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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L.) NO. 33597 OF 2024

- 1. Maharashtra Rajya Bandhkam Kamgar
Sanyukt Kriti Samiti
 - 2. Satyashodhak Kamgar Sanghatna
through its State President Shri Sagar Rambhau
Tayde
 - 3. Asangathit Kashtkari Kamgar Sanghatna
Through its Authorised Representative
Shri Sunil V. Ahire
 - 4. Kamgar Ekta Union
Through its Authorised Representative
Ms. Vinita Balekundri
 - 5. Kamgar Sanrakshan Samman Sangh
Through its Authorised Representative
Shri Akhilesh D. Rao
 - 6. Shivrajya Asangathit Kamgar Sanghatna
Through its Authorised Representative
Kalidas Rote
 - 7. Habitat and Livelihood Welfare Association,
Through its Authorised Representative
Shri Kalamuddin Idrisi
 - 8. Niwara Bandhkam Kamgar Sanghatna,
Through its Authorised Representative
Shri Shankar Lakhu Pujari
- .. Petitioners

Versus

- 1. State of Maharashtra
through the Secretary, Department of Industry,
Energy & Labour.
 - 2. Secretary/Chief Executive Officer,
Maharashtra Building Construction Workers
Welfare Board, Mumbai
 - 3. Deputy Secretary,
State Election Commission
- ...Respondents

Ms. Sudha Bharadwaj, for Petitioners.
Mr. Himanshu Takke, AGP, for Respondent No.1.
Mr. Akshay Shinde, for Respondent No. 2.

CORAM : ARIF S. DOCTOR &
SOMASEKHAR SUNDARESAN, JJ.

Date : November 6, 2024
(Vacation Court)

Judgement (PC):

1. Rule. By consent of the parties, rule made returnable forthwith, and taken up for final hearing and disposal.

Challenge in the Petition:

2. This Petition impugns a Circular dated October 17, 2023 (“***Impugned Circular***”) issued by the Maharashtra Building and Other Construction Workers’ Welfare Board (“***Board***”), suspending the implementation of various activities involving welfare measures administered under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (“***the Act***”), on the premise of the implementation of the Model Code of Conduct applicable to the conduct of the forthcoming Maharashtra Legislative Assembly Elections.

3. The Impugned Circular, issued to various authorities administering the Act, directs that until receipt of clarification from the Election

Commission, fresh registration, renewal of registrations, distribution of benefits such as protective gears, essential gears, household utility sets, grant of fresh approvals under the housing scheme and publicity work of the Board, shall remain suspended until further orders.

4. Ms. Sudha Bharadwaj, Learned Counsel appearing on behalf of the Petitioners (essentially trade unions and organizations representing building and construction workers in Maharashtra), took us through the Impugned Circular, and the scheme of the Act with a view to point out that the suspended activities are all activities of fresh registration, renewal of registration, distribution of benefits, distribution of safety kits, approval to housing schemes etc . A screenshot of the official website of the Board (<https://mahabocw.in>), demonstrating the suspension of the registration process is appended to the Petition – it carries the legend:

“Submission of new Registration is Stopped due to CODE OF CONDUCT”

5. Ms. Bharadwaj took us through various provisions of the Act to submit that the suspended activities are statutory imperatives which are required to be conducted under the schemes already formulated under the Act. Such activities have nothing to do, she would submit, with the any new policy decision or even any new scheme for distribution of new

largesse to the electorate in the context of the forthcoming elections or for that matter, any election related activity. She then pointed out the serious consequences and debilitating effect that such notification would have on the Petitioners members in as much many would not be entitled to avail of the statutory benefits under the Act and crucial welfare schemes which include for the provision of health and maternity cover, allowances for education and housing etc.

6. Mr. Akshay Shinde, Learned Counsel appearing on behalf of the Board (Respondent No.2) fairly stated that the registration exercise is indeed a basic statutory activity that is required to be conducted for the basis administration of the Act. Since the benefits under the Act relate to distribution of direct transfers of monies to the registered workers, the Board had doubts about conflict with the Model Code of Conduct, which led to the Board seeking guidance from the Election Commission. Since the clarification is still awaited, the activities covered by the Impugned Circular have remained suspended.

7. Upon a careful consideration of the provisions of the Model Code of Conduct applicable to the conduct of elections, the Scheme of the Act and the Impugned Circular, we are left in no manner of doubt that there is nothing in the Model Code of Conduct that would interfere with conduct

of ongoing statutory activity administering the provisions of the Act and the schemes made thereunder. Likewise, there is nothing in the Act and the schemes made thereunder that would render continued implementation of pre-existing benefits under pre-existing schemes and that too consistent with past practice as existing before commencement of the Model Code of Conduct that would be violative in letter or spirit. Consequently, we are of the view that the Impugned Circular, inasmuch as it seeks to suspend registration of workers as beneficiaries and renewal of such registration, and the provision of benefits to such beneficiaries under pre-existing terms of pre-existing schemes, consistent with past practice, deserves to be quashed and set aside.

Scope of the Act:

8. It must be remembered that the Act is a welfare legislation passed by Parliament, leaving the administration in each State to the respective State Governments. Building and construction work is essentially carried out by fragmented and unorganized labour, and the Act is evidently a vital piece of legislation seeking to accord health, safety and welfare measures for such labour by regulating the employment of such labour and stipulating norms for their terms of service. Chapter III of the Act makes it mandatory to register employer establishments and provides

that the effect of non-registration would mean that an employer who is not registered, cannot employ building workers in such establishment. Chapter IV deals with registration of building workers as beneficiaries. Section 12 provides that every building worker, aged at least eighteen years and less than sixty years, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under the Act. Upon registration, the Board would issue an identity card to every registered worker to establish identity as a beneficiary. Section 14(1) of the Act provides that when such a registered beneficiary attains the age of sixty years or when such a beneficiary is not engaged in building or other construction work for not less than ninety days in a year, he shall cease to be a beneficiary under the Act. Under Section 14(2), if a person had been a beneficiary for three consecutive years before attaining the age of sixty years, he shall be eligible to get such benefits as may be prescribed. In a nutshell, the registration of building workers is a central and imperative feature for the very administration of the statutory provisions of the Act.

9. It is seen from the record that the office of Director General (Labour Welfare), Ministry of Labour and Employment, Government of India has issued a Model Scheme and action plan for the provision of

benefits to building and other construction workers under the Act. In fact, such formulation was made pursuant to recommendations of a committee constituted pursuant to directions of the Supreme Court in judgements dated March 19, 2018 and May 7, 2018 in Writ Petition (Civil) No. 318 of 2006. It is seen that the welfare measures that would become available to the registered beneficiaries include life insurance and other disability insurance cover under the Pradhan Mantri Jeevan Jyoti Bima Yojana and the Pradhan Mantri Suraksha Bima Yojana. Likewise, benefits such as provision of health and maternity cover, allowances for education and housing, as also for skill development and a potential pension plan has been envisaged.

Scope of the electoral Model Code of Conduct:

10. From a perusal of the electoral Model Code of Conduct, we find that its provisions are aimed at preventing abuse of powers by political parties in government to influence voting behaviour of the electorate. By no stretch, in our opinion, would the Model Code of Conduct require suspension of administration of pre-existing schemes formulated under the Act. The right to register in order to avail of benefits under the schemes made under the Act, is a statutory right conferred by Parliament. Such right cannot be suspended in the name of elections. Likewise, the

continued provision of statutory benefits legitimately due under pre-existing schemes is not at all meant to be suspended under the electoral Model Code of Conduct.

11. In matters of payment of cash to members of society, the Model Code of Conduct essentially interferes with discretionary payments to members of the electorate after elections are announced. The Model Code of Conduct prohibits announcement of new projects, new programmes and grant of new concessions, and indeed the making of new promises, which have the effect of influencing the voters in favour of the party in power.

12. In fact, Paragraph II(2) of the Model Code of Conduct, explicitly states that national, regional and state utility schemes, which have already been brought up to the stage of completion and their utilization (when elections are announced) should not be stopped or delayed. Explicitly, it provides that Model Code of Conduct cannot be given as an excuse for not commissioning such schemes or for allowing such schemes to remain idle. What the Model Code of Conduct stipulates is that the implementation or commissioning of such schemes must be done by civil authorities without associating political functionaries and without any fanfare or ceremonies, so that no impression is created that such

commissioning has been done with a view to influencing the electorate in favour of the ruling party.

13. We agree with Ms. Bharadwaj's submission that none of the benefits already envisaged under the Act for the State of Maharashtra and already being implemented under the schemes made under the Act, as at the time the Model Code of Conduct was brought into force for the forthcoming elections, would constitute provision of any inducement to the electorate in the State.

14. It is evident that in view of the right to register being dependent on the mixed question of fact and law as to whether a registered worker has worked for at least 90 days in a year in building and other construction work, annual renewal of registration has to necessarily be a continuous and ongoing exercise. Such registration and renewal process has to necessarily be administered round the year if the mandate of Parliament has to run its intended course. Consequently, there is no basis to suspend the same on account of the electoral Model Code of Conduct. What would be prohibited under the Model Code of Conduct is the introduction of any new measure in the form of either policy of a revision of size of benefits when the Model Code of Conduct is in force. Likewise, what would be prohibited is the creation of any fanfare and holding of ceremonies with

the involvement of political functionaries. That would be the limited outcome of the implication of the Model Code of Conduct for the administration of the Act.

Conclusions and Directions:

15. In the result, the Writ Petition is allowed in terms of prayer clauses

(1) and (2) of the Petition, which read thus :

(1) Issue a Writ of Declaration, or any other appropriate writ, order or direction, declaring the Circular dated 17.10.2024 at Exhibit N, seeking to halt the registration of construction workers and distribution of benefits to them under the BOCW Act, issued by the Respondent No.2, as void, inoperative, and ultra vires the BOCW Act;

(2) Issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of mandamus, directing the Respondent No.2 not to stop the registration and renewal of registration of construction workers; and also not stop applications, processing and disbursal of claims under old ongoing schemes during the enforcement of Model Code of Conduct for future upcoming elections of the Urban Local Bodies and Gram Panchayats in the State of Maharashtra.

16. Therefore, the Impugned Circular is hereby quashed and set aside insofar as it suspends registration of workers under the Act, renewal of such registration, and provision of benefits to registered workers under existing schemes, whenever the Model Code of Conduct is brought into effect for any elections in the State of Maharashtra, be it the State

Legislative Assembly or local self government bodies such as municipalities and panchayats.

17. Whenever elections are held in the State of Maharashtra, the administration of the Act and the implementation of the schemes as existing when the Model Code of Conduct was made applicable, must necessarily be continued without any suspension in the ordinary course of administration, consistent with past practice and in accordance with benefits stipulated before the Model Code of Conduct is brought into force.

18. The Respondents are hereby directed, to forthwith, and in any event no later than one day from the date of this judgement, ensure that the online portal used for the administration of the Act are fully and freely available for registration, whether by employers or by workers for implementation of the schemes made under the Act for the State of Maharashtra, in the ordinary course of business and consistent with past practice.

19. Any publicity and advocacy activity as envisaged in the Impugned Circular shall be kept the bare minimum necessary to implement the schemes made under the Act. None of such activity shall entail any

ceremony or fanfare or even any association with any political functionaries.

20. Needless to add, nothing contained in this judgement shall be considered as a license for the State Government to frame a new scheme or to provide any new benefits that were not already in operation as of the date on which the Model Code of Conduct came into effect in relation to the forthcoming Maharashtra Legislative Assembly Elections.

[SOMASEKHAR SUNDARESAN, J.]

[ARIF S. DOCTOR, J.]