(2012) 01 KL CK 0155

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 29905 of 2007

Ernakulam District Bus Operators'' Organization and Others APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 1 KLJ 801

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Millu Dandapani, for the Appellant; P. Ramakrishnan (SC), George Mecheril (GP), for the Respondent

Judgement

C.N. Ramachandran Nair, J.—These writ petitions are referred to us by a learned Single Judge because the constitutional validity of Section 2(ja) of the Kerala Motor Transport Workers Welfare Fund Act, 1985 (hereinafter referred as the Act'') along with the corresponding provisions introduced by Amendment Act 23/2005 are under challenge. We have heard Senior counsel Smt Sumathi Dandapani and various other counsel appearing for the petitioners, standing counsel Sri. P. Ramakrishnan appearing for the Kerala Motor Workers Welfare Fund Board and Government Pleader for the State. Petitioners are registered owners and operators of various motor vehicles with permits for transport of passengers or goods. In some cases, the vehicle operation is by the registered owner/permit holder as proprietor and in certain cases partnership firms are operating the vehicles wherein the registered owner as a partner also happens to be engaged either as driver or as conductor or as door checker. The Motor Vehicles Owners'' Association is also a petitioner in one of the writ petitions. The provisions of the Act, until the amendment in 2005, provided for coverage of motor transport workers in the strict sense of the term in as much as self employed persons engaged in vehicle operations were not covered as "motor workers". Even though auto rickshaw owners who were operating their vehicles as drivers were separately covered by the Kerala Auto Rickshaw Workers Welfare

Fund Scheme framed under the provisions of the Act in 1991, registered owners of other vehicles operating their vehicles by themselves either as drivers or in any other capacity were not covered by the scheme. However, after the introduction of Section 2(ja) to the Act and corresponding provisions for payment of contribution and entitlement for benefits "self employed" persons operating their own vehicles whether as driver or any other capacity are, also brought under coverage as ''employee/motor worker''. As a result of this, a self employed person operating a vehicle that falls under the definition of ''motor transport undertaking'' within the meaning of Section 2(b) of the Act will have to pay contribution as "employer" as well as "employee". Section 4 simultaneously amended provides for payment of contribution by employers and self employed persons and also by employees at the rate fixed under a scheme to be framed. In tact prior to the amendment of Section 4 of the Act and framing of the scheme, contribution payable by both employee and the employer were at the rate of 8% of the wages for every employee. Besides this, employers were required to pay 5% of the wages towards gratuity wherever employees were not covered by the Payment of Gratuity Act. However, in order to avoid dispute and to provide for collection at standard rates, Section 4 was amended authorising framing of a Scheme which is also done. The main provision under challenge (section 2 (ja)) introduced by 2005 amendment is as follows:

(ja)- Self employed person" means a person other than an employee who is engaged in the profession of a motor transport undertaking by actually operating the vehicle and depending mainly on such a motor transport undertaking for his livelihood.

Simultaneous amendment is introduced in Section 4(2) and other provisions requiring the self employed persons to remit contribution at the rate applicable to employers. Since self- employed persons engaged in motor vehicle operation are entitled to membership in the Welfare Fund, they are required to make contribution as employee as well at the rate prescribed for payment of contribution under the Scheme. As a result of this, irrespective of whether a motor transport undertaking is run by the proprietor engaging workers or where the registered owner himself /herself is operating the vehicle with or without others, total contribution payable is one and the same for same type of vehicle. The main question that arises for consideration is whether the amendment introduced in 2005 stated above covering self employed persons also as beneficiaries of the Act is beyond legislative competence of the State.

2. Counsel appearing for the petitioners do not challenge the legislative competence of the State to make the welfare legislation covered by the Statute. However, the only challenge is against the authority of the State to cover certain category of persons for the benefit of the welfare legislation against their will and wish. There is no dispute that the ultimate benefit of the coverage of the petitioners will go to them or to their legal heirs. However, petitioners expressed their hardship in as much as besides meeting operational costs debt servicing

and other expenses, they may not be able to reserve anything for future that is by way of contribution. According to the counsel, without any surplus in the vehicle operation which essentially is a business, the State cannot compel them to make any contribution towards Welfare Fund even though the same is for their own benefits. The Government Pleader as well as the standing counsel appearing for the Welfare Fund Board submitted that every welfare legislation is to ensure guaranteed benefits for the employees by way of gratuity, terminal benefits, pension, loan facility and the like. So much so, according to them, petitioners have no right to question the same.

3. After hearing both sides, for the purpose of the Act, we do not find any distinction in vehicle operation pointed out by the petitioners between the two categories i.e. persons running the business as operators or entrepreneurs engaging workers and another set of people engaged in motor vehicle business by employing themselves. In the latter category the registered owner cum permit holder acts in a duel capacity because as the registered owner and as employer he employs himself to operate the vehicle which is nothing but self-employment The contention that registered owners operating the vehilcles with employees are not in the same position as registered owners operating the vehicles with employees, may be correct However, in our view, self employed persons will be able to make better margins because they have no over heads for supervision or expenditure by way of payment of wages to owner employees. So far as the requirement of payment of contribution is concerned, the legality or correctness of the same has to be considered with reference to the object of the Scheme, which is undoubtedly benefit only for the very same persons who are challenging it Those employed in Government service are required to contribute minimum amount towards Provident Fund. Similarly, industrial and plantation employees are covered by the Employees Provident Fund Act The scheme of contribution by self employed persons and the benefit they get later after retirement or after termination of business is similar to other welfare schemes applicable to employees. Extensive benefits available under the Act and the Scheme are equally applicable to the motor workers covered by employment with others and also to self employed persons like petitioners. The object of the amendment as rightly pointed out by the Government Pleader and the standing counsel for the respondents is to cover the whole category of motor workers under the Act We find force in this contention because in our view, a registered owner operating his vehicle as driver or conductor or as cleaner is as much as a motor worker as any other employee working under an employer. Therefore, essentially, petitioners are glorified motor workers raising funds, acquiring vehicles and operating the same by themselves as employees cum employers. The petitioners do not have the financial resources to employ other persons to operate their vehicles and that is the reason why they chose to operate the vehicle and carry on the business by engaging themselves. So much so, essentially and substantially petitioners are motor workers, though they are self-employed persons in their own business. We, therefore, do not find any

distinction between the category of motor workers originally covered under the Act and the category how being covered who are essentially motor workers engaged in their own vehicles. Consequently, we reject the challenge against the constitutional validity of Section 2(ja) and corresponding provisions of the Act on grounds of arbitrariness or violation of Article 14 of the Constitution.

4. Counsel appearing for the petitioners have referred to the various benefits available under the Act and Scheme and submitted that even though total payment of contribution is same for both in the case of employees working under employers/owners of vehicles and members of the scheme who are self employed persons, the benefits received by self employed persons are lesser. Specific reference is made to certain benefits specifically geared to salary drawn by employees which do not apply to self employed persons. In this context both the State Government as well as the Welfare Fund Board have raised the contention that benefits are equal and same to all members irrespective of whether they are employees working under other employers or they are self employed workers. The counter affidavit filed by the Government Pleader also confirms this position. We record the submission of the respondents and declare that petitioners and other self employed persons should be given the same benefits which other motor workers covered by the Act are given. If there is any difficulty in working out any relief such as those provided with specific reference to "salary", to self employed persons, the Board should fix salary on notional basis to self employed persons by taking the salary structure of similar employees and then give the benefit at equal rate as entitled to other persons. The writ petitions are disposed of by upholding the statutory provisions with direction to the respondents to give equal benefit to the self employed persons. At our request, the standing counsel for the Welfare Fund Board has furnished certain details from the Welfare Fund Board. We notice that in the course of last several years only a little over Rs. 25,000 employees have been given a total benefit of little over around Rs. 56.70 crores. The statistics furnished would show that as against around Rs. 8,00,000 vehicles operating in the State with permits for carrying passengers and goods, coverage is only for around Rs. 4,20,000 employees. The funds accumulated with the Welfare Fund Board is around Rs. 690 crores. On an average of 10% the Board will be raising Rs. 69 crores as annual interest income. We are prima facie convinced that all deserving motor vehicles are not covered under the scheme and the benefits also do not appear to be reaching even those who are in the rolls. In public interest we feel appropriate orders should be issued by this Court to cover every employee answering the description of "motor worker" of a motor transport undertaking within the State for equitable distribution of benefits in accordance with the Scheme. Therefore, the Registry will place this matter before the Honourable Acting Chief Justice for considering whether this Court should take up the statement filed on behalf of the Motor Workers Welfare Fund Board as a Public Interest Litigation to ensure benefits reaching all the deserving motor workers.

