

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

WRIT PETITION NO. 4171 OF 2023

Garware Fullflex India Private Limited
Plot No.D-28/3, MIDC, Wai,
District – Satara 412 803

...Petitioner

Versus

- 1 State of Maharashtra
- 2 Secretary, Labour & Industries
Department, Government of
Maharashtra, Mantralaya,
Mumbai 400 032
- 3 Chairman,
Satara Mathadi and Unprotected
Workers Mandal, 168, Raviwar Peth,
Powai Naka, Satara
- 4 Secretary
Satara Mathadi and Unprotected
Workers Mandal, 168, Raviwar Peth,
Powai Naka, Satara
- 5 Akhil Bhartiya Mathadi,
Surakshyarakshak, Shramjivi and
General Kamgar Union, 140/A Sant
Tukaram Marg, Jai Jalaram Marg
Building, Beside Fancy Chambers,
Dana Bandar, Masjid Bandar (E),
Mumbai – 400 009.

...Respondents

Mr. D. J. Bhanage, i/b Mayur Joglekar, for the Petitioner.
Mr. Shailesh Pathak, a/w Jay Vora, for Respondent Nos.3 & 4.
Mrs. V. S. Nimbalkar, AGP for the State/Respondent Nos.1
and 2.
Mr. Laxman Deshmukh, for Respondent No.5.

CORAM: N. J. JAMADAR, J.

DATED : 20th JUNE, 2023

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.
2. The challenge in this petition is to an order dated 20th January, 2023 passed by the Secretary, Satara Mathadi and Unprotected Workers Board – respondent No.4, directing the petitioner to register eight persons as mathadi workers with the Board and to employ them as mathadi workers and pay them wages in accordance with the directions of the Board.
3. The petitioner is company incorporated under the provisions of the Companies Act, 2013. It is engaged in the business of manufacture of rubber and elastic products. On 1st December, 2022, an Inspector of respondent No.4 Board visited the unit of the petitioner situated at Plot No.D-28/3, MIDC, Wai. It was noted that services of the workers were being utilised to load the finished goods.
4. The petitioner contested the said claim and submitted a reply with regard to the observations in the Inspection Report dated 1st December, 2022. It was the stand of the petitioner that the entire operations of dispatch of the finished goods were mechanised and being carried out with the help of the machines like Forklift, Stacker and battery-operated pallet trucks. Three

to four workers were giving marginal and supportive help to the entire automated process of dispatch. It was further contended that the petitioner is already registered as an employer under the Maharashtra Mathadi, Hamal and Other Manual Workers (Registration of Employment and Welfare) Act, 1969 ("the Act, 1969"), in respect of another adjacent Unit. And, if need be, the petitioner could utilise the services of the registered mathadi workers. In substance, the petitioner asserted that it was not liable to get registered under the Act, 1969 and the Scheme framed thereunder.

5. As the Board did not accede to the said clarification, the petitioner submitted an application under Section 5 of the Act, 1969 to the State Government for the determination of the question as to whether the Scheme applied to the petitioner's unit. While the said application awaits determination, according to the petitioner, respondent No.4 passed the impugned order on 20th January, 2023, directing the petitioner to appoint eight persons named therein as mathadi workers, provide them work and pay their wages and the levy thereon, accordance with the Scheme framed under the Act.

6. Being aggrieved, the petitioner has invoked the writ jurisdiction.

7. Mr. Bhanage, the learned Counsel for the petitioner, would submit that when the question as to whether the provisions of the Act, 1969 and the Scheme framed thereunder applied to the petitioner, awaits determination under Section 5 of the Act, 1969, respondent No.4 had no authority to pass the impugned order. Mr. Bhanage would thus urge that the impugned order renders the provisions contained in Section 5 of the Act, 1969 which vest authority in the State Government to decide the question after consulting the Advisory Committee constituted under Section 14 of the said Act, nugatory. Mr. Bhanage submitted that till the State Government decides the application filed by the petitioner, the impugned order deserves to be stayed, if not quashed and set aside.

8. To lend support to this submission Mr. Bhanage placed reliance on a judgment of a Division Bench of this Court in the case of *Precious Gas Service and anr. vs. Chairman, Goods Transport Labour Board for Greater Bombay and anr.*¹ and another judgment in the case of *M/s. Saint Gobain India Pvt. Ltd. vs. The Secretary, Maharashtra Rajya Mathadi Transport and General Kamgar Union and ors.*², wherein this Court had

1 2003 I CLR 785.

2 2016 O Supreme (Bom) 1208.

directed the State Government to decide the question of applicability of the Act, 1969 and the Scheme thereunder.

9. Mr. Bhanage further submitted that the explanation furnished by the petitioner regarding absence of requirement of manual workers in view of the complete automated operations in the petitioner's plant, was not properly appreciated by respondent No.4. On this count as well, according to Mr. Bhanage, the impugned order deserves to be interfered with.

10. In opposition to this, Mr. Pathak, the learned Counsel for respondent Nos.3 and 4, submitted that the instant petition does not deserve to be entertained as there is no challenge to the inspection of the petitioner's unit and the report submitted by the Inspector. Even, in the reply to the Inspection Report, the petitioner has admitted that three to four workers were rendering allegedly marginal and supportive help. Thus the presence of the workers at the unit cannot be disputed.

11. Mr. Pathak submitted that, in any event, till the application is decided by the State Government there is no impediment in providing work to the persons named in the impugned order and pay them wages as per the directions of the Board. To this end, reliance was placed on a judgment of the

Supreme Court in the case of *PEPSICO India Holdings Pvt. Ltd. vs. Gorcery Markets and Shops Board and others*³.

12. Section 5 of the Act, 1969 reads as under:

“Section 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.”

13. A plain reading of the aforesaid provision would indicate that whenever a question arises as to whether the Scheme framed under the Act, 1969 is applicable to any class of unprotected workers or employers, the matter is required to be referred to the State Government which, in turn, is enjoined to take a decision thereon after consulting the Advisory Committee constituted under Section 14 of the Act, 1969. Finality is clothed to such determination by the State Government. Undoubtedly, the petitioner has preferred such an application under Section 5 of the Act, 1969 questioning the applicability of the provisions of the Act, 1969 and the Scheme framed thereunder to the petitioner’s establishment. The said question is thus required to be determined by the State Government.

14. The question that, however, wrenches to the fore is whether the mere presentation of the application under Section

3 [2016 (149) FLR 301.

5 would constitute as an impediment in implementing the directions of the Board. By the text of Section 5 of the Act, 1969, an interpretation that presentation of such an application would operate as stay does not necessarily flow. Whether the order passed by the Board be stayed till the determination by the State Government under Section 5, by its very nature, is rooted in facts.

15. In the instant case, the thrust of the submission on behalf of the petitioner was that the entire process is automated and the petitioner does not require manual workers. The explanation dated 9th December, 2022 to the Inspection Report, however, indicates that the petitioner claimed that three to four workers were rendering marginal and supportive help to the automated process, at the time of inspection. In a further communication dated 23rd December, 2022, the petitioner claimed that the mathdi workers of Toli No.01A, who were employed in another unit of the petitioner, were not available on the premises but, if need be, the petitioner was always in a position to employ them at the unit in question. In the light of the aforesaid stand of the petitioner, I find substance in the submission of Mr. Pathak that the presence of the workers at

the unit on the day of inspection, can hardly be contested. Their number and requirement may be put in contest.

16. In the aforesaid view of the matter, in the facts of the case, it would be appropriate to direct the State Government to decide the application preferred by the petitioner under Section 5 of the Act, 1969 in accordance with law. And, in the meanwhile, defer the direction for registration of the petitioner with the Mathadi Board subject to the petitioner providing work to the workers named in the impugned order and paying their wages as per the direction of the Board. Needless to clarify that in the event the State Government holds that the petitioner is not liable to be registered under the Act, 1969 and the Scheme framed thereunder, the amount of levy, which the petitioner would be required to pay, would be liable to be refunded to the petitioner.

17. The petition, thus, stands disposed in the following terms:

- (a) The State Government shall decide the application of the petitioner under Section 5 of the Act, 1969 in accordance with law and without being influenced by any of the observations made hereinabove as expeditiously as possible and preferably within a period of five months from the date of communication of this order.

- (b) In the meanwhile, the impugned order to the extent it directs the petitioner to get it registered under the Scheme stands stayed till the decision on the application by the State Government.
- (c) However, the petitioner shall employ and provide work to the eight workers named in the impugned order and pay them wages and remit the levy as per the directions of the Board.
- (d) In the circumstances, there shall be no order as to costs.

[N. J. JAMADAR, J.]