
(2000) 03 KL CK 0025

In the High Court Of Kerala

Case No : O.P. No"s. 1653 and 5266 of 2000

Abdul Rahman

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-03-2000

Acts Referred:

Kerala Headload Workers Act, 1978 — Section 18

Citation : (2000) KLJ 1021 : (2001) 3 LLJ 796

Hon'ble Judges : S. Sankarasubban, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S. Sankarasubban, J.—Both these Original Petitions are filed against the same order passed by the Chairman, Kerala Headload Workers Welfare Fund Local Committee, Kozhikode dated November 26, 1999. The above order is produced as Ext. P2 in O.P. No. 5266 of 2000 and produced as Ext. P3 in O.P.No. 1653 of 2000. In O.P. No. 1653 of 2000, petitioners are transporting and handling contractors and forwarding agents. Petitioners in O.P. No. 5266 of 2000 are two employees union and two members of the unions. Short facts in these cases are as follows:

2. There are three railway yard houses/goods sheds in Calicut. They are one at Kallai, one at Kozhikode and one at West Hill. The work load in both Kallai and Calicut stations is high. But the Railways have decided to expand the goods shed at West Hill with the result most of the handling of goods will be at West Hill. The railway goods shed is an establishment coming under the Kerala Headload Workers Act. The Committee under the headload workers of Calicut railway goods shed passed a resolution that as soon as there will be more work at West Hill goods shed and comparatively less work at Calicut and Kallai railway goods sheds, 100 headload workers will be transferred to Calicut and Kallai stations which are respectively called as Pool 1A and Pool 1B. Ext. P2 in O.P. No. 5266 of 2000 and P3 in O.P. No. 1653 of 2000 show that the workers have been

transferred from Pool 1A and Pool 1B to the Pool at West Hill, which is called as Pool IE. In the West Hill, there are 24 headload workers. Petitioners in O.P. No. 1653 of 2000 have claimed that they have got permanent registered workers. The contention taken is that the Committee has no power to transfer the employees from one pool to another pool.

3. Petitioners in O.P. No. 5266 of 2000 are two unions and two members therein. According to them, they also have registered headload workers at West Hill and they should be deployed for the purpose of handling the goods instead of transferring persons from Pool 1A and Pool 1B. The main contention advanced by the Petitioner's counsel Shri. Thampan Thomas is that the Chairman, Kerala Headload Workers Welfare Fund Local Committee has no jurisdiction to transfer the workers. The Committee has got power only to pool the workers, but does not give any power to transfer the workers.

4. The Kerala Headload Workers Welfare Board, Kozhikode has filed a counter affidavit in O.P. No. 1653 of 2000 detailing the various facts. It has been stated that the order, Ext. P3 dated November 26, 1999 has been passed by the Chairman on the basis of the resolution of the Committee and hence, there is no want of jurisdiction.

5. I heard learned counsel for the petitioners Sri. Thampan Thomas, Shri. A.V. Ramakrishna Panicker for the Kerala Headload Workers Welfare Fund Local Committee, Shri. M.C. Cherian for the Railways and Shri. M. Ramachandran for the additional 5th respondent.

6. It is admitted that the Kerala Headload Workers (Regulation and Employment and Welfare) Scheme, 1983 applies to Calicut. The Kerala Headload Workers Act is an enactment passed for the regulation of the employment of headload workers in the State of Kerala and to make provision for their welfare, for the settlement of disputes in respect of their employment or non-employment and for matters concerned therewith. Section 18 of the above Act deals with Committees. It says that the Government may, by notification in the Gazette, appoint a Committee for such area and with such name as may be specified in the notification for the purpose of exercising the powers and performing the functions of the Committee under the Act. The Committee shall consist of members representing the employer and employees. Rules have been framed under the Headload Workers Act. Rule 24 of the Kerala Headload Workers Rules deals with functions and procedure of the Committee.

7. As already stated, the instant case is governed by the Scheme of 1983. Clause 6(1) of the Scheme says that no headload worker who is not a registered headload worker under the provisions of the Kerala Headload Workers Rules shall be allowed or required to work in any area to which the Scheme applies from the date of commencement of the functional operation of the Scheme in the area. Clause 6(2) of the Scheme further says that no headload worker who is not permanently employed by an employer or contractor shall be allowed or required

to work in any area to which the Scheme applies unless he is granted a further registration under the provisions of the Scheme. Clause 6B of the Scheme says that during March of every year the Committee may assess the probable number of workers that may be required additionally on account of retirement on superannuation, death, disability, resignation, removal and expansion of the Scheme and resolve to register such number of additional workers in the Committee. Clause 8 of the Scheme says that every registered headload worker, to whom registration has been granted by convener of the Committee shall work only in the area as per allotment made by the Committee. Clause 8(10) of the Scheme says that every headload worker shall be deemed to be employed by the Committee of that area and his work shall be supervised by the person for whom the workers have been allotted.

8. Chapter V of the Scheme deals with Committee. Clause 13 of the Scheme says that the Scheme when brought into force shall be administered by the Committee constituted u/s 18 of the Act. Clause 16 deals with powers of the Committee. It says as follows:

"16. The Chairman shall preside over the meeting of the Committee and shall carry out the decisions of the Committee for:-

- (a) posting of the headload workers who are not employed regularly under any employer;
- (b) in arranging and regulating employment to such headload workers and paying them -wages;
- (c) in taking disciplinary action against them wherever necessary;
- (d) in doing such acts as are necessary for implementing the Scheme for the area".

Clause 19 of the Scheme says that the Committee shall determine the number of headload workers needed for their area and for this purpose of increase or decrease the number - in their register. Clause 20 says that the Chairman shall make necessary arrangements to pool the registered workers into as many groups as are needed and locate these groups at locations decided by him.

9. Thus, on the review of the Rules, Act and the Scheme, it is seen that the Committee constituted u/s 18 of the Kerala Headload Workers Act is given power regarding the posting of headload workers, who are registered under the Kerala Head Load Workers (Regulation and Employment and Welfare) Scheme. The Committee is given power to determine the number of headload workers needed for an area and to increase and decrease the number. A perusal of the impugned order shows that the order was passed taking into account Clause 16(a) and Clause 19 of the Scheme. Clause 16(a) gives power to post headload workers and Clause 19 gives power to increase or decrease the number in the register.

10. Learned Counsel for the petitioners submitted that the Committee has got

power to pool the headload workers to different parts of the area. But the Rules do not give any power to transfer the headload workers from one place to another. According to the counsel, the Committee has got power to increase or decrease the number of headload workers in an area. Argument of the counsel is that merely because the workload in Calicut and Kallai railway goods sheds went down, it is not necessary that the headload workers there should be transferred to another pool. According to him, these headload workers can only work in the pool to which they are allotted and if there is any decrease in work, it is for the Committee to say that they are paid proper wages by giving work in other parts of the same pool. Counsel further contended that so far as the pool at West Hill is concerned, the workers in that area should be allotted for Pool 1E and no person should be transferred. Further contention of the counsel for the petitioners is that the petitioners in O.P. No. 1653 of 2000 have got their own permanent workers registered under the Kerala Headload Workers Act and their freedom to employ them should not be hampered by the transfer of the 100 headload workers to West Hill goods shed. It is now clear by the decision of the Full Bench of this Court in *Raghavan v. Superintendent of Police* 1998 (2) KLT 732, that all headload workers permanently employed in an establishment or not are to get Registration under Rule 26A. Thus, even if the employer has got permanent workers, he cannot utilise the service of such workers unless they are registered under the Headload Workers Act.

11. The question posed in these cases is regarding the transfer of employees. As already stated, the Act is enacted for the welfare of the headload workers. It is concerned with the headload workers, who are not attached to any establishment and to see that they got equal opportunity to work. For this purpose, under the Act, different areas have been constituted. A Committee has been formed for these areas for looking after the arrangements to give work to the headload workers. All the non attached headload workers in the areas and registered under the Headload Workers Act will Took on the Committee for the purpose of giving them work. The Committee pools these workers in different pools of the area. The number of workers in a pool depends upon the opportunity of work in that area. This is done for the convenience of the Committee as well as for the workers. But it cannot be said that merely because a headload worker is included in the pool in an area, he cannot be allowed to work in another pool in the same area. The posting and arrangement of work, according to me, is for the convenience of the Committee and the workers, so that it will be easy to assign the work to them.

12. u/s 18 of the Headload Workers Act, the Committee is formed for the purpose of an area. Thus, so far as controlling the headload workers in an area is concerned, it is vested in the Committee. The Scheme, as already stated, gives power to them to arrange the pool and to post the headload workers and also to determine the number of headload workers needed in an area. According to me, this gives a complete power to the Committee regarding the posting of the headload workers in an area. The Committee may find that because of the

circumstances, the work in an area will be increased or decreased. In this particular case itself, there are only 24 unattached headload workers at West Hill goods shed. According to the estimate, 100 more headload workers will be necessary and correspondingly, the work will be less in both Kallai and Calicut goods sheds.

13. Power of transfer, according to me, is incidental to the powers given to the Committee. CRAIES ON STATUTE LAW states as follows:

"If a statute is passed for the purpose of enabling something to be done, but omits to mention in terms some detail which is of great importance (if not actually essential) to the proper and effectual performance of the work which the statute has in contemplation, the Courts are at liberty to infer that the statute by implication empowers that detail to be carried out. Thus, in *Cookson v. Lee* 1854 (23) L.J. Ch. 473, 475, LORD CRAN WORTH L. C. a private Act vested certain lands in trustees for the purpose of enabling them to sell the lands for building purposes, but the Act contained no express power to expend any portion of the purchase moneys in setting out the lands or in making roads. In these circumstances the Court held that, having regard to the object of the Act, namely such power ought to be implied."

It is well settled that any authority on whom a jurisdiction is conferred has got all the power of doing all such acts which are essential and necessary to its proper execution. In other words, every authority which has certain powers has the jurisdiction to pass ancillary orders to effectively exercise the power vested in him. A similar question arose in *Trivandrum District Co- operative Bank Ltd. v. State of Kerala* 1992 (1) KLT 381, regarding the interpretation of Section 66 of the Kerala Co-operative Societies Act. This Court took the view that u/s 66 of the Kerala Co-operative Societies Act, the Registrar has got necessary power to pass necessary orders. It is profitable to extract the following observations in SUTHERLAND on STATUTORY CONSTRUCTION, III Edition, Volume 23:

"Where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication."

14. Another contention raised by the petitioners was that the impugned order was passed by the Chairman. Eventhough the order was passed by the Chairman, that was based, on the resolution of the Committee. This is clear from Ext. P2 in O.P. No. 5266 of 2000 and Ext. P3 in O.P. No. 1653 of 2000. It was next contended that there were permanent workers, who are attached and their work should not be suffered because of the transfer of the new persons. I am not going to consider this matter. This Court is only concerned with the question whether Ext. P3 order in O.P. No. 1653 of 2000, which is produced as Ext. P2 in O.P. No. 5266 of 2000, is valid or not I hold that the impugned orders are valid and hence, these Original Petitions are dismissed.