

A MAHARASHTRA RAJYA MATHADI TRANSPORT AND
CENTRAL KAMGAR UNION

v.

STATE OF MAHARASHTRA AND ORS.

B MAY 1, 1995

[KULDIP SINGH, N. VENKATACHALA AND
S. SAGHIR AHMAD, JJ.]

C *Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969—Vegetable Markets Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1985—Clause 14—Registration of Hundekaris as employers—Claim of—Whether Hundekaris as a class are employers within meaning of sub-sec (3) of section 2—Held, No.*

D **Hundekaris wanted to get themselves registered as employers with the Vegetable Markets Labour Board of Greater Bombay under clause 14 of the Vegetable Markets Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1985, made by the Government of Maharashtra under section 4(1) of the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969. The appellants union of Mathadi workers objected to registration of Hundekaris with the Board as employers on the ground that they were not the employers as envisaged by the Act and hence they were not also employers who were entitled to get registered under clause 14 of the Scheme. The Maharashtra Government, to resolve the dispute between Hundekaris and Mathadi workers took a decision dated 6-1- 1989 that as per the provisions of Section 2(3) of Mathadi Act and rule 14 of the scheme hundekaris were operating as clearing agents they were having a right and empowered to get themselves registered as 'owners'. This decision was challenged by the Mathadi workers by filing Writ Petition. The High Court dismissed the petition. Hence this appeal.**

H **The question raised for consideration was whether the Government was right in reaching the conclusion that 'Hundekaris' as a class were employers within the meaning of sub section (3) of Section 2 of the Act and clause 14 of the Scheme.**

Allowing the appeal partly, this Court

HELD : The Vegetable Markets Labour Board of Greater Bombay can register Hundekaris, by whatever name they may be called, under clause 14 of the Scheme as the employers only where it is established that they are the owners of the vegetable markets or establishments where they are carrying on the business either having ultimate control over such establishments or being entrusted with the carrying on the affairs of such markets or establishment and otherwise. If any of the Hundekaris, by whatever name may be called, are registered as employers under clause 14 of the Scheme not being the owners of the vegetable markets or establishments in the areas concerned having either ultimate control over them or being entrusted with the carrying on the affairs of the same, their registration is liable to be cancelled. [931-B, C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7415 of 1994.

From the Judgment and Order dated 26.8.93 of the Bombay High Court in W.P. No. 510 of 1989.

K.K. Singhvi, B.N. Singhvi and Rajeev Kumar Singh for the Appellants.

H.N. Salve, A.B. Bhasme, Girish Kedia, Ramesh Singh, Rakhi Varma and Ms. Bina Gupta for the Respondents.

The Judgment of the Court was delivered by

VENKATACHALA, J. Are 'Hundekaris' entitled to get registered with the Vegetable Market Labour Board of Greater Bombay - "the Board" as "Employers" under Clause 14 of the Vegetable Markets Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1985— "the Scheme" made by the Government of Maharashtra under Section 4(1) of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969— "the Act" is the short question that arises for our consideration in this appeal by special leave filed by Mathadi Workers Union - the appellant.

The factual background in which the said question arises for our consideration is the following:

A Mathadi workers are the members of the appellant-Union. They are unprotected workers who carry out the manual work in vegetable markets (including onions and potatoes markets) connected with loading, unloading, stacking, carrying, weighing, measuring, filing, stitching, sorting, cleaning of vegetables - a scheduled employment specified under the Act. That on January 1, 1985, the Government of Maharashtra made a scheme respecting that scheduled employment, as envisaged by Section 4 of the Act. Clause 14 of that Scheme required every employer to get himself registered with the Board. Hundekaris wanted to get themselves registered as employers with the Board, claiming that the provision in Clause 14 entitled them to get registered with the Board. The appellant-Union of B Mathadi workers objected to registration of Hundekaris with the Board as employers on the ground that they were not the employers as envisaged by C the Act and hence they were not also employers who were entitled to get registered under Clause 14 of the Scheme. Indeed, the Maharashtra Government by its Order dated February 16, 1987 directed the Board not to register Hundekaris as employers under Clause 14 of the Scheme. D However, later, the Government of Maharashtra sought to resolve the said dispute between Hundekaris and Mathadi workers under Section 5 of the Act taking note of an observation of the High Court in an order made on 27.7.1987 in a writ petition filed by respondent-2. But, the Government being under an obligation to consult the Advisory Committee constituted E under the Act in resolving a dispute under Section 5 of the Act, its view in the matter was sought for. The Advisory Committee which examined the matter was of the view that Hundekaris were not entitled to get themselves registered with the Board as employers under Clause 14 of the Scheme. Yet, the Government took a decision on January 6, 1989, purporting to be F that reached in consultation with the Advisory Committee and on hearing the parties concerned. The decision so taken on January 6, 1989 was as follows:-

"DECISION OF THE GOVERNMENT :

G In supersession of the Government orders dated 16.2.1987 and following section 5 and in consonance with the orders of the High Court dt. 27.7.1987 the Government is now giving orders that as per the provisions under section 2(3) of Mathadi Act 1969 and rule 14 of the scheme framed in 1985 hundekaries are operating H as clearing agents they are having a right and empowered to get

themselves registered as 'owners'. For this hundekaries should apply to the board in form 'A' and the Board as per the provisions of the Mathadi Act and the Scheme should take appropriate decision on the rights of hundekaries.

By orders and in the name of the Governor.

Sd/- Ramakant Asmar
Asstt. Secretary to the Govt."

The said decision was challenged by the Mathadi workers through their Union, the appellant, by filing Writ Petition No. 510/89 before the Bombay High Court. Since, a Division Bench of that High Court dismissed the Writ Petition by its judgment dated August 26, 1993, the correctness of that judgment is challenged in this appeal, giving rise to the aforesaid question requiring our consideration.

We have heard learned counsel appearing for parties in this appeal.

Whether a scheme formulated under the Act applies to any class of unprotected workers or employers, it is true, is a matter on which the State Government could take a decision in consultation with the Advisory Committee constituted under the Act, as provided for under-section 5 of the Act. The decision taken in the matter by the State Government dated January 6, 1989, which is excerpted by us earlier, undoubtedly, enables Hundekaris to get themselves registered with the Board as employers. As seen from the decision of the State Government, it is the provisions in Section 2(3) of the Act and Clause 14 of the Scheme which have made it to reach the conclusion that Hundekaris are entitled to be registered as the employers for the purpose of the Act and the Scheme. When that decision has given rise to the question under consideration, what requires our examination is whether the Government was right in reaching the conclusion that 'Hundekaris' as a class are employers within the meaning of sub-section (3) of Section 2 of the Act and Clause 14 of the Scheme and whether the High Court was right in upholding such conclusion.

Whether every Hundekari is an employer within the meaning of Section 2(3) of the Act could be examined first.

Section 2(3) is a definition clause. It defines 'employer' thus:

- A "(3). 'employer', in relation to any unprotected worker engaged by or through contractor, means the principal employer and in relation to any other unprotected worker, the person who has ultimate control over the affairs of the establishment, and includes any other person to whom the affairs of such establishment are entrusted, whether such person is called an agent, manager or is called by any other name prevailing in the scheduled employment;"
- B

According to the above definition of 'employer' he may be (i) an employer of an unprotected worker engaged by or through a contractor, that is, the principal employer, (ii) an employer of any other unprotected worker, that is, a person who has the ultimate control over the affairs of the establishment or the person to whom the affairs of such establishment are entrusted whether such person is called an agent, manager or by any other name prevailing in the scheduled appointment.

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- D When section 2(7) defines 'principal employer' as meaning an employer who engages unprotected workers by or through a contractor in any scheduled employment, principal employer can be classified or described as 'employer' when he engages unprotected workers by or through contractor of the scheduled employment.

- E 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.
- F

Who is a 'mathadi worker' and who is a 'contractor' require an examination before examining as to who is a 'Hundekari'.

- G 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 on incidental to such operations, is undisputed.
- H

A 'contractor' as defined in Section 2(2) of the Act is a person who undertakes to execute any work for an establishment by engaging unprotected workers on hire or otherwise or who supplies such workers either in groups or gangs (tollis) or as individuals and includes a sub-contractor, a mukadam, a tolliwalla. A

What, therefore, remains for examination is whether a 'Hundekari' is an employer falling in either of the two classes of employers covered by the definition of employer in Section 2(3) of the Act or a contractor as defined in Section 2(2) of the Act, i.e., a person who undertakes to execute any work for an establishment by engaging unprotected workers on hire or otherwise or who supplies such workers either in groups, gangs (tollis) or as individuals and includes a sub-contractor, a mukadam or a tolliwalla. B C

A 'Hundekari' is not a contractor within the meaning of Section 2(2) of the Act, but is an employer within the meaning of Section 2(3) of the Act according to the High Court, as seen from its judgment under appeal, which runs thus: D

"Clearing agents are generally known as Hundekaris. The goods which are sent by the agriculturist or vegetable produce market Committee are sent to the Hundekaris who personally remain present at odd hours of the night and receive vegetables and fruits which come to the city by railway, trucks and other modes of transport. Hundekaris engage labour for the work of loading and unloading of such goods. After receipt of the goods, hundekaris despatch these goods to the concerned commission agent or trader in the market. If the goods are stolen or spoiled or are not delivered in time, the hundekaris are responsible for the loss. They hold professional licenses of the Municipal Corporation and also pay professional tax. They also hold a license from the agricultural produce market committee. They also have their own independent establishment and they act as clearing agents between the farmers at the village level and the traders in the vegetable markets. Hundekaris have themselves described the nature of their work in writ petition No. 1475/1987 in the affidavit filed by the Balvantrao Salunke dated 29th July 1987. The Hundekaris also claim that they are the direct employers of manual workers who are engaged in the fruit, vegetable and flower markets for the work of loading and H

A unloading produce. They have pointed out in support of their contention, that the transport receipt in respect of the goods brought into the city is directly addressed by the farmers to the Hundekaris. The receipt also mentions the name of the agent and/or trader to whom the goods are to be delivered. The transport receipt which is addressed only to the Hundekari clearly indicates

B that he alone is responsible for the receipt of the goods and their effective despatch in the market. For this work the hundekari engages the services of the manual workers. On arrival of the vehicles carrying the produce, the hundekari pays necessary taxes to the Municipal Corporation of Greater Bombay for weighing the goods and also pays all other charges. In their affidavit the Hundekaris have annexed a copy of one such receipt for payment of weightment charges issued by the Municipal Corporation of a Hundekari. It is also pointed out that the transporter brings a letter addressed to the Hundekari from the farmer containing the transport receipt as well as other documents in respect of the goods which are addressed to the Hundekari and to the agents. The Hundekari has to check whether the goods mentioned in the transport receipt and the goods in the vehicle tally and are according to the description. He has to sort out these goods and despatch them to the respective traders or commission agents. When there is more influx of goods, Hundekaris have to engage additional workers for which they alone are responsible. The crates which are reusable are required to be re-despatched to the farmers. This work is also done by the Hundekaris. Looking to all these documents as well as the description of the work done by these Hundekaris, their contention that they directly engage manual workers for the work of loading and unloading appears to be correct. The state government is also supporting this stand as set out earlier. Hundekaris, therefore, cannot be considered as contractors within the definition of that term under section 2 sub-section (2) of the said Act. The workers are not engaged by Hundekaris on behalf of by the Hundekaris for their own work. Therefore, Hundekaris fall within the definition of the term 'employer' under section 2(3)."

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As stated above by the High Court 'Hundekaris' are persons who engage mathadi workers (unprotected workers) in the scheduled employment. This statement of the High Court is not controverted by the learned

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counsel for the appellant and indeed it gives no room for controversy. But, when a 'Hundekari' engages mathadi workers (unprotected workers) for executing the work of an establishment over which he has no ultimate control or the affairs of which are not entrusted to him he would be a contractor within the meaning of section 2(2) of the Act and not an employer who either engages unprotected workers by or through a contractor in the scheduled employment or who has ultimate control over the affairs of the establishment or to whom the affairs of the establishment are entrusted within the meaning of section 2(3) of the Act.

Therefore, a 'Hundekari', whether he is called an agent, a manager or by any name prevailing in the scheduled employment, he can be regarded as a 'contractor' within the meaning of section 2(2) of the Act when he engages such mathadi workers for the principal employer's establishment and not as employer within the meaning of section 2(3) of the Act unless he engages the mathadi workers for the scheduled establishment either being a person who has the ultimate control of the affairs of the establishment or a person to whom the affairs of the establishment are entrusted by their owners.

From the above, it follows, that where a Hundekari has an establishment over which he has ultimate control or has an establishment the affairs of which are entrusted to him and he engages mathadi workers either on hire or otherwise for carrying on the work of such establishment, such Hundekari could be regarded as an employer within the meaning of Section 2(3) of the Act, as is held by the High Court. On the other hand, a Hundekari, who does not engage the mathadi workers for the work of an establishment not belonging to him or on the affairs of which he has no ultimate control or the affairs of which are not entrusted to him, cannot be regarded as an employer within the meaning of Section 2(3) of the Act. The decision taken by the Government and the view taken by the High Court that even Hundekaris who have neither control over the establishment nor the entrusted with the affairs of the establishment are, employers within the meaning of Section 2(3) of the Act, is manifestly erroneous.

We shall now take up for examination Clause 14 of the Scheme, which provides for registration of employers. That clause reads thus:

"14. *Registration of employers.*—Every employer including a

- A Mukadam, commission agent, clearing agent, purchaser, importer, exporter engaged in selling, purchasing or trading or acting as agent in vegetable market and other establishments in the areas to which this Scheme applies shall get registered with the Board by applying in Form 'A' appended to this Scheme within fifteen days from the date of coming into force of this clause. Provided, however, that an employer of any establishment coming into existence after the commencement of this Scheme shall apply for a registration simultaneously on the commencement of his business."
- B

- C Form 'A' appended to the Scheme and referred to in the above Clause refers to the particulars to be furnished in the application for registration of employers . It reads thus :

"FORM 'A'

(See Clause 14)

- D **THE VEGETABLE MARKETS UNPROTECTED LABOUR BOARD**

Application for the registration of employer.

- E Registration No.
(to be filled in by office)

I, hereby apply for registration as an employer, etc. The necessary particulars are given below :-

- F
1. Name and address of the Establishment and Telephone No.
 2. Whether a firm or a company
Name of the proprietor

G (1) ...

(2) ...

(1) ...

H (2) ...

3. Are you a member of any Association of employer? If so, state the name of the Association. A

4. Whether your Establishment is registered under the Bombay Shops and Establishments Act, 1948. If so, state Registration No. B

5. The place(s) of work with location in details where the loading, unloading, stacking, carrying, etc. of goods is carried on in connection with trade/business of your Establishments. C

6. Are you employing workers through contractors(s)? If so, state the name and other details of the contractor(s). D

7. Are you employing workers through Tolli? If so, state the name of the Mukadam/s of the Tolli/s or of all workers. D

Date :

Place :

E

Signature of the Applicant
By order and in the name of the
Governor of Maharashtra.

N.N. PANDYA
Desk Officer"

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If the text of Clause 14 and the particulars required to be filled up by the employer in Form 'A' are seen together, they make it abundantly clear that the employer required to be registered under Clause 14 with the Board is none other than the employer falling within the definition of 'employer' in Section 2(3) of the Act. When Clause 14 states that every employer, including a mukadam, commission agent, clearing agent, purchase, importer, exporter engaged in selling, purchasing or trading or acting as agent in vegetable market and other establishments in the areas to which the Scheme applies shall get registered with the Board by applying in Form 'A' appended to the Scheme it makes abundantly clear that such H

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- A employer must have an establishment of his own over the affairs of which he has ultimate control or must have an establishment the affairs of which are entrusted to him. If a person who wants to register himself as an employer under that Scheme, he has to show as a condition precedent that he has an establishment of his own over which he has ultimate control or
- B has an establishment the business affairs of which are entrusted to him, becomes obvious for the reason that item 1 of Form 'A' requires him to give the name and address of the establishment and telephone number and under item 4 thereof requires him to give the information as to whether the said establishment is registered under the Bombay Shops and Establishments Act, 1948 with registration number. Therefore, if a person wants
- C to register as an employer under Clause 14 of the Scheme, the Board cannot register him as such unless he has an establishment on the business of which he has ultimate control or he has an establishment the business affairs of which are entrusted to him for being carried on. When later part of Clause 14 states "provided, however, that an employer of any establishment coming into existence after the commencement of this Scheme
- D shall apply for a registration simultaneously on the commencement of his business", would clearly support the view we have expressed of Clause 14 that the person who is required to get himself registered as an employer under Clause 14 must, as a condition precedent, have an establishment over the business affairs of which he has ultimate control or must be a person entrusted with carrying on the business affairs of such establishment, i.e.
- E of establishments carrying on business in vegetables, including onions and potatoes.

- Thus, if Hundekaris have to get themselves registered as employers under Clause 14 there is no room for doubt that they are entitled to be
- F registered as employers thereunder if they own markets or establishments doing the business in vegetables including onions and potatoes having ultimate control over such markets or establishments or are entrusted with the carrying on the affairs of such markets or establishments. However, if Hundekaris do not have vegetable markets or establishments of their own over which they have ultimate control or if the carrying on the affairs of
- G vegetable markets or establishments are not entrusted to them, they cannot be registered as employers under Clause 14 of the Scheme. The decision of the Government and the view taken by the High Court to the extent it is not in consonance with what we have said as to the right of the Hundekaris to get themselves registered as employers under Clause 14 of
- H the Scheme, we have to hold, is manifestly erroneous.

Hence, what emerges from a proper reading and understanding of the definitions in the Act relating to 'principal employer', 'employer', 'establishment', 'scheduled employment', 'contractor' and Clause 14 of the Scheme and Form 'A' appended thereto can be summarised thus : A

That the Board can register Hundekaris, by whatever name they may be called, under Clause 14 of the Scheme as the employers only where it is established that they are the owners of the vegetable markets or establishments where they are carrying on the business either having ultimate control over such establishments or being entrusted with the carrying on the affairs of such markets or establishments and not otherwise. If any of the Hundekaris, by whatever name may be called, are registered as employers under Clause 14 of the Scheme not being the owners of the vegetable markets or establishments in the areas concerned having either ultimate control over them or being entrusted with the carrying on the affairs of the same, their registration is liable to be cancelled. B C

What we have said as regards registration of Hundekaris as employers or cancellation of registration of employers under Clause 14 of the Scheme, shall not, however, come in the way of the Board of registering any person who owns a vegetable market or establishment, and has ultimate control over the business of such market or of registering any person who is carrying on the business affairs of such market or establishment being so entrusted as an employer under Clause 14 of the Scheme on submission of an application in the Form appended to the Scheme. D E

In the result, we allow this appeal partly, to the extent we have indicated as above and direct respondent-3 to decide on the registration of the employers under Clause 14 of the Scheme in terms of this judgment. No costs. F

R.A.

Appeal partly allowed.