

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

**WRIT PETITION NO. 13738 OF 2023**

SBW Logistics Pvt. Ltd.

A Company incorporated under  
the Indian Companies Act, 1956

Through its General Manager

Jalindar Ramchandra Shigaonkar,

Age: 54 yrs., Occ: Service,

Off: Gut No. 55, Village Khairne,

Behind Bharat Shell (T-5),

MIDC, Taloja, Navi Mumbai – 410208.

.. Petitioner

Verus

1. The Chairman,

Goods & Transport Workers Board,

Off/at: 102/103, Steel Chambers,

Devji Ratanshi Marg, Dana Bander,

Mumbai – 400 009.

2. The Works President,

Maharashtra Rajya Mathadi,

Transport & General Kamgar Union,

Mumbai – 400 009.

.. Respondents

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**Ms. Satyapriya Rao**, with Arjun Kulkarni & Vaibhav Patankar, i/b.  
Patankar Associates, for the Petitioner.

**Mr. B. S. Mahamulkar**, with Rahul D. Oak, for Respondent No.1-  
Board.

**Mr. Rakesh Patil**, for Respondent No.2-Union.

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**CORAM: SANDEEP V. MARNE, J.**

**DATE : 7<sup>th</sup> FEBRUARY, 2024.**

**ORAL JUDGMENT:**

1. Rule. Rule is made returnable forthwith. With the consent of the learned counsel appearing for the parties, Petition is taken up for final hearing.

2. By the present Petition, the Petitioner challenges order dated 26<sup>th</sup> April, 2023 passed by the Goods and Transport Workers Board, Mumbai fixing the rates of wages payable to the workers of Respondent No.2-Union by Petitioner during the period from 1<sup>st</sup> April, 2022 to 31<sup>st</sup> March, 2025.

3. I have heard Ms. Rao, learned counsel appearing for the Petitioner, Mr. Mahamulkar, learned counsel appearing for Respondent No.1-Board and Mr. Patil, learned counsel appearing for Respondent No.2-Union.

4. After having considered the submissions canvassed by the learned counsel appearing for parties and after perusal of the

impugned order passed by the Board on 26<sup>th</sup> April, 2023, it is seen that the order is passed under provisions of Clause 33 of the Goods Transport Unprotected Workers (Regulation of Employment and Welfare) Scheme 1971 formulated under the provisions of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969. Sub-clause 5 of Clause 33 of the scheme reads thus:

*“33(5). In fixing, revising, or as the case may be modifying the conditions of service of the registered workers the Board shall have regard to the cost of living the prevalent conditions of service in comparable employments in the local area, the capacity of the registered employer to pay and any other circumstances which may seem relevant to the Board.”*

5. Ms. Rao would submit that as per provisions of Sub-clause 5 of Clause 33, the Board must take into consideration various factors such as:

- i. The cost of living;
- ii. the prevalent conditions of service in comparable employments in the local area;
- iii. the capacity of the registered employer to pay; and
- iv. any other circumstances which are considered relevant by the board while fixing or revising the conditions of service of registered workers.

6. According to Ms. Rao, perusal of the impugned order would indicate that except making a vague reference to the factors such as rates of wages in other Container Freight Station [“CFS”], current inflation as well as capacity of Petitioner to pay hike in wages etc., no material was placed before the Board for the purpose of application of mind to various factors which are required to be mandatorily considered under Sub-clause 5 of Clause 33.

7. Ms. Rao has placed reliance on a Division Bench Judgment of this Court in *Steel Authority of India Ltd vs. Nagpur and Wardha District Mathadi and Unprotected Workers Labour Board and Others*<sup>1</sup>, in which this Court has held in paragraphs 26 and 27 as under:

“26. It would be thus clear that in matters like fixation of prices only limited enquiry by Courts is permissible and it is confined to examining whether the prescribed factors are present to the mind of the authorities specifying the price and that the Courts will not go into the mechanics of price fixation nor would reevaluate the considerations even if the prices are demonstrably injurious to some manufacturers or producers. Order impugned in this petition essentially being of the same nature as order of price fixation, same principles of judicial review will apply to it. Therefore, it would not be possible for us to interfere in the impugned order only on the ground that the rates are exorbitant or CPI year is incorrectly taken or highest of two different rates of wages has been

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<sup>1</sup> 2016(1) MH. L.J. 921

*considered for giving rise in wages. However, we make it clear here that this observation of ours is confined only to the examination of the impugned order from the view point of confined only to the examination of the impugned order from the view point of what rates ought to have been given and what rates ought not to have been given and not any further. The impugned order is still required to be assessed for its correctness or otherwise on the anvil of other principles of law as laid down in the aforesaid cases of Cynamide India Ltd. and anr. and M/s Gupta Sugar Works which we would be doing in the remaining part of this judgment.*

27. *It is the further contention of learned counsel for the petitioner that when representative Board was about to be constituted following the directions of this Court, one man Board i.e. respondent No. 1 was at the relevant time ought not to have gone ahead with revising the rates by passing the impugned order and, therefore, respondent No. 1 committed a gross impropriety. The argument cannot be accepted for the reason that, as rightly submitted by learned Senior Counsel and the learned counsel for the respondents, it is nobody's case that respondent No. 1 has no jurisdiction to revise the rates. Section 6-A of the Mathadi Act is very clear in this regard. It lays down that for the reasons stated in sub-clause (1), if the representative Board could not be constituted, the State Government may by publishing a notification in the official gazette appoint a person who shall hold office until a Board is duly constituted under section 6. Under sub-clause (2) of section 6-A, one man Board so appointed is deemed to constitute the Board for the time being and exercises all the powers and performs and discharges all the duties and functions conferred and imposed upon the representative Board. The person so appointed continues to function in office until the day immediately preceding the date of the first meeting of the representative Board constituted under section 6. This should make it clear to us that one man Board appointed under section 6-A is for*

*all purposes, a Board constituted under section 6 until the date immediately preceding the date of the first meeting of a representative Board. There is also no provision contained in the Mathadi Act that one man Board constituted under section 6-A cannot perform any function in terms of Clause 33 of the Scheme, nor any such prohibitory provision has been brought to our notice by the petitioner. If it be so, the question of propriety would not arise and one man Board under section 6-A would be within its powers when it revises or modifies the rates of wages in pursuance of the power under Clause 33 of the Scheme.*

8. Perusal of Sub-clause 5 of Clause 33 would undoubtedly indicate that the Board must take into consideration the four factors of cost of living, prevalent conditions of service in comparable employments in local area, capacity of registered employer to pay and other circumstances before taking a decision for fixation or revision of the rates of wages. The impugned order passed by the Board would indicate that the Board has not taken into consideration the prevalent rates of wages in the other CFS.

9. Mr. Mahamulkar would contend that it was the duty of the Petitioner to place before the Board the rates of wages in other CFS. This contention contains an implied admission that the rates of wages in other CFS were actually not placed before the Board. If this is the position, it is difficult to fathom as to how the Board

could have taken a decision to revise the rates of wages of the registered workers. In my view, therefore, the order passed by the Board clearly suffers from non application of mind to the relevant factors.

10. Ms Rao would submit that the presumption by the Board about Petitioner paying wages at the rate of per tonne in respect of loading and unloading of bag cargo/pulses/non-hazardous goods etc., is totally erroneous. In fact, the Petitioner has been paying wages at the rate of per container to the registered workers as per the existing agreements. According to her, the presumption of current system of payment of per tonne basis by the Board itself is misplaced and accordingly the increase of 12% in the rates of wages on per tonne basis in respect of loading and unloading of bag cargo/pulses/non-hazardous goods is unsustainable. She has invited my attention to their representation made by the Petitioner to the Board in paragraph 3 thereof, the Petitioner has informed the Board that the current rates of wages for loading/unloading of bag cargo is Rs.3,000/- for 20” and Rs.3,600/- for 40” container. It is Petitioner’s grievance that the increased in the rates of wages ought to have been directed on the current rate of Rs.3,000/- or Rs.3,600/- per container and not on the basis of per tonne. In my

view, even in this aspect is required to be taken into consideration by the Board.

11. Mr. Mahamulkar would express an apprehension that the Petitioner is deliberately avoiding to pay any hike to the registered workers by raising technical pleas. According to Mr. Mahamulkar, the rise in the wages is due since 1<sup>st</sup> April, 2022 and that despite passage of about two years, the Petitioner has not implemented any wage rise.

12. Ms. Rao, would submit that the Petitioner has already applied 12% hike in respect of the most of the items.

13. Considering the overall conspectus of the case, I proceed to pass the following order:

- i. The order dated 26<sup>th</sup> April, 2023 passed by Respondent No.1-Board is set aside and the proceedings are remanded before the Board for being decided afresh;
- ii. the parties shall appear before Respondent No.1-Board on 26<sup>th</sup> February, 2024 and obtain further directions;

- iii. the Petitioner shall place before Respondent No.1-Board the rates of wages and conditions of service of other comparable employments in the local area and relevant material about its capacity to pay;
- iv. Respondent No.1-Board shall take final decision in the proceedings on or before 30<sup>th</sup> June, 2024.
- v. All contentions of the parties are kept open.

14. With the above directions, the Petition is disposed of.

**SANDEEP V. MARNE, J.**