(1993) 07 KL CK 0030

In the High Court Of Kerala

Case No : W.A. No''s. 769 of 1991 and 776 and 1114 of 1992 and C.C.C. No. 37 of 1993

Cochin Port Trust APPELLANT

Vs

T.P. Valsan and Others RESPONDENT

Date of Decision : 02-07-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Dock Workers (Regulation of Employment) Act, 1948 — Section 3, 4, 5, 8, 8A
Employees State Insurance Act, 1948 — Section 1(3)

Citation : (1993) 07 KL CK 0030

Hon'ble Judges : M. Jaganiiadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : C.M. Devan, in W.A. 776 and 1114 of 1992, George Joseph, Addl. Central Govt. Standing in W.A. 769 of 1991 and M. Ramachandran, in C.C.C. No. 37 of 1993, for the Appellant; C.M. Devan, in W.A. 769 of 1991, M. Ramachandran, for Respondents 1 to 5 in W.A. 776 and 1114 of 1992, C. Kochuni Nair, Addl. Central Govt. Standing Counsel for 6th Respondents in W.A. 776 and 1114 of 1992, P. Radhakrishanan, for 1st Respondent in W.A. 769 of 1991, B.S. Krishnan, for 4th Respondent in W.A. 769 of 1991 and George C.P. Tharakan, Central Govt. Standing Counsel in C.C.C. No. 37 of 1993, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedharan, J.—Writ Appeal 769/1991 arises out of O.P. 9054/1989-C. Writ Appeals 776/1992 and 1114/1992 are from the decision in O.P. 5524/1992-G.

2. Appellant in W.A. 769/1991 is Union of India, the first Respondent in O.P. 9054/1989-C. That Original Petition was filed by Cochin Port Labour Union (C.I.T.U.) represented by its General Secretary, T.M. Mohammed. The prayer made by the writ Petitioner therein was to issue a writ of mandamus compelling the first Respondent, the Union of India, and the second Respondent, the Cochin Dock Labour Board, to decasualise the dock workers in the category of

Supervisors, Assistant Supervisors, Foreman, Assistant Foreman and General Purpose Mazdoors and bring them under the scheme administered by second Respondent. Learned Single Judge by his judgment dated 31st January 1991 directed the first Respondent to constitute a statutory Advisory Committee in accordance with Section 5 of the Dock Workers (Regulation of Employment) Act, 1948, hereinafter referred to as "the Act", and the Rules framed thereunder. The Central Government was also directed to take further action on the basis of the recommendations of such a Committee. These directions are under challenge in W.A. 769/1991.

3. Five persons in the category of Foreman and Assistant Foreman, working under the United Stevedores Association, approached this Court by filing O.P. 5524/1992 praying for the issuance of a writ of mandamus directing the Union of India to finalise the draft scheme published in the Gazette dated 27th September 1980 in terms of the provisions contained in Section 4 of the Act. Respondents in that Original Petition were the Union of India and the Cochin Port Trust. Learned Single Judge directed the first Respondent to finalise the draft scheme as expeditiously as possible, at any rate, within six months from the date of judgment, namely 28th May 1992. Aggrieved by this direction, second Respondent has preferred Writ Appeal 1114/1992. Cochin Dock Labour Board, which was not a party in the Original Petition, sought leave to appeal against the judgment in O.P, 5524/1992. After obtaining leave, the Dock Labour Board has filed Writ Appeal 776/1992. While disposing of O.P. 5524/1992, learned Single Judge directed to finalise the draft scheme as expeditiously as possible and at any rate within six months from the date of judgment. Since the scheme was not so finalised, writ Petitioners have moved contempt of Court Case 37 of 1993.

4. In all these matters the issue that arises for consideration is whether the writ Petitioners are entitled to have a writ of mandamus against the Central Government directing it to issue a scheme to take within its ambit certain category of employees engaged by the Stevedores Association. Therefore, we consider it advantageous to dispose of these matters by this common judgment.

5. In exercise of the powers conferred by the Act, Government of India made a scheme for the Cochin Port as "Cochin Dock Workers (Regulation of Employment) Scheme, 1959". That scheme is to ensure greater regularity of employment for dock workers and to secure that an adequate number of workers is available for the efficient performance of the work. That scheme relates to the classes or descriptions of dock work and dock workers set out in the schedule attached to it. As per the schedule, the classes of dock work and dock workers, to whom the scheme applies are (1) Stevedoring work including handling of passenger baggage and mail stowed in the holds; and (2) the following categories of Stevedore workers, namely General Foreman (Serang), Tindal, Winchmen, Stevedore Mazdoor, Tally/Sorting Clerks and Table. Clerks, Riggers or Rigger-cum-chargemen, Signaller and Tally/Table Supervisors. Supervisors, Assistant Supervisors, Foreman, Assistant Foreman and General Purpose Mazdoors had

been clamouring for their inclusion under the scheme. According to these workers and the unions representing them, there was no reason for leaving workers engaged in these categories of work from the scheme. It is alleged by the Petitioner in O.P. 9054/1989 that the Cochin Dock Labour Board at its meeting held on 13th May 1974 agreed to the registration of Supervisors and Assistant Supervisors as a prelude for decasualisation. It is further stated that on 10th December 1979 the Cochin Dock Labour Board resolved to adopt a new scheme, called "the unregistered workers Scheme". Nothing further was done on these decisions. Even though a draft Scheme for covering General Purpose Mazdoors was notified, it has not been finalised and consequently they have not been decasualised. Labour Unions, associations of employers and the Dock Labour Board. it is alleged, are of the considered opinion that it would be most desirable to decasualise employees engaged as Supervisors, Assistant Supervisors, Foreman, Assistant Foreman and General Purpose Mazdoors by bringing them under the Dock Labour Board for administrative efficiency and proper co-ordination.

6. Central Government published a draft Scheme in exercise of the powers conferred on it by Section 4(c) of the Act in the Gazette of India dated 27th September, 1980, called as "the Cochin Unregistered Dock Workers (Regulation of Employment) Scheme, 1980". That draft Scheme was intended to cover the categories of Foreman, Assistant Foreman, General Purpose Mazdoors, Steamer Supervisors and Assistant Supervisors. The draft Scheme has not so far been published as a final Scheme. According to the Petitioners in O.P. 5524/1992, the delay in the finalisation of the Scheme adversely affects them. A similar draft Scheme styled as the Madras Unregistered Dock General Pool Workers (Regulation of Employment) Scheme dated 12th October 1987 was published in the Gazette and without much delay a final Scheme dated 12th April 1988 was brought into force. The Central Government, it is averred, acted in violation of the provisions contained in Article 14 of the Constitution inasmuch as notification relating, to Cochin Dock Labour Board alone has not been issued.

7. Demands for decasualisation of additional categories of dock workers was the subject of review by a Committee, headed by Shri N.N. Chatterjee. That Committee was constituted by the Government of India on 3rd May 1975. That Committee took evidence from various organisations, including labour unions. Petitioner in O.P. 9054/1989 was one of the organisations consulted by that Committee. 17 organisations connected with the Cochin Dock Labour Board were consulted by the said Committee. Shri T.M. Mohammed, who signed the writ petition on behalf of the Petitioner in O.P. 9054/1989, was one among the 34 persons interviewed by the Committee. On the basis of the materials so collected, Committee opined that the additional categories are not to be decasualised. Paragraph 9, 24, dealing with the Cochin Port Trust, of the report submitted by the said Committee is in the following terms:

9.24 These supervisory categories are really the employees or the Steamer

Agents. The question whether they are covered by the term "dock worker" as defined in the Dock Workers (Regulation of Employment) Act, 1948 is a debatable point. But, the definition is so wide and comprehensive that one cannot brush aside the claim of any category found in the port area. (However, the Committee has elsewhere dealt with the issues regarding definition of "dock worker"- please see paras 2.17 to 2.20). In the present context, if we view the demand for decasualisation from the angle of productivity, one can safely conclude that these categories do not contribute to productivity. On the other hand, they will only increase the cost of cargo-handling. There is, therefore, no merit in the claim for decasualisation of these categories. The beterement of the service conditions of Supervisors and Assistant Supervisors being the main reason for this demand, this can as well be achieved, by the direct monthly employment of supervisory staff by the Steamer Agents instead of bringing them under the Dock Labour Board. The committee is not in favour of bringing these categories under the Dock Labour Board. On the other hand, the Committee feels that the Deputy Chairman of the Dock Labour Board, who is the convenor of the informal pool, should gradually dissociate himself from the informal pool and the working of the pool should be left to the parties concerned. The working of informal pools with officers of Dock Labour Board at the helm of affairs give a legitimate Hope to the workers that they will be taken over by the Dock Labour Board in due course. In order to avoid giving such hopes, which might in many cases be frustrated, the Committee is of the view that the officers of the Dock Labour Board should not be associated with any informal pool of workers.

8. Again the issue was referred to another Committee, headed by Shri P.M. Abraham. As in the case of the previous Committee, this Committee also collected evidence from various organisations and persons. Writ Petitioner in O.P. 9054/1989 was one among the eleven organisations which were contacted by the Committee. On the basis of the materials collected, the Committee came to the following conclusion in the case of Supervisors and Assistant Supervisors; and Foreman and Assistant Foreman:

6.5 At present the Supervisors and Assistant Supervisors are paid wages as per wage agreements between the Government and the federations from time to time and are entitled to annual increments, minimum guaranteed wages for 21 days in a month, attendance allowance of Rs. 7.50, weekly off with wages, one day leave for every 20 days of work/attendance, five closed holidays, 11 sectional holidays, povident Fund benefit, Compensation under Workmens'' Compensation Act, bonus at the rate of 15 percent, night weightage allowance and stream allowance, 28 Supervisors and 42 Assistant Supervisors are booked on rotational basis by 37 Steamer Agents as per their work requirements. On an average, the Supervisors are getting about 24 days employment per month whereas Assistant Supervisors are getting employment for 20 days per month. In additions to wages for the days of work, a levy of 60 percent of the wage is collected by the pool management to meet the additional benefits extended to the workers. In addition, the pool management is collecting levy for payment of workmens'' compensation benefits and bonus at the rates of 2 percent and 15 percent respectively.

6.7 Foremen and Assistant Foremen are the representatives of the stevedores on board the vessel. Their duties are to contact the Chief Officer of the ship, get hatch and cargo stowage plan, check up the ship''s gears, post gangs suitably, arrange the manner of loading and unloading of cargo, arrange stowage of cargo in hatches, keep liaison with the Dock Labour Board, prepare a statement showing details of loading and unloading of cargo, etc. Demand for decasualisation of these categories was examined by the Board in its meeting held on 16th January 1979 and was agreed to in principle. Again the Board in its meeting held on 10th December 1979 resolved to bring these workers under a separate Listing Scheme. The Cochin unregistered Dock Workers (Regulation of Employment) Scheme covering inter alia the Foremen and Assistant Foreman, was notified by the Government on 12th September 1980 for comments/ objections. In the light of the comments/objections received in respect of the draft scheme, it was felt by the Government that it would be in the interest of the efficiency and economy in cargo handling operations if the Foremen and Assistant Foremen continue to remain under the Stevedores rather than under the Dock Labour Board. There was industrial unrest among Foremen and Assistant Foremen. The Regional Labour Commissioner (C) brought out a settlement between the United Stevedores Association of Cochin Pvt. Ltd. and the Unions to bring the Foremen and Assistant Foremen under an informal pool. The pool started functioning from 1st February 1983 with United Stevedores Association of Cochin Pvt. Ltd. as the Administrative Committee to run the pool.

6.8 At present, there are 30 Foremen and 40 Assistant Foremen. They are paid wages as per the wage agreements between the Government and the four Federations of port and dock workers, minimum guaranteed wages for 21 days in a month, attendance allowance of Rs. 7.50 per day when work is not provided, weekly off with wages, one days'' leave for every 20 days of work/attendance, 5 closed holidays, 11 sectional holidays, Provident Fund benefits, workmen''s compensation benefits, bonus at the rate of 15 percent, night weightage allowance and stream allowance. In order to meet the additional benefits, the levy at the rate of 60 percent of the time rate wage is collected. In addition, a levy at the rate of 2 percent for payment of workmens'' compensation and a levy at 15 percent for payment of bonus are also collected. There are 10 registered Stevedores and the Foremen and Assistant Foremen are booked on rotational basis. Their average employment is 25 days in a month in the case of Foremen and 20 days in the case of Assistant Foremen.

Dealing with the General Purpose Mazdoors, the Committee reported:

The general purpose mazdoors are paid wages as per wage agreement between the Government and the four labour federations from time to time and are entitled to minimum guaranteed wages for 15 day, weekly off with wages, leave at the rate of 1 day for every 20 days of work/attendance, 5 closed holidays, 8 sectional ''holidays, Provident Fund benefits, workmens'' compensation benefits, bonus at the rate of 15 per cent, night weightage allowance and stream allowance. As in the case of the other categories of workers, a levy of 60 percent is collected for meeting the expenditure on account of additional benefits. In addition, a levy at 2 percent for payment of workmen''s compensation benefits and a levy of 15 percent for payment of bonus is collected.

The Committee lastly came to the conclusion that the existing arrangements of Pool made by Stevedores Association should continue. On the basis of these reports, it appears that the Central Government have declined the request made by the writ Petitioners. This Court in exercise of the powers under Article 226 of the Constitution is not to direct the Central Government to amend the scheme so as to include the categories mentioned by the Petitioners.

9. Central Government in exercise of the powers conferred by the Act framed the Cochin Dock Workers (Regulation of Employment) Scheme, 1959. That Scheme is one framed u/s 3 of the Act. Section 4 of the Act deals with making, variation and revocation of the Schemes. As per that Section the Government can by notification in the Official Gazette amend, vary or revoke any existing Scheme. Section 5 of the Act provides for constitution of the Advisory Committees. Clause (1) of that section reads:

The Government may, or if it decides to make any scheme u/s 4, shall, constitute an Advisory Committee to advise upon such matters arising out of the administration of this Act or any scheme made thereunder as the Government may refer to it for advice.

This provision, according to us, cannot be considered to be one imposing an obligation on the part of the Central Government to constitute an Advisory Committee, on the facts and circumstances of this case. According to us, the request made by the Petitioners cannot be taken as one requiring making, variation or revocation of a Scheme within the meaning of Section 4 of the Act. In such a situation, it is not obligatory for the Central Government to constitute an Advisory Committee. Viewed in this light, we find it difficult to sustain the direction given by the learned Single Judge to constitute a Statutory Advisory Committee in accordance with Section 5 of the Act. So, the direction given by the learned Single Judge in O.P. 9054/1989 has only to be vacated and we do so.

10. Section 8 empowers the Central Government to make rules by notification in the Official Gazette to give effect to the provisions of the Act. As per Section 8A, every Scheme made under the Act and every rule framed by the Central Government should be laid before each House of the Parliament, while it is in session, for a total period of thirty days. Section 8A further provides that the Houses have the power to make modification in the Scheme or the rules. Thereafter the Scheme or the rule made by the Central Government, as modified by the Houses of Parliament, shall be in force. These statutory provisions make it clear that the Scheme to be promulgated by the Government under the Act is in

the nature of legislation. It is trite law that no writ of mandamus can be issued to the Government to frame rules or Schemes which are in the nature of subordinate legislation. No writ of mandamus can be issued to the legislature to enact a particular legislation. Same is the position as regards the executive when it exercises the power to make rules or frame Schemes which are in the nature of subordinate legislation (vide State of Jammu and Kashmir Vs. A.R. Zakki and others, . In Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others, the validity of Section 1(3) of the Employees State Insurance Act, 1948 came up for consideration. That provision reads:

The Act shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed tor different provisions of this Act and for different States or for different parts thereof.

The argument was that the power given to the Central Government to apply the provisions of the Act by notification confers on the Central Government absolute discretion, the exercise of which is not guided by any legislative provision and is therefore invalid. Their Lordships took the view that the provision of the Act is not an illustration of delegated legislation, but it is One properly described as conditional legislation Constitution Bench of the Supreme Court observed:

In the very nature of things, it would have been impossible for the legislature to decide in what areas and in respect of which factories the Employees'' State Insurance Corporation should be established. It is obvious that a scheme of this kind, though very beneficent, could not be introduced in the whole of the country all at once. Such beneficial measures which need careful experimentation have sometimes to be adopted by stages and in different phases, and so, inevitably, the question of extending the statutory benefits contemplated by the Act has to be left to the discretion of the appropriate Government.

This Statement of the law applies on all fours to the facts before us. The power exercised by the Central Government can be treated as a conditional legislation. Courts are not to regulate the exercise of that power. On the basis of the reports, referred to earlier in this judgment, Government have declined to include the categories mentioned by the writ Petitioners in the Scheme. This Court cannot sit in judgment over such a decision. Nor can a direction be given to the Central Government to initiate steps to amend the Scheme, which is in the nature of a conditional legislation. This Court cannot substitute even its juster will for that of the Central Government, so long as the power of the Central Government under the Act in framing the Scheme is legislative rather than administrative or executive. The Courts are not to interfere with the exercise of that power. Therefore, the learned Single Judge, while disposing of O.P. 5524/1992 was not justified in directing to finalise the draft Scheme as early as possible. That direction has also to be vacated. We do so.

11. Yet another argument that was advanced by the learned Counsel

representing the writ Petitioners, Respondents in these appeals, was that while Central Government framed a Scheme known as "Madras Unregistered Dock General Pool Workers (Regulation of Employment) Scheme, 1988" to decasualise workers in the categories of Supervisor, Receipt Clerk, Rigger Foreman, Mazdoor, Basket Mender, Trimming Stitcher, Cleaning Mazdoor, Net Sling Mender, Carpenter and Rigging Mazdoor, there was no justification in not framing such a Scheme applicable to those categories of employees in Cochin Port Trust. The absence of the Scheme for the Cochin Port Trust, according to Counsel, is violative of Article 14 of the Constitution. We are not impressed with this argument. Violation of Article 14 cannot apply to legislative power of the State. Since we have held that the power exercised by the Central Government in framing the Scheme is legislative in character, violation of Article 14 cannot be a ground to challenge the exercise of that power. Further the conditions which exists in Madras Port are not shown to be identical to that which prevails in Cochin Port. The Committees appointed by the Central Government recommended against decasualisation of the employees in Cochin Port on the ground that Supervisors and Assistant Supervisors do not contribute to productivity and their decasualisation will only increase the cost of cargo handling. So also decasualisation of Foreman and Assistant Foreman will result in laxity in supervision and decline in productivity. These workers are already in monthly employment of respective Stevedores. According to the Committee, demand of the workers for registration under the Deck Labour Board will only have the effect of increasing the cost of handling and thereby resulting in diversion of cargo from Cochin Port Trust to the neghbouring ports. Ultimately it will harm the interest of the port in the long run. Taking note of the peculiar circumstances under which the Cochin Port is functioning, the Government have not framed the Scheme extending the benefit of decasualisation to the categories mentioned by the writ Petitioners. That decision can by no stretch of imagination be considered as violative of Article 14 of the Constitution on the ground that certain categories of employees in the Madras Port have been included in the Scheme applicable to that port.

In the circumstances detailed above, we allow these writ appeals and dismiss O.Ps. 9054/1989 and 5524/1992. Consequently the contempt case 37/1993 is also dismissed. We make no order as to costs.

