

Bombay High Court

Poonya Steel Processors Pvt. Ltd vs State Of Maharashtra And Others on 11 December, 2008

Bench: Dr. D.Y. Chandrachud

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.163 OF 2007  
with  
CIVIL APPLICATION NO.1809 OF 2007

Poonya Steel Processors Pvt. Ltd.	..Petitioner.
Vs.	
State of Maharashtra and others	..Respondents.

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Mr. S.C. Naidu with Mr. Jay Choksi i/b M/s. C.R. Naidu & Co. for the  
Petitioner.

Mr. A.P. Vanarase, AGP for Respondent No.1.

Ms. Lata Desai i/b Ms. Pallavi Divekar for Respondent No.2.

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CORAM: DR. D.Y. CHANDRACHUD, J.

11th December, 2008.

ORAL JUDGMENT :

1. Rule, by consent of the learned counsel made returnable forthwith. Counsel appearing for the Respondents waive service.

With the consent of the learned counsel and at their request, the matter is taken up for hearing and final disposal.

2. The Petitioner has a factory at Talaja in the District of Raigad and engages in the work of decoiling HR and UR coils. The Petitioner was registered with the Bombay Iron and Steel Labour Board (the Second Respondent to these proceedings) and was assigned Registration No.1901. The Second Respondent has been constituted under the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969. The Board is in charge of implementing the Bombay Iron and Steel Unprotected Workers scheme which has been framed under the Act.

In paragraphs 4 and 5 of the Petition, the Petitioner has explained the nature of its operations. For convenience of reference it would be appropriate to extract the relevant averments in their entirety :

"4. The Petitioner company is engaged in the work of decoiling HR and CR Coils. These coils come in a roll ranging from 10 tons to 28 tons. The said coils are decoiled, straightened and cut to size as per specifications of the customers of the Petitioner company. The entire work of lifting, shifting, stacking, decoiling, straightening, cutting to size, re-loading, etc. is completely mechanical.

The Petitioner company has a work shed of around 24000 sq.ft.

5. The work shed has four overhead Electrically Operated Traction cranes (EOT). The EOT cranes are multi directional and are capable of carrying 28 metric tons. The goods can be lifted, shifted, stacked and/or loaded both by sling as well as by hook. The coils (HR/CR/GP) are sent by the customers upto the work shed of the Petitioner company. The work shed is so constructed that the luggage compartment of the truck enters the work shed.

The EOT crane is utilized for unloading and stacking the coils in the stores. Upon receipt of the specifications the coils are shifted from the store to the de-coiling machine by the EOT cranes. The entire process from de-coiling to palliating is fully mechanized. No manual labour is required. After the pallets are made the same are stacked. The vehicles for picking up finished goods are sent by the customers. The Petitioner company loads the pallets in the truck by using EOT. The manual work involved in the entire operation is to sling the pallets while loading it into the truck. The said operation is performed by one manual worker. It may be stated here that placing the hook to the coil is an automatic job and carried out by the crane operator. Hence the only operation where manual labour is required is during loading of the pallets."

3. In the affidavit in reply that has been filed by the Second Respondent it has been averred that the Petitioner uses cranes for the purposes of unloading coils. However, some part of the work is required to be done manually. The Board had initially allotted two mathadi workers to carry out the

said operations, comprised in Toli No. 404. In October 2003 the union - the Third Respondent to these proceedings - represented to the Board that the material of Tata Steel and M/s. Ispat was being unloaded at the factory of the Petitioner and that consequently Toli Nos.A-1 to A-16 which were allotted to Tata Iron and Steel Company Limited should be allotted to the factory of the Petitioner.

4. Following the representation submitted by the union, the Board allotted Toli Nos. A-1 to A-16 to the Petitioner on 6th November, 2003. The Petitioner objected to the allotment of the aforesaid tolies and claimed before the Board that it was not doing any work for Tata Iron and Steel Company Limited. The Board in its reply filed in these proceedings has clarified that it deputed its inspector to inspect the factory of the Petitioner, when it was found that the work of cutting, decoiling and slitting of material belonging to various companies was being carried out. According to the Petitioner it engages in carrying out job work for various third parties and the material which is received thereupon is sent back. The Board was satisfied with the explanation submitted by the Petitioner and on 9th December, 2003 the allotment of Tolies A-1 to A-16 to the Petitioner was cancelled.

Simultaneously the Board allotted Toli No. 404 comprising of two manual workers to the Petitioner for carrying on its scheduled operations. The Chairman of the Board visited the establishment of the Petitioner on 2nd June, 2005. In its reply the Board has stated that the inspection revealed that the Petitioner was carrying out job work for various companies and manual work of fixing slings over the material was being carried out only by two mathadi workers. The Board has stated that it was of the view that since most of the work was mechanized, the two mathadi workers allotted by the Board were adequate and there did not appear to be a need to increase the number of workers. However, if the work increases in future, additional strength of mathadi workers would have to be given. An intimation was accordingly furnished by the Chairman of the Board to the Joint Commissioner of Labuor.

5. On 30th August, 2006 a meeting was held under the chairmanship of the State Minister of Labour to resolve the issue in regard to the allotment of mathadi workers to the establishment of the Petitioner. On behalf of the Board a statement was made by its representative that the Board had already allotted two mathadi workers on Toli No.404 to the Petitioner and the work may be allowed to be carried out by the aforesaid workers. However, in the event that there was an increase in the quantum of work in future, the Board would consider allotting workers from Toli Nos. A-1 to A-16. The Minister of Labour, however, issued a direction that while keeping the allotment of the existing two workers in tact, the Board should allot eight workers from Toli Nos.A-1 to A-16 to the Petitioner and that necessary proceedings should be adopted against the Petitioner by issuing a notice to show cause.

6. The order passed on 30th August, 2006 has been called into question in these proceedings.

7. On behalf of the Petitioner it has been submitted that (i) The impugned order was passed in violation of the principles of natural justice since the Petitioner was not furnished a due opportunity of being heard; (ii) The order that is passed is ultra vires the provisions of the Act and the Scheme

and (iii) the Minister of Labour has usurped the powers of the Board.

8. As already noted earlier the Second Respondent has filed an affidavit in reply in these proceedings and the learned counsel appearing on behalf of the Board has placed before the Court the material facts as set out therein. The Learned AGP has attempted to sustain the order passed by the Board.

9. Section 3 of the Act provides that for the purpose of ensuring an adequate supply and full and proper utilization of unprotected workers in scheduled employments and generally for making better provisions for the terms and conditions of such workers, the State Government may by means of a scheme provide for the registration of employers and unprotected workers in any scheduled employment and provide for the terms and conditions of work of registered unprotected workers. Sub section (2) of Section 3 lays down the provisions which may be made in a scheme framed under the Act. Among them in clause (d) is regulating the employment of registered unprotected workers and the terms and conditions of employment. The power to frame schemes is vested in the State Government under Section 4.

The State Government is empowered to establish one or more Boards under Section 6 of the Act. Under Section 7 the Board is responsible for administering the scheme. Under sub-section (4) of Section 7 the Board in the exercise of powers and discharge of its functions is to be bound by such directions as the State Government may for reasons to be stated in writing give to it from time to time. As already noted earlier, it is in exercise of the statutory powers conferred upon it that the State Government has framed the Bombay Iron and Steel Unprotected workers scheme.

10. The Petitioner was allotted two mathadi workers from Toli No. 404 following its registration under the scheme. On a complaint made to the Board that the petitioner was handling material for certain third parties, the Board initially allotted eight workers from Toli Nos.

A-1 to A-16 by its order dated 6th November, 2003. The Petitioner objected to the allotment contending that as a matter of fact it was not carrying on any work for Tata Iron and Steel Company Limited and hence, there was no justification to allot the workers from Toli Nos. A-

1 to A-16 on the ground that they have been allotted to the aforesaid company. As the Board states in its reply in these proceedings the inspectors of the Board were deputed to carry out an inspection of the factory of the Petitioner. The Board has stated on affidavit that it was satisfied with the explanation furnished by the Petitioner and cancelled the letter of allotment on 9th December, 2003 and allotted two manual workers from Toli No. 404 to the Petitioner for its operations. The Board has also stated that an inspection was carried out on 2nd June, 2005 by its chairperson when it was noticed that since most of the work was mechanized, the two mathadi workers who were allotted by the Board were adequate to deal with the volume of the work. The Board which is a statutory authority primarily responsible for administering the Scheme was therefore clearly of the view that the nature and volume of work which was being carried out in the establishment of the Petitioner would justify the allotment of two mathadi workers who had been allotted from Toli No.404.

11. The Minister of Labour convened a meeting on 30th August, 2006 and proceeded to issue a direction that in addition to the aforesaid two workers, eight other workers from Toli Nos.A-1 to A-16 should be allotted to the factory of the Petitioner. The minutes of the meeting are bereft of any justification in support of such a direction.

Undoubtedly, the State Government is vested with a controlling and directing power under Sub - section (4) of Section 7. This provision, however, lays down that the Board would be bound by such directions as the State Government may for reasons to be stated in writing issue to it from time to time. Reasons are, however, conspicuous by their absence in the impugned order. The power which is conferred controlling and directing upon the State Government under Section 7(4) is in the nature of a power. The directions which the Government can give under Section 7(4) are not to be issued at the whims and fancies of the Government, but for stated reasons, where the Board has failed to achieve the objects of the Act or to discharge its functions where, in the present case, the Board had upon a physical inspection determined the complement of workers required at the factory and having regard to the nature and extent of mechanization at the establishment determined a particular complement of mathadi workers, the State Government ought to have given due deference to the view taken by the Board. Even assuming that the Government was within its jurisdiction to override the decision of the Board in exercise of powers under Section 7(4), such a decision can be overridden on cogent grounds when a justification is made out for reasons in writing. That has not been done. The exercise of powers by the State Government under Section 7(4) is ultra vires because the conditions precedent for the exercise of such powers have not been fulfilled. In the meeting that was held on 30th August, 2006, there was no factual determination to the effect that the reasons which had weighed with the Board in allotting two mathadi workers were incorrect or that the nature and volume of work would justify the allotment of an additional strength of workers. The Board it may be noted had stated in the meeting of 30th August, 2006, should there be an increase in work in the future, it would consider allotting additional workers from Toli Nos.A-1 to A-16. The direction which has been issued by the State Government is without any underlying rationale or justification. The Petition will accordingly have to be allowed. The impugned direction will have to be set aside. The Petition is accordingly disposed of by setting aside the directions contained in the minutes of the meeting dated 30th August, 2006 (Exhibit H) and the consequential notice dated 15th November, 2006 (Exhibit M). However, it is clarified that this shall not preclude the Board, the Second Respondent, from taking recourse to its statutory powers to assess from time to time the strength of mathadi workers that is required to be allotted to the establishment of the Petitioner for carrying out work in any scheduled employment under the Act and the Scheme. The powers of the Board shall not be restricted in any manner by the terms of this order. The Petition is accordingly disposed of. There shall be no order as to costs.

In view of the disposal of the Petition, the Civil Application shall stand disposed of.

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