

(1992) 04 KL CK 0023
In the High Court Of Kerala
Case No : W.A. No. 381 of 1992

Kochayyan Subrahmanian and Others	APPELLANT
Vs	
Cochin Cadalas (P) Ltd. and Others	RESPONDENT

Date of Decision : 07-04-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 13, 13(1), 13(2), 25H
Kerala Headload Workers Act, 1978 — Section 10, 11, 12, 13, 14

Citation : (1992) KLJ 696

Hon'ble Judges : M. Jagannadha Rao, C.J; Krishnamoorthy, J

Bench : Division Bench

Advocate : T. Devassia, for the Appellant;

Final Decision : Dismissed

Judgement

M. Jagannadha Rao, C.J.—This is an appeal preferred by the Respondents 4 and 5 in the Writ Petition. The writ Petitioner is the first Respondent. In the Writ Petition, the relief claimed was for grant of police protection by issue of a writ of mandamus against Respondents 1 to 3. The Petitioner also sought protection to its workers for carrying out the loading and unloading work in the factory of the Petitioner at Brahmapuram, and for direction for removal of all obstructions caused by the Appellants and their followers in that behalf.

2. The writ Petitioner has its registered office at Tripunithura and its factory at Brahmapuram. In the factory craft paper is manufactured, there are 32 workers in the factory, and there are four staff in the establishment. The above said workers are attending to all work in the factory, including loading and unloading of raw materials and finished goods. The raw materials are waste paper, chemicals and firewood. The waste paper bundles, chemicals and firewood are reaching the factory compound in lorries and vans and finished goods, paper reels, are loaded into the vehicles. The production in the factory began in August, 1984, and it is the case of the Petitioner that ever since then the workers in the factory are attending to loading and unloading work. The relationship

between the workers in the factory and the Petitioner has been cordial, and there are long term settlements governing their relationship. But on 8th January 1992 when loads of waste paper come to the factory in lorries from Willingdon Island at 6.30 p.m. the factory workers were unloading the material, and suddenly some people of the locality gathered at the factory gate and began obstructing the workers engaged in unloading the waste paper bags. This created a tense situation between the factory workers on the one hand, and obstructers on the other. The writ Petitioner came to know of the names of some of the obstructers, that they belong to certain trade unions, and three of such obstructers are Respondents 4 to 6 in the writ petition (two Appellants and Anr.). The writ Petitioner presented a petition to the Sub Inspector of Police, Karimugal (third Respondent), and also before Respondents 1 and 2 (Assistant Commissioner of Police, and Circle Inspector of Police). The third Respondent assured the Petitioner that if any obstruction is caused by outsiders in future it will be removed. The Petitioner apprehended that there would be obstruction by the loading and unloading workers of the locality, and filed an application on 5th February 1992 before the Sub Inspector of Police, the third Respondent, praying for police protection. On 22nd February 1992 when loading of finished goods in lorries was taking place, at 4 p.m. a gang of people said to be under the leadership of the fourth Respondent in the writ petition and Ors. came and demanded wages, and lorry "was not allowed to be removed from the factory site. The writ Petitioner again went to the police station. Two constables were sent, and they released the lorry from the clutches of the gang under the leadership of the fourth Respondent in the writ petition. The Director of the Petitioner-company met the Sub Inspector of Police, the third Respondent, on 24th February 1992, and he promised assistance, but on 25th and 26th February, 1992 he pleaded helplessness, on account of the prevailing situation. The Petitioner then approached the higher authorities, and then filed the present Writ Petition in this Court.

3. A counter-affidavit has been filed before the learned Single Judge by the Appellants, Respondents 4 and 5 in the Writ Petition, stating that they represent the I.N.T.U.C. Union, and the fourth Respondent is the General Secretary of the Union. It is stated that the statement of the writ Petitioner that the company workers are doing loading and unloading work is wrong, and is intended to avoid the headload workers who were carrying on the loading and unloading work. It is stated that the so-called factory workers of the writ Petitioner are permanent factory employees. They are dealing with factory affairs. It is stated that the headload workers of the fourth Respondent in the Writ Petition were dealing with the loading and unloading work of the Petitioner's factory. It is stated that arrangement had been made for loading and unloading by employing three headload workers from I.N.T.U.C. everyday and two head load workers from C.I.T.U. everyday. A list of 27 persons from among whom three from I.N.T.U.C. are being sent is given in the counter-affidavit. There is no denial of allegation regarding obstruction made by the writ Petitioner, and on the other hand, it is

stated that the writ Petitioner is trying to divide the interest of the working class and to have the work done by the factory employees with a view to cause loss to Respondents 4 and 5 and their followers. A reply affidavit has been filed by the writ Petitioner.

4. The point for consideration is whether Respondents 4 to 6 in the Writ Petition and their followers have been, obstructing the loading and unloading operations in the factory of the writ Petitioner, and if so, whether they have any right to cause any such obstruction under the Kerala Headload Workers Act, 1978, and the rules made thereunder?

5. On the facts mentioned above, it is clear that the writ Petitioner is a factory having 32 workers, and it has been conducting the loading and unloading operations at the factory by utilising, the services of it's own employees. The writ Petitioner has come forward with an allegation that there is obstruction to its loading and unloading operations, and that such obstruction has been, created by the Appellants and their followers. From the facts mentioned in the Writ Petition it is clear that obstruction was created on earlier occasions on 8th January 1992 and the writ Petitioner reported to the police authorities. This is clear from the petition, Ext. P-1 dated 5th February 1992. There was further obstruction on 22nd February 1992, when two police constables were dispatched. In the counter-affidavit filed by the Appellants, there is no denial of the fact that there was obstruction. On the other hand, it is the case of the Appellants that they have a right to be engaged in the loading and unloading operations inside the factory and that the writ Petitioner is trying to divide the working class. It is stated that the I.N.T.U.G. Union is not creating any trouble and the situation does not warrant any police protection. The other Union, C.I.T.U. is also stated to be not indulging in any clash or violence. But there is no denial of the allegation that the Appellants and their followers had obstructed the loading and unloading on 8th January 1992 and on the later dates Mentioned in the Writ Petition.

6. From the facts mentioned above, we are of the view that the material on record is sufficient to come to the conclusion that there has been obstruction by the Appellants and their followers in connection with the loading and unloading operations in the factory of the Petitioner.

7. It is however, argued that the Headload Workers Act, 1978 provides for determination of disputes u/s 21 of the Act, and that therefore this Court cannot decide the said issue. u/s 21 of the Act if a dispute connected 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, the Assistant Labour Officer, having jurisdiction may hold conciliation conferences for the purpose of bringing about a settlement of the dispute and, if such settlement is not arrived at, send a report of the dispute to the Conciliation Officer: on receipt of the said report, the Conciliation Officer may hold conciliation proceedings and shall, for the purpose of bringing about a settlement of the dispute, without delay investigate the same and all matters affecting the merits

and the right settlement thereof and may do all such things as he thinks fit for the purpose of promoting a fair and amicable settlement of the dispute; if a settlement of the dispute or of any of the matters in dispute is arrived at in the course of conciliation proceedings, the Conciliation Officer shall send a report thereof to the appellate authority; if a settlement of the dispute or any of the matters in dispute is not arrived at, the Conciliation Officer shall take a decision on the dispute or, as the case may be, on the matters in respect of which no settlement has been arrived at and shall send a report of the dispute with a copy of his decision to the appellate authority, the decision of the Conciliation Officer shall, subject to the decision of the appellate authority, be final and binding on all the parties to the dispute; and, the appellate authority shall not stay the operation of the decision of the Conciliation Officer, pending its decision on appeal, except for good and sufficient reasons Section 22 provides that notwithstanding anything contained in Section 21, as above stated, where any dispute exists or is apprehended, the Government may, refer the dispute to the appellate authority.

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

"headload worker" means a person engaged 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 lot wages, but does not include a person engaged by an individual for domestic purposes.

Section 2(i) defines employer as:

"employer" means,

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

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

(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.

Section 2(h) refers to dispute as follows:

"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, of any headload

workers.

Section 2(r) defines the "scheme" as meaning a scheme made under the Act. Chapter II, which contains Section 3 to 5, deals with Conciliation Officers, Appellate Authorities and Inspectors- Chapter III, which contains Sections 6 to 12, deals with Hours and Limitation of Employment and Wages. Chapter IV contains only one section, namely, Section 13, and deals with scheme. Chapter V deals with the Board for the purpose of exercising the powers and performing the functions of the Board under the Act and the schemes, and it contains Sections 14 to 17. Chapter VI which contains Sections 18 to 20 deals with committees. Chapter VII deals with disputes and it contains Sections 21 to 23. Chapter VIII deals with Section 24 relating to workmen's compensation Chapter IX deals with registers and records and Chapter X deals with penalties and procedure. Chapter XI deals with miscellaneous provisions. Section 34 of Chapter XI deals with bar of jurisdiction of civil Courts to entertain any suit or other proceedings to set aside or modify any order or decision passed by any authority or officer under the Act in respect of any of the matters falling within its or his scope.

9. Rules have been made u/s 43 of the Act in relation to the operation of the Act. There is a Scheme promulgated by the Government in 1983 which is called the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983. Clause 3 of the Scheme says that the scheme shall come into force in the area specified in the schedule attached to the scheme in respect of all establishments from such date as may be fixed by the Government by notification in the gazette. Chapter 2 of the scheme relates to registration of headload workers and employers. Clause 6(1) of Chapter 2 provides that no headload worker who is not a registered headload worker shall be allowed or required to work in any area to which the scheme applies after a period of 107 days from the date of commencement of the scheme. Clause 7 states that every employer in the area regularly requiring services of headload workers shall also register with the committee after remitting a fee of Rs. 25 in cash, and a register shall be kept by the committee of all such persons registered. Chapter 3 deals with obligation of headload workers and employers. Clause 11 thereof states that after coming into force of the scheme for an area, no headload worker shall be employed or paid wages except in accordance with the provisions in the scheme. Chapter 4 deals with welfare of headload workers and Chapter 5 deals with committee. Clause 16 of Chapter 5 states that the committee may take decision for posting of the headload workers who are not employed regularly under any employer and also in arranging and regulating employment to such headload workers and paying them wages, in taking disciplinary action against them wherever necessary, and in doing such acts as are necessary for implementing the Scheme for the area. Chapter 6 deals with regulation of employment of registered headload workers. Clause 19 which occurs in this chapter states that the committee shall determine the number of headload workers needed for their area and for this purpose increase or decrease the number in their register. Clause 20 states that the Chairman shall make necessary arrangements to pool

the registered workers into as many groups as are needed and locate these groups at locations decided by him. Clause 21 states that an employer requiring the services of headload workers shall from time to time intimate the convener the number of workers needed by him and the convener shall allot such number of registered workers for that employer. Chapter 7 deals with conditions of services of registered headload workers. Chapter 8 deals with finance of the committee and Chapter 9 deals with general.

10. On a perusal of the provisions of the Headload Workers Act and the Rules, we do not find any provision therein conferring any preferential right for employment on the registered headload workers,-in the absence of any scheme made u/s 13. Unless there is a preferential right such as the one in Section 25H of the Industrial Disputes Act, 1947, the headload workers cannot, in our view, contend that they should be employed on a preferential basis. While the Act and the rules contain no such provisions, the question will be whether the scheme made u/s 13 in 1983 creates any such preference. Assuming that the scheme of 1983 confers such a preferential right to employment, it must be established that the scheme is extended to the particular area. The question is whether the scheme of 1983 has been extended to the area covered by the factory in the present case.

11. It is admitted before us that the Scheme of 1983 has not been extended to the area where the factory of the Writ Petitioner-Respondent is located. Clause 3 of the scheme referred to earlier shows that unless the particular area is covered by the schedule to the scheme, the scheme will not apply. u/s 13(1) Government may, by notification in the gazette, make one or more scheme or schemes for any employment or group of employments in one or more area or areas specified in the notification and by similar notification add to or amend or vary any such scheme or substitute Anr. scheme for any such scheme, and the scheme shall provide for the various matters stated in Section 13(2). Admittedly, there is no scheme covering the area where the factory in the present case is located. A similar question arose in W.A. No. 278 of 1992 decided by us on 20th March 1992. There also, police protection orders granted by the learned Single Judge were affirmed on the ground that the scheme u/s 13 did not extend to the area where the factory in that case was located. In such cases no right to preferential employment can be said to have been conferred on any headload worker.

12. Inasmuch as it is admitted before us that the scheme has not been extended to the area in question, we are of the view that the Appellants and their followers have no right to obstruct the loading and unloading inside the factory of the writ Petitioner. The learned Single Judge was therefore right in granting police protection to the writ Petitioner, and in giving directions to the police authorities to see that the Appellants and their followers do not obstruct any loading and unloading operations inside the factory of the writ Petitioner.

For the aforesaid reasons, the Writ Appeal is dismissed.