

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7671 OF 2005

Kay Kay Embroideries P. Ltd. .. Petitioner.

vs.

Cloth Markets & Shops Board

And Others. .. Respondents.

Mr. J.P. Cama, Sr. Counsel with

Shri A.K. Jalisatgi for petitioner.

Smt. Lata Desai with Smt. Pallavi Divekar

for respondent nos. 1, 2 & 5.

WITH

WRIT PETITION NO. 597 OF 2001

Bhulwarka Steel Industries Ltd. .. Petitioner.

vs.

The Bombay Iron & Steel Labour

Board (For Gr. Bombay, Thane &

Raigad Districts) & Anr. .. Respondents.

Mr. S.K. Talsania, Sr. Counsel with

Mohit Kapoor with Shri Aditya Chitale

for petitioner.

Smt. Lata Desai for respondent nos. 1 & 2.

WITH

WRIT PETITION NO. 1835 OF 2001

Maharashtra Rajya Mathadi &

General Kamgar Union .. Petitioner.

vs.

The Grocery Markets and

Shops Labour Board & Ors. .. Respondents.

Mr. Anand Grover i/by Ms. Bharati Patil

for petitioner.

Shri P.K. Rele with S/Shri R.P. Rele, Vinod

Tayade, Piyush Shah i/by Shri N.G. Chitre

for R. No.2.

Shri S.R. Nargolkar, AGP., for R. Nos. 3 & 4.

Shri K.M. Naik i/by Shri S.P. Dhulapkar for R.

No.1.

WITH

C.A. NO. 1315 OF 2004 in WRIT PETITION NO.1835 of

2001.

Maharashtra Rajya Mathadi &

General Kamgar Union .. Petitioner.

vs.

The Grocery Markets and

Shops Labour Board & Ors. .. Respondents.

Shri Prakash Mahadik for Applicant.

Shri K.M. Naik, i/by Shri S.P. Dhulapkar for
Respondents.

WITH

C.A. 504 of 2005 IN WRIT PETITION NO. 1835 OF 2001.

Maharashtra Rajya Mathadi &
General Kamgar Union ... Petitioner.

vs.

The Grocery Markets and
Shops Labour Board & Ors. ... Respondents.

Shri Prakash Mahadik for Applicant.

Shri K.M. Naik, i/by Shri S.P. Dhulapkar for
Respondents.

WITH

WRIT PETITION NO. 3112 OF 2006

Maruti on Board Courier Services .. Petitioner.

vs.

Cloth Market & Shop Board & Anr. .. Respondents.

Shri S.C. Naidu i/by Shri N.P. Dalvi for petitioner.

Smt. Lata Desai i/by Smt. Pallavi Divekar for R.

No.1.

Shri S.R. Nargolkar, A.G.P. for Government.

WITH

WRIT PETITION NO. 3717 OF 2005

Shri Scaffolding Pvt. Ltd., .. Petitioner.

vs.

State of Maharashtra

Nashik Mathadi Labour Board. .. Respondents.

Shri M.S. Karnik for petitioner.

Smt. Lata Desai i/by Smt. Pallavi Divekar for R.

No.2.

Shri S.R. Nargolkar, A.G.P. for Respondent No.1.

WITH

WRIT PETITION NO. 3783 OF 2001

Pennzoil Quaker State India Ltd., .. Petitioners.

vs.

The Grocery Markets & Shops

Board for Greater Bombay & Ors. .. Respondents.

Shri P.K. Rele with S/Shri R.P. Rele, Vinod

Tayade, Piyush Shah i/by Shri N.G. Chitre for

petitioner.

Shri S.R. Nargolkar, AGP., for State.

Shri K.M. Naik i/by Shri S.P. Dhulapkar for R.

No.1.

WITH

CIVIL APPLICATION NO. 618 OF 2003 IN WRIT PETITION
NO. 3783 OF 2001

Maharashtra Rajya Mathadi &
General Kamgar Union .. Petitioner.

vs.

Pennzoil Quaker State India Ltd.,
& Ors. .. Respondents.

Mr. Anand Grover i/by Smt. Bharati Patil for
Applicant.

Shri P.K. Rele with S/Shri R.P. Rele, Vinod
Tayade, Piyush Shah i/by Shri N.G. Chitre for
Respondent No. 1.

Shri S.R. Nargolkar, AGP., for State.

Shri K.M. Naik i/by Shri S.P. Dhulapkar for R.
No.2.

WITH

WRIT PETITION NO. 9125 OF 2003

Vilas Dattu Shirke & Ors. .. Petitioners.

vs.

The Grocery Markets and Shops

Board for Greater Bombay, etc.,

and another.

.. Respondents.

Shri M.S. Topkar for petitioner.

Shri K.M. Naik i/by Shri S.P. Dhulapkar for R.

No.1.

Shri D.S. Joshi for Respondent No. 2.

WITH

ORIGINAL SIDE WRIT PETITION NO. 2544 OF 2003

Chemfert Traders Bombay

Pvt. Ltd.,

.. Petitioner.

vs.

State of Maharashtra & Ors.

.. Respondents.

And

Hindustan Lever Employees'

Union.

.. Intervener.

None for petitioner.

Smt. M. Kajle, AGP, for R. Nos. 1 to 4.

Shri K.M. Naik i/by Shri S.P. Dhulapkar for R.

No.5.

CORAM : J.N. PATEL,

D.K. DESHMUKH &

ROSHAN DALVI, JJ.

DATE : 30th August, 2006.

ORAL JUDGMENT : (Per J.N. PATEL, J. for self and Smt.
Roshan Dalvi, J.)

. The Division Bench of this Court while considering a group of petitions filed by the petitioner employers relating to the application of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (hereinafter referred to as "the Mathadi Act, 1969" for the sake of brevity and convenience) felt that principally two questions of law arise for the determination of the Court in those proceedings treating the writ petition of M/s. Kay Kay Embroideries Pvt. Ltd., (Writ Petition NO. 7671 of 2005) as a lead petition. The Bench was of the view that the interpretation placed in the judgment of this Court in **Century Textiles & Industries Ltd., vs. State of Maharashtra**, 2000 II CLR 279 relating to section 2 definitions defining the words "unprotected workers" (Section 2 (11) and "worker" (Section 2 (12) of the Mathadi Act, 1969 is in conflict with the statutory provisions enacted by the legislature and that the correctness of the decision would, therefore, merit examination by the Larger Bench. The two questions of law for determination of the controversy were formulated after considering the various provisions of the Mathadi Act, 1969 and the Schemes enacted thereunder like the Cloths Markets and Shops Unprotected Workers (Regulation

of Employment and Welfare) Scheme, 1971 and the Grocery Markets, Shops Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1970 and Iron and Steel Scheme which have been made in exercise of the power conferred by Sections 3 and 4 of the Mathadi Act, 1969 and are operative in their respective fields of employment of manual workers in scheduled employment or group of scheduled employments for the purpose of effective implementation of provisions of the Mathadi Act, 1969 and the various schemes formulated under the said Act.

2. The Bench examined the issue in the backdrop of the previous decision of this Court in **C. Jairam Pvt. Ltd., vs. The State of Maharashtra** (Misc. Petition No. 150 of 1973) dated 19th April 1974 wherein the constitutional validity of the Act and the Scheme was in question before the Court, namely, the Cotton Merchants Scheme of 1972 and a subsequent decision rendered in the case of **S.B. More vs. State of Maharashtra** (Misc. Petition No. 414 of 1973) dated 24th April 1974 in the context of the Khokha and Timber Unprotected Workers Scheme, 1973, which upheld the validity of the said Act and the Schemes except clauses found to be and held offending Article 19 (1) (g) of Constitution of India. It also referred to the decision of the Division Bench dated 16th January 1980 (**Lallubhai Kevaldas vs. The State of Maharashtra**, Writ Petition No. 119 of 1979 in

the backdrop of the statement of objects and reasons underlined in the enactment of Mathadi Act of 1969 and after examining the definition of the term "unprotected worker" defined in Section 2 (11) of the said Act and "worker" as defined in section 2 (12), the Bench found that once the Act defines the expression "unprotected worker" the definition in the Act provides a statutory dictionary. The Court is under bounden duty to apply the provisions of the said Act to such 'worker' who stands covered by the definition, and, therefore, it was not open to the Court to adopt the meaning of the expression "unprotected worker" to apply only to the casually engaged workmen who would come within the purview of the Act, which is at variance with what has been laid down by the competent legislation and it felt that the judgment of the Division Bench in **Century Textiles & Industries Ltd., vs. State of Maharashtra** does not advert to the definition of Section 2 (11) in the judgment in its proper perspective. The Division Bench observed that the definition merely indicates that "unprotected workers" are manual workers who are engaged or to be engaged in any scheduled employment and, therefore, the Division Bench felt that the judgment in Century Textiles does not give effect to the plain meaning of the language used by the legislature in section 2 (11) and requires consideration. They framed the following question of law for being considered by a 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 & Industries Ltd., vs. State of Maharashtra**, 2000 II CLR 279 on the aforesaid expression that it is only casually engaged workers who come within the purview of the Act, correct and proper?

3. We have heard the learned counsel appearing for the petitioners, the Board and the Respondents who are representing the cause of workers purported to be covered by the Mathadi Act, 1969. Though the question referred to us by the Division Bench relates to the interpretation of the definition of "unprotected workers" and "worker", we have been also addressed touching the merits of the petitions which in substance challenge the very applicability of the Mathadi Act, 1969 to the establishment of the petitioners and so also the respective schemes for ensuring regular employment of unprotected workers which arguments are directed on the premise that even if their establishments engage manual workers and comes within the scheduled employment, they will not be governed by the Mathadi Act, 1969 and the Schemes framed thereunder relating to the scheduled

employment as these workers are regular employees of the establishments. It is canvassed before us that the Mathadi Act, 1969 is only meant for "unprotected workers" whose employment is not protected by any of the labour legislations.

4. On behalf of the employers it is contended that though their establishments may fall within the scheduled employment, their workers who are engaged for doing manual work are protected as they enjoy benefits of more than one labour legislation like : (1) Industrial Employment (Standing Orders) Act, 1946, (2) Industrial Disputes Act, 1947, (3) The Factories Act, 1948, (4) The Employees State Insurance Act, 1948, (5) Minimum Wages Act, 1948, (6) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (7) The Payment of Bonus Act, 1965 and (8) Maharashtra Factories Rules, 1963.

5. It is strongly contended before us that it has been the consistent view of this Court that the Mathadi Act, 1969 is applicable to establishments which employ manual workers to do casual work in a scheduled employment who is "unprotected worker" as defined in Section 2 (11) of the Mathadi Act, 1969. It is submitted that the decision of this Court in **C. Jairam Pvt. Ltd., vs. The State of Maharashtra** (Misc. Petition No. 150 of 1973) dated 19th April 1974 followed by another

decision in the case of **S.B. More vs. State of Maharashtra** (Misc. Petition No. 414 of 1973) dated 24th April 1974 and affirmed by the decision of the Division Bench of this Court dated 16th January 1980 in the case of **Lallubhai Kevaldas vs. The State of Maharashtra**, Writ Petition No. 119 of 1979 has consistently held it to be so and it has been reaffirmed in the judgment of the Division Bench in **Century Textiles & Industries Ltd., vs. State of Maharashtra**, 2000 II CLR 279 when the Division Bench of this Court expressed its approval by observing in para 40 of the reported judgment as under:-

"40. We, therefore, respectfully agree with the view expressed in the said judgment dated 16th January, 1980 in Writ Petition No. 119 to the effect that the Act does not deal with employees engaged on monthly basis as the same are protected under the Shops and Establishments Act and other enactments. We also agree with the view that it is only the casually engaged workmen who would come within the purview of the Act. The material produced on record clearly shows that they are protected workmen more particularly with reference to the said Agreement under S.2(p) of the Industrial Disputes Act, 1947."

6. It is the contention of the employers that the

definition of "unprotected workers" in section 2 (11) of the Mathadi Act must be read conjointly with the expanded meaning of "worker" in Section 2 (12) and if so read, it becomes clear that when the Act applies to "unprotected workers" it covers all these employees whether engaged directly, indirectly (on contract) or by simple agreement and, therefore, it would cover all "unprotected employees" whatsoever engaged and in case if "worker" as defined in Section 2 (12) is read separately from "unprotected worker" in Section 2 (12) it would mean that "unprotected worker" means someone engaged other than directly, indirectly or by simple agreement. In our view this contention stems from the observations made by the Division Bench of this Court in the case of Century Textiles and Industries Limited, particularly in the later part of para 32 of the reported judgment which reads as under :-

"The definition given as to the word "worker" in Clause 2 (12) of the said Act is meant to refer to those persons who are not employed by any Employer or 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, the workers covered by this definition are engaged or to be engaged directly or through any Agency on wages or not, to do manual work

a
According to Mr. Cama, the learned counsel for
petitioners, this would make the definition clause in
section 2 (11) meaningless and inoperative which is not
b
permissible in law. On the other hand, if "worker" in
section 2 (11) is independent of section 2 (12) and
refers to the same person other than an "unprotected
worker" in section 2 (11) then, since the protection and
c
coverage of the entire Act and Scheme apply only to
"registered unprotected workers" that word after its
incorporation into the Act under Section 2 (12) has no
effective purpose, object or usage which will again be an
d
impermissible construction and, therefore, one is left
with no choice but to read the two sub-sections
conjointly. It has the effect of conformity with the
obvious and overriding object and purpose of the statute
e
in the first instance and by giving the expression
"unprotected worker" the widest possible meaning expands
the coverage of the Act to "unprotected workers" employed
f
in every conceivable manner.

7. It is further contended that the statute does not
bring within its fold every "workman" in scheduled
g
employment as it would be fallacious as it would defeat
the very objects and reasons for which the Mathadi Act
came to be enacted. The learned counsel for the
petitioner employers have also made a detailed reference
h

before us to the three Committees appointed by the Government which found that a certain special class of workers employed essentially in markets, factories and other such places were either not covered by the existing labour legislations or could not be covered by the same, because of the very uncertain employment and the entirely transitory nature of their work and this was thus the existing position of law in 1969 which the Legislature found out through the aforesaid three Committees. It was, therefore, the non-protection of this specific class of workers which the Legislature sought to thereafter correct by the enactment of this special statute which is also reflected in the observations made by the Division Bench of this Court in the case of **Lallubhai Kevaldas** (supra) which took into consideration the judgment of **C. Jairam Pvt. Ltd.**, (supra) and **S.B. More** (supra) and has expressly come to the conclusion that it is only those workers who are unprotected by other labour statutes who are intended to be covered by the present statute and the said reasoning has been thereafter adopted by another Division Bench in the case of **Irkhar Sahu and another vs. Bombay Port Trusts**, reported in 1994 I CLR 187 and this is also the view of the learned Division Bench in **Century Textile's** case (supra) and, therefore, as this Court has taken a consistent view that the expression "unprotected workers" in the Mathadi Act refers to a worker who is unprotected by other labour statutes, such a long standing unbroken line of law cannot and should not be

easily upset and does not call for any reconsideration.

It was also argued before us that the stand taken by the Mathadi Board that the workers directly employed in scheduled employment are ipso facto not casual, must also be held to be covered under the said Act. It is, therefore, submitted that there is no bar on the part of the employers to engage workers directly or indirectly or even by simplicitor agreement by referring to item 6 of Schedule IV of the MRTU & PULP Act and item 10 of the Fifth Schedule of the I.D. Act and by referring to clauses 4 (c) and 4 (d) of the Model Standing Orders. It is, therefore, submitted that the test is not whether the worker is engaged directly or indirectly in scheduled employment but whether the worker engaged in any manner is at the time of intended coverage unprotected as in respect of his employment and conditions of service from other existing labour statutes. Therefore, according to the learned counsel for the petitioner employers, the worker could be covered under the Mathadi Act of 1969 only if it is found that :

- (i) The employee must be unprotected by other statutes,
- (ii) He must be employed in scheduled employment.
- (iii) He must be employed to do the work set out in the schedule.

and, therefore, the Act has no application to manual workers even in scheduled employment who are doing other kind of manual work and it is equally inapplicable to employees in scheduled employment who are protected by other Labour Legislations.

8. It is further contended that if literal construction of section 2 (11) is attributed to the definition of "unprotected workers" in Section 2 (11) of the Mathadi Act, 1969, it is directly opposed to the objects of the Act as demonstrated from the committee reports which preceded the Act, the statement of objects and reasons for the enactment and indeed the preamble too. It is submitted that it will also lead to a situation where the word "unprotected worker" would have no rational meaning other than to club together by force of law protected and "unprotected workers" in one lumpsum and this would not advance the cause of protecting "unprotected workers" but would simultaneously lead to protected workers being terminated from employment so that they can be registered as "unprotected workers" under the Mathadi Act so that finally they could be sent back to the same or similar employer as daily rated or monthly rated mathadi workers. Therefore, it has been emphasised that such liberal construction would lead to an absurdity and should not be accepted. It is, therefore, contended that while resorting to the literal

construction of the definition of "unprotected workers"

the Court should take into consideration the object and reason of the enactment and then to read the words sought to be construed in consonance with that object.

9. In addition to relying on the decision of this Court in the case of **C. Jairam Pvt. Ltd.**, till **Century Textiles'** reliance has also been placed on the following cases :-

1. Mohandas Issardas and others vs. A.N. Sattanathan and others, reported in AIR 1955 Bombay 113.

2. Judgement of this Court in Criminal Revision Application No. 160 of 1975 (with Cri. Rev. Application No. 161/75) in the case of M/s. Western Rolling Mills Pvt. Ltd., and Five others vs. Shri T.S. Hatekar and the State of Maharashtra dated 24th November, 1975.

3. AIR 1985 SC 1698
Commissioner of Income-tax vs. J.H. Gotia.

4. JT 1998 (4) SC 507
State of Haryana & Anr. vs. Raghubir Dayal.

5. AIR 2004 SC 5009
U.P. State Electricity Board vs. Shri Shiv
Mohan Singh. a
6. (2005) 2 SCC 271
Nathi devi vs. Radhadevi Gupta. b
7. AIR 1987 SC 1454
Utkal Construction & Jonery Pvt. Ltd.,
vs.
State of Orissa. c
8. 2004 II CLR 534 (SC)
Mukesh K. Tripathi vs. Senior Divisional
Manager, LIC. d
9. (2005) 12 SCC 778
Baldevsingh Bajwa vs. Monish Saini. e
10. AIR 1964 SC 1272
Buchingham and Caruatic Mills Ltd., vs.
Venkatiah & Anr. f
11. (2002) 5 SCC 111
Pradeep Kumar Biswas vs. Indian Institute of
Chemical Biology and others. g
12. (1996) 3 SCC 15 h

Thirumuruga Kirupananda Variyar Thavathiru

Sundara Swamigal Medical Educational &
Charitable Trust vs. State of Tamil Nadu and
others.

13. (2001) 4 SCC 262

Kulwant Kaur and others. vs. Gurdial Singh
Mann (dead) by Lrs. and others.

14. AIR 2002 SC 3404

Kaiser-I-HInd Pvt. Ltd., and others, etc., v.
National Textile Corporation Ltd., and others,
etc.

10. Mr. Talsania, the learned counsel appearing
for Bhuwalka Steel Industries Ltd., in Writ Petition No.
597 of 2000 also joined issue with Mr. Cama and he
supports the contentions advanced by Mr. Cama on behalf
of the petitioner employers who would also like to
apprise the Court with the consistent view taken by this
Court which is holding the field since the last 25 years
as regards the class of workmen who are covered under the
Mathadi Act being those who have been casually employed
workmen and who do not enjoy benefits of regularly
employed workmen governed by the provisions of the
Industrial Disputes Act, 1947, the Minimum Wages Act,
1948 and other enactments and, therefore, relying on the

principle of **stare decises** submitted that the settled position in law should not be disturbed and placed reliance on the decision rendered by the Seven Judge Bench of the Hon'ble Supreme Court in the case of **State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamad (2005) 8 SCC 534.**

11. Mr. Naidu who represents petitioner employer Maruti on Board Courier Services (Writ Petition No. 312 of 2006) submitted that the Court should not prefer a literal interpretation of the definition "unprotected worker" (Section 2 (11)) and "worker" (Section 2 (12)) in a scheduled employment (Section 2 (9)) as it would lead to patent absurdity, anomaly, inconsistency, injustice and hardship as it would deprive the employer from engaging manual workers directly/indirectly in a scheduled employment as every manual workman working in a scheduled employment would be "unprotected workman" and this will result into termination from service of manual workers engaged directly in a scheduled employment as it encompasses all scheduled employments within its scope. It is further contended that it will also lead to repugnancy or inconsistency and cause irreconceivable hardship in the implementation and compliance of other labour laws and labour welfare legislations which otherwise apply on its own motion to regular, direct or indirect mathadi workers working in any employment including a scheduled employment under the Mathadi Act.

The next limb of the arguments canvassed by Mr. Naidu relates to the competency of the State in enactment of the Mathadi Act in exercise of legislative power conferred by Article 246 of the Seventh Schedule, List III, Entry 24 which is sufficiently covered by various enactments like Industrial Employment (Standing Orders) Act, 1946, Industrial Disputes Act, 1947, The Factories Act, 1948, The Employees State Insurance Act, 1948, Minimum Wages Act, 1948, The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, The Payment of Bonus Act, 1965 and the Maharashtra Factories Rules, 1963 and according to him, this takes sufficient care of each and every class of worker including those who are doing manual work in all the factories and establishments and as the object of the Mathadi Act is protection of employment and extension of certain benefits to a special class of workers who, according to him, were not covered under the aforesaid enactments, this can be the only meaning which can be attributed to the term "unprotected worker" and, therefore, according to him if worker is the genus, for the purpose of Industrial Law "unprotected worker" is a 'species' thereof. As a natural corollary "protected worker" is the other species. Both form a distinct and separate class and, therefore, the Mathadi Act of 1969 would not be applicable to those factories or establishments, though they may be carrying out scheduled employment, if the manual workers employed in such scheduled employment is otherwise "protected". In

support of his contention, Mr. Naidu has also referred to the various committees and labour conferences which led to the passing of various enactments to look into the problems of workers/employees. Mr. Naidu has also canvassed that this Court, while answering the reference, should have purposive approach as opposed to literal construction which was adopted by Lord Denning L.J. in the case of Seaford Court Estates Ltd., v. Asher which was approvingly referred to by the Supreme Court in the case of **Bangalore Water Supply & Sewage Board V. A. Rajappa**, AIR 1978 SC 548. In addition to these submissions Mr. Naidu has also relied on various authorities which lay down principles for interpretation of the statute in its proper perspective and concluded his argument by submitting that the interpretation given by the learned Single Judge in the two cases C. Jairam Pvt. Ltd. (supra) and S.B. More (supra) as well as by Division Bench in Lallubhai Kevaldas (supra) followed by another Division Bench in Century Textiles's case (supra) is the correct interpretation and requires to be upheld. He has also expressed the same feeling as his other colleagues representing the cause of employers that in case any different view is taken in the matter it would unsettle the proposition which has been accepted for the last so many years that the employers who have employed regular workmen on their rolls within the scheduled employment and who are duly protected by other labour legislations do not fall within the purview of the

Mathadi Act, 1969.

12. On behalf of the Mathadi Board Mrs. Lata Desai, the learned counsel submitted that in deciding the reference this Court will be required to determine the following questions of law which arise as a corollary to the above reference.

- a) Whether the term "Unprotected worker" means a worker not protected by labour legislations or whether it means a manual worker as defined in the Act?
- b) Whether a mathadi worker who is engaged directly by the Employer falls outside the purview of the Mathadi Act and the Scheme?

Mrs. Desai has drawn our attention to the findings of the various committees which led to the introduction of the Bill which ultimately culminated into passing of the Mathadi Act, 1969 by the State Legislature. According to her, the apprehension expressed by the learned counsel espousing the case of the employers is unfounded as Mathadi Act and the Scheme formulated thereunder takes sufficient care of all such apprehensions and employer is not left without a remedy in case in his factory or establishment, which has been notified as a scheduled

employment, manual worker enjoys all the benefits which the Mathadi Act and the Scheme thereunder contemplates and provides for. In support of her contention she has referred to the decision of the Supreme Court in the case of **Punjab Land Development and Reclamation Corporation Limited Versus Presiding Officer, Labour Court Chandigarh and ors.**, reported in (1990) 3 SCC 682 wherein the Supreme Court was dealing with the issue of retrenchment in a group of petitions and held as under :

The doctrine of ratio decidendi has also to be interpreted in the same line. To consider the ratio decidendi court has to ascertain the principle on which the case was decided. The ratio decidendi of a decision may be narrowed or widened by the judges before whom it is cited as a precedent. In the process the ratio decidendi which the judges who decided the case would themselves have chosen may be even different from the one which has been approved by subsequent judges. This is because judges, while deciding a case will give their own reasons but may not distinguish their remarks in a rigid way between what they thought to be the ratio decidendi and what were their obiter dicta, that is, things said in passing having no

binding force, though of some persuasive power."

According to Mrs. Desai, the observations made by the learned Single Judge of this Court in C. Jairam's case and S.B. More's case and the Division Bench of this Court in the case of Lallubhai Kevaldas (supra) and Century Textiles case (supra), cannot be considered to be a ratio decidendi for the simple reason that the provisions of the various schemes of the Mathadi Act were under challenge before the learned Single Judge. Whether the Act could be applicable to a worker who is otherwise protected under any other labour legislation and who is not casually employed is only a further reasoning in deciding the vires of the Act and the Scheme and they were not dealing with the interpretation of the definition of "unprotected worker" and "worker" as given in the Mathadi Act, 1969. According to her, the Mathadi Act is a special legislation and a complete code in itself, which has been the consistent view of this Court, and the scheme framed under the Act takes care of terms and conditions of employment and the benefits to which a manual worker working in scheduled employment is entitled. She contended that the Act is designed to achieve the twin purpose and it is not merely designed to regulate the employment of mathadi labour, to make better provisions for their terms and conditions of employment and for welfare and for health and safety measures but

importantly to make provision for ensuring an adequate supply to and full and proper utilization of such workers and to prevent avoidable unemployment. It is, therefore, contended that in so far as the decision of the Division Bench of this Court in Lallubhai Kevaldas's case to which a passing reference is made in Century Textiles case are casual observations which are not binding on another Bench of co-ordinate jurisdiction of this Court.

13. Mrs. Desai also furnished to us a note on the Cloth Markets and Shops Board, Specimen Form No. A for Registration of Employer under the Cloth Market and Shops Board, Specimen Form No. 1 for information to be given by employer to the Board regarding work done by workers, Specimen Form No. 2 - Statement of Wages and Levy to be submitted by the Registered employers, Specimen Form No. 3 for particulars of work carried out by the workers of the toli to be filled in by the Mukadam of the Toli, Form No. A submitted by Maruti OBC Services Pvt. Ltd., Petitioner in Writ Petition No. 3112 of 2006 along with inspection report and show cause notice issued to Maruti OBC Services by way of illustration to demonstrate that the Act and the Scheme do not in any manner lead to any sort of absurdity, inconvenience, injustice or hardship to the employer as contended by Mr. Naidu nor it has resulted in unemployment of workers/employees in any factory or establishment and, therefore, fears expressed on behalf of the employers is merely a figment of their

imagination and such considerations cannot have any bearing or impact while interpreting the definition of "protected", "unprotected workers" and "worker" in the Mathadi Act of 1969 which has to be read conjointly.

14. Mr. Naik who appears for the workers in a group of writ petitions and particularly on behalf of the Grocery Board and Mr. Anand Grover submitted that the learned counsel appearing for the employers tried to narrow down the scope of discussion when addressing the court on the question referred by restricting it only in relation to casually engaged workers and submitted that the Act and the Scheme framed thereunder is applicable to manual workers engaged in or to be engaged in any scheduled employment de hors the terms of their employment as to whether it is regular or casual and has analysed that each of the workers and "unprotected worker" as defined in section 2 (11) and "worker" in section 2 (12) of the Mathadi Act, 1969 in context to the scheduled employment as defined in section 2 (9). He has also highlighted provisions of section 3 (1) and submitted that it necessarily presupposes that prior to the passing of the said Act there was no adequate supply of full and proper utilization of the "unprotected workers" in the scheduled employment and there were no better terms and conditions of service for such "unprotected workers" and in order to protect them, State Government has passed the said legislation which is a

special welfare legislation for class of workers in a class of scheduled employment. He submitted that the Court can very well examine the objects and reasons of passing of the said enactment along with definition clause which defines "unprotected worker" 2(11), "worker" 2(12), "employer" 2(3) and scheduled employment 2(9) and establishment 2(4) and submitted that the conjoint reading of all the aforesaid definitions and the use of the respective words in the various provisions of the Mathadi Act, 1969 in context to the definition and if the provisions of the said Act are read with various provisions and the schemes framed thereunder clearly manifest the intention of the State that a machinery in the form of a Board has to be constituted to monitor and/or administer the entire scheme for unprotected workers to achieve the objects, to regulate their employment, better provision for their terms and conditions of employment, to provide for their welfare and for health and safety measures, including providing for Provident Fund, Gratuity, etc. He has submitted that the arguments on behalf of the employer that the direct and regular employees may get better benefits and as such they are not coverable under the Mathadi Act has no substance because the provisions of Section 21 of the Mathadi Act takes care of such a contingency and this also indicates that the State Government was very much aware that as on the date of passing of the said Act there are unprotected workers enjoying better benefits

than the one available under the said Act and the Scheme framed thereunder and thus those better benefits are fully protected under section 21. It is submitted that section 22 of the Mathadi Act provides for exemption by the Government if the employers can establish that they have directly employed regular employees who are enjoying better benefits than the benefits provided under the said Mathadi Act which defeats the arguments of the employers that their direct and regular manual workers are not covered under the said Act and, therefore, according to Mr. Naik upon passing of the Mathadi Act, 1969 all workers doing manual work in the specified scheduled employment will be covered which object cannot be defeated by accepting the proposition that only casually engaged workers are covered by the said Act. It is the contention of Mr. Naik that the passing reference made by the learned Single Judge in the case of C. Jairam Pvt. Ltd., and another (supra) that the provisions of the Act and the Scheme are not applicable to worker who are covered by Bombay Shops and Establishments Act if it is applicable to an establishment and further in Lallubhai Kevaldas (supra) a passing reference has been made that the Act is not applicable to protected workers which has occurred in Century Textiles' case, which will have to be held as per incurium as it forms part of obiter dicta as the learned Single Judge as well as the learned Division bench while dealing with Lallubhai's case has considered the constitutional validity of the

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provisions and the scheme framed thereunder. Mr. Naik placed reliance on the case of **Goodyear India Ltd., vs. State of Haryana**, reported in AIR 1990 SC 781. According to Mr. Naik, the observations made by the Division Bench of this Court in Century Textiles' case (supra) particularly in para 32 of the reported judgment, the definition of worker as given in clause 2 (12) of the Mathadi Act is wrongly read and understood. It is submitted that as there is no ambiguity in the provisions of the Mathadi Act, 1969, this Court need not by way of external aid refer to the other Acts like Security Guards Act which covers altogether different fields and submitted that the manual work done in scheduled employment is of several kinds such as loading, unloading, stacking, carrying, piling, weighing, measuring, etc., which are incidental to the main activity of any business enterprise and not casual in nature. It is such work in scheduled employment for which manual worker is employed to which the Mathadi Act, 1969 is attracted.

15. Smt. Kajle, the learned counsel appearing for the State of Maharashtra supports the stand taken by the Board in favour of workers.

16. Mr. Singhvi has also addressed us on behalf of Hindustan Lever Employees' Union, the intervener in Writ Petition No. 2544 of 2003. Mr. Singhvi concurred with

the submissions of Mr. Naik and submitted that the provisions of the Mathadi Act, 1969 and the Vegetable Markets Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1985 relating to hundekaries came up before the Supreme Court for consideration and the three Judge Bench in the case of **Maharashtra Rajya Mathadi Transport & Central Kamgar Union v. State of Maharashtra & Ors.** reported in 1995 II CLR 217 has considered the provisions of the Act and the Scheme and in para 11 of the reported judgment has observed as under :-

"11. A 'mathadi worker' is an unprotected worker in the 'scheduled employment' - an employment specified in the Schedule to the Act i.e., 'employment in vegetable markets (including onions and potato markets) in connection with loading, unloading, stacking, weighing, measuring, sewing, stitching, sorting, cleaning or such other work preparatory or incidental to such operations, is undisputed."

And, therefore, according to him, there is a clear dictum on the concept as to who are "unprotected workers" governed by the Mathadi Act and the Schemes framed thereunder which leaves no doubt in one's mind that all those workers employed in scheduled employment are within the purview of Mathadi Act and are governed by the

schemes framed thereunder.

17. The learned counsel appearing for the employers also addressed the Court on the issue of grant of Presidential assent to the Mathadi Act of 1969 by referring to Article 254 of the Constitution of India and cited the case of **Kaiser-I-Hind Pvt. Ltd., and others, etc., v. National Textile Corporation Ltd., and others, etc., reported in AIR 2002 SC 3404.** In our view this is not the subject matter of the reference and, therefore, it is not necessary for us to deal with the contention.

18. We have given our anxious consideration to rival contentions made at the Bar and the various authorities cited in support of the same. Before we proceed to examine the key issue which is referred to us, we reproduce the relevant provisions of the Mathadi Act, 1969 which are crucial for considering the key issue referred to us. As the reference relates to the statutory definition of the expression "unprotected worker", the following definitions from the definition clause require our consideration i.e. out of the definition clause:-

"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."

It also requires consideration of the provisions of Sections 3 (1), 18, 19, 20, 21 and 22 in context to the definitions which read as under :-

"3. (1) For the purpose of ensuring an adequate supply and full and proper utilization of unprotected workers in scheduled employments, and generally for making better provision for the terms and conditions of employment of such workers 1 * * * * , the State Government may by means of a scheme provide for the registration of 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."

"18. The provisions of the Workmen's Compensation Act, 1923, and the rules made from time to time thereunder, shall mutatis mutandis apply to [registered unprotected workers] employed in any scheduled employment to which this Act, applies; and for that purpose they shall be deemed to be workmen within the meaning of that Act; and in relation to such workmen, employer shall mean where a Board makes payment of wages to any such workmen, the Board, and in any other case, the employer as defined in this Act.

19. (1) Notwithstanding anything contained in the Payment of wages Act, 1936, (hereinafter referred to in this section as "the said Act"), the State Government may, by notification in the Official Gazette, direct that all or any of the provisions of the said Act or the rules made thereunder shall apply to all or any class of [registered unprotected workers] employed in any scheduled employment to which this Act applies, with the modification that in relation to [registered unprotected

workers] employer shall mean where a Board makes payment of wages to any such worker, the Board, and in any other case, the employer as defined in this Act; and on such application of the provisions of the said Act, an Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of the enforcement of such provisions of the said Act within the local limits of his jurisdiction.

(2) The State Government may, only if the Advisory Committee so advises, by a like notification, cancel or vary any notification issued under sub-section (1).

"20. Notwithstanding anything contained in the Maternity Benefit Act, 1961 (hereinafter referred to in this section as "the said Act") the State Government may, by notification in the Official Gazette, direct that all or any of the provisions of the said Act or the rules made thereunder shall apply to [registered unprotected women workers] employed in any scheduled employment to which this Act applies; and for that purpose they shall be deemed to be women within the meaning of the said Act;

and in relation to such women employer shall mean where a Board makes payment of wages to such women, the Board; and in any other case, the employer as defined in this Act; and on such application of the provision of the said Act, an Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of enforcement of such provisions of the said Act within the local limits of his jurisdiction.

"21. Nothing contained in this Act shall affect any rights or privileges, which any [registered unprotected worker] employed in any scheduled employment is entitled to, on the date on which this Act comes into force, under any other law, contract, custom or usage applicable to such workers, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act and the scheme;

. Provided that, such worker will not be entitled to receive any corresponding benefit under the provisions of this Act and the scheme.

"22. The State Government may, after consulting the Advisory Committee, by notification in the Official Gazette, and subject to such conditions and for such period as may be specified in the notification, exempt from the operation of all or any of the provisions of this Act or any scheme made thereunder, all or any class or classes of unprotected workers employed in any scheduled employment, or in any establishment or part of any establishment of any scheduled employment, if in the opinion of the State Government all such unprotected workers or such class or classes of workers, are in the enjoyment of benefits which are on the whole not less favourable to such unprotected workers than the benefits provided by or under this Act or any scheme framed thereunder :

. Provided that, before any such notification is issued, the State Government shall publish a notice of its intention to issue such notification and, invite objections and suggestions in respect thereto, and no such notification shall be issued until the objections and

suggestions have been considered and a period of one month has expired from the date of first publication of the notice in the Official Gazette:

. Provided further that, the State Government may, by notification in the Official Gazette, at any time, for reasons to be specified, rescind the aforesaid notification."

In so far as the schemes framed under Sections 3 and 4 of the Mathadi Act, 1969 are concerned, are not the subject matter of our consideration and also not necessary for answering the reference as the various schemes framed under the said Act are subject matter of the writ petitions which are pending before the Division Bench of this Court and, therefore, we would like to make it clear that the judgments which have led to the controversy right from C. Jairam Pvt. Ltd., till Century Textiles case were mainly concerned with the issue of the validity of the Mathadi Act, 1969 and the schemes framed thereunder and while dealing with the challenge in the respective petitions, particularly on the issue of applicability of the Act and the respective schemes framed thereunder, the question arose as to which class of "workers" is governed by the said Act and the Schemes framed thereunder. In so far as the constitutional

challenge to the provisions of the Act i.e. violative of Articles 19 (1) (f) and (g) and 300 of the Constitution is concerned and so also the applicability of the respective schemes have been negated and to that extent there is a consistency in all the judgments except for holding that some of the clauses were ultra vires and were struck down. Therefore, one thing is clear that the Mathadi Act, 1969 and the Schemes framed thereunder are valid and in force i.e. it is in operation and functional.

19. The virus which corrupted the definition of "unprotected worker" 2 (11) and "worker" 2(12) can be detected from the judgment delivered in C. Jairam Pvt. Ltd., by Rege, J. and can be traced to the use of the terminology "casual worker" referred in the scheme while discussing clause 30 (2) of the Cotton Merchants Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1971. At this stage only we would make it clear that in so far as clause 30 of the said Scheme is concerned, it does not in any manner, and cannot, override the statutory definition of "unprotected worker" 2(11) and "worker" 2 (12) as given in the Mathadi Act, 1969 and that the tenor of the judgment will also show that in the said case the Court did not make any attempt to redefine the two statutory definitions. On the other hand, it was basically dealing with the implementation and the implication of the various clauses in the scheme

which sub-divides the "unprotected worker" 2(11) as clause 11 of the said scheme provides for maintenance of various registers as provided under sub-clauses (2), (3) and (4) of clause 11 of the said scheme and it is while providing for these registers sub-clauses (3 and (4) in sub-clause (4) a pool register is required to be maintained which distinguishes the worker from the one whose name is to be maintained in the monthly register. A monthly register provides that there shall be a register of workers who are engaged by each employer on contract on monthly basis and who are known as monthly workers whereas the pool register provides that there shall be a register of workers other than those on the monthly register known as pool workers. This register shall include a sub-pool of workers who are not attached to any gang to fill casual vacancies in gangs. The workers included in such a sub-pool shall be known as leave reserve workers. Thereafter while dealing with the subsequent petition in S.B. More's case which was basically related to "unprotected worker" in Khokha industry, the learned Judge has expressly held that the delegation of power given to the Government to prepare a Scheme and the purpose of the Scheme are necessarily to give protection to the workers who are found to be unprotected in many respects covered by the objects of the Act. Merely because to those workers the Bombay Shops, and Establishments Act, 1923, the Payment of Wages Act, 1965, the Workmen's Compensation Act, 1923, The

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Minimum Wages Act, 1948, the Payment of Bonus Act, 1965, the Payment of Gratuity Act, 1972, and the Employees Provident Funds and Family Pension Act, 1952, are made applicable, that, by itself, would not afford to them complete protection in respect of things not covered by these special legislations, as it envisaged by the Act and the Scheme. Moreover, the Act and the Scheme themselves protect any higher benefits received by such workers under any other legislation and the Scheme on that ground therefore cannot be declared to be ultra vires the Act.

20. The Division Bench of this Court while deciding the case of Lallubhai Kevaldas (supra) though observed that the view taken by Rege, J. has to be approved and has held in paragraph 8 of the judgment as under :-

"8. We are unable to see any merit in this connection. The obligation of the employers and employees to get compulsorily registered is merely a part of the mechanism aimed at ensuring effective enforcement of the Act. It is obvious that the main object of the Act is to ensure some element of security to the casually employed workman and ensuring certain employment benefits to them which are available to the other monthly paid or

other regular workers governed by the provisions of the Industrial Disputes Act, Minimum Wages Act and other enactments. That is why the workers governed by this Act are described as "unprotected manual workers". Before the enactment, such workers not only did not have any security of work but the wages paid to them were also not regulated by any rules and no Provident Fund or Gratuity benefits were available to them, work as well as the wages, therefore, depended entirely on the employers' unbridled option, Pleasure and will. It is precisely to prevent this and ensure work for them and better conditions of service that, several provisions have been made in the present enactment.

(Emphasis supplied)

In our view the reasoning spelt out in paragraph 8 by the Division Bench was in reference to the contention that the operation of the Act and particularly in reference to clause 31 of the Scheme where private employer were engaging in unregistered workers and that this provision is both against registered and unregistered employers made reference to sub clause (2) of clause 31 and the Bench proceeded on the assumption that engaging of

unregistered workers is prohibited under the Scheme which, according to the petitioner in Lallubhai's case can have effect of unregistered worker having no work at all though the Act is mainly aimed at benefits of all the unprotected workers. Exclusion of such unprotected worker is beyond the scope of law. Therefore, it is very clear that these observations particularly on which we have laid emphasis were in reference to the scheme under the Act which was being examined by the Division Bench in Lallubhai Kevaldas's case. Such observations came to be made as the main object of the Act is to ensure security of employment to casually employed workers and that is why the workers governed under the Mathadi Act are described as "unprotected manual workers", The word "manual" is, therefore inserted (read) in the definition clause sub clause (11) of Section 2 which only provides for the definition of "unprotected worker" and not "unprotected manual worker" and, therefore, after examining the scheme, the Bench fell into error when it observed in the later part of paragraph 9 of the judgment,

"It is pertinent to note that this Act does not deal with employees engaged on monthly basis as the same are protected by Shops and Establishments Act and the enactments. It is only the casually engaged workmen that come within the purview of the Act."

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which was exactly contrary to what Justice Rege has observed in the case of S.B. More (supra). Nor are these observations in context to the definition clause in the Mathadi Act, 1969. In our view, it is a clear obiter dicta which is per incurium. If it has to be construed as a judicial interpretation of the word "unprotected worker" as defined in section 2 (11) of the Mathadi Act, 1969, these observations deserve to be ignored for the said purpose. But, unfortunately, we find that it is this observation of the Division Bench in the case of Lallubhai Kevaldas which persuaded the Division Bench in the case of Century Textiles' to consider it as a foundation when they observed in the concluding part of paragraph 24 of the reported judgment by reproducing paragraph 9 of the judgment in Lallubhai's case. This was though it was vehemently opposed by the respondents by contending that these are casual observations and when the Court was dealing with a writ petition with regard to the constitutional challenge is not called upon to decide the extent and scope of the applicability of the Act. This observation may not be said to be the decision noted on the point of applicability of the Act by the Division Bench with regard to what is sought to be made - a category of "protected workers", though the Division Bench in Century Textiles case made it clear in paragraph 31 of the reported judgment that the entire Act,

therefore, is not only designed to take care of "unprotected workers" but also throughout referred to workers as "unprotected" for which there is a definition clause under 2 (11). It merely indicates that "unprotected workers" are manual workers who are engaged or to be engaged in scheduled employment but then it fell in error when it went on to observe in paragraph 32 of the reported judgement as under :-

"32. The submission made on behalf of the Respondents, therefore, is that moment the worker is found to be manually working in any Scheduled Employment to which the Act is extended, he is an unprotected worker. Once this situation arises, there is no alternative but to cover the employers and workers under the provisions of the Act, Scheme and the Board. The definition given as to the word "worker" in Clause 2 (12) of the said Act is meant to refer to those persons who are not employed by any Employer or 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, the workers covered by this definition are engaged or to be engaged directly or through any Agency on wages or not, to do manual

(emphasis supplied)

We are in total agreement with the submissions of Mr. Naik, learned counsel appearing for the Grocery Board in assailing the observation by stating that the plain reading of the above para clearly shows that the definition of "worker" as given in clause 2 (12) of the Mathadi Act has been wrongly read, understood and applied. As in our view the plain reading of the definition does not call for such an interpretation and to read it in the sense expressed by the Division Bench in Century Textiles and Industries Ltd., would be nothing but to corrupt the definition of "worker" as given in clause 2 (12) of the Mathadi Act. The dissection of the definition in the process of analysis has done much violence to the definition rather than promoting the object for which the Mathadi Act, 1969 came to be enacted as it excludes the earlier part which rather spells out the source from where worker may be engaged or employed to do manual work in any scheduled employment and restrict it only to those workers by laying emphasis on the later part of the definition i.e. working with the permission of, or under agreement with the employer or a contractor, but does not include the members of the employer's family. The workers covered by this definition are engaged or to be engaged directly or

through any agency, whether for wages or not, to do manual work in any scheduled employment.

21. The learned counsel for the employers have heavily relied upon the history which led to the introduction of the Bill and the statement of objects and reasons for introducing the Bill in the Legislature by the then Labour Minister in order to make a point as to why the Mathadi Act, 1969 was not meant for and is not applicable to the regular employee in a scheduled employment who is doing manual work as in the proposed Bill which contained the statement of objects and reasons and was presented to the State Legislature on 19.12.1968 by the then Minister of Labour. The notes on clauses in order to explain the important provisions of the Bill and particularly clause 2 in which some of the important expressions were defined. There the proposed definition in the Bill of the word "unprotected worker" which found place in sub-clause (11) of clause (2) read as under :-

" 2(11) "unprotected worker" has been defined to mean a manual worker who but for the provisions of this Act is not adequately protected by legislation for welfare and benefits of the labour in force in the State."

But then when the Bill came to be passed and received the

assent of the President on 5.6.1969 and was first published in the Maharashtra Government Gazette, Extraordinary, Part IV, on 13th June, 1969 clearly eliminated from its definition of "unprotected worker" the words "but for the provisions of this Act is not adequately protected by the legislation for welfare and benefits of labour in force in the State" and defined the words "unprotected worker" in sub-section (11) of Section 2 of the said Act means a manual worker who is engaged or to be engaged in any scheduled employment. The Legislature in their wisdom were conscious of the fact that there may be employers who may directly engage manual workers in scheduled employment and they may also enjoy better benefits and, therefore, if such a definition as proposed in the Bill is to be accepted then the employers will take advantage of the definition and deprive "workers" as defined in Section 2 (12) of the Act of the benefits to which they are entitled to under the Mathadi Act, 1969 as contemplated under Section 3 of the said Act. The Legislature was also conscious of the fact being concerned with the welfare of the workers for whom the Mathadi Act, 1969 was considered to safeguard their interest by providing protection to such workers as enshrined in Section 21 of the Mathadi Act, 1969. Further, they also incorporated Section 22 to enable the employer to seek exemption from the Government should they establish that they have directly employed regular employees who are enjoying better benefits than the

benefits provided under the said Mathadi Act and if the definitions of "unprotected worker" and "worker" in the Act is read along with Sections 21 and 22 of the Mathadi Act, 1969 there remains no doubt in one's mind as to the intention of the Legislature that the Act was to protect the interest of unprotected workers as a distinct class of workers and they have in plain and simple words defined who is "unprotected worker" and such "worker" as defined in section 2 (12) of the said Act who are manual workers employed in scheduled employment.

22. It is now a well settled rule of interpretation that the statement of objects and reasons for introducing the Bill in Legislature is not admissible as an aid to construction of statute as enacted, far less can it control the meaning of actual words used in the Act. It can only be referred to for limited purpose of ascertaining the circumstances which activated the sponsor of Bill to introduce it, and the purpose of doing so. The preamble of statute, which is often described as a key to understanding of it, may legitimately be construed to solve any ambiguity or to ascertain or fix the meaning of words in their context which otherwise bear more meaning than one. It may afford a useful assistance as to what the statute intends to reach, but if enactment is clear and unambiguous in itself then no preamble can vary its meaning. While construing the statute, one has to bear in mind the presumption that the

legislature does not intend to make any substantial alteration in existing law beyond which it expressly declares or beyond the immediate scope and object of the statute. (AIR 1973 SC 913 AC Sharma vs. Delhi Administration. Therefore, at the most reference to object and reasons can be made for the limited purpose of finding out the intention of the Legislature which obtained at the time of introduction of Statute and which led to introduction of legislation and for ascertaining the extent and the urgency of the evil which was sought to be remedied by a particular statute.

23. The Supreme Court in the decision rendered in the case of Workmen of F.T.& R. Co. vs. The Management, reported in AIR 1973 SC 1227 observed that :-

The statement of object and reasons is not taken into account while interpreting the plain words of section, but it is useful in finding out the intention of legislature.

In construing the provision of welfare legislation court should adopt beneficial rule of construction. As far as reasonably possible construction furthering the policy and object of Act and more beneficial to employee has to be preferred. Act intended to improve and safeguard the service

conditions of an employee should be liberally interpreted according to plain words and without doing violence to the language used by legislature, bearing in mind the principle laid down by S.C."

In the case of A.H. & Co. vs. Engineering Mazdoor Sabha, reported in AIR 1973 SC 946 wherein certain provisions of the Payment of Bonus Act and Finance Act were under consideration, the Supreme Court observed as under :-

"As a general principle of Interpretation, where the words of statute are plain, precise and unambiguous, the intention of the legislature is to be gathered from the language of the statute itself and no external evidence such as parliamentary debates. Reports of the committee of legislature or even the statement made by Minister on the introduction of measure or by the framers of the Act is admissible to construe those words. It is only where a statement is not exhaustive or where its language is ambiguous uncertain, susceptible of more than one meaning or shades of meaning that external evidence as to the evils if any, which the statute was

intended to remedy or of circumstances which led to the passing of the statute may be looked into for the purpose of ascertaining the object which the legislature had in view in using the words in question. "

24. On examining the definition of "unprotected worker" and "worker" as given in the definition clause of the Mathadi Act, 1969, we have no hesitation to hold that the words used by the Legislature defining the important terms are plain, precise and unambiguous. They are not in conflict with each other. On the other hand, the Legislature has first defined the word "unprotected worker" in section 2 (11) so as to remove any ambiguity as regards the special class of "worker" which they had in their mind and which, according to them, needed to be protected as a class as these workers needed protection and the definition of "unprotected worker" refers to manual worker engaged or to be engaged in any scheduled employment also clearly indicates the field where they are employed by notifying it as scheduled employment which is not left to the choice of 'employer' who is defined in Section 2(3) and 'scheduled employment' is also defined in section 2 (9) of the Mathadi Act to mean "any employment specified in the Schedule hereto or any process or branch of work forming part of such employment;" and thereafter they proceeded to define

"worker" in clause 2 (12) where they have specified as to

who are "unprotected workers" to mean :

1) person who is engaged or to be engaged directly.

2) person who is engaged or to be engaged through any agency.

3) person who works with the permission of, or under agreement with the employer or contractor.

to do any manual work in any scheduled employment, whether for wages or not; and only the members of an employer's family are excluded from the unprotected worker.

Therefore, for the purpose of interpreting the definition of "unprotected worker" and "worker" in the Mathadi Act of 1969, statement of objects and reasons are not relevant as tried to be canvassed before us for the simple reason the statement of objects and reasons are relevant when object or purpose of an enactment is in issue or uncertain. They can never override the effect which follows logically from the implicit and unambiguous language of its substantive provision. Such effect is the best evidence of intention. The statement of objects

and reasons is not a part of statute and, therefore, not even relevant in a case in which the language or the operative part of the Act leaves no room whatsoever, as it does not in the present Act, to doubt what was meant by Legislature. Reading the definition of "unprotected worker" or "worker" in the Mathadi Act, 1969 as construed by the Division Bench in the case of Century Textiles' case (supra) would negative the very object and purpose which is sought to be achieved by enacting the Mathadi Act, 1969. We may quote another decision of the Supreme court rendered in the case of Nasruddin vs. S.T.A. Tribunal, reported in AIR 1976 SC 331 wherein it was held as under :-

"If the precise words used are plain and unambiguous, they are bound to be construed in their ordinary sense.

The mere fact that the result of statute may be unjust does not entitle a court to refuse to give it effect.

If there are two different interpretations of the word in an act, the Court will adopt that, which is just, reasonable and sensible, rather than that which is none of those things.

If the inconvenience is an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if it is read in a manner in which it is capable, though not in an ordinary sense, there would not be any inconvenience at all. There would be reason why one should not read it according to its ordinary grammatical meaning where the words are plain the Court would not make any alteration."

25. The next point which we propose to examine arises out of the contention on the part of the learned counsel for the employers that the Court should normally not unsettle a settled proposition as in the present case where this Court has held in the case of Lallubhai Kevaldas (supra) which was followed in Century Textiles and Industries' case that the provisions of the Act are not applicable to worker if he is otherwise protected by various labour legislations in the field applicable to factory or establishment, for which the word coined is "mathadi workmen" in contradistinction to "unprotected worker", and reliance is placed on the decision rendered by the Supreme Court in the case of **Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology and others**, reported in (2002) 5 SCC 111 which is primarily based on

the premise of doctrine of stare decises. Consistency is the corner stone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedents, principle of stare decisis etc., These rules and principles are based on public policy and if these are not followed by courts then there will be chaos in the administration of justice. Before we proceed to delve on this proposition, the Supreme Court had an occasion to consider the definition of "mathadi worker" while dealing with the case of Hundekaries Maharashtra Rajya Mathadi Transport & Central Kamgar Union v. State of Maharashtra & Ors. 1995 II CLR 217 and in clear terms held that:-

"9. When it comes to an employer of any other unprotected worker to be classified or described as 'employer' he must be a person who has ultimate control over the affairs of the establishment, i.e., a place or premises or precincts in which any part of scheduled employment is being or ordinarily carried on [see Section 2(4)] or any agent, manager or the like prevailing in the scheduled employment

to whom the affairs of the establishment are entrusted.

"11. A 'mathadi worker' is an unprotected worker in the 'scheduled employment' - an employment specified in the Schedule to the Act i.e., 'employment in vegetable markets (including onions and potato markets) in connection with loading, unloading, stacking, weighing, measuring, sewing, stitching, sorting, cleaning or such other work preparatory or incidental to such operations, is undisputed."

Though the words used by the Supreme Court are "mathadi worker" in context with the definition of worker as defined under the Mathadi Act, 1969 vis-a-vis the employer, the Supreme Court has not qualified the definition of "unprotected worker" in the scheduled employment" means a casual worker who is not protected by any labour legislation.

26. In so far as reference to the decision of the Supreme Court in Pradeep Kumar Biswas's case (supra) by the learned counsel appearing for the employers is concerned, in that very decision Ruma Pal, J (while delivering the judgment, for Bharucha, C.J. Quadri and

Hegde JJ, herself and Pasayat J.) referred to the issue

and in paragraph 61 of the reported judgment observed :-

"Should Sabhajit Tewary (AIR 1975 SC 1329) still stand as an authority even on the facts merely because it has stood for 25 years? We think not. Parallels may be drawn even on the facts leading to an untenable interpretation of Article 12 and a consequential denial of the benefits of fundamental rights to individuals who would otherwise be entitled to them and

"[t]here is nothing in our Constitution which prevents us from departing from a previous decision if we are convinced of its error and its beneficial effect on the general interests of the public". (AIR 1955 SC 661 p. 672, para 15)

Since on a re-examination of the question we have come to the conclusion that the decision was

plainly erroneous, it is our duty to
say so and not perpetuate our
mistake."

We think that the Division Bench which made the reference noted the anomaly in the interpretation placed by the Division Bench in Century Textiles and Industries Ltd., & Ors., vs. State of Maharashtra & Ors. 2000 II CLR 279 and rightly referred for answering the reference as it felt that the meaning given to the definition of "unprotected worker" and "worker" in the case of Century Textiles and Industries Ltd, (supra) did not appear to be correct.

27. Now let us look at the issue from the different angle. There are several Central and State Acts in the field of labour and industrial law and each one of them contains a definition clause and has defined the words "employer" and "employee" using different nomenclatures but in reference to the object and purpose of the respective enactments. To cite a few and which would not be out of place if we refer to Sections 18, 19 and 20 of the Mathadi Act of 1969 which expressly makes the provisions of the Workmen's Compensation Act, 1923, Payment of Wages Act, 1936 and Maternity Benefit Act, 1961 applicable to Mathadi Act of 1969. The reason being obvious as the definitions of "employer" and "employee" in those Acts do not cover "unprotected worker" and

"worker" as defined under Mathadi Act, 1969. By way of illustration we may cite a recent decision of the Supreme Court rendered in the case of **Central Mine Planning and Design Institute Ltd., vs. Ramu Pasi & Anr.**, reported in 2006 (1) ALL MR (S.C.) 150, wherein the Supreme Court was concerned with the claim of compensation by a casual worker for the award of compensation under the Workmen's Compensation Act which has its own definition of the word "workman" which is defined in section 2 (n) and the Supreme Court held that the bare reading of the said Act shows that the expression "workman" as defined in the Act does not cover a "casual worker" and, therefore, he was not entitled to claim compensation under the Workmen's Compensation Act, 1923 though the Court in the peculiar facts and circumstances of the case did not interfere with the amount awarded as compensation to the respondent casual workman. Therefore, the Court, while interpreting the words defined in the definition clause of a particular Act, will lean towards the meaning if it be susceptible to the objects and reasons of the Act and the mischief which is sought to be prevented and ascertain from relevant factors its true scope and meaning. The Court cannot reduce statutory words as is apparent from the manner in which the Division Bench in Century Textile and Industries interpreted the definition of "unprotected worker" and "worker. In any case if the Court felt that there is casus omissus, then, it is for the Legislature rather than the Court to remedy the defect or remove the

lacuna but otherwise it is left with no choice but to read the provision as it stands without doing any violence to the definition as the intention of the Legislature has always been gathered from the words used by it giving the word the plain, normal grammatical meaning. We find that if the definitions and words "unprotected worker" and "worker" are read literally by giving them the strict grammatical interpretation, it does not give rise to an absurdity or inconsistency, but rather it subserve the purpose of the legislation and accordingly the benefit meant for such worker who was covered by the Mathadi Act, 1969.

28. For the aforesaid reasons, we find that the interpretation placed by the Division Bench in Century Textile and Industries Limited and others vs. State of Maharashtra & Ors., 2000 II CLR 279 on the definition of the words "unprotected worker" and "worker" for the purpose of applicability to Mathadi Act, 1969 that it is only the casual workmen who come within the purview of the Act is not correct and proper and it is erroneous which deserves to be ignored and is overruled.

29. The Reference is answered accordingly. The petitions in respect of point of reference be now placed before the Division Bench for disposal in accordance with law.

sd/-

(J.N. Patel, J.)

(D.K. Deshmukh, J.)

(Smt. Roshan Dalvi, J.)

Bombay High Court

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