

(2003) 07 KL CK 0074

In the High Court Of Kerala

Case No : O.P. No. 11772/90, 96/91 etc.

Charangat Coir Manufacturing Co. (P) Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-07-2003

Acts Referred:

Kerala Coir Workers Welfare Fund (Amendment) Act, 1998 — Section 2, 3, 4(2)
Kerala Coir Workers Welfare Fund Act, 1987 — Section 4(2)

Citation : (2004) 1 ILR (Ker) 40 : (2004) 1 KLT 312 : (2004) 2 LLJ 448

Hon'ble Judges : K. Thankappan, J; J.B. Koshy, J

Bench : Division Bench

Advocate : B.S. Krishnan, M. Pathrose Mathai, U.K. Ramakrishnan, P.V. Lohithakshan, K. Anand, M.K. Chandramohandas, C.S. Manilal, K.K. Raziya, Siby Mathew, A. Ramaprabhu, R. Ranjini, Mathew John, Baby Thomas, S. Siri Jagan, S. Sreekumar and N.M. Mohammed Ayub, for the Appellant; T.P. Kelu Nambiar Rajan Joseph, A.A.G., P.S. Sreedharan Pillai and Denizen Komath, for the Respondent

Judgement

J.B. Koshy, J.—In all these Original Petitions constitutional validity of some of the provisions in the Kerala Coir Workers' Welfare Fund Act, 1987, hereinafter referred to as the Act, are challenged by the petitioners. The above Act was amended by the Kerala Coir Workers' Welfare Fund (Amendment) Act, 1998, hereinafter referred to as the Amendment Act, which came into force with effect from 30th day of September, 1997. When the above amendment came, Original Petitions were amended and the provisions under the Amended Act are also under challenge. The Preamble of the Kerala Coir Workers' Welfare Fund Act, 1987 states that it was enacted "to provide for constitution of a fund to grant relief to, to promote the welfare of, and to pay pension to coir workers and self employed persons in coir industry in the State of Kerala and for certain other matters incidental thereto". One of the contentions raised by the petitioners is that the petitioners are paying contributions under the Employees Provident Fund Act, ESI Act and other welfare legislations and the State have no legislative

competence to enact a similar Act and it is beyond legislative competence of the State.

2. Various similar Acts regarding the welfare of the workers were challenged and the Apex Court held that the State Government has got power to enact such Act for the welfare of the workers as it comes under List III. In *Mangalore Ganesh Beedi Works and Others Vs. Union of India (UOI) and Others*, a Constitution Bench of the Apex Court held that having regard to the true nature and character of the legislation meant for enforcing better conditions of labour amongst those who are engaged in the manufacture of beedis and cigars, the said Act, in pith and substance was for welfare of the labour falling within Entries 22, 23 and 24 of List III. It was pointed out that the said Act had fastened liability on the person who himself engaged labour or the person for whom or on whose behalf labour was engaged or the person who had ultimate control over the affairs of the establishment by reason of advancement of money or of substantial interest in the control of the affairs of the establishment. Therefore, the impugned legislation is valid as it creates a welfare scheme for the workers by levying impost by way of contributions on the employer or a person in the position of an employer. Apex Court was considering the validity of the Beedi and Cigar Workers' (Condition of Employment) Act, 1966. The Supreme Court categorically stated that the employers who employed persons or managed persons directly or indirectly for the manufacture of the same are liable to contribute. Therefore, the Welfare Fund Act enacted cannot be struck down in its entirety on the ground that there is no legislative competence as these are coming within Entry 22, 23 and 24 of List III. The Act and the Rules with Schemes made thereunder are welfare legislation under Articles 39 and 41 of the Constitution. A legislation under Entry 23 of List III of the VIIth Schedule can be enacted by the State also. In the view of the above decision, the producers and the persons who engaged coir workers in the industry are liable to pay contribution.

3. The main point argued before us is that "dealers" and "exporters" are not liable to pay contribution on the basis of the turnover of the establishment, when there is no relationship of employer and employee. Now we will consider the definition in the Act so far as needed for deciding the issues. The Section 2(h) of the Amended Act, "employer" is defined as follows:-

""employer" means any person who directly employs whether on behalf of himself or for any other person one or more coir workers to do any work in connection with the processes in coir industry".

As per Section 2(ha) of the Amended Act, the "exporter" is defined as follows:

""employer" means any dealer or producer of coir products who exports coir products to any country outside India from ports within the State of Kerala and any such person who produces in or procures from Kerala such coir products and exports them to any country outside India from ports outside the State of Kerala".

"Producer of coir products" is defined in Section 2(q) of the Amended Act as

follows:

"producer of coir products" means a person who manufacture coir products or carries on the business of processing coir products for export or for internal marketing".

Section 2(f) of the Act, before its amendment defines the term "dealer" as follows:-

"dealer" means any person who is engaged in the business of purchase, sale or storage of sale, of husks or fibre or coir yarn or any coir products or a person who rets husks and includes an agent of a dealer but does not include a cultivator who sells, or stores for sale, raw husks owned by him".

4. The contention raised is that as per the definition of "dealer" and "exporter" even if persons who are not engaging any coir workers in their units and if they purchase the goods or sell it in the State, they will become the dealer and they will have to pay contribution on the basis of the total turnover. It is further contended that as per the definition of the term "exporter", even if the factory is situated outside the State and if they purchase coir products from Coir Board or any manufacture of dealer doing business in or outside the State and if export through Cochin Port, they are liable to pay contribution on the basis of the turnover. Even if an exporter purchases coir products from the factory from Kerala and export the same from a port outside the State, then they are also liable to pay contribution. It is the contention of the petitioners that such persons have no obligation to look after the welfare of the coir workers who are employed in the manufacture or production of coir products. The matter was dealt with by a 5 member Bench of the Supreme Court in Koluthara Exports Ltd. Vs. State of Kerala and Others, , where the Supreme Court after dealing with the provisions of the Kerala Fishermen Welfare Fund Act, 1985, as amended by Act 15 of 1987, held as follows:-

"22. In the instant case, the only nexus between the categories of persons covered by the sweep of Clause (d) of Section 2 of the Act, including the appellant, who carry on the business of buying or selling or processing fish or exporting fish (in raw or processed form) or fish products, including- (i) a commission agent, a broker or any other mercantile agent, by whatever name called, and (ii) a nonresident dealer or an agent or a nonresident dealer or a local branch of a firm or company or association situated outside the State of Kerala and the beneficiaries under the Act and the Scheme - the fishermen - is that the former are the purchasers and the latter are the catchers and sellers of fish. Such a nexus, in our view, is not sufficient to burden a purchaser/ exporter with the impost of levy of the contribution u/s 4(2) of the Act, which will clearly be outside the ambit of Entry 23 of List III of the Constitution and, therefore, lacking legislative competence."

Accordingly, Section 4(2) of that Act, in so far as purchaser or dealer or exporter are concerned, was declared unconstitutional.

5. Following the above decision we are of the opinion that only the producers who are employing coir workers are liable to pay contribution under the Act. They are the employers of workers who produce or manufacture of coir products. Section 4(2) of the Kerala Coir Workers' Welfare Fund Act was amended as follows:-

"(2) Every employer, producer of coir products and dealer should pay to the Fund a contribution at the rate shown in the Annexure per year".

6. Following the above dictum of the Constitution Bench of the Apex Court in Koluthara Exports Ltd., the above section in so far as it compelling the dealers and exporters in payment of contribution is ultra vires and beyond the legislative competence of the State. However, Section 4(2) which refers payment of contribution by employers or producers is valid. Therefore, contributions are payable at the rates as prescribed under Sl. Nos. 1 to 8 in Annexure to the Act in view of Section 4(2). We quote the same.

Sl.

Category

Rate of contribution

(1)

(2)

1.

Employers engaged in production of yarn using spinning ratts: (a) traditional Ratt
(b) motorised Ratt

rupees thirty per ratt installed or used rupees twenty-five per ratt installed or used

2.

Persons engaged in the extraction or production of fibre using defibering machinery from:

(a) retted husk

rupees one hundred and fifty

(b) unretted husk

rupees five hundred.

3.

Persons engaged only in cleaning or curling of fibre using power:

(a) for willowing or cleaning unit

rupees fifty per unit

(b) curling unit

rupees two hundred per unit.

4.

Persons engaged in the production of coirmats, mattings and carpets using:

(a) handlooms producing mats

rupees sixty per loom

(b) handlooms capable of producing mattings of width upto and including Three metres

rupees two hundred and forty per loom.

(c) handlooms capable of producing mattings of width above Three metres

rupees four hundred and eighty per loom.

(d) semi-automatic looms (e) automatic looms or powerlooms

rupees nine hundred per loom. rupees one hundred and two hundred per loom

5.

Persons engaged in the production of rubber backed coir products including those carrying out job work utilising:

(a) hand press only

rupees one hundred per unit or factory

(b) power press

rupees two hundred and fifty per unit or factory

6.

Persons engaged in the production of rubberised coir products including rubberised coir mattresses and PVC, rubber, foam, synthetic foam or any

rupees fifteen thousand per

other foam backed coir products.

unit or factory

7.

Persons engaged in sheering, stenciling and other finishing, work of coir products

rupees one thousand five hundred

8.

Persons engaged in the production of coir products not specified elsewhere:

(a) for installed capacity in terms of value of production upto and including rupees one lakh

rupees five hundred

(b) for installed capacity in terms of value of production above one lakh and upto and including rupees ten lakhs

rupees one thousand and five hundred

(c) for installed capacity in terms of value of production above rupees ten lakhs upto and including rupees fifty lakhs

rupees three thousand

(c) for installed capacity in terms of value of production above rupees fifty lakhs

rupees ten thousand

Employers who employed workers in the production of coir products are liable to pay contribution as prescribed under Sl. Nos. 1 to 8 quoted above. But part of Note-I and Note II are under challenge. We quote Note I and Note II:

Note 1: Employers or producers of coir products under Sl. Nos. 1 to 8 above need not make any contribution as a dealer in respect of sale within the country of products manufactured by them.

However, if they resort to marketing of fibre, yarn or coir products procured from other sources, they shall be liable to pay contribution as applicable to a dealer for such quantity of goods procured and sold in the domestic market.

Note2: If any of the employers or producers of coir products in Sl. Nos. 1 to 8 above exports their production to countries outside India they shall be liable to pay contribution as an exporter for such quantity of goods that are exported".

7. First sentence in Note 1 is undisputedly valid. But second sentence starting from However, if they resort to marketing of fibre, etc. and Note 2 are invalid on the basis of the law declared by the Apex Court in Koluthara Exports Ltd. (supra). It can be seen that Sl. Nos. 1 to 8 employers or producers of coir products are liable to pay contribution, as they employ coir workers. As employees engaged in the marketing of coir products are not entitled to become members of the Fund, those who produce and sells or export are not liable to pay contribution on the annual turnover of their business or as mentioned in item No. 11 of the Annexure. But they are also liable to pay contribution as shown in Sl. Nos. 1 to 8 as coir workers are employed by them. Section 3 as amended also shows that only workers or self employed persons employed in the various process of the coir industry can become the members of the Fund. In other words, employees employed for exporting or selling of coir products are not entitled to become members of the Fund. So, workers employed by dealers or exporters will not get

any benefit from the Fund as process in coir industry as defined in Section 2(p) includes only manufacturing activity upto processing and not selling. Therefore, on the basis of the dictum of the Constitution Bench of the Apex Court in Koluthara Exports Ltd. (supra) we declare that Section 4(2) of the Amended Act in so far as it imposes liability to pay contribution on the dealer and exporter on the basis of turnover is unconstitutional and out side the ambit of Entry 23 of List III of the Constitution and therefore lacking legislative competence.

8. Another contention raised by the petitioner in O.P. No. 1645/93 is that they are manufacturing only rubberised mattresses. As per the Principal Act, before amendment u/s 2(c), "coir products" means mats and mattings, rugs and carpets, ropes and other articles manufactured wholly or partly from coir and coir yarn". After the amendment with effect from 30th September, 1997 in the above section "coir products" means mats and mattings, rugs and carpets, fibre, yarn, rubberised coir products and other articles manufactured wholly or partly from fibre, yarn or pith and includes such products or coir backed with PVC, rubber or any similar backing material". This shows that the rubberised mattress will also come within the definition of coir products with effect from 30th September, 1987 and they are liable to pay contribution with effect from 30th September, 1997 ie., after the introduction of the Amended Act. Petitioner in this case is not bound to pay contribution before 30th September, 1997 if they are not manufacturing any of the coir products as defined in the Act prior to the Amended Act came into force. Thereafter they are bound to pay contribution as per Sl. Nos. 1 to 8.

9. In view of the above, the demands challenged are set aside: The Coir Workers Welfare Fund Board can take steps to make fresh assessment according to law for the past payment, if any, within three months from today.

10. Learned Senior Counsel Sri. T.P. Kelu Nambiar appearing for the Coir Workers Welfare Fund Board submits that in some of the cases amounts were realised from the parties and some benefits also were given to the workers. As held by the Supreme Court in paragraph 24 of the decision reported in (Koluthara Exports Ltd. Vs. State of Kerala and Others, , if any amount was realised from dealers or exporters that need not be refunded.

11. All the Original Petitions are disposed of accordingly.