



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5360 OF 2023**

M/s. Conex Terminal Pvt. Ltd.
Having its registered office at
E-609, Tower-II, L&T Sea-Woods
Grand Central, Sea-Woods,
Navi Mumbai – 400 706

... Petitioner

versus

1. Akhil Bharatiya Mathadi, Suraksha Rakshak,
Shramajivi and General Kamgar Union, 417,
Central Facility Building, 5th Floor,
APMC Fruit Market, Sector 19,
Turbhe, Navi Mumbai – 400 703.

2. M/s. Grocery Market and Shops
Board for Greater Bombay,
515 Central Facility Building, 6th Floor,
Fruit Market, Turbhe,
Navi Mumbai – 400 705.

3. M/s. Central Warehousing Corporation,
District Park, Sector 17,
Dronagiri Node, Bhendkhal, Tal. Uran,
Dist. Raigad

... Respondents

WITH
WRIT PETITION NO.10188 OF 2022

1. Shree Krushna Logistic,
Having its factory & Office at
Mitali Commercial Complex,
Gala No.C-8, Rahianal,
Bhiwandi – 421 302

2. Radhika Agarwal,
Proprietor of M/s. Shree Krishna Logistic,

Having its factory & Office at
Mitali Commercial Complex,
Gala No.C-8, Rahianal,
Bhiwandi – 421 302

... Petitioners

versus

1. Maharashtra Rajya Mathadi Transport
and General Kamgar Union, J.B.Shah
Market, 3rd Floor, Yusuf Meherali Road,
Near Masjid Station, Mumbai – 400 009.

2. Goods Transport Labour Board,
Bombay, having its office at 102/103,
Steel Chambers, Devji Ratanshi Marg,
Danabandar, Mumbai – 400 009.

... Respondents

Mr. Mahesh Shukla i/by Mr Niraj Prajapati, for Petitioners.

Mr. Sanjay P. Shinde with Mr. Prathamesh T. Bhanumanshe, for Respondent No.1 in
WP 5360 of 20223.

Mrs. Bharati Patil for Respondent No.1 in WP 10188 of 2022.

Mr. B.S.Mhamunkar with Mr. Rahul D. Oak, for Respondent No.2 in WP 5360 of
2023.

Mr. S.R.Soni, for Respondent No.3 in WP 5360 of 2022.

CORAM: N.J.JAMADAR, J.

RESERVED ON 13 JUNE 2023
PRONOUNCED ON 5 OCTOBER 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the learned
Counsel for the parties, heard finally.

2. As common questions of law arise in these two Petitions, they are heard
and decided by this common judgment. However, there is some distinctiveness in the

facts of each case. Therefore, the facts in Writ Petition No.5360 of 2023 are first noted, a little elaborately; followed by the facts in Writ Petition No.10188 of 2022.

FACTS IN WRIT PETITION NO.5360 OF 2023

3.1 M/s. Conex Terminal Pvt. Ltd. (Conex) - Petitioner is engaged in the business of supporting and ancillary transport activities. M/s. Central Warehousing Corporation - Respondent No.3 is a Government of India Undertaking. The Petitioner entered into a Strategic Alliance Management Agreement on 22 October 2020 with Respondent No.3 for the Container Flight Station (CFS) - Distripark.

3.2 Respondent No.2 is the Board established under the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (the Mathadi Act, 1969). Respondent No.1 is a registered Trade Union of the Mathadi workers registered with the Respondent No.2 Board.

3.3 Respondent No.1 / complainant filed a complaint alleging unfair labour practices under Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices, Act, 1971 (the Act, 1971) with the allegations that the registered mathadi workers of Toli No.6164 were working with the Petitioner. They were allotted to the Petitioner by Respondent No.2 Board. Initially the workers of Toli No.6164 were working through the earlier contractor M/s. Pearl Fright Services, M/s. Akdas Maritime Agency and M/s. A.R.Maritime Agency. With the change in the contract, the Petitioner came to be appointed.

3.4 Respondent No.3 – Central Warehousing Corporation has, thus, appointed the Petitioner as a contractor to do all the mathadi work from May 2021. However, the Petitioner restrained the mathadi workers registered with Respondent No.2 Board from working in the establishment of the Petitioner. Instead, the Petitioner has been availing the services of non-registered workers, despite the registered mathadi workers and the mathadi work for them being available. It is further alleged that despite the directions by the Respondent No.2 Board to Respondent No.3 – Central Warehousing Corporation to direct the Petitioner to register with the Board and get all the mathadi work done through the workers of Toli No.6164, the Petitioner and the Respondent No.3 illegally and arbitrarily refused to provide the mathadi work to the workers of Toli No.6164. Thus, alleging breach of agreement/settlement, Respondent No.1 approached the Industrial Court attributing unfair labour practices under Items 9 and 10 of Schedule IV of the Act, 1971, seeking a declaration to that effect and directions to Petitioner and Respondent No.3 to cease and desist from engaging in those unfair labour practices.

3.5 In the said complaint, Respondent No.1 Union took out an application for interim relief under Section 30(2) of the Act, 1971 praying, inter alia, for directions to the Petitioner and Respondent No.3 to engage only the workers of Toli No.6164 for all types of mathadi work and not to engage any unregistered workers.

3.6 The Petitioner resisted the application for interim relief, inter alia, on the

ground that there was no employer-employee relationship between the Petitioner and the members of the Respondent No.1 Union. The Petitioner was never registered with Respondent No.2 Board, nor was Toli No.6164 ever allotted to the Petitioner. Resultantly, the Petitioner was not bound by the directions of the Respondent No.2 Board. It was further contended that the relationship between Respondent No.3 and the Petitioner was that of principal to principal and not of employer and contractor.

3.7 Respondent No.3 in its affidavit in reply also contended that there was no employer – employee relationship between the Respondent No.3 and the members of the Respondent No.1 Union. As there was no employer - employee relationship, the Respondent No.1 has no *locus standi* to file a complaint against Respondent No.3. In any event, the reliefs claimed by the Respondent No.3 were stated to be in the nature of final relief, which can only be granted after appraisal of the evidence at the stage of final adjudication. Therefore, the Respondent No.3 prayed for rejection of the application for interim relief.

3.8 In addition, Respondent No.3 filed an application for dismissal of the complaint (Exh. CA6) reiterating the objection based on absence of employer employee relationship. It was further contended that the Respondent No.3 is duly registered under the provisions of Contract Labour (Regulation and Abolition) Act, 1970, and as the Mathadi Act, 1969 is the self-contained Code and any dispute which arises under the provisions of the said Act, has to be resolved under the scheme

framed by the Board, and, resultantly, in the absence of employer – employee relationship, the Industrial Court lacks jurisdiction to hear the complaint on the ground of alleged unfair labour practices.

3.9 Respondent No.1 Union countered by asserting that under Clause 5.4 of the Agreement between the Petitioner and Respondent No.3, the Petitioner was responsible to fulfill all the requirements of Central and State Labour Laws which, according to Respondent No.1, includes the provisions of the Mathadi Act, 1959. Respondent No.1 Union further contended that though there was no employer employee relationship between the members of the Respondent No.1 Union and the Petitioner and Respondent No.3, the Industrial Court has jurisdiction to direct the Respondents to provide work of loading and unloading to the registered Mathadi workers.

3.10 The learned Member, Industrial Court, decided both the applications by separate orders of even date. The Petitioner and the Respondent No.3 were directed to allow the work of mathadi nature on the establishment of Respondent No.3 to the members of Toli No.6164 during the pendency of the complaint. The preliminary objection raised by the Respondent No.3 on the count of absence of employer-employee relationship was answered against the Respondent No.3. The learned Member, Industrial Court was of the view that the Respondent No.1 Union was not seeking any direct benefit arising out of the employer-employee relationship. Under

Clause 5.4 of the Agreement between the Petitioner and Respondent No.3, an obligation was cast on the Petitioner to ensure fulfillment of all Central and State Labour Laws and, thus, the obligations under the Mathadi Act, 1969 were also enforceable. Holding thus, the learned Member, Industrial Court found a prima facie case in favour of the members of the Respondent No.1 and that the balance of convenience tilted in favour of the Mathadi workers. It was also held that registered mathadi workers would suffer irreparable loss in the event the interim relief is not granted.

3.11 Being aggrieved, the Petitioner has invoked the writ jurisdiction.

FACTS IN WRIT PETITION NO.10188 OF 2022

4.1 The Petitioner No.1 - Shree Krushna Logistic is engaged in transport business. The Petitioner No.1 is allegedly covered under the provisions of the Act, 1969. Respondent No.2 Board allotted Toli No.2719 to the Petitioner No.1 in the year 2011. Initially, there were four workers. Later on, four more workers were added to the said Toli.

4.2 Respondent No.1 Union filed a complaint with the allegations that when the mathadi workers returned to Mumbai after Covid 19 Pandemic restrictions were lifted, the Petitioners refused to provide work to those workers. It further transpired that the Petitioner had, without seeking permission of the Board – Respondent No.2, engaged other workers and denied regular work to the registered Toli No.2719.

4.3 In the said complaint as well, Respondent No.1 Union filed an application for interim reliefs. The Petitioners took out an application for dismissal of the complaint.

4.4 By orders dated 11 October 2021, the learned Member, Industrial Court granted interim relief by directing the Petitioners to provide work to the workers of Toli No.2719 by devising an interim arrangement, under which the Petitioner was given an option to provide security for the wages of the concerned employees from 1 January 2021 to December 2021, and, thereafter, for further calendar years. Simultaneously, the Petitioners were restrained from employing or deputing new workmen to perform the work listed in Exhibit A to the complaint, without express approval of the Board, Respondent No.2.

4.5 The learned Member, Industrial Court, rejected the application for dismissal of the complaint holding, inter alia, that the Mathadi Act, 1971 operated in a different field and the fact that a separate regime was provided under the Mathadi Act, did not disentitle the workers registered with the Mathadi Board to approach the Industrial Court where unfair labour practices were shown to have been indulged in by the employer. It was observed that the power of the Board were seriously undermined and the Board had not been powerful and dynamic enough and that necessitated the workers to resort to the proceedings before the Industrial adjudicator. On this premise, the learned Member, Industrial Court, granted interim relief.

5. I have heard Mr. Mahesh Shukla, the learned Counsel for the Petitioners in both the Petitions, Mr. Shinde, learned Counsel for the Respondent No.1 Union in Writ Petition No.5360 of 2023, Mr. Soni, for Respondent No.3 in Writ Petition No.5360 of 2023, Ms. Bharati Patil, learned Counsel for Respondent No.1 Union in Writ Petition No.10188 of 2022 and Mr. Mhamunkar for Respondent No.2 Board. With the assistance of the learned Counsel for the parties, I have perused the pleadings and the material on record.

6. Mr. Shukla, learned Counsel for the Petitioners strenuously submitted that the Industrial Court, in both the Complaints, committed a grave error in law in entertaining the complaints and passing interim orders when the absence of employer -employee relationship between the Petitioner and the members of the Respondent No.1 Union was rather incontrovertible. Mr. Shukla would urge that it is settled by a catena of judgments that a complaint of unfair labour practice in the absence of undisputed or indisputable employer – employee relationship is not maintainable under the provisions of the Act, 1971.

7. Mr. Shukla would also urge that, in the process, the Industrial Court lost sight of the fact that the Maharashtra Mathadi Act, 1969 is a complete code in itself. An efficacious machinery and remedy is provided under the said Act. It was further submitted that the legislature has not consciously made the provisions of MRTP and PULP Act, 1971 applicable to the workers covered under the Mathadi Act, 1969,

though applicability of other labour welfare legislations has been specifically provided for.

8. Laying emphasis on the provisions contained in Section 13 and 17A of the Act, 1969, Mr. Shukla would urge that a complaint under Section 28 of the Act, 1971 is not an appropriate remedy, and the Industrial Court not an appropriate forum. Mr. Shukla submitted that despite recording that there is no employer-employee relationship between the Petitioner and the members of the Respondent No.1 Union, the Industrial Court has proceeded to fasten the liability on an incorrect premise that the members of the Petitioner No.1 Union were not claiming benefits arising out of the said employer-employee relationship. Once this position is conceded, according to Mr. Shukla, the complaints under the Act, 1971 are rendered wholly untenable.

9. To buttress the submission that the existence of undisputed or indisputable employer-employee relationship is a condition precedent for entertaining a complaint under the Act, 1971 and where the same is disputed, it is necessary to get the said issue resolved under other enactments, Mr. Shukla placed a strong reliance on the decision of the Supreme Court in the case of **Vididh Kamgar Sabha V/s. Kalyani Steels Ltd. and Anr.**¹ In the said case, it was enunciated that the provisions of the Act, 1971 can only be enforced by persons who admittedly are workmen. If there is dispute as to whether the employees are employees of the company, then that dispute must first be

1 (2001) 2 SCC 381

resolved by raising a dispute before the appropriate forum. It is only after the status as a workmen is established in an appropriate forum that a complaint could be made under the provisions of the Act, 1971.

10. Reliance was also placed on a Division Bench judgment of this Court in the case of **Hindustan Coca Cola Bottling S/W Pvt. Ltd, Mumbai and Anr. V/s. Bhartiya Kamgar Sena, Mumbai and Ors.**² wherein after referring to the decisions in the cases of **Vividh Kamgar Sabha (supra)** and **Cipla Limited V/s. Maharashtra General Kamgar Union and Ors.**³ it was enunciated that if the employer – employee relationship is established before the competent forum, namely, Industrial Tribunal or Labour Court under the Industrial Disputes Act, or the employer-employee relationship is undisputed or indisputable, then the complaint under the Act, 1971 would be maintainable. However, in a case where the employer had never recognized the workmen as his employees and throughout treated these persons as employees of the contractors, the court constituted under Section 28 of the Act, will have no jurisdiction to entertain the complaint unless the status of relationship of employer-employee is first determined in a proceeding under the Industrial Disputes Act.

11. To meet the case of hardship adverted to by the Industrial Court, Mr. Shukla submitted that the fact that a particular provision causes hardship to individual or a group of persons may not be a ground not to give effect to the clear intent of the

2 2002 (1) Mh.L.J. 559

3 2001 (1) CLR 754

legislature. For this purpose, reliance was placed on a decision of the Supreme Court in the case of **Rohitash Kumar and Ors. V/s. Om Prakash Sharma and Ors.**⁴

12. Per contra, Mr. Shinde, learned Counsel for the Respondent No.1 in Writ Petition No.5360 of 2023 would submit that since the challenge in this Petition is to an interim order, which cannot be said to be perverse, by any standard, this court may not entertain the Petition in exercise of writ jurisdiction. Mr. Shinde forcefully canvassed a submission that the unfair labour practice is writ large as the workers of Toli No.6164 have been working at the very same establishment since years and only the contractors have changed.

13. Banking upon the provisions contained in Clause 14 of the Scheme, which mandates registration of the employer, Mr. Shinde submitted that recourse to the provisions contained in the Act, 1971, in view of the breach of the express statutory mandate, cannot be faulted at.

14. Mr. Soni, learned Counsel for Respondent No.3 in Writ Petition No.5360 of 2023 submitted that under the terms of the agreement, the Petitioner was enjoined to ensure compliance of all the labour laws. Thus, the impugned order to the extent it directs Respondent No.3 to provide mathadi work cannot be sustained.

15. In Writ Petition No.10188 of 2022, the learned Counsel advanced submissions on identical lines. In addition, Mr. Shukla submitted that the basis of

⁴ (2013) 11 SCC 451

granting reliefs on the ground that the power of the Board have been undermined is legally unsustainable. In effect, there would be two parallel proceedings for enforcement of the very same rights of the workmen if the view in the impugned order is upheld, submitted Mr. Shukla.

16. The aforesaid submissions now fall for consideration. To start with the statutory regime. Under Section 3(5) of the Act, 1971, an employee has been defined as under :

“3(5) “employee” in relation to an industry to which the Bombay Act for the time being applies, means an employee as defined in clause (13) of Section 3 of the Bombay Act, and in any other case, means a workman as defined in clause (s) of Section 2 of the Central Act, and a sales promotion employee as defined in clause (d) of Section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976.”

17. Sub-section (6) of Section 3 defines ‘employer’ as under :

3(6) “employer” in relation to an industry to which the Bombay Act applies, means an employer as defined in clause (14) of section 3 of the Bombay Act; and in any other case, means an employer as defined in clause (g) of section 2 of the Central Act.”

18. Under Section 26 of the Act, 1971, unless the context requires otherwise, unfair labour practices mean any of the practices listed in Schedules II, III and IV. Section 27 proscribes the employer, Union or employee from engaging in any unfair labour practice. In the context of the complaints at hand, Items 9 and 10 of Schedule IV read as under :

9. Failure to implement award, settlement or agreement.

10. To indulge in act of force or violence.

19. The Maharashtra Mathadi Act, 1969 defines the employer, unprotected worker and worker as under :

“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(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.”

20. The Maharashtra Mathadi Act, 1969 was enacted to regulate the employment of unprotected manual workers such as mathadi, hamal etc. employed in certain employments. The Act seeks to make provision for ensuring an adequate supply to and full and proper utilisation of, such workers in such employments to prevent avoidable unemployment. Section 3 of the said Act, 1969 provides for making of a Scheme by the State Government for registration of the 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.

21. Section 6 envisages constitution of one or more Board. Under Section 13 of the Act, 1969, the Board or such officer as may be specified by it in this behalf may, by order, determine any sum due from any employer or worker under this Act or any scheme made thereunder, and for this purpose may conduct such inquiry as the Board or such officer may think to be necessary. The Mathadi Act 1969 is a welfare legislation.

22. At this stage, it may be advantageous to notice the situation which necessitated the enactment of the Mathadi Act, 1969 and the object it seeks to achieve. In the case of **Bhuwalka Steel Industries Ltd. V/s. Bombay Iron and Steel Labour Board and Anr.**⁵ the Supreme Court while upholding the decision of the Full Bench of this Court in the case of **Kay Kay Embroideries Pvt. Ltd. V/s. Cloth Markets and Shops Board and Ors.**⁶ observed as under :

“83. Before parting with the judgment, we must refer to the fact that 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 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

5 (2010) 2 SCC 273

6 2006 (6) Mh.L.J. 377

Section 6 of the Mathadi Act. Deep thoughts have gone into creating the framework of the Boards, of the Schemes, etc. With these lofty ideas that the Act was brought into existence. In these days when Nobel Laureate Profess Mohd. Yunus of Bangladesh is advocating the theory of social business as against the business to earn maximum profits, it would be better if the employers could realise their social obligations, more particularly, to the have-nots of the society, the workers who are all contemplated to be the inflicted workers in the Act.” (emphasis supplied)

23. Who are covered by the protective umbrella of the Mathadi Act, was the subject matter of the reference to the Full Bench. In the case of **Century Textiles and Industries Ltd. V/s. State of Maharashtra**⁷, a Division of this Court had held that the expression “unprotected worker” would cover only casually engaged workmen. Doubting correctness of the said view, another Division Bench in **M/s. Kay Kay Embroideries Pvt. Ltd. V/s. Cloth Markets and Shops Board and Ors.**⁸ referred the following question to the larger Bench :

“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 and Industries Ltd. (supra) on the aforesaid expression that it is only casually engaged workers who come within the purview of the Act, correct and proper ?”

24. The Full Bench of this Court in the case of **Kay Kay Embroideries Pvt.**

⁷ 2001(2) Mh.L.J. 775

⁸ WP No.7671 of 2006

Ltd. (supra), held that the aforesaid restrictive interpretation of “unprotected worker” covered by the Maharashtra Mathadi Act, 1969, was not in consonance with law by delivering two concurring judgments. In a separate concurring opinion, D.K.Deshmukh, J., observed as under :

“37. 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.” (emphasis supplied)

25. When the matter was carried in appeal before the Supreme Court in **Bhuwarka Steel Industries Ltd. (supra)**, the Supreme Court held that the Full Bench was absolutely correct in giving the aforesaid conclusion. The observations in paragraphs 26 and 27 read as under :

“26. The definition of the term “worker” is an inclusive definition. It includes a worker, who is engaged by the employer directly or through any agency and it is not necessary that such worker gets the wages or not. The term “wages” is also defined vide Section 2(13) of the Mathadi Act. Therefore, even if such person does not earn the wages, as contemplated in Section 2(13), such person who is engaged to do manual work in any scheduled employment, would be a worker. Further, even if such worker is not employed in the strict sense of the term by an employer or a contractor, but is working with the permission or under the agreement with the employer or contractor, even then such worker would be a “worker” within the meaning of Section 2(12) of the Mathadi Act. The only exception is that such worker should not be a member

of employer's family. As per the plain meaning, when such worker is engaged or is to be engaged in the scheduled employment, he becomes the unprotected worker.

27. It has been correctly held in the judgment of the Learned Single Judge (Hon'ble Deshmukh, J.) that these two definitions ("worker" and "unprotected worker") given in Sections 2(11) and 2(12) of the Mathadi Act would have to be read together for realizing the scope of the Section 2(11) of the Mathadi Act. Therefore, insofar as the language of Section 2(11) is concerned, it is plain, unambiguous and clear. It means that every worker, who is doing manual work and is engaged or to be engaged in any scheduled employment, would be covered by that definition and would become an unprotected worker....." (emphasis supplied)

26. The aforesaid being the scope of the definition of the "unprotected workers", under the Mathadi Act, 1969, the question in controversy deserves to be examined. The principal contention of the Petitioners is that there is no employer-employee relationship between the Petitioners and the registered members of the Respondent No.1 Union. In the absence of the employer-employee relationship, a complaint under Section 28 of the of the MRTP and PULP Act, 1971 could not have been entertained.

27. In contrast, the Respondent Nos.1 and 2 alleged unfair labour practice on the ground that under the agreement between the Petitioners and Respondent No.3 – Central Warehousing Corporation (in Writ Petition No.5360 of 2023), the Petitioner had undertaken an obligation to comply with the central or state labour legislations. Refusal to provide work to the registered workman constitutes an unfair labour

practice under Item 9 of Schedule IV of the Act, 1971.

28. The legal position that there should be either undisputed and indisputable employer – employee relationship between the parties before a complaint under Section 28 of the Act, 1971 is entertained, and, if not, the said issue be first decided by the forums under the appropriate legislations, cannot be disputed.

29. Equally indisputable is the fact that the concerned workmen registered with the Respondent-Board cannot and do not claim to be directly employed by the Petitioners. However, that does not seem to be the end of the matter. A brief reference to the facts would become necessary to explore an answer.

30. Strategic Alliance Management Agreement executed between the Central Warehousing Corporation and Conex (in Writ Petition No.5360 of 2023), *inter alia*, contain the following clauses :

“4.4 Conex acknowledge and accept that the Conex is entitled to use the existing facilities already constructed by or on behalf of CWC on “as is whereis” basis after full due diligence in respect of the said facilities, design and specification thereof and the suitability and adequacy of the said facilities for carrying on the activities and/or for effective use of the facilities for the ICD/CFS activities.

.....

5.4 Conex shall be responsible to obtain the necessary clearances and fulfill the requirements of all the Central and State Labour Laws as applicable from time to time. Conex shall ensure due payment of minimum wages to the workers engaged and also ensure the safety of the workers as required under the applicable laws Conex shall ensure that necessary records and registers are maintained and the returns filed as required under the applicable Labour

Laws. Notwithstanding the above all persons engaged to undertake services shall be the employees of Conex and they shall not have any claim against the CWC.”

31. Evidently, the Petitioner had agreed to fulfill the requirements of all the Central and State Labour laws, as applicable from time to time. It was further agreed that all persons engaged to undertake services shall be the employees of Conex and they shall not have any claims against the Respondent No.3 – CWC.

32. It would be contextually relevant to note that the President of the Respondent No.1 Union addressed a communication to the President and Secretary of the Respondent No.2 Board, making a grievance about not providing work to the unprotected workmen of Toli No.6164 at Container Flight Station (CFS) – Distripark. The Respondent No.2 Board, in turn, addressed a communication to the Respondent No.3 instructing Respondent No.3 to allow the unprotected workers registered with the Board to work at the said establishment. Respondent No.3 was further instructed to direct the Petitioner to get it registered under the provisions of the Maharashtra Mathadi Act, 1969.

33. In Writ Petition No.10188 of 2022, Shri Krushna Logistic, the Petitioner No.1 was informed vide letter dated 9 March 2011 that it was registered as a registered employer on 17 February 2011 and unprotected workers in Toli No.2719 were deputed to work at the said establishment. On 25 August 2020, the Inspector of Respondent

No.2 Board informed the Petitioner No.1 that the unprotected workers of Toli No.2719 had been to their native place on account of the Covid-19 Pandemic restrictions and upon their return, they were restrained from working at the said establishment since 17 August 2020. This was followed by further communication dated 28 October 2020 and a show cause notice dated 18 March 2021. In the show cause notice, it was mentioned that the Petitioner was liable for action for breach of clauses 30(2), (4), (5), and 31 of the Scheme.

34. In the backdrop of the aforesaid facts, the position which obtains is that M/s. Conex – the Petitioner in WP No.5360 of 2022 has not registered itself with the Respondent No.2 Board as the employer, though the Mathadi work is available at the said establishment. Whereas, Shri Krushna Logistics, Petitioner No.1 in WP No.10188 of 2022, has already been registered as the employer with the Respondent No.2 Board. Unprotected workers allotted under Toli No.2719 had been working at the said establishment since the year 2011 and after the lock-out restrictions were lifted, the Petitioner No.1 refused to allow the unprotected workers of the said Toli No.2719 to work at the said establishment.

35. A reference to the relevant clauses of the Grocery Markets or Shops Unprotected Workers (Regulation of Employment and Welfare) Scheme 1970, would also be necessary. Clause 14 of the said Scheme enjoins every employer engaged in selling, purchasing, or trading or acting as agents in grocery markets or shops in the

area to which the scheme applies to get himself registered under the said scheme. Clause 15 provides for registration of existing and new workers. Clause 29 incorporates the obligation of the registered worker. It, inter alia, provides that the registered worker in the pool which is available for work shall be deemed in the employment of the Board and such registered workers shall not engage himself for employment under registered employer, unless he is allotted to that employer by the Secretary. Clause 35 of the Scheme envisages disciplinary matters. Sub-clause (1) of Clause 35 reads as under :

“35. Disciplinary procedure – (1) (i) The Personnel Officer may on receipt of the information whether on a complaint or otherwise that a registered employer has failed to carry out the provisions of this scheme after investigating the matter, give him a warning in writing, or
(ii) where in his opinion, a higher penalty is merited, the Personnel Officer shall report the case to the Chairman, who may then cause such further investigation to be made as he may deem fit and take any of the following steps as regards that employer, that is to say he may -
(a) censure him and record the censure in his record sheet; or
(b) subject to the approval of the Board and after one month’s notice in writing given to the registered employer, remove his name from the employers’ register for such period as determined by the Board or permanently.”

36. The registered employer who fails to carry out the provisions of the Scheme can be given a warning, censure and removed from the employers’ register for such period as determined by the Board. If the provisions contained in the Mathadi Act, 1969 are read in conjunction with the Grocery Markets or Shops Unprotected Workers

Scheme, 1970, it becomes abundantly clear that the Board is not equipped with effective authority to deal with the cases where the employer refuses to get himself registered or, having been registered, refuses to provide work to the unprotected workers deputed by the Board.

37. The observations of the learned Member in the impugned order in Complaint (ULP) No.130 of 2021 (Writ Petition No.10188 of 2022) that the powers of the Board were seriously undermined and the Board had not been powerful and dynamic enough, if considered in the light of the aforesaid provisions of the Act and the Scheme, cannot be said to be unmerited. The question that arises is whether the refusal of the registered employer to allow the registered unprotected workers who were shown to have been working at the said establishment for more than 10 years i.e. Toli No.2719 at the establishment of Shree Krushna Logistic – Petitioner No.1 in Writ Petition No.10188 of 2022, at the said establishment, can give rise to a cause of action for a complaint under Section 28 of the Act, 1971.

38. Similarly, the object of the Mathadi Act, 1969, can be frustrated by the employer simply refusing to register himself under the Scheme framed by the Board. Indisputably, the Scheme 1970 enjoins every employer to register himself under Clause 14. However, the scheme does not provide for any effective redressal mechanism for non-registration by the employer, though liable to be covered by the provisions of the Maharashtra Mathadi Act, 1969. An employer cannot be permitted

to defeat the object of the Mathadi Act, 1969, by not paying heed to the directions of the Board. If the employer desires to contest the applicability of the Scheme, an avenue is open to him to raise the dispute before the State Government under Section 5 of the Mathadi Act, 1969. In the face of the directions by the Board to give work to registered unprotected workers, the employer, without resorting to the dispute resolution mechanism under Section 5 of the Mathadi Act, 199, cannot be permitted to frustrate the Scheme by steadfast refusal and inaction.

39. It is in the aforesaid context, a reference to the decision of the learned Single Judge of this Court in the case of **Krantikari Suraksha Rakshak Sanghatna, Thane V/s. A.L.Alaspurkar and Ors.**⁹ becomes necessary. In the said case, the controversy arose in the backdrop of the provisions contained in Maharashtra Private Security Guards (Regulation of Employment and Welfare) Scheme, 1981, and the Scheme framed thereunder. The Industrial Court had held that it had no jurisdiction to entertain a complaint of unfair labour practice under the Act, 1971, as there was no employer – employee relationship between the registered security guards and the registered employers – establishments where those security guards were posted.

40. The learned Single Judge after an elaborate analysis of the provisions of the Maharashtra Private Security Guards Act, 1981 and the Scheme framed thereunder, which were enacted and framed, by and large, with the similar objects and reasons for

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which the Mathadi Act, 1969 has been enacted and schemes thereunder are framed, enunciated the law as under :

“41. An in-depth analysis of the judgment of Sawant, J. in *Tradesvel*, became necessary in view of the fact that both sides in this group of petitions, with equal vehemence, contend that the judgment of Sawant, J. supports them. In my view, the opinion of the learned Judge (Sawant, J.), is reflected in his observation "for the purposes not provided for the legislation (Security Guards Act/Security Guards Scheme), the employer will be the principal employer, that is, the registered employer as defined in section 2 (3) of the Security Guards Act". The learned Judge took the view that the Security Guards Scheme was almost a complete code in itself as it provides for most of the conditions of service for which there is either a provision or a manner indicated of having them suitably prescribed or revised. It is true that Clause 29 of the Security Guards Scheme deals with most aspects of the conditions of service and also indicated the mode by which they can be bettered. But, for that reason, it is not possible to postulate that there can exist no condition of service, not provided for in the Security Guards Scheme or Security Guards Act, or that the exercise of the identification of the employer is always redundant. In my considered view, there can be several situations not provided by the Security Guards Act and the Security Guards Scheme, wherein it would be necessary to identify the employer so that the Security Guards may have a remedy against him. The case on hand is one such instance.

42. The ULP Act is an act brought on the statute book for the purpose, inter alia, of defining unfair labour practices "to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing the provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid". Unfair labour practices have been defined by Clause 3(16) of the ULP Act to mean unfair labour practices as defined in Section 26. Section 26 provides that, unless

the context requires otherwise, unfair labour practice mean any of the practices listed in Schedules II, III and IV to the Act. The different items in Schedule II indicate several activities on the part of the employer which may have the effect of stifling healthy and legitimate trade Unionism. The ULP Act frowns upon such practices. Correspondingly, it also gives a remedy to the aggrieved employees for redressal. Similarly, in Schedule IV are listed general unfair labour practices on the part of the employers for which an appropriate forum and an appropriate remedy has been provided.

43. It is difficult to accede to the contention of the employers in this case that all relevant matters having been taken care of by the Security Guards Act and the Security Guards Scheme, there can be no other purpose for which an exercise of identification of the employer under the said Act and Scheme becomes necessary. For the purpose of 'unfair labour practices' under any of the Items under Schedule II of ULP Act, it would very much necessary to identify the employer. I am unable to accept the contention of learned counsel for the employers and the Board that the provisions of the Security Guards Act and the Security Guards Scheme take care of this contingency also. On the other hand, it appears to me, after careful perusal of the Security Guards Act and Security Guards Scheme, that they contain no provision whatsoever with regard to relief against an unfair labour practice. True, that there is provision for betterment of service conditions, but lack of proper service conditions is not the only content of an unfair labour practice. Even the Security Guards are entitled to unionise; in fact they are unionised as members of the petitioner Union. Since they are entitled to unionise, their right to associate, form an union of their choice and to pursue their legitimate union activities has to be guarded against unwarranted interference from the employer - may be registered employer, in a given case. It is not unthinkable that the registered employer may indulge in several acts intended to stifle trade union activities of his own Security Guards or those allotted to him by the Board. As long as the probability of such a situation exists, and it is not demonstrable from the

provisions of the Security Guards Act and Security Guards Scheme that there is a suitable remedy and a proper forum for adjudication of complaints of unfair labour practices, I must hold that unfair labour practice is one subject for the purpose of which it is necessary to identify the employer. Such subject not having been adequately taken care of by the Security Guards Act and Security Guards Scheme, I am of the opinion that, it is one area in which the registered employer must be held to the employer atleast for the purpose of unfair labour practices complaints. I am, therefore, of the view that the Courts below were wrong in holding that there could never be a legal relationship of employer-employee between the registered employer and the Security Guards for any purpose whatsoever. Though, out of the several strands of the vinculum juris which go to make the employment contract, most may have been snapped by statute, as long as even a single strand remains, the policy of the statute, as declared by this Court in Tradesvel Security, is that, for that purpose, the registered employer must be considered the employer of the registered Security Guards. In this view of the matter, I am of the opinion that the complaints could not have been dismissed on the preliminary objection as untenable and the Courts below armed in upholding the preliminary objection as to tenability of the complaints. The three complaints were perfectly tenable against the registered employer, since they would be employers for the purpose of the unfair labour practice complaints.”

41. The learned Single Judge repelled the submission that the provisions of the Security Guards Act, 1981 and the Security Guards Scheme addressed all the contingencies. It was, in terms, observed that the said Act, 1981 and the Scheme thereunder, do not contain any provision whatsoever with regard to the relief of an unfair labour practice. As long as there is a probability of the workman being

subjected to unfair labour practice and it could not be demonstrated that the Security Guards Act and the Scheme provided a suitable remedy and a proper forum for adjudication of complaints of unfair labour practices, it must be held that unfair labour practice was one subject for the purpose of which it was necessary to identify the employer. The said aspect having not been taken care of by the Security Guards Act and Security Guards Scheme, the learned Single Judge held that, the registered employer must be held to the employer at least for the purpose of unfair labour practices complaints. It was, thus, ruled that the Courts below were wrong in holding that there could never be a legal relationship of employer-employee between the registered employer and the Security Guards for any purpose whatsoever.

42. The aforesaid pronouncement, in my considered view, applies with equal force to the facts of the case at hand. The registered unprotected workers do not seem to have an efficacious remedy to agitate the grievances of unfair labour practices under the provisions of the Mathadi Act, 1969 and the Scheme thereunder. The Board, in turn, does not seem to have the power to enforce the directions issued by it to an employer to get himself registered under the Scheme and compel the registered employer to allow the allotted registered unprotected workers to work in the said establishment. The object of the Mathadi Act, 1969 would be defeated if the registered unprotected workers are deprived of the remedy to approach the Court seeking redressal against the unfair labour practices.

43. In the cases at hand, as noted above, Conex had undertaken the contractual obligation to fulfill all the obligations under the Central or State Labour legislations. Clause 5.4 of the agreement between Conex and Respondent No.3 specifically provides that all persons engaged to undertake services shall be the employer of Conex and they shall not have any claim against Respondent No.3. Prima facie, there does not seem to be the relationship of principal employer and workman between CWC – Respondent No.3 and registered unprotected workers. Shree Krushna Logistics has, in fact, been registered as the employer under the Scheme framed by the Board and had been availing the work from the registered unprotected workers for more than 10 years.

44. Refusal to provide work to the registered unprotected workers may, therefore, be the subject matter of the complaint of unfair labour practice under Item 9 of Schedule IV of the Act, 1971. I may hasten to add that whether it does amount to an unfair labour practice would be a matter for final adjudication in the complaint before the industrial court. The fundamental objection of absence of employer – employee relationship, if considered in the light of the absence of effective redressal mechanism, pales in significance and the registered employer can be considered to be an employer for the purpose of redressal of unfair labour practices. The employer who refuses to get himself registered with the Board despite a direction of the Board cannot be permitted to draw a mileage from such refusal.

45. At any rate, this Court is considering the matter at an interim stage. A direction to provide work or security for the wages does not cause an irreparable injury to the Petitioners. It is not the case that the mathadi work is not at all available. As regards the aspect of the tenability of the complaints, it would be appropriate to decide the same after providing an opportunity to the parties to adduce evidence. I, therefore, deem it appropriate to keep the said issue open for final adjudication.

46. Hence, the following order :

ORDER

(i) The Writ Petitions stand dismissed.

(ii) The aspect of tenability of the complaints under Section 28 of the MRTP and PULP Act, 1971 is kept open and be tried as an issue along with all the issues at the final hearing of the complaints.

(iii) Rule discharged.

(iv) There shall be no order as to costs.

(N.J.JAMADAR, J.)