and Wardha District Mathadi and Unprotected Workers Labour Board and others* ***[2015 (6) ALL M R 755]*** to substantiate his contentions in that regard. It was then submitted that under the provisions of Section 6 of the Act of 1969 the State Government was required to constitute a Board that was empowered to undertake the administration of the Scheme to carry out the objects under the Act of 1969. For a considerable period of time such Board was not constituted and by issuing a Notification, a single member was appointed to discharge duties of the Board by resorting to the provisions of Section 6A of the Act of 1969. Since the impugned order was not passed by a duly constituted Board under Section 6 of the Act of 1969, the same was liable to be set aside. It was thus submitted that the reliefs prayed for in the writ petition ought to be granted.

4. Shri N. S. Rao, learned counsel for the respondent no.2 supported the impugned order. According to him, after considering all relevant aspects and in the light of the earlier agreement between the petitioner and the respondent no.3 recorded on 02.05.2015 the increased revision of wages had been undertaken. The petitioner had failed to bring on record prevalent service conditions in the locality and hence it was not open for the petitioner to contend that the prevailing conditions had not been considered while passing the impugned order. Since the revision of wages was not unreasonable, there was no case to interfere in writ jurisdiction.

Shri S.D.Shukla, learned counsel for the respondent no.3 also supported the impugned order. He submitted that having agreed to the revision of wages with a 20% increase, it was not permissible for the petitioner to challenge the revision of wages as directed by the impugned order. In that regard he invited attention to the agreements dated 08.07.2013 and 02.05.2015 to urge that rate of wages was reasonable and not requiring any interference.

5. We have heard the learned counsel for the parties and we have perused the relevant material on record. Perusal of the impugned order indicates that the stand taken by the petitioner of various distilleries existing in the District as well as in the adjoining areas has been noted. The rate of wages paid in those distilleries was lower than what was paid by the petitioner and on that count it was difficult for the petitioner to compete with such other distilleries. Though the respondent no.2 has referred to this stand of the petitioner, the revision of wages has not been undertaken after considering that aspect. Under Clause 33(5) of the Scheme, it is necessary for the Board to consider various factors including the cost of living, prevalent conditions of service in comparable employments in the local area as well as the capacity of registered employer to pay wages. The stand taken by the petitioner in this regard has not been satisfactorily considered. Except for observing that the Mathadi workers were working in other distilleries where the Act was not applicable, this was held to be an insufficient reason to consider that aspect. We find that this approach of the respondent no.2 is contrary to the observations of this Court in *Steel Authority of India Ltd* (supra). In paragraph 31 of the said decision it has been observed as under:

> *"31. Even if it is assumed, just for the sake of argument, that the contention so advanced on behalf of the respondents is right, still, a duty is cast upon respondent no.1 under the provisions of the Scheme [Clause 33(2)]*

> *to call upon the registered employers and trade unions of workers to submit appropriate representations and, therefore, it was necessary for respondent no.1 to call upon the petitioner to place before it proper representations. If the petitioner had failed to place before respondent no.1 the appropriate data even thereafter, respondent no.1 would have been right to have not considered the factor of financial capacity of the petitioner. As regards the following of industry-cum-region principle or the prevalent rates of wages in comparable or similar industries in the region, respondent no.1 could not be said to have been dependent upon the date to be submitted by the petitioner as such information would have been available on its own record. It may be emphasized here that the principle of industry-cum-region, which must be followed while fixing rates of wages has been firmly entrenched in our labour jurisprudence. This could be seen from the ratio of the case of A.K.Bindal and anr., [2003(4)ALL MR 1160 (SC)], French Motor Car Co. Ltd. Concept Pharmaceuticals Ltd. and M/s Polychem Ltd.(supra) referred to us by the learned counsel for the petitioner. We find that the impugned order having been based upon only one factor of rise in cost of living and being oblivious to the two most relevant factors such as financial capacity to pay and prevalent rates of wages in similar industries in the region, cannot be upheld by us. It deserves to be quashed and set aside."*

6. From the aforesaid it is clear that the Board cannot depend upon the information supplied by the employer and it must also take efforts to gather relevant material. The material gathered is required to be taken into consideration in view of Clause 33(5) of the Scheme. Though the

petitioner sought to draw the attention of the respondent no.2 to this aspect, there has been no consideration of the same. We therefore find that it would be necessary for the respondent no.2 to re-consider the matter in the light of Clause 33(5) of the Scheme.

7. As regards the earlier agreement of the years 2013 and 2015 its cumulative effect would also have to be considered alongwith the factors mentioned in Clause 33(5) of the Scheme. By taking an over all view of the matter, the Board would have to revise the wage rate. Since these relevant aspects have not been taken into consideration, we find that the impugned order is liable to be set aside on the ground of non-consideration of material aspects as required by law.

8. It is seen that by the interim order dated 19.08.2022 this Court had directed payment of enhanced wages to the members of the respondent no.3 on the basis of 13% hike from 22.08.2022. The learned counsel for the petitioner submitted that it is willing to make such payments from the month of August 2022 and an amount of Rs.8,11,847/- has been deposited in this Court in compliance with the aforesaid order. This amount alongwith accrued interest would be required to be transferred to the Board for disbursement in accordance with the Rules.

We also find that it would be necessary for the State Government to constitute a Board as required by Section 6 of the Act of 1969. The Board being a statutory entity it is expected that the State Government would take all necessary steps to constitute the same. Though it is open for the State Government to take recourse to the provisions of Section 6A of the Act of 1969, the same is only in the contingency that the State Government is unable to constitute a Board for such scheduled employment in accordance with the provisions of Section 6 of the Act of 1969. It is informed that for a considerable period of time the State Government has taken recourse to the provisions of Section 6A of the Act of 1969 and has failed to constitute the Board under Section 6 of the Act of 1969. It is expected that the respondent no.1 would take necessary steps to constitute the Board as contemplated by Section 6 of the Act of 1969.

9. Accordingly for aforesaid reasons, the following order is passed:

(i) The order dated 14.08.2018 passed by the respondent no.2-Nagpur and Wardha District Mathadi Board through its Chairman is set aside. The proceedings are remanded to the Board for re-consideration in the light of the observations in *Steel Authority of India Ltd.* (supra) and in accordance with Clause 33(5) of the Scheme.

(ii) The Board shall decide the said proceedings expeditiously and within a period of eight weeks from the date of appearance of the parties before it. The parties shall appear before the Board on 20.09.2022.

(iii) The respondent no.1 shall take all necessary steps to constitute a Board as required by Section 6 of the said Act. A copy of the judgment shall be forwarded to the respondent no.1 to take necessary action in that regard.

(iv) The amount deposited by the petitioner in this Court being Rs.8,11,847/- with accrued interest shall be transferred to the Board for disbursement in accordance with law.

(v) Rule is made absolute in aforesaid terms with no order as to costs.

Pending civil application stands also disposed of.

(URMILA JOSHI-PHALKE, J.) **(A.S.CHANDURKAR, J.)**

Andurkar..