

(2012) 02 KL CK 0003

In the High Court Of Kerala

Case No : Writ Petition (C) No. 23510 of 2010

Eastern Condiments (P) Ltd.

APPELLANT

Vs

SI of Police and Others

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Kerala Headload Workers Act, 1978 — Section 18, 2(i), 2(j), 2(m), 25

Citation : (2012) 4 KLJ 299

Hon'ble Judges : P.R. Ramachandra Menon, J;Manjula Chellur, J

Bench : Division Bench

Advocate : Biju Abraham and Jaiju Babu, for the Appellant; Koshy George, Liji J. Vadakedom and V.P. Prasad, for the Respondent

Final Decision : Allowed

Judgement

Manjula Chellur, Ag. C.J.

1. The writ petitioner in the first three Writ Petitions is one Eastern Condiments Pvt. Ltd., Adimaly in Idukki district. The said writ petitioner has approached this Court seeking police protection complaining the obstruction caused by the respondent Union demanding unloading work of the Company to be given to them at different places, where the products of the petitioner are taken for distribution to various shops and establishments. The petitioner claims to be an establishment dealing in manufacturing and marketing of spices, powder of spices, rice, tea etc., kept and packed in pouches or bags starting from 100 grams to 5 kgs. These individual packets again would be packed in cartons to be supplied to various distributors or shops. These cartons are loaded into transport vehicles and taken to different establishments at different places. So far as unloading and loading of these cartons, the petitioner has employed permanent employees, who carry on the work of loading and unloading. They accompany the delivery van along with the goods and unload the articles at the respective destinations. The petitioner has taken registration for the permanent headload workers of it in terms of the Statute, i.e., R. 26A of the Kerala Headload Workers

Rules, 1981. In the first Writ Petition, the complaint is, the Headload Workers Union of Chavakkad town, represented by the President and the Secretary, i.e., respondents 3 to 5, are obstructing the transportation and unloading of the articles at different destinations coming within the Chavakkad area on the ground that the permanent headload workers of the petitioner's establishment have no registration for carrying on the unloading work within the jurisdiction of Chavakkad area. Similarly, W.P. (C). No. 6997 of 2010 is filed in respect of Perinthalmanna area in Malappuram district on the ground that they have no registration in Perinthalmanna area. In the third petition, i.e., W.P. (C). No. 26903 of 2009, it is in respect of Kanjirapally area in Kottayam District. The petitioner in W.P. (C). No. 12566 of 2011 is a dealer in paper and paper boards. Though they have registered office at Pallipalayam, Erode in the State of Tamil Nadu, they have godown at Ernakulam at Power House Extension Road. The stocks kept in this godown have to be transported to various destinations depending upon the orders. To carry on this work, they have permanent headload workers, who does the loading and unloading work. Subsequently, the godown came to be shifted to building No. 25/126K, Pakkai Property, Koonamthai, Kalamassery. The third respondent raised objection saying, there is no registration for the headload workers in the newly shifted area, therefore, the petitioner cannot entrust the work of loading and unloading to the permanent workers with them. When these obstructions came to be caused as stated above, according to the petitioners, in spite of approaching the jurisdictional police, there was no positive assistance. Therefore, they had to approach this Court seeking police protection in order to carry on their business in a peaceful manner.

2. So far as the petitioner in W.P. (C). No. 12566 of 2011, on an earlier occasion also, there was shifting of godown and similar problem arose. Therefore, they had to approach this Court seeking police protection in O.P. No. 14604 of 1997 and the same came to be allowed on 29.8.1997, as per Exhibit P2.

3. When notices were sent to the respondent Unions and also the Board, they have made appearance and serious disputes are raised with regard to the reliefs sought in the Writ Petition. According to the petitioner by virtue of three judgments, petitioner is entitled for the reliefs now sought for as the Board was a party to the earlier proceedings and this Court, while interpreting the definition of "headload worker", held, the words "for an establishment" would mean, outside the area, where the establishment is situated, provided the person, who does the work of headload work for the very same establishment even outside the registered area.

4. He relies upon a Division Bench judgment of this Court reported in *Crescent Trading Company Vs. Sub Inspector of Police*, : *Crescent Trading Company Vs. Sub Inspector of Police*, . In this case, the question that arose before the Bench was whether the permanent registered headload workers for an establishment can perform duty even outside the premises of the establishment. Their Lordships at paragraphs 8 and 9 proceeds to hold as under:

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 S. 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 latter 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 under S. 2(i) of the Act, would show that in case of a headload worker who is 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 under 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 cl. 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.

5. By following this judgment, a Division Bench of this Court, on an earlier occasion, in W.P. (C). Nos. 30509 and 13160 of 2009 opined, as long as the employer has permanent registered headload workers of the establishment or the individual employer, they can perform the duties attached to their employment of loading and unloading even outside the premises of the establishment without obtaining further registration under different areas. Placing reliance on these judgments, learned counsel for the petitioners in the above four Writ Petitions contend that since the controversy in these Writ Petitions is already covered by the above judgments, the Writ Petitions have to be allowed giving sufficient and adequate police protection.

6. As against this, learned counsel for the Board contends that the word "for an establishment" as envisaged under definition 2(m) of the Kerala Headload Workers Act, 1978 has to be read along with S. 2(j), which defines the word "establishment".

According to the learned Standing Counsel for the Board, as long as the area comes within the meaning of precincts of an establishment referred to,; there is no difficulty to accept the contention of the petitioners, but once the headload workers' duties demand their work outside the precincts of the establishment, it cannot mean the work attached to the establishment. Therefore, the words "for an establishment" in the definition of headload worker under S. 2(m) would only refer to the areas within the precincts of establishment and not beyond the precincts of establishment. In other words, once the loading and unloading work irrespective of the fact that they are permanent workers under the employer carry on their duties in an area other than the place of establishment or the precincts of the establishment, it requires, separate registration under that Labour Officer concerned. Therefore the petitioners cannot seek for expanding the duties of the permanent headload workers beyond the jurisdiction of the establishment. He relies upon two decisions. One pertains to Apex Court and the other a Division Bench judgment of this Court.

7. The learned Standing Counsel for the Board refers to paragraph A- of the Supreme Court decision reported in M.K. Salpekar Vs. Sunil Kumar Shamsunder Chaudhari and Others, : M.K. Salpekar Vs. Sunil Kumar Shamsunder Chaudhari and Others, , which reads as under:

4. Mr. Bobde appearing in support of the appeals has contended that the

provisions of Clause 13(3)(v) quoted below, which are the basis for the impugned decision, do not apply to non-residential buildings:-

13.. (1) No landlord shall, except with the previous written permission of the Controller,-

(a) give notice to a tenant determining the lease or determining the lease if the lease is expressed to be determinable at his option; or

....

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(3) If after hearing the parties the Controller is satisfied

(i)...

....

(v) that the tenant has secured alternative accommodation, or has left the area for a continuous period of four months and does not reasonably need the house;

Explanation.- For the purpose of this item the tenant shall be deemed to have secured an alternative accommodation if he owns a residential house in the city or town concerned and if such house is constructed on a site lying vacant on 1st January, 1951 or on a site made vacant on or after that date by demolition of any structure standing on such site; or

(vi)....

...

he shall grant the landlord permission to give notice to determine the lease as required by sub-clause (1).

The Courts were, therefore, in grave error in directing eviction of the appellant from the premises let out to him not for the purpose of his residence but for running, a clinic. The argument is that the Explanation to the clause quoted above by referring to "a residential house in the city or town concerned" makes it abundantly clear that the clause cannot be applied to a nonresidential house, for, a residential house cannot be considered as alternative accommodation to a non-residential building,.

8. He also places reliance on the decision reported in Sama Alana Abdulla Vs. State of Gujarat, , paragraph 7 of which reads as follows:

7. It was next contended that the High Court has misinterpreted S. 3(1)(c) and erroneously held that the sketch, plan, model, article or note or other document or information need not be secret for establishing an offence under that section. In order to appreciate this contention, it is necessary to refer S. 3 which reads as follows :-

3. Penalties for spying - (1) If any person for any purpose prejudicial to the safety or interests of the State-

(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

(b) makes any sketch, plan, model or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or

(c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States.

The High Court held that the word "secret" in Clause (c) qualifies only the words "official code or pass word" and not "any sketch, plan, model, article or note or other document or information". The reason given by the High Court is that after the phrase "any secret official code or pass word" there is a comma and what follows is thus not intended to be qualified by the word "secret". The Calcutta High Court *Sunil Ranjan Das v. The State*, (1973) 77 Cal. WN 1061 has also taken the same view. It has held that the word "secret" in the said section qualifies officials code or password and not any sketch, plan, model, article or note or other document or information. This is clear from the comma and the word "or" which comes after the word "password";.

9. By reading the above two judgments, according to him, the definition of "headload worker" has to be interpreted by putting a "comma" after the word "contractor". Then it would give proper meaning indicating that if the headload worker is working directly under the employer if is different and only if the headload worker is working through a contractor, then it refers to "for an establishment". In other words, according to him, "for an establishment" in the definition of "headload worker" has to be referred to as headload workers for an establishment engaged through a contractor. The learned counsel by referring to the above two decisions, stressed upon the fact that the word "for an establishment" is with reference to the headload workers coming through a contractor and it does not mean a headload worker for an establishment even outside the area of the establishment to which they are attached.

10. The party respondents took us through the Rules pertaining to the Kerala Headload Workers Rules, 1981. According to him, R. 26A(1) and (2) refer to the details given in certain columns of Form XI, which clearly indicates the place of establishment. Therefore, other than the place of establishment even by reading the contents of the form in which the registration is done put a bar on the headload worker to work beyond the establishment concerned. According to him, once the headload workers, even if they are permanent headload workers, discharge duties of loading and unloading outside the registered area, they need

to again get registration certificate from the Labour Officer of the concerned area, where they discharge duties of headload worker. He relies upon a Full Bench decision of this Court reported in Raghavan Vs. The Superintendent of Police and Others : Raghavan Vs. The Superintendent of Police and Others . In the above decision, several issues came up for consideration with regard to Headload Workers Rules and also definition of "headload worker", the first controversy was, if a person permanently employed in an establishment for loading and unloading work, would he come within the definition of "headload worker" as contemplated under S. 2(m) of the Kerala Headload Workers Act. In that context, Their Lordship, while discussing the details of the headload worker at paragraph 14 held as under:

14. One of the main issues argued before us by both sides is the status of permanent workers attached to an establishment with reference to the provisions contained under the Act and Rules and Scheme thereunder. When we use the term "establishment", we refer to the establishments included in the Schedule to the Act as per the definition of the term under S. 2(j). It was contended by the learned counsel for the petitioners, who are employers that the term "headload worker" as defined under 5.2(m).of the Act would not take in a permanent worker attached to an establishment. It is Submitted that the following words in the definition namely, "and includes any person not employed by any employer or contractor but engaged in the loading or unloading or carrying on head or person or in a trolley any article or articles for wages" would mean that persons permanently employed in an establishment are excluded from the definition. According to learned counsel, the terms "employment" and "engagement" have different connotation and the Act takes in to its fold, only the headload workers who are engaged and not employed. We do not find any merit in this contention. A reading of the definition as a whole would clearly show that it takes in two sets of persons and excludes specially persons engaged by an individual for domestic purposes. The first set of persons included in the definition are persons engaged directly or through a contractor in and for an establishment, whether for wages or not. The second group are persons who are not employed by any employer or contractor, but who are engaged in loading and unloading work for wages. The first group are persons who have specific employers. But in their case, such employment need not be for wages. In the case of second group of persons, who are also engaged in loading and unloading, work, it must be for wages, even though not under any specific employer or contractor. We cannot accept the contention that a person permanently employed in an establishment for loading and unloading work would not come within the first category of persons referred in the definition clause since the word used therein is "engaged". It can be seen from the different provisions of the Act that the words "engage" and "employ" have been used in just a position with each other. For example, the term "employer" is defined under S. 2(i) as follows:

(i) "employer" means,--

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

(2) in relation to a headload worker who is not employed by any employer or contractor, the committee constituted u/s 18; and

(3) 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.

11. Ultimately, they opined that the definition in S. 2(m) includes only those persons engaged by an individual for domestic purposes other than that all the workers including permanent worker employed in an establishment for loading and unloading would come within the definition of headload worker".

12. The second question raised was whether all headload workers, whether permanently employed in an establishment or not, are to get registration under R. 26A. With reference to R. 26A, at paragraph 18, Their Lordship held as under:

18. The above provisions would make it clear that the registration contemplated by the Scheme is not applicable to permanent headload workers employed in an establishment either directly by the employer or through a contractor. But, that does not mean that such permanent workers cannot get registered as per the provisions contained under R. 26A. As mentioned earlier, the Act and the Rules are made applicable for the whole of the State and the requirement of registration under R. 26A is effective throughout the State whether it is an area to which the Scheme is made applicable or not. Therefore, all headload workers whether permanently employed in an establishment or not are to get registration under R. 26A.

13. It was also held that registration contemplated by the scheme is not applicable to permanent headload workers employed in an establishment either directly by the employer or through a contractor. They further held that there is no prohibition for such permanent workers to get registration as per the provisions contemplated under R. 26A. Ultimately, they opined that all the headload worker, whether permanently employed in an establishment or not, are to get registration under R. 26A. From reading of the above decision especially paragraphs 14 and 18, a permanent headload worker could be employed in an establishment either directly by the employer or through a contractor.

14. Section 2(m) defines "headload worker" as under:

(m) "headload worker" means a person engaged or employed directly or through a contractor in or for an establishment, whether for wages or not, for loading or unloading or carrying on head or person or in a trolley any article or articles in or from or to a vehicle or any place in such establishment, and includes any person not employed by any employer or contractor but engaged in the loading or

unloading or carrying on head or person or in a trolley any article, or articles for wages, but does not include a person engaged by an individual for domestic purposes.

15. The contention of the learned counsel for the Board that the words "for an establishment" would mean, only in a case through a contractor headload workers were employed falls to ground in view of the law laid down by the Full Bench of this Court. Even otherwise, reading of the definition "headload worker" in S. 2(m), there is no word used respectively after the words "for an establishment" indicating the difference between the headload workers employed by employer directly or through a contractor. When we read the definition of establishment" at S. 2(j), it only refers to an establishment specified in the schedule and includes the precincts. In order to give extended meaning to the word "establishment", the precincts are also included in the definition. But, it does not restrict the meaning of establishment for the simple reason that if the establishment has more than 2-3 branches, it still belongs to one establishment and not 3-4 establishments. The definition of "headload worker" as interpreted in Crescent Trading Company's case (supra), still holds the field as we do not find new dimension to the definition of "headload worker", as contended by the Board. Reading of the definition do not indicate that there has to be reading of the word "establishment" with reference to different set of headload worker. If we bifurcate the words "for an establishment" and read the entire definition, it would not take us to any logical or purposeful meaning. A reading of the entire definition would only indicate headload worker would include a person directly employed by an employer or through a contractor as well. The words "for an establishment" would mean not only in connection with the establishment, but all the duties connected to the said establishment, which would mean "for an establishment". Therefore, whatever duties entrusted to the headload workers in relation to the establishment, where they are permanently employed as headload workers irrespective of the area they work, as long as it is for the establishment under which they are working they continue to be the permanent headload workers of that establishment.

16. Our view is fortified, by clause 6(1) and (2) of the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983, the procedure contemplated for regulation of employment of headload workers pertaining to scheme covered areas. The definition of "headload worker" as stated above would be clarified in a better and meaningful way. Clause 6 of the Scheme reads as under:

6. Procedure for regulation of employment of headload workers on Scheme areas.-

(1) No headload worker who is not a registered headload worker under the provision of the Kerala Headload Workers Rules shall be allowed or required to work in any area to which the scheme applies from the date of commencement of the functional operation of Scheme in the area.

(2) From the date of commencement of the functional operation of the Scheme in any area, no headload worker who is not permanently employed by an employer or contractor shall be allowed or required to work in any area to which the Scheme applies unless he is granted a further registration under the provisions of this Scheme.

17. Clause 6(1) of the Scheme contemplates a situation where a headload worker is barred from discharging the work, if he is not the registered worker in an area where the Scheme is applicable. If he intends to work in an area, to which the Scheme is applicable from the date of commencement of the functional operation of the Scheme in such area, necessarily, he has to get registration as a headload worker under the Labour Officer concerned for that area. When we come to clause 6(2) of the Scheme, it refers to operation of the Scheme in different areas and the requirement of registration in different areas, to discharge the work of a headload worker in more than one area. But, an exception is carved out for a particular class of headload workers, i.e., permanent headload workers. If the employer has permanent headload workers working for him, such permanent headload workers need not get separate registration in any other area, as long as they have registration under a particular area.

18. Apart from the meaning working for an establishment, a reading of clause 6(2) of the Scheme, it would clearly envisage the intention of making this definition. By reading clause 6(2) of the Scheme, the requirement is registration in every Scheme covered area for a headload worker, other than a permanent headload worker is the mandate. The headload worker must get registered in different areas as long as he intends to work in more than one area, if he is not a permanent headload worker. Therefore, it is discernible from the Scheme, permanent headload workers are given certain exemption, i.e., exemption from getting registered under different areas, even if the area of operation of the worker extends to more than one Scheme covered area. If they are permanent headload workers attached to either an establishment or an individual employer, as long as they work for the employer or an establishment, they can carry on their duties as headload workers irrespective of the area so long as they carry the tag of permanent workers of an individual employer or an establishment.

19. Therefore, in the present case, the party respondents and the Board having not raised any serious dispute with regard to the character or status of the headload workers, i.e., permanent nature of their employment, we are unable to understand how the Board can insist that there has to be a separate registration whenever they go outside the area where they are already registered. Therefore, as long as they are permanent headload workers working for an establishment irrespective of the area to which they belong to, they can carry on the work outside such area as long as it is for an establishment, provided their employments permanent in nature.

20. The two unreported judgments are inter party judgments between the

Eastern Condiments Private Limited and the Board. Having accepted the law laid down by the Division Benches of this Court placing reliance on the Crescent Trading Company's case (supra), now it is not open to the Board to turn around and say, the law laid down in the above decision is not a good law. We say so, because they have never challenged the judgment in W.P.(C). Nos. 13160 and 30509 of 2009. Even in Crescent Trading Company's case (Supra), the Board was a party to the proceedings and they have not challenged interpretation of "for an establishment" in the definition of headload workers. Accordingly, we proceed to hold that the petitioner in the first three Writ Petitions, i.e. W.P.(C).Nos. 23510 and 6997 of 2010 and 26903 of 2009 is entitled for adequate and sufficient police protection in the area of operations referred to in the Writ Petitions. Then coming to the fourth Writ Petition, it is well settled in an earlier judgment of this Court what happens if the establishment is shifted. In Pareeth Vs. Sub Inspector of Police, , similar question arose before the Division Bench of this Court. The controversy was whether the headload worker having identity card under R. 26A, when the establishment was in existence at a particular place, later shifted to another place can continue to work. The question was whether under the same identity card could he carry on the work of headload worker after shifting of the business from one place to another place. Their Lordship, by referring to sub-section (2) of S. 25 of the Act and by referring to R. 26A, ultimately held that there cannot be denial of employment to headload workers, even if the establishment was shifted from one place to another place. Similarly, if the establishment of the petitioner, which carries on the business of paper and paper boards is shifted from one place to another place, can the headload workers union of new office raise objection to the work carried on by the headload workers, who were on earlier occasion employed by the employer. They were working for the same establishment, but there is only change of office. The fact remains, the employer is the same and the establishment for whom they were working is the same, except change of place. In the present case, from 1997 onwards the petitioner Company has permanent headload workers with identity cards working for the petitioner. There was change of place even on an earlier occasion when they shifted to different place. Similar problem arose and police protection came to be ordered for the loading and unloading work carried on by the headload workers, as per Exhibit P2 judgment. Neither the Union nor the Board raised any objection at the relevant point of time. Even otherwise, in view of the discussion and reasoning above, as the headload workers, who are permanent headload workers are discharging the duties of their employment under the petitioner Company at a new place for the same establishment cannot be obstructed by the Union or the Labour Officer concerned.

In that view of the matter, we direct the respondent police to extend sufficient and adequate police protection to the petitioner company.

The Writ Petitions are allowed as above.