

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
AD-HOC NO. WP-LD-VC-41 OF 2020
WRIT PETITION (ST.) NO. OF 2020**

Maharashtra Kamgar Sanghatana ... Petitioner

Versus

City Industrial Development Corporation and Ors. ... Respondents

Mr.Sanjay Singhvi, Sr. Adv. i/b. Ms. Karishma Rao for the Petitioner.

Mr. G.S.Hegde a/w. Ms. P.M.Bhansali for Respondent Nos.1 and 2

Ms.Shruti D. Vyas, 'B' Panel Counsel for Respondent No. 3.

CORAM : S.J.KATHAWALLA,

DATE : 13TH MAY, 2020

P.C. :

1. The above Writ Petition is filed by the Petitioner – Maharashtra Kamgar Sanghatana on behalf of its members / workmen, who since the last several years are working as Gardeners or 'Malis' for Respondent No. 1 – City Industrial Development Corporation ('CIDCO').

2. The Petitioners have moved this Court through video conferencing seeking urgent orders/directions against Respondent No. 1 CIDCO, to immediately pay the members of the Petitioner, their wages which are outstanding from January-2020 at the rate payable to the permanent workers in the unskilled category, alongwith interest at commercial rate and to also provide essential service ID Cards to the members of the Petitioner, to enable them to reach their place of work without facing

any difficulties, and also provide them with masks and gloves to protect themselves whilst they are outdoors.

3. Prior to the year 2012, the concerned workmen, continuously worked for several years as 'Malis' i.e. Gardeners for CIDCO. Since CIDCO continued to treat them as contract workers, on 1st December, 2012, Reference (ID) No. 61 of 2012 was made in the Industrial Tribunal, Thane, regarding permanency of the concerned workmen. On 13th January, 2017, the Award was passed stating that the concerned workmen be absorbed as permanent employees in CIDCO and be extended all benefits of permanency with effect from 1st December, 2012. CIDCO impugned the said Award before this Court vide Writ Petition No. 4378 of 2018, which was dismissed by this Court by an Order dated 31st January, 2020, stating that the Award passed, calls for no interference.

4. Since the orders are admittedly not stayed, CIDCO was bound to absorb the concerned workmen as permanent employees and also extend all benefits of permanency to them with effect from 1st December, 2012.

5. CIDCO has not only failed to extend all benefits of permanency with effect from 1st December, 2012 to the concerned workmen, but has also deprived the concerned workmen of their earned wages since January, 2020. Therefore, despite the Court orders being in their favour and despite them having continued to work during the pandemic Covid-19, CIDCO compelled the concerned workmen to survive on charity i.e. the ration provided by NGOs and social workers.

6. Advocate Hegde appearing for the CIDCO on instructions states that CIDCO had in February, 2020 itself sent the relevant papers to their Advocate at New Delhi with a request to file a SLP impugning the Order passed by this Court dated 31st January, 2020, in Writ Petition No. 4378 of 2018. However, the Advocate at New Delhi has, due to the current pandemic not taken any steps till date. Advocate Hegde further states that some payments were made by CIDCO on 30th April, 2020 to the concerned workmen for the month of January, 2020 and instructions have been issued by CIDCO to the Contractor to pay the concerned workmen upto April, 2020, and thereafter for the subsequent months, and that this Court should record the said statements. Advocate Hegde has also submitted that since CIDCO has handed over / is in the process of handing over the gardens to Panvel Municipal Corporation ('PMC'), it is the PMC who will have to pay the concerned workmen. However, PMC is reluctant to accept the concerned workmen as their workmen.

7. None of the submissions advanced by Advocate Hegde on behalf of CIDCO justify the inhuman and callous conduct of non-payment of the earned wages since January, 2020, to the concerned workers. The fact remains that on 13th January, 2017, an Award has been passed by the Industrial Tribunal, Thane, in Reference (ID) No. 61 of 2012, directing that the concerned workmen be absorbed as permanent employees of CIDCO with all benefits of permanency with effect from 1st December, 2012. The challenge to the said Award by CIDCO before this Court vide Writ Petition No. 4378 of 2018 was rejected by this Court vide its Order dated 31st January, 2020 on

the ground that the impugned Award needs no interference. Admittedly, the Orders dated 13th January, 2017 and 31st January, 2020 continue to be in force. CIDCO is certainly not entitled to deprive the concerned workmen of their monthly wages from January, 2020 onwards, on the ground that the necessary papers are forwarded to their Advocate at New Delhi to file a SLP, which is admittedly not filed till date, nor on the ground that there are some differences between the CIDCO and the PMC. Making the concerned workmen work even during the pandemic and thereafter not paying them their earned wages for months, thereby compelling them to extend their hands before NGOs and social workers for ration to feed themselves and the members of their families, is certainly a very inhuman act on the part of CIDCO, which deserves severe condemnation. Even at this stage, CIDCO is not willing to make a statement that CIDCO will make payment to the concerned workmen (who have been directed by the Orders of the Court / Tribunal to absorb them as their permanent employees and extend all benefits of permanency with effect from 1st December, 2012) but is only willing to make a statement that CIDCO will direct the Contractor to make payment to the concerned workmen. Since the next excuse could be that despite being directed by CIDCO, the Contractor has failed to pay the concerned workmen, for which CIDCO cannot be held responsible, I am not willing to accept the statement of CIDCO.

8. In addition to the above, it is inter alia also the grievance of the concerned workmen that they are not provided ID Cards, face masks, hand gloves, etc. because of which, they are finding it difficult to reach their place of work and are

exposed to the rigors of the deadly virus. Advocate Hegde for CIDCO states that he has no instructions qua the said grievance of the concerned workmen.

9. In the above circumstances, I pass the following Order :

i. CIDCO is directed to pay the concerned workmen their unpaid earned wages upto April, 2020 as per their entitlement under the Award dated 13th January, 2018, which is upheld by this Court vide its Order dated 31st January, 2020 on or before 18th May, 2020, and thereafter continue to pay such earned wages on or before the 5th day of each successive month.

ii. CIDCO shall on or before 18th May, 2020 issue essential service ID Cards to the concerned workmen along with face masks, hand gloves, sanitizers / soap, if not provided so far, and replace / replenish the same from time to time.

iii. CIDCO shall file its Affidavit within a period of two weeks from today i.e. on or before 27th May, 2020.

iv. Stand over to 1st June, 2020 for Admission.

10. This Order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this Order.

(S.J.KATHAWALLA, J.)