Supreme Court of India
Pepsico India Holding P.Ltd vs Grocery Market & Shops Board & Ors on 12 February, 2016
Author: R Nariman
Bench: Kurian Joseph, Rohinton Fali Nariman

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9999 OF 2010

PEPSICO INDIA HOLDING P. LTD. …APPELLANT

VERSUS

GROCERY MARKET & SHOPS BOARD
& ORS. ...RESPONDENTS

WITH

CIVIL APPEAL NO.10000 OF 2010

SUPREME PETRO-CHEM LIMITED …APPELLANT

VERSUS

STATE OF MAHARASHTRA & ORS. …RESPONDENTS

J U D G M E N T

R.F. Nariman, J.

1. These appeals involve an interpretation of the provisions of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969, (hereinafter referred to as “the 1969 Act”) read with the Grocery Markets or Shops Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1970 (hereinafter referred to as “the 1970 Scheme”). The brief facts necessary for a decision in Civil Appeal No.10000 Of 2010 (Supreme Petro-Chem Limited v. State of Maharashtra and others) are that under Section 5 of the said 1969 Act, if any question arises whether any scheme applies to any class of unprotected workers, the matter shall be referred to the State Government and the decision of the State Government which shall be taken after consulting the Advisory Committee constituted under Section 14 shall be final. By an order dated 24.6.2008, the State Government after referring to submissions from the appellants as well as submissions from the Board, held:-

"4. Govt has analyzed overall situation, documents application of the organization dated 01.03.2003 and information about the product and its raw material. Govt has come to the following conclusion:

a. Company is manufacturing Polystyrene.

b. For manufacturing styrene and Polybutadin are used as raw material. Polybutadin comes in rubber form and it is not natural rubber.

c. Polystyrene is a hard plastic.

d. Polystyrene is not a petrochemical product but a chemical product.

e. Even Polystyrene manufacturing is considered as petrochemical production it is finally a chemical production only. The material used to manufacture the product is also chemical.

f. There is no written reference in the Mathadi Act that petrochemical should be kept out of the act but chemical itself includes everything.

g. Mathadi Act and scheme is for the betterment of workers and purpose of the scheme is to make applicable to the chemical manufacturing companies. It is not mentioned in the scheme that petrochemical products should be excluded and as petrochemical is not mentioned in the scheme so the scheme is not applicable to the said organization is not acceptable.

5. In the situation Samitte and Govt. has come to the conclusion that Grocery market and shops unprotected workers (Regulation of Employment and Welfare) Act 1970 is applicable to Supreme Petrochem Ltd.

6. In the company loading unloading work of chemical product and its raw material is carried out. And with respect to this Mathadi kind of work is carried out in the company. As said by the company this work is carried out by two Cooperative societies. These societies do the work by employing the workers and get compensation from the company. Company says that these employees get the facilities like Provident fund and others. But in the report filed by the mandal on 20.09.2006 this statement has not been proved. As per the decision given by Hon. High Court in 2006 (3) CLR PG 999, there is no meaning to what company is saying. Instead of that it proves that in the said company Mathadi kind of work carries out.

8. In this situation Maharashtra Mathadi Hamal and other Manual Workers (Regulation of Employment and Welfare) Act 1969, Grocery Markets or Shops Unprotected Workers (Regulation of employment and welfare) Scheme 1970 is applicable to the said organization. Therefore, application given under section 5 of Mathadi Act is rejected by the Government."

2. The said order was challenged before the Bombay High Court by filing a writ petition. The writ petition was dismissed by the impugned judgment dated 10.2.2009 after holding:-

"4. It is rather difficult to digest the arguments of the learned counsel. Basically, what we find is that the petitioners are manufacturing polysterene and polysterene is a combination of styrene and polybutadin. Polybutadin comes in rubber form and is not a petrochemical though it is not a natural rubber. Styrene is one of the by-product of the petrochemical which is used by the petitioner for manufacturing polysterene. Therefore, the petitioners are not manufacturing any petrochemicals, but one of the by-product of the petrochemical is used by the petitioners to manufacture polysterene and polysterene is hard plastic.

5. All these aspects have been considered by the Government authorities and thereafter the authorities concluded that the petitioners are not dealing with petrochemicals as they have submitted. We agree with the findings of the authority. Assuming for a moment that the petitioners are dealing in petrochemicals, yet the Act will be applicable to them because the words used in this application clause referred to above is the product including the manures and thereby, every type of production has been covered. What is important to note is that the manures which are like urea etc. are also derivatives of the petrochemicals and thereby by inclusive clause the manures which could have been saved probably have been included there. Therefore, the word "product" has been used by the Legislature in its wisdom with all its cognate variations and it cannot be interpreted to have a limited meaning. What we find is that the petrochemical is a part of the chemical. Chemical is the genesis while petrochemical is species of the said genesis and thereby if the chemical industry is covered it is rather difficult to hold that the petrochemical industries are not covered.

6. What is important to be looked into is whether in this industry the work which the mathadis are carrying out is available or not. If, in that industry, the work of mathadis is available then only because the industry is dealing in some different aspect, that work cannot be given to some other unorganized workers. The basic test, after having ascertained that the industry is covered by law, is to find out that the work of mathadis is available and if it is available, the Act and the Scheme will apply to the industry. It is not disputed that the mathadi work is not available. The only distinction which was tried to be made out was with regard to petrochemicals and that, therefore, the Act is not applicable, which submission we have already rejected for the reasons stated above. We find that the Government has rightly decided the matter under Section 5 and no interference is called for at the hands of this court."

3. Shri J.P. Cama, learned senior advocate appearing on behalf of the appellants has argued that the 1969 Act only applies to employments that are specified in the Schedule. Inasmuch as grocery markets or shops are mentioned in Item 4 of the Schedule, according to learned counsel, employment in factories which occurs only in Item 5 of the said Schedule could not possibly be attracted as Item 5 only speaks of establishments which are not covered by any other entries in the Schedule. Inasmuch as the 1970 Scheme in the present case is a scheme dealing with employment in grocery markets or shops, Item 5 of the Schedule is not attracted, and the 1970 Scheme is ultra vires the 1969 Act insofar as it provides for employment in factories which manufacture chemical products and are covered by entry 5 of the Schedule to the said 1969 Act. He also referred to Section 1(4A) of the 1969 Act to state that insofar as employment in factories in district Raigad are concerned, item 5 in column 4 of the table appended to Section 1(4A) speaks of "colour chemicals" and "products including fertilizers", and not "chemical products". This being so, chemical products

in any case are outside Section 1(4A), and the 1970 Scheme insofar as it purports to include within it under clause 2(1)(f) "chemical products", is therefore ultra vires Section 1(4A). Further, according to learned counsel, what is allegedly manufactured in the appellant's factory are petro chemicals and not chemicals. He has referred to a number of documents which include various licences and letters from authorities clearly stating that what is manufactured in the appellant's factory are only petro chemicals. For that reason also, petro chemicals not being chemicals would not be within the coverage of the 1969 Act or the 1970 Scheme. He further argued, referring to Section 4(1)(b) of the 1969 Act that if the 1970 Scheme is to be made applicable to petro chemicals manufactured in factories, the only method of doing so is if a demand or request is made by a majority of the employers or workers that the provisions of the grocery markets or shops scheme should be applied to another scheduled employment – that is, manufacturing petro chemicals in factories, and it is only after consultation with the employers and workers that the State Government may apply the provisions of the 1970 Scheme to the appellant's factory manufacturing petro chemicals. This not having been done, the 1970 Scheme cannot apply to the appellant. Learned counsel further argued that in point of fact there is no work of transportation undertaken by the employer from the employer's factory to the purchaser's premises. He argued that the factory was by and large mechanised and that the petro chemical products manufactured at the factory were picked up by purchasers by employing contract labour that was arranged by the purchasers themselves. This being so, the 1969 Act and the 1970 Scheme would have no application to the appellant's factory.

4. Shri S. Chinchwadkar, learned advocate appearing on behalf of the respondent-Board has countered each of the arguments of Mr. Cama. According to Shri Chinchwadkar Entry 5 appearing in the Schedule to the 1969 Act is a residuary entry which takes in all employments not otherwise covered by any scheme under any of the other items of the Schedule, and as petro chemicals manufactured in factories were admittedly not covered by any of the other items, they would fall within the residuary entry. Further, according to learned counsel, the nomenclature of the scheme is irrelevant so long as the provisions of the 1970 Scheme actually cover the appellant's activities carried out in factories. He further argued referring to Sections 3 and 4 of the 1969 Act that there can be a composite scheme in which several scheduled employments or groups of employments can be bunched together, which has been done in the present case. He also argued with reference to Section 1(4A) that item 5 in column 4 when it referred to "products including fertilizers" would include all products including chemical products, and that therefore the 1970 Scheme is intra vires the 1969 Act. He also referred to the State Government order, which was impugned before the High Court and upheld, in order to show that the State Government had applied its mind under Section 5 of the 1969 Act, and that such order should not be interfered with in the exercise of judicial review under Article 226 of the Constitution. He also referred us to the definition of "establishment" contained in section 2(4) which would mean "any place or premises including the precincts thereof in which any scheduled employment is being carried on". According to him, inasmuch as lifting of the appellant's product was being carried on from the precincts of the factory, the appellant would be covered by the 1969 Act and the 1970 Scheme. He also referred in some detail to Bhuwalka Steel Industries Limited v. Bombay Iron & Steel Labour Board, (2010) 2 SCC 273 to buttress his proposition that this Court, following the Full Bench of the Bombay High Court, has construed the 1969 Act as a welfare legislation, and having regard to its object has expressly stated that employers should realise their social obligations qua this segment of workers who are non-protected workers,

as defined by the said Act.

5. We have heard learned counsel for the parties. Before entering into the merits of the controversy before us, we would like to set out the relevant provisions of the 1969 Act and the 1970 Scheme made thereunder. The long title of the 1969 Act is important in that it sets out the object for which the 1969 Act was enacted, and is as follows:-

"An Act for regulating the employment of unprotected manual workers employed in certain employments in the State of Maharashtra to make provision for their adequate supply and proper and full utilization in such employments, and for matters connected therewith. WHEREAS, it is expedient to regulate the employment of unprotected manual workers such as, Mathadi, Hamal etc., engaged in certain employments, to make better provision for their terms and conditions of employments, to provide for their welfare, and for health and safety measures where such employments require these measures; to make provision for ensuring an adequate supply to, and full and proper utilization of, such workers in such employments to prevent avoidable unemployment; for these and similar purposes, to provide for the establishment of Boards in respect of these employments and (where necessary) in the different areas of the State; and to provide for purpose connected with the matters aforesaid; It is hereby enacted in the Twentieth Year of the Republic of India as follows: -

The Sections of the Act relevant for deciding these appeals are set out hereinbelow and read as follows:

"1. Short title, extent, application and commencement. – (3) It applies to the employments specified in the Schedule hereto.

(4A) Notwithstanding anything contained in sub-section (4), and in Government Notification, Industries and Labour Department, No. UMA. 1272/Lab-IV, dated the 28th March 1972, this Act shall be deemed to have come into force in the areas specified in column 2 of the Table below on the dates and in respect of the employments specified in columns specified in columns 3 and 4 against each such areas in the said Table, respectively.

TABLE

Sl. No.	Areas	Date	Name of the employment
2	3	4	
1	Thane and Kalyan Talukas of the Thane District; and Panvel Taluka of the Kulaba (now Raigad) District)	26th day of Dec. 1979. 1st day of August 1983.	Employment in Grocery Market or Shops, in connection with loading, unloading, stacking, carrying, weighing, measuring (filling, stitching sorting, cleaning) or such other work including work

	(b) The whole of the Thane and Raigad Districts excluding the Thane and Kalyan Talukas of the Thane District and Panvel Taluka of the Raigad District.		preparatory or incidental to such operations. (2) Employment in markets and other establishments, in connection with loading, unloading, stacking, carrying, weighing, measuring (filling, stitching, sorting, cleaning) of soda ash, coal-tar, lime, colour chemicals, chemical products including fertilizers, gunny bags, coir ropes, ropes, mats, hessian cloth, hessian yarn, oil cake, husk chuni and chhal or such other work including work preparatory or incidental to such operations. (3) Employment in onion and potato wholesale markets in connection with loading, unloading, stacking carrying, weighing, measuring (filling, stitching, sorting, cleaning) of such other work including work preparatory or incidental to such operations. (4) Employment in factories and mills manufacturing grocery products if such employment is connected with loading, unloading, stacking, carrying, weighing, measuring (filling, stitching, sorting, cleaning) or such other work including work preparatory or incidental to such operations carried on by

			workers covered by entry 5 in the Schedule to this Act. (5) Employment in factories and mills manufacturing colour chemicals, products including fertilizers, if such employment is in connection with loading, unloading, stacking, carrying, weighing, measuring (filling, stitching, sorting, cleaning) or such other work including work preparatory or incidental to such operations carried on by workers covered by entry 5 in the Schedule to this Act.

Definitions.

(3) "employer", in relation to any unprotected workers 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;

(4) "establishment", means any place or premises, including the precincts thereof, in which or in any part of which any scheduled employment is being or is ordinarily carried on;

(7) "principal employer" means an employer who engages unprotected workers by or through a contractor in any scheduled employment;

(9) "scheduled employment" means any employment specified in the Schedule hereto or any process or branch of work forming part of such employment;

(10) "scheme" means a scheme made under this Act;

(11) "unprotected worker" means a manual worker who is engaged or to be engaged in any scheduled employment;

(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.

3. Schemes for ensuring regular employment of unprotected workers. – (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 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.

4. Making, variation and revocation of scheme. – (1) The State Government may, after consultation with the Advisory Committee, by notification in the Official Gazette and subject to the condition of previous publication, make one or more schemes for any scheduled employment or group of scheduled employments, in one or more areas specified in the notification; and in like manner add to, amend, vary or substitute another scheme for, any scheme made by it:

Provided that, no such notification shall come into force, unless a period of one month has expired from the date of publication in the Official Gazette:

Provided further that, the State Government may –

(a) if it considers necessary, or

(b) if a demand or request is made by a majority of the employers or workers in any other scheduled employment, that the provisions of any scheme so made for any scheduled employment or any part thereof should be applied to such other scheduled employment, after consulting the employers and workers in such scheduled employment by notification in the Official Gazette, apply the provisions of such scheme or part thereof to such scheduled employment, with such modifications, if any, as may be specified in the notification.

(2) The provisions of section 24 of the Bombay General Clauses Act, 1904, shall apply to the exercise of the power given by sub-section (1) as they apply to the exercise of a Power given by a Maharashtra Act to make rules subject to the condition of previous publication.

5. Disputes regarding application of scheme. - If any question arises whether any scheme applies to any class of unprotected workers or employers, the matter shall be referred to the State Government and the decision of the State Government on the question, which shall be taken after consulting the Advisory Committee constituted under section 14, shall be final.

SCHEDULE

4. Employment in Grocery Markets or shops, in connection with loading, unloading, stacking, carrying, weighing, measuring, filing, stitching, sorting, cleaning or such other work including work preparatory or incidental to such operations.

5. Employment in markets, and factories and other establishments, in connection with loading, unloading, stacking, weighing, measuring, filing, stitching, sorting, cleaning or such other work including work preparatory or incidental to such operations carried on by workers not covered by any other entries in this Schedule.

6. The provisions of the 1970 Scheme, insofar as they are relevant for decision in the present appeals, are set out hereinbelow and read as follows:

"No. UWA-1469.(GR)_160783/LAB-IV :- In exercise of the powers conferred by sub-section (1) of section 4 of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (Mah. XXX of 1969) and of all other powers enabling it in that behalf the Government of Maharashtra after consultation with the Advisory Committee, hereby makes the following scheme for employment in grocery markets and shops in connection with loading, unloading, stacking, carrying, weighing, measuring or such other work including work preparatory or incidental to such operations in the areas specified in the Schedule appended to this Scheme, the same having been previously published as required by sub-section(1) of the said section 4, namely:-

2. Objects and Application:-

(1) Objects:- The objects of the scheme are to ensure an adequate supply and full and proper utilization of unprotected workers employed in-

(a) Grocery Markets or Shops in connection with loading, unloading, stacking, carrying, weighing, measuring [filling, stitching, sorting, cleaning] or such other work including work preparatory or incidental to such operations:

(b) Markets and other establishments in connection with loading, unloading, stacking, carrying, weighing, measuring [filling, stitching, sorting, cleaning] of soda ash, coaltar, lime, colour chemicals, chemical products including fertilizers, gunny bags, coir ropes, ropes, mats, hessian, cloth, hessian yarn, oil, cakes, husk, chuni, chhala, or such other work including work preparatory or incidental to such operation carried on by workers not covered by any other entries in the schedule for efficient performance of work and generally for making better provisions for the terms and conditions of employment of such workers and make provision for their general welfare.

(c) onion and potato wholesale markets in connection with loading, unloading, stacking, carrying, weighing measuring [filling, stitching, sorting, cleaning], or such other work, including work preparatory or incidental to such operations.

(d) factories and mills manufacturing grocery products if such employment is connected with loading, unloading, stacking, carrying, weighing, measuring, [filling, stitching, sorting, cleaning] or such other work including work preparatory or Incidental to such operations carried on by workers covered by entry 5 in the schedule to the Act;

(e) railway yards and goods sheds in connection with loading, unloading, stacking, carrying, weighing, measuring [filling, stitching, sorting, cleaning] of grocery articles or such other work preparatory or incidental to such operations by workers who are not employed by Railway Authorities and

(f) factories and mills manufacturing colour chemicals, chemicals products including fertilizers, in connection with the loading, unloading, stacking, carrying, weighing, measuring [filling, stitching, sorting, cleaning] or such other work including work preparatory or incidental to such operation carried on by workers covered by entry 5 in the Schedule to the said Act;

42. Cost of operating the scheme and provision for amenities and benefits to registered workers – (1) The cost of operating this scheme and for providing different benefits, facilities and amenities to registered workers as provided in the Act and under this scheme shall be defrayed by payments made by the registered employers to the Board. Every registered employer shall pay to the Board such amount by way of levy in respect of registered workers allotted to and engaged by him as the Board may, from time to time specify by public notice or written order to the registered employer and in such manner and at such time as the Board may direct.

(2) In determining what payments are to be made by the registered employers under sub-clause (1) the Board may fix different rate of levy for different categories of work, or registered workers, provided that the levy shall be so fixed that the same rate of levy will apply to all registered employers who are in like circumstances.

(3) The Board shall not sanction any levy exceeding fifty percent of the total wage bill without the prior approval of the State Government.

(4) A registered employer shall on demand make a payment to the Board by way of deposit or provide such, other security for the due payment of the amount referred to in sub-clause (1), as the Board may consider necessary.

(5) The Secretary shall furnish from time to time, to the Board such statistics and other information as may reasonably be required in connection with the operation and financing of the scheme.

(6) If a registered employer fails to make the payment due from him under sub-clause (1) within the time specified by the Board the Secretary shall serve a notice on the registered employer to the effect that unless he pays his dues within three days from the date of receipt of the notice, the supply of registered workers to him shall be suspended. On the expiry of the notice period the Secretary shall suspend the supply of registered workers to defaulting registered employer until he pays his dues.

43. Provident Fund and Gratuity:-

The Board shall frame and operate rules providing for contributory Provident Fund for registered workers. The rules shall provide for the rate of contribution, the manner and method of payment and such other matters as may be considered necessary so however that the rate of contribution is not less than 6 ½ per cent of the wages of a registered worker and is not more than 8 per cent of such wages.

Provided that pending the framing of the rules it shall be lawful for the Board to fix the rate of contribution and the manner and method of payment thereof.

(1a) In framing rules for the contributory Provident Fund the Board shall take into consideration, the provisions of the Employees' Provident Funds Act 1952 as amended from time to time and the schemes made thereunder for any establishment.

The Board shall frame rules for payment of gratuity to registered workers.

(2a) In framing rules for the payment of gratuity to registered workers, the Board shall take into consideration the provisions of the Payment of Gratuity Act, 1972 as amended from time to time.

The rules of the provident fund and Gratuity framed by the Board shall be subject to the previous approval of the State Government."

7. The first contention of Shri Cama, that the 1970 Scheme, insofar as it provides for employment in a factory manufacturing chemical products, is ultra vires the Schedule to the 1969 Act, has to be rejected. We agree with learned counsel for the respondent that clause 5 of the Schedule to the Act is a residuary clause which would rope in employment in factories in connection with loading, unloading, etc. carried on by workers not covered by any other entries in the Schedule. Admittedly, manufacture of petro chemicals in factories is not covered by any other entry including entry 4 to the Schedule. For this reason, we are of the view that the provisions of the 1970 Scheme dealing with manufacture of petro chemicals in factories would be within the coverage of the residuary entry i.e. Item 5 of the Schedule to the 1969 Act. This being so, no part of the 1970 Scheme is ultra vires the 1969 Act.

8. The second submission of learned counsel for the appellant has also to be rejected for the reason that clause 2(1)(f) of the 1970 Scheme is intra vires Section 1(4A) table column 4 item 5 of the 1969 Act. It is clear that the expression "products including fertilizers" is wider than "chemical products including fertilizers". The 1969 Act's terminology being wider than the terminology of the impugned 1970 Scheme, obviously the 1970 Scheme when it speaks of "chemical products" manufactured in factories and covered by entry 5 in the schedule to the 1969 Act would be intra vires the expression "products including fertilizers".

9. The further submission of Shri Cama, learned senior counsel, that the appellant allegedly manufactures petro chemical products and not chemical products has been correctly repelled by the

Division Bench of the Bombay High Court by stating that "petro chemical products" would be a species of the genus "chemical products". In fact, the appellant has admitted that it manufactures polystyrene (granules). Polystyrene in turn has been described as an inexpensive and hard plastic which is a vinyl polymer. In the report of the working group on chemicals and petro chemicals in the 11th Five Year Plan from 2007-2008 to 2011-2012 made by the Department of Chemicals and Petro Chemicals, it is stated:-

"1. Petrochemicals are derived from various chemical compounds, mainly hydrocarbons. These hydrocarbons are derived from crude oil and natural gas. Among the various fractions produced by distillation of crude oil, petroleum gases, naphtha, kerosene and gas oil are the main feedstocks for the petrochemical industry. Ethane and natural gas liquids obtained from natural gas are the other important feedstocks used in the petrochemical industry. Olefins (Ethylene, Propylene & Butadiene) and Aromatics (Benzene, Toluene & Xylenes) are the major building blocks from which most petrochemicals are produced.

2. Petrochemical manufacturing involves manufacture of building blocks by cracking or reforming operation; conversion of building blocks into intermediates such as fibre intermediates (Acrylonitrile, Caprolactum, Dimethyl Terephthalate/Purified Terephthalic Acid, Mono Ethylene Glycol); precursors (Styrene, Ethylene Dichloride, Vinyl Chloride Monomer etc.) and other chemical intermediates; production of synthetic fibers, plastics, elastomers, other chemicals and processing of plastics to produce consumer and industrial products.

10. A perusal of the aforesaid report shows that not only are petro chemicals derived from various chemical compounds, but also that petro chemical manufacturing involves among other things the production of plastics. In fact, in a report made by the Inquiry Officer appointed under Section 13 of the Act, the authorized officer came to the conclusion:

"Under these circumstances, my opinion is that polystyrene production is not a petroleum product but it is a chemical or chemical product. For a moment if it is accepted that company is a petrochemical company and producing petrochemical, even though petrochemical is also one of the chemical and therefore no reason is seen for not accepting a chemical production and Mathadi Act and Scheme are not applicable. After all petrochemicals are chemicals. It is not mentioned anywhere that petrochemicals should be omitted while implementing Mathadi Act and Scheme. Under the circumstances, I am giving my ruling that company's above point is not valid and hence Mathadi Act and Scheme is applicable to the company."

11. From the above, it is clear that the conclusion reached by the Government in its order dated 24.6.2008 that petro-chemical products are a species of chemical products and that the appellant manufactures chemical products, cannot be said to be perverse. We must not forget that the High Court in dismissing the writ petition was exercising the power of judicial review which would not go to the merits of the controversy before the Government but would only go to perversity –that no reasonable person invested with the same power could possibly arrive at the conclusion arrived at by the Government. Even otherwise, we must not forget that we are dealing with a welfare legislation whose primary object is to provide adequate employment for and better terms and conditions for

the employment of daily wagers, and to provide for their general welfare, which includes health and the safety measures, and to provide them with various other facilities including provident fund and gratuity. Arguments indulging in unnecessary hairsplitting have therefore necessarily to be dismissed out of hand.

12. Another submission made by learned senior counsel appearing on behalf of the appellant is that the 1970 Scheme deals with grocery markets or shops as its title suggests and cannot therefore include within it's scope petro chemicals manufactured in factories without following the drill of Section 4(1)(b) of the 1969 Act. This argument again has to be rejected for the reason that both Sections 3 and 4 of the Act refer to a scheme which provides for registration of unprotected workers "in any scheduled employment or employments" (as per Section 3(1) of the 1969 Act). Further, Section 4(1) of the 1969 Act also makes it clear that the State Government may make one or more Schemes for any scheduled employment or group of scheduled employments. On a reading of these provisions it becomes clear that there can be a composite scheme which takes within its ken various employments which may be contained in more than one entry of the Schedule to the 1969 Act. This being so, it is clear that merely naming a particular composite scheme as a grocery market or shop scheme does not carry the matter further. It is clear that the present scheme specifically takes within its ken factories manufacturing chemical products covered by entry 5 in the schedule to the 1969 Act, and would therefore be a scheme which provides for registration of unprotected workers in different scheduled employments and/or a group of scheduled employments. This being the case, it is clear that the attack based on nomenclature of the 1970 Scheme as a grocery market or shops scheme must fail.

13. We also agree with learned counsel for the respondent that Section 2(4) of the 1969 Act, which defines "establishment", would not only include any place or premises in which manufacture of petro chemicals is being carried on, but would also include the precincts thereof, which would include transportation made beyond the factory gate but within the precincts of the factory. This being the case, it is common ground that workers are necessary and are being used by the appellant to load the appellant's products on to the vehicles provided by the appellant's purchasers. This being the case, any argument that the factories' manufacturing activities are mechanized and that there is no need for manual labour would have no material bearing to the case at hand.

14. This Court, while approving a Full Bench decision of the Bombay High Court, has in the Bhuwalka Steel case interpreted the expression "unprotected worker" occurring in Section 2(11) of the 1969 Act as meaning every manual worker who is engaged or to be engaged in any scheduled employment, irrespective of whether or not he is protected by other labour legislations. This Court referred to the Objects and Reasons for the 1969 Act in the following terms:

"The Statement of Objects and Reasons mentions that report was made by the Committee to the Government on 17.11.1967. In that report, it was mentioned that the persons engaged in vocations like mathadi, hamals, casual workers employed in docks, lokhandi jatha workers, salt pan workers and other manual workers mostly work outside fixed premises in the open and are mostly engaged on piece-rate system in a number of cases. They are not employed directly, but are either engaged through Mukadum or Toliwalas or gangs as and when there is work and they also work for different

employers on one and the same day. The volume of work is not always constant. In view of the peculiar nature of work, its variety, the precarious means of employment and the system of payment and the particular vulnerability to exploitation of this class of labour, the Committee had come to the conclusion that the application of the various labour laws to such workers was impracticable and regulation of their working and other conditions by introducing amendments to the existing labour laws was not possible. Therefore, the Committee recommended that the working and the employment conditions of such unprotected workers should be regulated by a special enactment.

The Statement of Objects and Reasons further mentions that after holding series of meetings with the representatives of the interests affected by the proposed legislation and after considering all these suggestions and examining the recommendations of the Committee, Government had decided to bring the Bill which seeks to regulate the employment of mathadis, hamals and other manual workers employed in certain employments, to make better provision for their terms and conditions of employment, to provide for their welfare, for health and safety measures, where such employments require those measures, to make provision for ensuring an adequate supply to, and full and proper utilization of such workers in such employments, to prevent avoidable unemployment and for such purposes to provide for the establishment of Boards in respect of these employments and (where necessary) in the different areas of the State and to provide for purposes connected with the matters aforesaid. (emphasis supplied)" (at Paras 9 and 10)

15. After construing Section 2(11) of the 1969 Act to cover all "unprotected workers", i.e. all manual labour engaged in any scheduled employment irrespective of protection under other Labour Legislation, this Court went on to hold:-

"Before parting with the judgment, we must refer to the fact that this legislation, which came way back in 1969, has in its view, those poor workmen, who were neither organized to be in a position to bargain with the employers nor did they have the compelling bargaining power. They were mostly dependent upon the Toliwalas and the Mukadams. They were not certain that they would get the work everyday. They were also not certain that they would work only for one employer in a day. Everyday was a challenge to these poor workmen. It was with this idea that the Board was created under Section 6 of the Mathadi Act. Deep thoughts have gone into, creating the framework of the Boards, of the schemes etc. With these lofty ideas that the Act was brought into existence. In these days when Noble Laureate Professor Mohd. Yunus of Bangladesh is advocating the theory of social business as against the business to earn maximum profits, it would be better if the employers could realize their social obligations, more particularly, to the have-nots of the society, the workers who are all contemplated to be the inflicted workers in the Act." (at Para 83)

16. Taking a cue from the Objects and Reasons for this piece of social legislation and from the well known doctrine of construing such legislation in an expansive manner to further the object of welfare Legislation of the kind mentioned hereinabove, and not to stultify such object, we hold that the Bombay High Court cannot be faulted in its reasoning. It must also not be forgotten that the object of the 1970 Scheme is not only to provide work to both employer and employee but also to provide amenities and benefits to registered workers. These amenities and benefits are to be provided by the Board to employees by charging the employer with a levy which cannot exceed 50%

of the total wage bill of the employer without the prior approval of the State Government. We are told that in the present case the levy amount is 41%, which is utilized not only to look after the health of the workers, but also to give them terminal benefits such as provident fund and gratuity provided for by clause 43 of the 1970 Scheme.

17. It was further submitted by Shri Cama that on a conjoint reading of the definitions of "employer", "principal employer" and "worker" contained in Sections 2(3), (7), (12), as the two societies are contractors employing contract labour for and on behalf of the appellant company's purchasers, the appellant company cannot be said to be the "principal employer" who is liable to be registered under the 1969 Act. We are afraid that this contention does not lie in the mouth of the appellant company. By an application made for registration under the 1969 Act dated 11.10.1996, in column No.7 which reads as follows:-

"7. Are you employing workers through contractors? If so, state the name of the contractors" the Company has specifically mentioned two cooperative societies and one other contractor thereby admitting that it actually employed about 30 workers itself through contractors.

18. By a letter dated 1.3.2003, i.e. almost 7 years after the appellant company had been registered as an employer under the 1969 Act, the appellant company applied to remove its name from the register contained in the 1969 Act. This was followed up by a representation dated 10.5.2004 in which the appellant company stated:-

"The company, although did not engage any mathadi workmen, in view of the prosecution, registered itself on 11/10/1996, and was issued Registration No.4516. After registration, the Company with a view to close the matter pleaded guilty in the proceedings filed by the Board before the Labour Court. The Company submits that no Toli was allotted to it in spite of being registered till 21/3/2001, as the Board was well aware that the Company itself did not engage any persons for loading trucks and that the truckers/customers engaged persons from the Societies for loading work. The Company conducted and continued its business as usual and sold its products on ex-work basis whereby the customer as earlier sent Truckers along with persons who were from the Societies for loading."

19. Similarly in the writ petition filed before the High Court, the appellant company's own pleading in paragraph 8 is that the appellant registered itself with the respondent No.2 Board under pressure of the Board believing that the Act and the scheme were applicable. It was granted registration No.4516. Further, in proceedings under the Act against the company it admitted that it pleaded guilty for not having registered itself. This being the state of facts before us, we cannot characterize the State Government's finding in its order dated 24.6.2008 as even incorrect, let alone perverse. As pointed out above, in paragraph 6 of its order, the State Government specifically arrived at a finding that Mathadi work was carried out in the company by two cooperative societies who had the work done by employing workers and got compensated by the appellant company. This being the case, there is no factual foundation for Shri Cama's argument that it is the appellant's purchasers and not the appellant company itself that is the principal employer under the Act.

20. One other contention of Shri Cama needs to be noticed. Shri Cama argued before us that the 1969 Act being inconsistent with the Contract Labour (Regulation and Abolition) Act, 1970 would be repugnant to the said Act and therefore invalid under Article 254 of the Constitution. He candidly admitted that no such ground had been raised or argued before the High Court, but asked that the Supreme Court allow him to raise this plea as it is a pure question of law. We are afraid that this is not possible for the reason that even if Shri Cama were to be correct in his submission that the Central Parliamentary Act of 1970 would impliedly repeal the 1969 State Act, yet Section 30(1) of the said Act provides that despite the provisions of the 1970 Act being allegedly inconsistent with the 1969 State Act, yet if contract labour employed in an establishment are entitled to benefits which are more favourable to them than those to which they would be entitled under the 1970 Act, the contract labour shall continue to be entitled to more favourable benefits, notwithstanding that they also receive benefits in respect of other matters under the Central Parliamentary Act. This being the case, it was incumbent upon the writ petitioner not only to take up the plea of repugnancy and implied repeal but also to state as a fact that what the workmen would be entitled to under the 1969 State Act would not be as beneficial as what they would be entitled to under the 1970 Central enactment. This would then give the respondent Board, in turn, an opportunity of either admitting or denying this factual averment. There being no pleading to this effect in the writ petition before the High Court, it is clear that it is not possible for us to accede to Shri Cama's request to go into the argument on repugnancy and implied repeal.

21. This appeal is, accordingly, dismissed.

Civil Appeal No.9999 of 2010

22. In this appeal, the fact situation is that the appellant company is manufacturing soft drinks being aerated water and bottled water. A State Government order dated 18.8.2008 made under Section 5 of the Act rendered the following finding:-

"5. The Government has perused all the case papers and considered the above circumstances. After examining all the aspects of the case the Government has arrived at the following findings:-

(a) The company products drinking water and drinks of various kinds such as Pepsi, Mirinda and Seven-up.

(b) In the said products the Company uses as raw material such as Sugar, Caustic Soda, Carbonic Acid; Ascorbic Acid; Coffin, Sequesters Agents, Buffering; Carmel Water, Emulsifying and Stabilizing.

(c) "Drink" is one of the substances of food products;

(d) "Drink" is a grocery product;

(e) The raw material from which they are produced are also primarily consumable food products.

(f) The raw material required for the manufacture of the product as also the product manufactured are both consumable food products (liquid and solid).

(g) Mathadi Act and the Scheme famed thereunder being beneficent and benevolent welfare Schemes and the object is to make the same applicable to the companies manufacturing grocery market products as provided in the Grocery Markets & Shops Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1970.

6. In the above circumstances, the State has come to the finding that the Scheme of the Grocery Bazar and Shops Workers Board is applicable to the Company.

7. The company is engaged in products of drinks and drinking water and consequently in carrying on works in the nature of Mathadi such also loading, unloading, stacking, carrying setting up of raw material. The said works was carried out by 49 workers of contractor M/s M.M. Patil under the supervision the Grocery Board Supervisor. The said workers, excepting their wages, were deprived of P.F. contribution, paid holidays, house rent, workmen's compensation, bonus and other medical benefits. In these circumstances, the provisions of the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 and the Grocery Markets or Shops Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1970 are applicable to your establishment. Therefore, the application made by you to the Government under the provisions of section 5 of the Mathadi Act is rejected."

23. A writ petition filed against the said order before the Bombay High Court failed. The High Court dismissed the petition as follows:-

"The second submission is that the petitioners are manufacturing Soft Drinks like Pepsi, Mirinda, Seven-up etc. and it is not a grocery items. It is not disputed before this court that in the manufacturing process of these soft drinks, the petitioners are using sugar, carbonic acid, ascorbic acid, coffin, sequestrates agents. The petitioners are using caustic soda for cleaning bottles. But we find that these soft drinks are provided to refresh persons and to provide energy to them when they are exhausted. The items, like sugar or carbonic hydride provide energy. It is also not disputed that all these items used in the manufacturing process are the grocery items and accordingly the State Government has also made observations that these are the grocery items. Apart from that the Oxford Dictionary has given the meaning of "grocery". According to said dictionary "Grocery" means items of food in a grocery shop or a super- market. Now-a-days, all the Soft Drinks are available in the grocery shops and the super-markets. They are the items of food and, therefore, they are all grocery items. Apart from this, it is not disputed by the learned counsel that in all the manufacturing process, loading and unloading activities are carried out, which are the activities of the Mathadi Kamgara. We do not find any substance in the contentions raised. The writ petition is rejected."

24. Shri Giri, in addition to the submissions raised by Shri Cama, on his special facts submitted that it was fallacious to take into account raw materials that ultimately went into the manufacturing of the finished products and to state that the said raw materials being groceries would therefore make the final product also a "grocery". He further argued that the expression "grocery" would only

comprise articles which are required as daily necessities such as oil, grain, etc. in households, and this not being the case, soft drinks manufactured and bottled water would be outside the expression "grocery". He also argued that when the Act was extended to the appellant company's factory, in the year 1983, whatever may be the position today, the position in 1983 was clear and obviously the items manufactured by the appellant company would not have fallen within the expression "grocery" as understood in 1983.

25. Learned counsel appearing on behalf of the Board has repelled all these arguments stating that the expression "grocery" was wide enough to include all items of food and drink which would necessarily take in the appellant company's products. He reiterated his argument on construing a beneficial enactment such as the 1969 Act to achieve the object set out and that assuming that the term "grocery" has a narrower meaning, obviously the broader meaning should be taken into account. Further, he also stated that whatever the position was in 1983, at the stage of the show cause notice in 2005 and by the date of the State Government order in 2008 both soft drinks manufactured as well as bottled water manufactured by the appellant company were certainly household items among the middle class and rich sections of society.

26. The definition of "grocery" contained in the Oxford Advanced Learner's Dictionary of Current English, 9th Edition, is as follows:-

"grocery – (grocery store) a shop/store that sells food and other things used in the home. In American English 'grocery store' is often used to mean supermarket. 2. Groceries – food and other goods sold by a grocer or at a supermarket." We also find a useful definition contained in Collins English Dictionary, Third Edition – "groceries – merchandise, esp. Foodstuffs, sold by a grocer".

27. That the expression "grocery" in 2005, when the Act was sought to be applied to the appellant company, would include soft drinks manufactured by the appellant company and bottled water as daily household goods among the middle class and rich sections of society, was not seriously contested by Shri Giri. The argument that we should find the meaning of the expression "grocery" on the date on which the Act was extended to the area in which the appellant company's factory was situate is fallacious in law. This Court in The Senior Electric Inspector and others v. Laxmi Narayan Chopra and others, 1962 (3) S.C.R. 146, when confronted with a similar argument to that made by Shri Giri, repelled the said argument in the following terms:

"The legal position may be summarized thus: The maxim contemporanea expositio as laid down by Coke was applied to construing ancient statutes but not to interpreting Acts which are comparatively modern. There is a good reason for this change in the mode of interpretation. The fundamental rule of construction is the same whether the Court is asked to construe a provision of an ancient statute or that of a modern one, namely, what is the expressed intention of the Legislature. It is perhaps difficult to attribute to a legislative body functioning in a static society that its intention was couched in terms of considerable breadth so as to take within its sweep the future developments comprehended by the phraseology used. It is more reasonable to confine its intention only to the circumstances obtaining at the time the law was made. But in a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word

used at the time the law was made, for a modern Legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them. We cannot, therefore, agree with the learned Judges of the High Court that the maxim contemporanea expositio could be invoked in construing the word "telegraph line" in the Act." (at 156, 157)

28. We thus find that the High Court was absolutely correct in not interfering with the State Government order dated 18.8.2008 and in dismissing the writ petition filed by the appellant company. For the same reasons given in Civil Appeal No.10000 of 2010, we therefore reject this appeal as well. The appeal is, accordingly, dismissed, with no order as to costs.

.....J.

(Kurian Joseph) .....J.

(R.F. Nariman) New Delhi;

February 12, 2016.