

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

WRIT PETITION NO. 6268 OF 2024

The Bombay Dyeing & Manufacturing Co.Ltd.
(Polyester Plant)

...Petitioner

Versus

The Grocery Markets & Shops Board For
Greater Mumbai Thane & Raigad Dist. & Ors.

...Respondents

**AND
WRIT PETITION NO. 18102 OF 2024**

Bombay Dyeing & Manufacturing Co.Ltd.
(Polyester Division)

...Petitioner

Versus

Grocery Markets and Shops Board For
Greater Mumbai, Thane & Raigad Dist. & Ors.

...Respondents

...

Mr.J.P. Cama, Senior Advocate a/w Mr. Avinash Jalisatgi, Mr. T.R. Yadav
and Ms. Divya Wadekar for the Petitioner in both the Petitions.

Mr. B.S.Mahamulkar for Respondent No.1 in WP No. 6268 of 2024.

Mr.Sanjay Shinde (through VC) with Mr.Rajesh Kamble for Respondent
No.2 - Union in WP No.6268 of 2024.

Mr.B.V.Samant, Addl.GP with Mr.K.S.Thorat, 'B' Panel Counsel for
Respondent No.3 in WP No. 6268 of 2024.

Ms.Pavitra Manesh with Ms. Bhargavi Patil for Respondent No.2 in WP
No.18102 of 2024.

Mr.G.P.Sawant, Addl.GP with Mr.A.K.Naik, AGP for Respondent No.3
in WP No. 18102 of 2024.

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**CORAM : RAVINDRA V. GHUGE
&
ASHWIN D. BHOBE, JJ.**

DATE : 18TH DECEMBER, 2024

P.C.:

1. We have heard the learned Advocate representing Respondent No.2 Union and the learned Senior Advocate for the Petitioner Company.

2. Considering the statements recorded in our order dated 9th December, 2024, more specifically, paragraph Nos. 5 and 7, the learned Advocate representing the Union submits that the Union is agreeable to take the rise at the rate of Rs. 29% as was earlier offered by the Petitioner Company in the Memorandum of Understanding dated 22nd August, 2023 for the period 1st April, 2021 upto 31st March, 2024 as a full and final settlement.

3. The learned Senior Advocate for the Petitioner submits, on instructions, that the Company which has made this offer, stands by the said offer and desires that the issue be put to rest. The benefits of the understanding, between the parties, would be effected for the period 1st April, 2021 to 31st March, 2024.

4. On the point of overtime payment, the demand of the Union seems to be unacceptable to the Petitioner. While the dictation of this order was in progress, the learned Advocate representing Respondent No.2 Union prayed that the issue of overtime, which is a part of the impugned order, be kept open for further negotiations between the Petitioner and the Union. The learned Senior Advocate representing the Petitioner is instructed to state that it would be a cumbersome exercise to dig into old records to find out which Mathadi worker/toli had worked overtime on a particular day and for a particular time so as to calculate the overtime.

5. The learned Advocate representing Respondent No.1, the Chairman of the Board, submits that the impugned order rests on considering the work performed by the Toli, for grant of overtime. Since the data before the Chairman was only to the extent of the documents tendered by the Union and the Management had not tendered its data, the Chairman accepted the contentions of the Union. We are afraid that, this is not the procedure to be used for deciding the calculations of overtime wages. It is clear from the provisions of the Factories Act, 1948 and the Maharashtra Factories Rules, 1963 that the overtime is person/worker centric and the overtime to be paid to each worker has to be

calculated on the number of hours that he has put in, in overtime working. If the Tolis are paid on tonnage basis and if a particular Toli has worked overtime, such details will also be necessary for calculating the overtime wages, which may be distributed equally amongst the Toli members, if that is the convention which is followed for a long time. Respondent no. 1 submits that such data was not available from the Management to make a precise or accurate calculation.

6. Considering the above and in order to give further time to the Petitioner and Respondent No.2 Union, to re-think on their proposals, list this Petition on **23rd January, 2025 at 2.30 pm**. On the next date, if there is no resolution between the Petitioner and Respondent No.2 Union, we would proceed to decide the issue on its merits. The ad-interim order passed earlier, to continue till then.

7. Insofar as the observations of this Court in paragraph Nos. 6 and 8 of our order dated 9th December, 2024, we had clearly indicated to the State that since Section 6-A of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (the Act of 1969) is merely a stop gap arrangement and not a resolution or a substitute for the appointment of a regular Board under

Section 6 in perpetuity. As a regular board has not been constituted for more than two decades, we deem it appropriate to issue further directions to the State Government.

8. For clarity, we are reproducing paragraph Nos. 6 and 8 of our order dated 9th December, 2024 hereunder:

“6. The learned Sr. Advocate makes a serious grievance about a one member Board having been constituted more than two decades ago under Section 6-A of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 and the scheme thereunder. He contends that Section 6-A is merely a stop gap arrangement empowering the State Government to appoint a Board consisting of one person, until a regular Board is constituted under Section 6. Normally, the State Government follows the practice of appointing an Assistant Commissioner Labour/Conciliation Officer or a Deputy Commissioner Labour to officiate as a one member Board.

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8. We would expect the Principal Secretary Industries and Labour Department, State of Maharashtra to make a statement on the next date, as to when would the State constitute a Board under Section 6, not only for Respondent No.1/Board, but all the Boards in the State of Maharashtra.”

9. The learned Addl. GP submits, on instructions, that the swearing in of the Council of the Ministers has occurred and very soon

the portfolios would be distributed. The concerned Minister In-charge of the Industries and Labour portfolio would be briefed on the constitution of the Board under Section 6 of the Act of 1969.

10. We expect on the next date that, the State Government would apprise the Court that the process under Section 6 of the Act of 1969 has been set into motion and the process for constituting all the Boards in the State of Maharashtra is undertaken.

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11. Considering the above, list this Petition along with Writ Petition No. 6268 of 2024 on 23rd January, 2025 at 2.30 pm.

12. Ad-interim order passed earlier to continue till then.

(ASHWIN D. BHOBE,J.)

(RAVINDRA V. GHUGE, J.)