

(1997) 02 KL CK 0019

In the High Court Of Kerala

Case No : O.P. No's. 20627 of 1996 and 202 of 1997

Ammini Karnan and Others

APPELLANT

Vs

District Labour Officer and Others

RESPONDENT

Date of Decision : 07-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Headload Workers Act, 1978 — Section 13, 21

Citation : (1998) 2 LLJ 151

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : M.M. Abdul Aziz and Babu Karukapadath, for the Appellant; K. Balakrishnan and H.B. Shenoy, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—The petitioners in these cases are conducting rice mills. The petitioners in O.P. No. 20627 of 1996 are challenging exhibit P- 11 and exhibit P-14 orders. Exhibit P-11 is an order passed by the conciliation officer in terms of Section 21 (4) of the Kerala Head Load Workers Act, 1978 (Act 20 of 1980)(hereinafter referred to as "the Act"). Exhibit P-14 is the order passed by the appellate authority u/s 21(7) of the Act in an appeal filed by the petitioners against exhibit P-11. The petitioners in O.P. No. 202 of 1997 challenge exhibit P-4 and exhibit P-7, similar orders passed by the respective authorities in their case. The respondents in these two cases are the same. The petitioners also seek a declaration that they have fundamental right to employ workers of their own choice to do all the works including loading and unloading in their rice mills. I will deal with O.P. No. 20627 of 1996, the decision will have a bearing on O.P. No. 202 of 1997.

2. The petitioners submit that they have their own workers employed in their rice mills to do all works including the head load work. When they have such permanent employees they are not liable to employ the head load workers in the

locality represented by respondents Nos. 3 to 6, even though they have registration and identity cards issued under the Act. But 29 head load workers unionised under respondents Nos. 3 to 6 maintained the view that they were doing the headload work under the petitioners since long that they cannot be replaced by any other person and that they have a right to continue to do the headload work available in the petitioners' mill. As and when lorry loads of paddy are brought to the mills they had the right to unload it and as and when rice is taken out of the mills they have the right to load that rice into the lorry. They submit that there were several agreements between the rice mill owners and the unions concerning the terms of employment of the headload workers represented by them including the 29 workers who were doing the head load work under the petitioners and the other rice mill owners. The petitioners on the other hand submit that they have the right to choose their own workmen. The petitioners, therefore, approached for police protection in O.P. No. 20042 of 1995, which led to exhibit P-1 judgment. Without resolving the dispute between the petitioners and the unions police protection was directed to be given to the petitioners reserving the right of the union to raise a dispute before the appropriate labour authorities. Two among the unions went in appeal. In the appeal, the unions raised the relevance of exhibit R-5(a) agreement dated January 1, 1993, produced in that original petition (exhibit P-16 in this case). In exhibit P-2 judgment, it was observed as follows:

"It is admitted before us that exhibit R-6(a) agreement was executed between the representatives of rice mill dealers' association and various trade unions representing the workmen. But the stand of the employer here is that she is not bound by the terms of exhibit R-6(a)

It was further observed in the judgment that:

"Of course we are not deciding the genuineness of the claim made by the appellants unions vis-a-vis the rice mills run by the petitioner. Nor are we accepting the stand of the petitioner that the members of the appellants unions were not engaged in the loading and unloading operations of the rice mills run by the petitioner."

3. Accordingly, the Division Bench directed the Assistant Labour Officer, Perumbavoor, to take a decision regarding the dispute as to whether members of the appellants-unions are entitled to be engaged for loading and unloading operations in the rice mills run by the petitioner. The police protection was directed to be continued until the decision was taken. The first petitioner herein moved a CMP for clarification of exhibit P-2 judgment and it was clarified that instead of Assistant Labour Officer, Perumbavoor, the District Labour Officer, Ernakulam, shall take decision as directed in exhibit P-2. In compliance with that direction, exhibit P-5 order was passed by the District Labour Officer, the first respondent. That was against the workmen represented by the unions, respondents Nos. 3 to 6. They filed appeal against exhibit P-5. That appeal was allowed by exhibit P-7 and the matter was remanded to the District Labour

Officer. The petitioners challenged exhibit P-7 in O. P. No. 13127 of 1996. That original petition was dismissed by exhibit P-9 judgment. Consequently, in terms of exhibit P-7 remand order, the first respondent took up the matter for hearing. After considering the evidence tendered by either side and advertng to the contentions raised by them, the first respondent passed exhibit P-11 order upholding the rights of the workmen. It was directed that 29 headload workers represented by respondents Nos. 3 to 6 with identity card issued under the Act shall be given employment by the petitioners in terms of agreement dated March 30, 1990, and letter dated May 21, 1995. The former one is produced as exhibit P-15 in this case. The petitioners challenged exhibit P-11 again in O.P. No. 15284 of 1996. I disposed of the said original petition directing the petitioner to file an appeal against exhibit P-11 and that till the appellate order was passed, the arrangements existing shall continue and it was also directed that if the final order is in favour of the workers, the petitioners would be liable to recompense the workers by paying the wages they had lost due to denial of employment. Based on exhibit P-12, the petitioners submitted exhibit P-13 appeal before the second respondent. The second respondent conducted an enquiry in terms of Section 21(7) of the Act and passed exhibit P-14. In exhibit P-14 the appellate authority came to the conclusion that the 29 workers represented by respondent Nos. 3 to 6 are entitled to unloading work available in the petitioner's rice mill based on the agreements produced before the District Labour Officer. The petitioners thus challenge exhibit P-11 and exhibit P-14.

4. In O.P. No. 202 of 1997, exhibit P-4 is the order passed by the District Labour Officer in compliance with exhibit P-1 judgment. It was ordered therein that in terms of the agreement dated March 30, 1990, Exhibit P-8 in that case which is the same as-exhibit P-15 in O.P. No. 20627 of 1996, the petitioners are liable to employ the headload workers possessing identity card issued under the Act. Another document, exhibit A-6 produced before the District Labour Officer was also relied on to arrive at that conclusion. When that was challenged in. O.P. No. 11072 of 1996¹ repelled that challenge directing the petitioner to file appeal against exhibit P-4. Consequently, the petitioners submitted exhibit P-6 appeal. Exhibit P-7 is the order passed in the appeal. It is in the same terms as exhibit P-14 in O.P. No. 20627 of 1996. Thus, exhibits P-4 and P-7 are under challenge in O.P. No. 202 of 1997.

5. One among the main contentions raised by the petitioners is that as the scheme framed u/s 13 of the Act has not been implemented in the area, the Headload Workers Act has no enforceability. The specific contention of the petitioners is that, "in the absence of the Scheme u/s 13 of the Kerala Head-Load Workers Act, the Kerala Head Load Workers Act is in-operative and not applicable to any area and, therefore, the second respondent has no jurisdiction to hold that the members of respondents No. 3 and 6 have the right to do the unloading works of the petitioners in their rice mills." This contention has no merit on the following reasons.

6. Section 1(3) of the Act says that it shall come into force on such date as the Government may, by notification in the Gazette appoint. All provisions in the Act came into force in the whole of the State of Kerala in respect of establishments except that owned or controlled by the Central Government as per Notification No. 15401-E2/81/ LBR, dated May 19,1981 published in the Kerala Gazette Extraordinary No. 385, dated May 19, 1981, as SRO No. 589 of 1981. Thus, the Act applies to the whole of State of Kerala. The scheme is provided in Chapter IV of the Act. Section 13 provides that "the Government may by notification in the Gazette make one or more scheme or schemes for any employment or groups of employments in one or more area or areas specified in the notification and by similar notification added to amend or vary any such scheme or substitute any scheme for any such scheme". It is also provided that before enforcing the scheme a draft scheme shall be published inviting objections. No scheme is an authority to be constituted under the Act, if the Act will be enforced even if the scheme is not framed and published or brought into force. Scheme can be brought into force even for a particular area, but the Act will be applicable to the whole of the State of Kerala. Chapter IX provides for the registration of headload workers and maintenance of records by the employers. Clause 6(A) of the scheme framed under the Act, though not brought to the area in question provides that at the commencement of the scheme a headload worker who is not permanently employed by an employer or contractor and who is registered under the provisions of the Kerala Headload Workers Rules may submit an application for registration under the scheme. That itself is conclusive of the fact that even before the enforcement of the scheme, there will be a registration under the Kerala Headload Workers Rules. That means the Headload Workers Act shall be enforced first and the scheme would be enforced after that. Thus, even without a scheme, the Act would be applicable. When the Act is so applicable, necessarily the machineries provided for resolving dispute as contained in Chapter VII, namely, the conciliation officer and appellate authority shall have jurisdiction to decide the disputes. So there is no basis in the contention that the first or the second respondent has no jurisdiction to hold that the members of respondents Nos. 3 to 6 have right to do unloading work in the petitioners' mills. Dispute as denned in Section 2(h) of the Act means, "any dispute or difference between employers and employers or between employers and head-load workers or between headload workers and headload workers, which is connected with the employment or non-employment or the terms of employment or the conditions of employment, of any headload workers." Respondents Nos. 3 to 6 representing the workmen raised a dispute that they are denied their employment by the petitioners. Necessarily, the conciliation officer has the duty to resolve that dispute. When an appeal is brought before the appellate authority against the decision of the conciliation officer, necessarily, the appellate authority also is liable to decide that appeal. Therefore, exhibit P-11 and exhibit P-14 in O.P. No. 20627 of 1996 and exhibit P-4 and exhibit P-7 in O.P. No. 202 of 1997 are perfectly within the jurisdiction of the respective authorities.

7. Another contention of the petitioners is that they have got their own "permanent workers in both the rice mills to do all the works including loading and unloading." Thus, admittedly by the petitioners, head load worker is available in the petitioner's establishment, they are employers in respect of the headload workers. In terms of Section 26 of the Act, "every employer shall maintain such registers and records as may be prescribed." The registers prescribed are as contained in Chapter 4 of the Kerala Headload Workers Rules, 1981. Rule 27 provides that "every employer shall maintain a register of employment and wages in Form No. V" and that every employer shall supply to every headload worker wage in Form No. VI." The petitioners have no case that they have kept any register in terms of these provisions. If they had kept such a register, necessarily that would have been the fine evidence to be produced in support of their claim that they have their own permanent headload workers. To maintain such register is a statutory duty cast on the petitioners, that they did not maintain such register shows that they have no permanent headload workers to do the headload work in their mills. Merely because the petitioners had produced some muster rolls, that will not conclusively prove that the persons mentioned in that muster roll are headload workers. There are other workers in the mill, muster roll is in respect of them. The petitioners cannot say after enforcement of the Act that they have workers for doing all works including headload works. If any of the workers employed by them is a headload worker their names shall be kept in a separate register as mandated by the statute. In the absence of that it has to be taken that the petitioners have no permanent headload workers in their establishment. The petitioners could not prove that fact before the concerned authority. The petitioners themselves have produced in this original petition (O.P. No. 2062) exhibit P-15 and exhibit P-16 settlements. These are produced as exhibit P-8 and exhibit P-9 in O.P. No. 202 of 1997 also. Exhibit P-15 is dated March 30, 1990, and it is entered into between the rice mill owners' association and different labour unions. The second petitioner is a signatory to exhibit P-15. The first petitioner is the wife of the second petitioner and she is also a rice mill owner. She has no case that she is not a member of the association. So any settlement arrived at by the association is binding on the petitioners. The second petitioner in O.P. No. 202 of 1997 is a signatory to exhibit P-15. The rice mill of the first petitioner is specifically referred to in Clause (7) of exhibit P-15. He has also no case that he is not a member of the association. So exhibit P-15 is binding on all the petitioners and the unions, Respondents Nos. 3 to 6, who are parties to the same. Exhibit P-16 is another settlement dated January 1, 1992, concerning the terms of employment. That is also by the association of rice mill owners and the trade unions of headload workers. As the petitioners are members of the association they are bound by exhibit P-16 as well. It is made mention of in clause 7 of exhibit P-15 that from January 1, 1992, onwards the unloading work available in the rice mill owned by the second petitioner in O.P. No. 20627 of 1996 and the petitioners in O.P. No. 202 of 1997 would be completely given to the workers represented by Respondents Nos. 3 to 7 unions.

8. The nature of exhibit P-15 and exhibit P-16 settlements/agreements shows that those are industry wise settlements governing the industry of rice mills in Kunnathunad Taluk. If the owners of the rice mills are not employing any headload workers represented by Respondents No. 3 to 6 unions, such settlements/agreements would not have been arrived at. The act refers to disputes. Such dispute can be the dispute between the employers and headload workers. Naturally, that dispute shall be first discussed and decided by the employer and employees. The machinery for settlement of disputes u/s 21 is provided to settle the dispute which is not settled by the parties. If the dispute is settled between the employer and workers, naturally it will not be referred to the conciliation officer. Exhibit P-15 and exhibit P-16 show that there were disputes between the petitioners and the workers, after the enforcement of the Act and such disputes were settled as per exhibit P-15 and exhibit P-16 with regard to terms of employment of the workers represented by Respondents Nos. 3 to 6. If there were permanent workers for the petitioners as alleged, naturally there would not have been the settlement like exhibit P-15 and exhibit P-16. The second petitioner in O.P. No. 20627 of 1996, who started rice mill later also did not produce any registers before the concerned authorities. In the absence of own headload workers, the second petitioner is also liable to employ the headload workers of the locality. Thus, the petitioner could not prove before the authorities that they had permanent workers in their rice mills to do loading and unloading work. When they have no permanent workers whenever they employ headload workers, they are liable to engage the 29 workers represented by Respondents Nos. 3 to 6 who were being engaged by them as revealed by exhibit P-15 and exhibit P-16.

9. Another contention of the petitioners is that the members of Respondents Nos. 3 to 6 have no right to claim any work in the rice mills of the petitioners under any law including the Kerala Headload Workers Act and that the petitioners have the right to employ workers of their own choice. In support of this the petitioners have cited the decision in Malappuram Dt. Headload Workers" Federation Vs. P. Kunju Mohammed and Others, A Division Bench of this Court held as follows:

"We are clearly of the view that if any industrialist or an employer wants to employ his own workmen for the purpose of running his industry or for the purpose of his shop or other organisation, he has a right to engage workers of his choice and this right falls clearly under Article 19(1) of the Constitution of India. The Kerala Headload Workers Act, 1978, is, in no way, intended to interfere with the said right. If, however, the employer or the person who starts industry is unable to secure workmen of his choice, then, it is open to him to take the services of the headload workers registered under the Headload Workers Act, 1978. However, if the employer or other person who starts industrial business has his own band of workmen, we are unable to see how he can be prevented from employing the workmen of his choice."

10. As revealed by the extracted passage what the Division Bench considered

was in respect of the industry newly started where the employer wants to engage his own persons as permanent workers. Labour union interfered demanding employment. The said decision in that fact situation, is not applicable to the case on hand because admittedly by the petitioners theirs are not new establishments and, as revealed by exhibit P-15 and exhibit P 16, they were employing the 29 workers represented by Respondents Nos. 3 to 6. If the petitioners had chosen to employ their own workers at the initial stage of starting their industry, obviously Respondents Nos. 3 to 6 cannot make a demand for employment of their members. But in this case the petitioners had employed 9 persons represented by Respondents Nos. 3 to 6 since long as revealed by exhibit P-15 and exhibit P-16 agreements entered into after the enforcement of the Act. So the said decision does not render any help to the petitioners.

11. Moreover, it cannot be accepted, if an employer had continued some persons in employment, that after so many years he can displace them and employ his own persons. That is not conducive to the systems and situation prevailing in our country as regards employer and employee relationship. An employer cannot change the workers as he changes his apparels. If he wants to change the workers there is established procedure for that and without following such procedure the petitioners cannot after employing certain persons for long contend that they want to employ workers of their own. If the petitioners want to employ permanent workers necessarily, that shall be from among those who were being employed by them in terms of exhibit P-15 and exhibit P-16.

12. The petitioners also cited the decision in *Desiya Chumattu Thozhilali Union and Others Vs. Superintendent of Police and Others*, . It was held in that case that as no scheme was applicable to that area in question nothing could come in the way of the employer engaging workmen of his own choice for the purpose of cutting trees and removing them and transporting the same. The original petitions were filed by estate owners seeking police protection to cut and remove certain trees in their estate. In such a case naturally, the Headload Workers Act will not be applicable because an estate is not an establishment as defined in Section 2(j) of the Act. "Establishment" means an establishment specified in the Schedule and includes the precincts thereof. The Schedule does not contain estate or precincts thereof. Even if the work of loading of trees cut is available in an estate on a casual occasional will not become an establishment to bring the estate into the fold of the Act. Thus, that was a case where the Act did not apply. Therefore, that decision also will not be applicable to the case of the petitioners.

Counsel for the petitioners also cited a decision in *Ibrahimkutty v. Superintendent of Police* 1991 1 KLT 829, where an employer approached for police protection but was rejected by a learned single Bench as there was objection from the fifth-respondent union. Matter was taken in appeal. Police protection was directed to be given allowing the appeal. The basis for the decision was that (page 831):

"When we asked learned counsel for the fifth-respondent to point out the

provisions which confer on them the right to get employment under the appellant, in the matter of the work of loading and unloading, learned counsel was not in a position to point out any provision which confers such a right."

In this case, the workers have pointed out subsisting settlements/agreements as revealed by exhibit P-15 and exhibit P-16 which confer on them right for employment under the petitioners. So that decision is also of no help to the petitioners. It was also held in that decision that (page 831):

"As regards the resolution of the dispute contemplated by the Headload Workers Act is concerned, there is no injunction or prohibition for resort being had to the authorities concerned for resolution of their disputes in accordance with the provisions of that Act, if the provisions of that Act are applicable."

In this case, those remedies had been resorted to by the workers and the impugned orders had been passed under the Act. So the decision in *Ibrahimkutti v. Superintendent of Police*, (supra) cannot be made applicable to the case on hand.

13. As I have already found that the Head-load Workers Act is applicable and as the workers represented by Respondents Nos. 3 to 6 are registered under the Act and as there are settlements as revealed by exhibit P-15 and exhibit P-16 representing the association of the petitioners and Respondents Nos. 3 to 6 regarding terms of employment of the headload workers represented by those unions, the petitioners cannot now say that they have the right to employ their own workers or that the members of Respondents Nos. 3 to 6 have no right.

14. It is also contended by the petitioners that exhibit P-15 and exhibit P-16 had already expired. Exhibit P-15 is a settlement/agreement reached on March 30, 1990, between the association of the petitioners and Respondents Nos. 3 to 6. It is stated that it is applicable only till December 31, 1992. A reading of exhibit P-15 shows that what is limited till December 31, 1992, is the wage rate as contained in Clauses (1), (2), (3) and (4). Clause (5) concerning distance, Clause (6) concerning double wages and Clause (7) concerning complete work are not limited till December 31, 1992. This is also discernible from exhibit P-16, a settlement dated January 1, 1993, which concerned about only the revision of wages. Further, an employer cannot contend that a settlement arrived at on a date mentioning therein, a period of its operation cannot operate beyond that period, because the period is specified only for the purpose that within that period no further demand shall be raised.

15. Above all, what is challenged in these writ petitions under Article 226 are the decisions by the conciliation officer and the appellate authority (exhibit P-11 and exhibit P-14 in O.P. No. 20267 of 1996 and exhibit P-4 and exhibit P-7 in O.P. No. 202 of 1997). Those decisions were arrived at by the respective authorities after adverting to the contentions raised before them and looking into the evidence produced by the concerned parties. They had full and ample opportunity to prove their own cases. The findings by the respective authorities are based on the facts

proved before them. Sitting under Article 226 such finding of facts cannot be interfered with. The petitioner had no case that the findings contained in the impugned orders are perverse. Though there is a contention that the impugned orders are mala fides it was not urged at the time of hearing nor any material is produced along with the original petition as to how the orders are vitiated and mala fides. In the above circumstances, I find no reason to interfere with exhibit P-11 and exhibit P-14 in O.P. No. 20627 of 1996 and exhibit P-4 and exhibit P-7 in O.P. No. 202 of 1997. The original petitions fail and are dismissed. There is no order as to costs.