
(2009) 06 KL CK 0140

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 13881 of 2009

Crescent Trading Company

APPELLANT

Vs

Sub Inspector of Police

RESPONDENT

Date of Decision : 17-06-2009

Acts Referred:

Kerala Headload Workers Act, 1978 — Section 18, 2

Citation : (2009) 3 KLJ 16 : (2010) 2 LLJ 511

Hon'ble Judges : P.R. Raman, J;P. Bhavadasan, J

Bench : Division Bench

Advocate : P.K. Suresh Kumar, K.P. Sudheer and P. Jayalakshmi, for the Appellant; P.A. Salim, Government Pleader, Koshy George, K.T. Shyam Kumar and Harish R. Menon, for the Respondent

Final Decision : Allowed

Judgement

P.R. Raman, J.—The petitioner is a partnership firm engaged in the trade of grocery and cement at Tanur in Malappuram District. It is a recently started establishment. Loading and unloading work is incidental to the business activities of the establishment. The goods which are brought to the business premises have to be unloaded and the goods sold to customers directly and to the retail traders have to be loaded and transported to the places indicated by such customers and retailers. The loading and unloading being a major part of the work, petitioner has employed 8 permanent workers who are registered under the Kerala Headload Workers Act, for short "the Act". According to the petitioner, they are sufficient to carry on the activities of loading and unloading work that arise in the establishment and for the establishment. But despite the existence of such permanent workmen directly employed by the petitioner, local unions are causing obstruction to the work in the establishment by raising an illegal demand that their members are also to be employed for doing the loading and unloading work in and for the establishment. As the obstruction lead to a complete stalemate as far as the business of the petitioner is concerned, it filed Writ

Petition, W.P.(C)No. 9754/2009, before this Court. At that time, the workers employed by it were not registered under the Act and applications for registration were pending, hence, by Ext.P1 judgment, the Writ Petition was disposed of directing the disposal of the applications for registration and also directing the police to render necessary protection for carrying out the loading and unloading work for a period of three weeks. Pursuant thereto, applications were considered by the registering authority, viz., the Assistant Labour Officer, and granted registration. Thus, the permanent workers employed by the petitioner had also become registered workers under the Act, who according to the petitioner are thus entitled to carry out all loading and unloading operation in and for the establishment. Exts.P2 to P9 are the registration certificates so issued. The nature of the activities carried on by the petitioner is further explained in paragraph 5 stating that upon getting an order from a retailer, the workers of the petitioner will have to carry goods to such retailer. Depending on the quantity of the goods, the workers may either carry the goods by headload or in a trolley. But there are obstructions by the union leaders stating that this is not part of the work that could be carried out by the permanent workers and according to them the loading and unloading workdone beyond the premises of the establishment cannot be done by such permanent workers. The obstructors are respondents 4 to 6 and their associates. It is contended that such obstruction is illegal. Though the petitioner has made a complaint to the police as evidenced by Ext.P10, no action was taken, as he is reluctant to interfere on account of the political pressure being exerted by the unions especially the 4th respondent union. Petitioner prays, in the circumstances, to issue a writ of mandamus or other appropriate writ, order or direction, directing the first respondent to render adequate police protection to the petitioner and the workers employed by it for carrying out all the loading and unloading work, in connection with the delivery of goods to retail traders and customers, and also to remove the obstruction, if any, caused by respondents 4 to 6.

2. This Court by an interim direction dated, 21.5.2009, directed the first respondent that in case any obstruction is caused for loading and unloading the materials by engaging the registered workers in the petitioner establishment, such obstruction shall be removed. Subsequently on 3.6.2009, it was clarified that so long as the petitioner is engaging his permanent workers for carrying the goods in connection with his establishment, protection shall be afforded. The matter was adjourned for enabling the respondents to file counter affidavit, if any.

3. Headload Workers Union who are alleged to be causing obstruction are arrayed as party respondents 4 to 6. Despite service of notice by special messenger, they did not appear to file counter affidavit controverting the allegations so made in the Writ Petition. However, third respondent, Kerala Headload Workers Welfare Board, through its Chairman has filed a counter affidavit.

4. In the affidavit of the third respondent, it is inter alia contended that the

prayer made in the Writ Petition is contrary to the provisions contained in the Act. Reference was also made to Section 2(j) of the Act, which defines the term "establishment" as also to the definition of the term "Headload Worker" defined u/s 2(m), and it is contended that headload workers attached to an establishment can do loading and unloading work at any place in such establishment only and not beyond the precincts thereof. No other contention was raised in the counter affidavit. Thus the whole argument of the third respondent is that the registered workers of petitioner establishment can carry on the loading and unloading work within the precincts of the establishment, but not beyond the geographical borders of the establishment.

5. We have heard the arguments of both sides. The Kerala Headload Workers Act, 1978, was enacted to regulate 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 connected therewith.

6. As per Section 2(h) of the Act, "dispute" means any dispute or difference between employers and employers or between employers and headload 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, or any headload workers. As per the explanation thereunder, any employer discharges, dismisses, retrenches, or otherwise terminates the services of, or denies employment of an individual headload worker, any dispute or difference between that headload worker and his employer connected with, or arising out of, such discharge, dismissal, retrenchment, termination or denial of employment shall be deemed to be a dispute notwithstanding that no other headload worker or any union of headload workers is a party to the dispute.

7. Section 2(i) defines the term "employer" which means,

(i) in relation to a headload worker engaged by or through a contractor, the principal employer;

(ii) in relation of a headload worker who is not employed or engaged by any employer or contractor, the Committee appointed u/s 18.

As per the explanation, for the purpose of this sub-clause "headload worker" means a person registered as headload worker under the Scheme, and whose wages are paid by the employer or contractor through the Committee concerned. Sub-clause (iii) however is not relevant for our purpose.

8. Even though "establishment" as defined may be a definite place where the business activities is being carried on, the definition of the term "headload worker" shows that the work is not confined within the establishment. As per Section 2(m) of the Act, "headload worker" is a person either employed or engaged directly or through a contractor, and such engagement could be "in the establishment or for the establishment". When the legislature has used the

expression "in the establishment or for the establishment" it takes in loading and unloading work both within the establishment and outside, but in the later case, the work must be connected with the establishment. When it is said that headload worker is a person directly employed or through the contractor in the establishment or for the establishment, there cannot be any doubt that in order to become a headload worker, he need not necessarily be a person whose activities connected with loading and unloading is confined to any particular premises, rather he can also be a person who may work for an establishment which necessarily means outside the establishment as well. If the contention of the respondents is accepted, in so far as persons who are not attached with an establishment will fall outside the definition of the term headload worker. As a matter of fact, the word "employer" as defined u/s 2(i) of the Act, would show that in case of a headload worker who engaged by or through a contractor, the employer is the principal employer, and in the case of a headload worker who is not employed or engaged by any employer or contractor, the employer is the Committee appointed u/s 18 and as per the explanation, a headload worker is a person registered as headload worker under the Scheme, and whose wages are paid by the employer or contractor through the Committee concerned. As per clause 2(i)(iii), in relation to any other headload worker, the person who has ultimate control over the affairs of the establishment in or for which the headload worker is employed and includes any other person to whom the affairs of such establishment are entrusted, whether such person is called an agent, manager or by any other name prevailing in such establishment. Thus, the legislature, all through uses the expression "in" the establishment as also "for" the establishment, thereby leaving no room to doubt that the loading and unloading work involved may be even outside any definite premises and that the work may either be within the precincts of the establishment or it could be outside the precincts of the establishment. So however in the latter case, work should be connected with the establishment. If it is to be understood in the manner as contended by the third respondent, then a person who has no definite premises to work will fall outside the definition of the term "worker". The third respondent who has no permanent establishment under whom he works will not come within the definition of the term "headload worker". Therefore, we are unable to accept the contention as raised by the third respondent.

9. Whether or not the activities of loading and unloading are confined to any definite premises of an establishment or even outside the premises of an establishment will depend upon the nature of the business carried on by such establishment. If the activities are confined to the establishment as defined, necessarily, the permanent workers will have to confine their activities within the establishment. Whereas, if, having due regard to the business activities carried on by the employer, loading and unloading operation connected with such establishment has to be done even outside the premises of the establishment, then such permanent workers registered has every right to perform the duties attached with their jobs and to perform such loading and unloading operations

connected with the establishment, though not within the premises of the establishment.

10. To cite an example, in the case of a dealer in LPG Gas Cylinder, where the nature of work of the establishment involves loading and unloading operation even outside the establishment, because they are required to deliver the LPG Gas Cylinders to the customers at their premises, when the employer has registered permanent workers in connection with his establishment, it cannot be said that loading and unloading should be confined to the premises where LPG Gas Cylinders are stocked. LPG Gas Cylinders will have to be transported to different places after loading the same to the vehicle and unloading the same to the delivery point of each such customers. If the contention of the third respondent is true, at every place of delivery, the pool workers will have to be called, for unloading the cylinders in the premises of the customers, which is not the object behind the legislation nor such interpretation justified on the plain language of the term "headload worker" as defined u/s 2(i) of the Act.

11. In the present case, it has been demonstrated by filing an affidavit that the business activities of the petitioner requires delivery of the commodity through the customers or to the retail dealers and this has not been disputed in the counter affidavit. If so, the permanent workers registered under the Act attached to the establishment of the petitioner is entitled to do the work for which they are appointed and cannot be prevented so long as the work done by them in connection with the establishment which has engaged them. In the circumstances, the interim order passed by this Court is made absolute. In case, any obstruction is caused by the respondents for loading and unloading operation not only within the establishment but also outside the establishment, in connection with the establishment is carried on, the police will give necessary protection to exercise the right as guaranteed by the Act.

The Writ Petition is allowed as above.