
(1994) 02 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 7458 of 1989

H.O. John

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 22-02-1994

Acts Referred:

Headload Workers Act, 1978 — Section 13, 18

Citation : (1994) 1 KLJ 635 : (1994) 2 LLJ 1095

Hon'ble Judges : K.J. Joseph, J

Bench : Single Bench

Advocate : P. Nandakumar, for the Appellant; A.V. Ramakrishna Panicker and Jayasankar, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.J. Joseph, J.—When this case has come up for hearing on December 20, 1993, neither the counsel nor the petitioner was present. Therefore, Original Petition was dismissed for default. C.M.P. No. 874/94 is filed by the petitioner praying for restoration of the Original Petition back to files and to set aside the order of dismissal for default. Copy of the said petition was served on the respondents. I heard the counsel for the petitioner and the respondents. The petition is not opposed. Hence the same is allowed.

2. The petitioner in this Original Petition is the Honorary Secretary of the Chamber of Commerce, Trichur, a registered body to improve and foster the industry and commerce in the Trichur Municipality. The Chamber of Commerce has a membership of many people who are businessmen, traders and industrialists in Trichur. Some of the members of the Chamber of Commerce are engaged in wholesale and retail trade of various commodities and also manufacturing and sale of various commercial industrial products. In their business activities, the loading and unloading of various items of goods also becomes necessary and forms part of their business. For carrying out the said business, they require the help of headload workers. It is the case of the

petitioner association that they were having regular headload workers attached to their business. But with the introduction of Kerala Headload Workers Act and the Scheme framed thereunder, according to the petitioner, at the instance of the convenor of the local area committee they have retrenched the service of permanent head-load workers attached to their business in order to enable those workers to register their names under the Head-Load Workers Act and the Scheme framed thereunder. Thus the members of the association had agreed to take into consideration the larger interest of the headload workers who were attached to their business activities for a long number of years.

3. The Headload Workers Act, 1978 (Act 20 of 1978) was enacted by the State Legislature with the object to regulate the employment of headload workers in the State of Kerala and to make provisions for their welfare, for the settlement of disputes in respect of their employment or non-employment and matters connected therewith. u/s 14 of the said Act, the State Government as per a notification published in the gazette established the Kerala Head-load Workers Welfare Board with Chairman and members. Section 18 of the Act gives power to the Government to appoint a committee for such area by way of a notification and with such name as may be specified in the said notification for the purpose of exercising the powers and performing the functions of the committee under the Act and the scheme in relation to that area. The committee so constituted shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and may by that time, sue and be sued. The committee shall consist all such number of members not exceeding 15 nominated by the Government. The functions and duties of the committee are specifically stated in Sub-clause 8 of Section 18 of the Act. Government also appointed officers for conciliation of the disputes that may arise in connection with the employment or non- employment or the terms of employment or with the conditions of work of any Headload worker exists or is apprehended in respect of a particular area and prescribe the area of its jurisdiction.

4. The main function of the local committee is to pool the headload workers who are not employed under any employer or contractor and to arrange and regulate employment to such headload workers and to pay them wages and also to take disciplinary action against them whenever necessary.

5. Section 13 of the Kerala Headload Workers Act provides for implementation of a scheme for the matters specified therein. The said scheme was published in the year 1983 and it has come into force in the area specified in the schedule attached to the scheme on March 1, 1984. As per the notification dated March 8, 1985, the scheme was made applicable to Ward Nos. 1 to 32 in the Trichur Municipal Town. According to the petitioner, many members of the petitioner-association are doing business mainly in the above 32 Wards of the Trichur Municipality. It is the case of the petitioner that members of the Chamber of Commerce bring various articles and goods to their shop from distant place in

lorries and tempo vans. These goods are to be unloaded and their goods are to be loaded and for the entire loading and unloading activities, they have to depend entirely on the headload workers registered under the respondents. As contemplated under the Scheme, the entire wages payable to the headload workers are deposited with the 5th respondent in advance by the employers. Apart from that, 25% of the wages also is paid by the employers to meet the administrative expenses of the respondents. It is the case of the petitioner-association that in spite of request, sufficient headload workers were not made available for carrying out the loading and unloading activities in their business places, even though the headload workers in the local area have to be divided into various pools depending on the need of the locality. As per the Rules framed under the Act, the pool and the workers are under the direct control of the 5th respondent, the Convenor, Kerala Headload Workers Local Committee, Trichur. It is the case of the petitioner that without any statutory provision or legal authority, the 5th respondent permitted the pool leaders to be elected from among the headload workers and the statutory functions required to be exercised by the 5th respondent were delegated to the pool leaders and the pool leaders invented and implemented a particular method of work known as "top system"

6. According to the petitioner, all the head-load workers in a particular pool will elect one of them as their leader and he will not do any work. But he will fix a target amount and whenever a worker earns the target amount, he will be exempted from further work and declare as "top". Thereafter, he will not be available for doing any work for the rest of the day. Even though he will sign in the register of the pool as if he worked, but will not work. By introduction of this irregular and unwanted system, in most of the pools, sufficient number of workers were not available for carrying out the loading and unloading activities, specially in certain Wards. It is the case of petitioner that the Headload Workers Act does not provide for such a "top system", but the same is implemented and enforced by the workers in that particular area. It is the case of the petitioner that they brought to the notice of the authorities including the respondents as per Ext. P1 resolution about the unauthorised and illegal practice that is being followed by the so-called pool leaders and area committee attached to the Trichur Municipality, but no action was taken by the concerned authorities. It is also the case of the petitioner- association that the respondents are not able to take appropriate action and control the headload workers in the locality. When the goods are being brought by lorries, the headload workers refused to do work and if they are prepared to do work, would demand 1 1/2 times higher wages that has been prescribed under the Act. They will also demand payment of higher amount by the employer directly to the workers ignoring the fact that the employers have already paid the charges to the Convenor, area committee. They have specifically narrated the high-handed activities of the headload workers in the Trichur Municipal Town in Exts. P1, P3 and P5 representations addressed to the Hon"ble Minister for Law and the Chief Executive of the Kerala Headload

Workers Welfare Board and also the Chairman of the Welfare Fund Board, Trichur Local Committee. The demand of higher wages and refusal to send sufficient number of headload workers to carry out the loading and unloading activities were highlighted in the above representations.

7. On receipt of these representations even though the Chairman of the Headload Workers Welfare Board had sent Exts. P2 and P4 replies to the petitioner-association, they did not take any effective steps to supply sufficient number of headload workers for doing the loading and unloading activities of the members of the petitioner-association. They did not also take any effective steps preventing the headload workers from making any demand claiming more amount than the amount prescribed under the Headload Workers Scheme from the employers. In Exts. P2 and P4 replies, the Chairman of the Headload Workers Welfare Board had practically accepted the grievances raised by the petitioner-association regarding the "top system" and not providing sufficient number of workers for doing the loading and unloading activities as and when asked for by the employers.

8. The petitioner-association thereafter has taken up the matter to the Government as per Ext. P6 detailed representation stating the high handed activities undertaken by some of the pool attached to the Trichur Municipal Town area with special reference to pool 5B and requested the Government to issue necessary direction to redress the grievances of the employers. The grievances of the employers were highlighted by the news media and the petitioners have produced Exts. P8 and P9 paper publication to prove that the employers in Trichur Municipal area were put to great difficulties and financial loss by the sudden strike and other illegal activities of the headload workers in Trichur Municipal area. Ext. P6 representation followed by Ext. P10 detailed representation addressed to the Chairman, Headload Workers Welfare Board, wherein also they have reiterated their grievances and sought immediate remedial measures for the various matters specified by them in their various representations. But the respondents did not take any further action in the matter and, therefore, the petitioner was constrained to move this Court seeking for issuance of a writ of mandamus or other appropriate writ, order or direction, directing the respondents to take effective steps to stop the "top system" as it is against the statute and also to appoint its own officers to control various pools established as per the provisions of the Act. The petitioner also prays for issuance of a writ or mandamus directing the respondents to compel them not to allow the headload workers to demand more wages than the wages prescribed u/s 9 of the Act and also to provide adequate and sufficient workers to an area of strike from the area where other registered headload workers are available with the respondents. They also prayed for consequential reliefs.

9. On behalf of respondents 2 and 3, a detailed counter affidavit has been filed in the case. In the said counter affidavit, it is stated the head-load workers scheme prepared u/s 13 of the Act of the Kerala Headload Workers Act was implemented

in respect of Trichur Municipal area and before formulation of the scheme, objections were called for through notification and the petitioner did not object to the scheme and, therefore, the scheme had become final and the same scheme is made applicable to the area in question. Pursuant to the scheme, the registration of workers and enrollment in the committee were done under the provisions of the Kerala Headload Workers (Regulation, Employment and Welfare) Scheme, 1983 on the basis of the applications furnished by each individual worker. It is also stated in the counter affidavit that for the purpose of rendering the services of the headload workers to the employers effectively, the pool leaders were being determined by the committee as per the provisions of the scheme as per Section 13(1) of the Act. It is further stated in the counter affidavit that the pool leaders so determined from among the workers themselves on rotation basis and they are making effective arrangements for providing service of the workers present on each day to the registered employers without any delay. They have also stated in the counter affidavit that no headload workers shall be employed or paid wages except in accordance with the provisions in the Scheme as contemplated in paragraph 11 of the Scheme and it is the duty of the area committee for posting the headload workers as and when the employers require the service of the headload workers. It is the case of the respondents in the counter affidavit that the duty assigned to the pool leaders by the committee are only to mark the attendance, make available the workers to the employers as and when their services are required, etc. and it is the case of the respondent that u/s 18 of the Act, the area committee has authority and jurisdiction to take disciplinary action against the workers who are acting against the provisions of the Act and the Scheme. In respect of the statements in the Original Petition that the workers demand 1 1/2 times the prescribed wages u/s 9 of the Act, the counter affidavit states that strict instructions also have been issued by the authorities to the workers not to demand higher wages or wages than what is notified, from the employers and they have pointed out instances where the excess amount received by the workers from the employers were ordered to be refunded to the employer by recovering the same from the workers. They have also stated that the committee had ordered payment of damages to one of the employers for the damage incurred by the said employer by the carelessness in loading and unloading of his articles.

10. Even though Ext. P3 representation submitted by the petitioner, Chamber of Commerce, to the Kerala State Subordinate Legislation Committee, according to the counter affidavit, the committee has not taken any decision in the matter. The counter affidavit further admits that against the decision taken by the Board, some of the workers started lightning strike and the committee took appropriate action and resumed normal work immediately. In another occasion, when the workers went on strike in respect of payment of festival advance, the respondents gave an ultimatum to the workers to resume work on August 28, 1989 and few workers in defiance of the ultimatum acted against the decision and they were punished as per the provision of the Scheme. Therefore, according

to the respondents, the petitioner is not entitled to get the relief that they asked for in this Original Petition.

11. I heard the learned counsel for the petitioner as well as the learned counsel for respondents 2 and 3 at great length. As can be seen from Exts. P2 and P4 communications sent by the Chairman of the Kerala Headload Workers Welfare Board to the petitioner-association, the Board was fully aware of the activities of the headload workers in Trichur area and Chairman had assured appropriate timely action in respect of the complaints made by the Chamber of Commerce in Exts. P1 and P3 representations wherein they have specifically alleged violation of the terms and provisions in the scheme and the difficulties caused to the employers by the workers in the area in the matter of loading and unloading their articles during the course of their trade and business. In none of the communications sent by the Chairman to the petitioner, Chamber of Commerce, it is stated that the allegations raised by the Chamber of Commerce are baseless and made with any ulterior motive. On the other hand, the Chairman has even requested the co-operation of the petitioner, Chamber of Commerce and its members, to settle the problems. He had also assured that appropriate action would be taken in regard to the grievances voiced by the Chamber of Commerce in their various representations addressed to Chairman, area committee and the Government. Therefore, it cannot be said that grievances raised by the petitioner, Chamber of Commerce, for and on behalf of its members in Exts. P1, P3, P5 and P7 representations/appeals did not attract the immediate attention of the Board and its officers. The grievances of the petitioner, Chamber of Commerce, had been reported in important newspapers which is evident from Exts. P8 and P9 reports. In the absence of any specific denial of the allegations raised of the petitioner, the Chamber of Commerce, it cannot be said that the respondents have no duty to consider their representations and redress the grievances voiced by the Chamber of Commerce. For an effective implementation of the Act and the scheme framed thereunder, the Board and its executive Officers have to take immediate and effective steps. If the provisions of the Act and the Scheme are not implemented effectively, it will cause serious consequences and repercussions to the headload workers who are the beneficiaries under the Act and the Scheme.

12. It is also pertinent to note that in respect of the allegations stated by the petitioner in Ext. P1 in and in paragraph 8 of the Original Petition, there is no denial of the statements contained in respect of the allegations mentioned in paragraph 8 of the original Petition. In the above paragraph, petitioner has stated as follows;

"8. All the headload workers in a particular pool will elect one of them as leader. He will not do any work. But he will fix a particular amount as target amount. Whichever headload worker works for that amount will be exempted from work and declared as top. If a particular headload worker can work and reach that target amount he will be exempted from actual work during the rest of the days.

He will sign in the register of the pool as if he worked but will not work. In a pool having a strength of 50 people there will be only 20 or 25 to work towards at close of the week days. In a pool where 50 persons are allotted by the 4th respondents based on the need there are only 20 to work and others classified as top will not work, but sign the register. Those who need the headload workers will not get workers in time. The pool leaders will demand more money than the prescribed wages and also extra payments for providing headload workers. Even though there are headload workers in the register, they will not work and the traders will not be in position to get the work done also through other workers. The Headload Workers Act does not provide for such a top system but the same is implemented by the workers. Even though the petitioner brought this to the notice of the respondents, they did not do anything to prevent this illegal practice. Through a letter dated June 23rd, 1988 petitioner informed the second respondent about the wild cat strike and the implementation of top system by the workers. A copy of the said letter is produced herewith and marked as Ext. P1. It is stated by the petitioner that for no fault of the traders they are made the victims. On account of some dispute or misunderstanding between the headload workers and the respondent, strike is commenced by the head load workers. The respondents are not able to take appropriate action and control the headload workers. Goods brought by the merchants through lorries from distant places cannot be unloaded due to sudden strike. Secondly, even during the continuance of work, suddenly strike is commenced on trivial grounds. Heavy loss and damage is sustained by the merchants. The respondents do not compensate the loss sustained by the petitioner due to the strike by their own registered headload workers. Petitioner requested the respondent to implement the prescribed wages also for the work done by the headload workers."

13. The specific allegation and statements made in paragraph 8 of the Original Petition had not been denied in the counter affidavit filed by respondents 2 and 3. Learned counsel for the respondents 2 and 3 was not able to satisfy me that the system adopted by the pool leaders made mention in paragraph 8 is contemplated either under the scheme or under any other provisions of the Act. There is no justification for the pool leaders not to do any work and fix any particular amount as target and decree those workers who achieved the target as top. There is also absolutely no justification for those workers who achieved the target for not doing any work for rest of the day. Neither under the provisions of the Kerala Head Load Workers Act nor in the Rules framed thereunder or the scheme framed u/s 13 of the Act contemplates such a top system and fixing any "target" for any worker and after achieving the said "target" declaring him as "top". Such a system is not conducive for the cordial relationship between the employer and employee and unheard of in any other part of the State. To crown above all these events, head load workers who were declared as "top" need not do any further work, but to remain as "top" for the rest of the day, thereby denying the legitimate right of the employer to get the work done by the head load workers attached to the area atleast for that day. The Act and the scheme

did not even visualise such a contingency. What action did the respondents take against such an illegal system is not specifically stated by the respondents in their counter affidavit. There is absolutely no legal basis for following such a system to continue in any part of the State, where the Head Load Workers Scheme is made applicable by the State Government.

14. Under the provisions of the scheme, the employer is entitled to get sufficient number of workers for carrying out loading and unloading activities. The system adopted and made mention in paragraph 8 of the Original Petition run contrary to the provisions of the scheme and the Act itself. Those workers whose names had been registered under the Act and allotted by the area committee to any particular area, they are legally bound to do the work of loading and unloading as and when required by the employer. Those workers who achieved the target and not doing any work for the rest of the day, Including the pool leader are acting against the provisions of the scheme. The respondents are bound to take appropriate action against such activities of the pool leader and the workers under the provisions of the scheme including disciplinary action u/s 18 of the Headload Workers Act. It is a valuable right that is conferred on the employers to employ the head load workers as and when required and it is the statutory duty of the area committee to provide sufficient number of workers to the employers as and when they make the demand. There is absolutely no justification for following the system made mention in paragraph 8 of the Original Petition which is not even controverted in the counter affidavit. Therefore, the respondents are legally bound to take appropriate and immediate action to stop the illegal system made mention in paragraph 8 of the Original Petition and there will be a direction to respondents 1 and 5 to that effect.

15. In the light of the statements contained in the counter affidavit and after taking into consideration the arguments advanced by the learned counsel appearing on behalf of both sides, I am satisfied that this is a fit case to issue a direction to respondents 1 to 5 to take immediate and urgent and effective steps to stop the unauthorised system made mention as "top system" prevailing in the Trichur Municipal town and I further direct the 5th respondent, Convenor, Kerala Headload Workers Local Committee, Trichur, to make available sufficient headload workers for the loading and unloading activities of the members of the petitioner, Chamber of Commerce, immediately on getting a demand for such employment from the employers coming under his area. I also direct the respondents to take effective steps for preventing the headload workers whose names have been registered with the 5th respondent from making any demand for more wages than prescribed u/s 9 of the Headload Workers Act and further to take urgent and speedy action against the erring headload workers immediately on receipt of any complaint from the members of the petitioner, Chamber of Commerce, in respect of loading and unloading work undertaken by them in the area.

16. Original Petition is allowed with the above directions. There will be no order

as to costs.