

(2004) 05 KL CK 0017

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11320 of 2004

Chummattu Thozhilali Union

APPELLANT

Vs

Kerala Headload Workers Welfare Board

RESPONDENT

Date of Decision : 24-05-2004

Acts Referred:

Headload Workers Rules, 1981 — Rule 26A

Citation : (2004) 2 KLT 601 : (2004) 3 LLJ 714

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : K.S. Madhusoodanan and C.P. Peethambaran, for the Appellant; A.V. Ramakrishna Panicker, A. Mohamed Mustaque and M.A. Thomaskutty, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—A Trade Union representing Headload workmen has filed this Writ Petition. The Kerala Headload Workers Welfare Board; Chairman of the Local Committee, Kannur and the Assistant Labour Officer, Kannur are respondents 1 and 3 in the Writ Petition. Respondents 4 to 8 are registered Headload workers, in whose advantage proceedings have been issued, referred to in Ext. P6, whereunder they became entitled to wages equally with members of the petitioner-Union, who were attached to the Valapattanam Railway Goods Shed. There, under the Scheme, loading and unloading activities were being held in the auspicious of the Headload Workers Welfare Board. The complaint of the petitioner was that respondents 4 to 8 were not working along with them in the pool on any day and therefore there was no justification for treating them as having worked in the pool or for disbursing them remuneration from the total earnings of the workmen attached to the pool. The petitioner has also referred to a petition filed by them as Ext.P9, pending before the third respondent, complaining that deduction from payments made to them for distributing it to the said five workmen constituted an illegal deduction from their earnings and

his interference under the Act for recouping of the amount was called for.

2. Sri. K.S.Madhusoodanan, counsel appearing for the petitioner, also submitted that the proceedings whereunder membership granted to respondents 4 to 8 under the Scheme were illegal and such conferment legally was not capable to enure benefits to the said persons and the proceedings of the second respondent in this regard also are to be set aside. Ancillary reliefs are also prayed for.

3. A counter affidavit has been filed on behalf of respondents 1 and 2. I had heard Sri. A.V. Ramakrishna Panicker on behalf of respondents 1 and 2. He points out that functional operation of the Scheme framed under the Act had commenced in the Kannur Municipal area in 1994 and in the Valapattanam Railway Goods area on 27.11.1995. In Kannur Railway Goods Shed 52 workers had been registered under the scheme and the number at Valapattanam Goods Shed was 43. Later on substantial reduction of work resulted in the Kannur Railway Goods Shed and whatever work which was available had been transferred to Valapattanam Railway Goods Shed. As a consequence, the workers in Kannur Railway Goods Shed and Valapattanam Railway Goods Shed were pooled in the Valapattanam Railway Goods Shed after the merger of the two pools. There were retirement "vacancies and the scheme provided for replenishment of such vacancies. Steps had been taken in this regard by the Committee. Sensing that induction of additional workers might be there, the petitioner had made representations pointing out that there was hardly work for the existing workers. The bickerings had started from the said point. Ultimately, membership had been conferred on five workmen.

4. The petitioner refers to Ext.P2 whereunder the District Labour Officer had required the Assistant Labour Officer to look into the matter as instructed by the District Collector, Kannur. However, no further action has been taken on such representation. The petitioner, thereafter, refers to Ext.P4 dated 5.1.2004, which is a letter sent by the second respondent to the petitioner. It had been pointed out that their conduct of preventing five workmen, who were newly registered, to enter into the premises and work as Headload Workers was highly objectionable. The union had been advised that their conduct was irregular in all respects. Against this show cause notice, a reply had been submitted by the petitioner requesting that proceedings granted registration to additional workmen should be cancelled.

5. It is evident that the Union and its members were not prepared to tolerate the presence of additional registered workmen and it was in that circumstance that the Committee had decided that such workmen will be deemed as having worked in the premises from 1.1.2004 and they will be entitled to a share of the wages as if they had put in work. This is evidenced by Ext.P6 dated 4.2.2004. The Union had taken up the matter by way of appeal to the first respondent -- Board and had filed Ext.P9, since the above step by the Local Committee directly affected their earnings.

6. The principal contention of the petitioner is that induction of additional workers was irregular and illegal. According to the learned counsel, this was in violation of the provisions of the Scheme and the affected persons were not heard in the matter at all. The decision had been taken by the Appellate Authority, thus effectively taking away the right of appeal. If the above contention is accepted, the counsel submits that follow up orders whereunder wages were paid to the additional workmen automatically become illegal.

7. Sri. A.V. Ramakrishna Panicker, counsel for the Kerala Headload Workers Welfare Board, however, submits that the decision had been taken quite some time back and it had not been the subject matter of any challenge at appropriate time. He submits that the Committee had taken a decision and the second respondent had intimated the concerned persons about the decision. According to him, the Scheme authorises replenishment to the pool and though the vacancies had been assessed as eight only five persons had been additionally appointed and this could not have been treated as objectionable.

8. The legal points urged by the petitioner could be gatherable from Grounds B & C. They are extracted herein below:

"B. The Scheme only envisages registration of headload workers by the Convener, after publishing notice inviting application from those who had been registered under Rule 26A of the Headload Workers Rules for a period at least two years prior to the date of notice and working in that area on assessing the probable manner of workers additionally required and after making such enquiry as he may deem fit. In consideration of the seniority of the registration under the Kerala Headload Workers Rules, he may grant registration and issue registration card under para 6A and B of the Scheme. Here the 2nd respondent has given to wind all these legal requirements.

C. The decision of the 2nd respondent dated 21.10.2002, that too without complying any of the requirements under para 6A and B of the Scheme is ab initio void. He being the appellate authority under Para 6E of the Scheme, he cannot originally decide the lis, thereby denuding the right to appeal to the concerned".

This naturally leads to the position that if the conferment of membership in the Scheme is legal, the petitioners have no case to be presented. If their objections are sustainable, respondents 4 to 8 will have to be divested of their membership.

9. However, I do not think that the petitioner is on strong grounds, in these region. Under the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 modalities are prescribed for registration, replenishment etc. Paragraph 6B relates to replenishment. Sub-paragraphs (4) and (5) thereof might be relevant, which are extracted herein below:

"(4) On receipt of such application the Convener may make such enquiries as he may deem fit and after giving the applicant an opportunity of being heard and in

consideration of the seniority of Registration under the Kerala Headload Workers Rules, may grant registration and issue Identity Card as provided in sub-paragraphs (2) and (3) of paragraph 6 A of the Scheme.

(5) If any application for registration as per this paragraph is rejected the Convener shall * communicate that fact to the applicant in writing with reasons therefore forthwith".

In the present case, notice had been published and the Convener had made enquiries as has been postulated. It is to be presumed that workers had been identified. The Chairman had issued orders granting registration. The contention of Sri. Madhusoodanan is that Convener being the Appellate Authority the procedure adopted was irregular.

10. Paragraph 6E of the Scheme relates to appeal provisions. Any person aggrieved by an order of the Convener under sub-paragraph (4) of paragraph 6A; or sub-paragraph (5) of paragraph 6C is entitled to file an appeal within 60 days from the date of receipt of the order of the Committee concerned. Such appeal is to be addressed to the Chairman of the Committee.

11. When we examine the provisions, it is clear that the right of appeal is conferred only on an applicant and not on all and sundry. The Union is under a misapprehension that they have a right of appeal. An appeal is a statutory remedy and not a common law remedy. When the statute does not prescribe an appeal by the Union, it cannot be argued that they have a right, or opportunity to object to registration of workmen, which is done after deliberations by the Committee. Perhaps, that is not the case of a basic registration for membership as a headload worker. But, this is the registration at the second stage, and selection is from qualified, eligible headload workers in the area. The Act did not postulate that a third party need be conferred with a right of appeal in those region. Therefore, there was no irregularity in the registration even if it was conferred by an appellate authority, especially so far as the petitioner-Union is concerned.

12. Therefore, the Writ Petition does not appear to be maintainable or sustainable. The conduct of the Union in preventing the registered workers from attending the work was without justification. They had a right to work. The Committee was justified in distributing the wages to the additionally registered workers even though they were not rendering work, out of the total earnings of the pool of workers. The illegal obstruction of the petitioners was a restrictive step, viewed from any angle. In the larger interests of the working class, they should not have continued the agitation, when once they were advised that the registration was authorised. In view of the above, the distribution of wages to respondents 4 to 8 was unexceptionable. Ext.P9, therefore is not to be taken notice of by the, third respondent as the application is misconceived.

The Writ Petition is dismissed.