

(2007) 12 KL CK 0033
In the High Court Of Kerala
Case No : O.P. No. 5477 of 2007

Muthoot Pappachan Consultancy and Management Services	APPELLANT
Vs	
Labour Commissioner	RESPONDENT

Date of Decision : 06-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 345, 346
General Clauses Act, 1897 — Section 21, 29A
Industrial Employment (Standing Orders) Act, 1946 — Section 10, 11, 2, 3, 5
Kerala Industrial Employment (Standing Orders) Rules, 1958 — Rule 10A

Citation : (2008) 1 ILR (Ker) 47 : (2008) 2 LLJ 420

Hon'ble Judges : Siri Jagan, J

Bench : Single Bench

Advocate : Alex Varghese, for the Appellant; T.P. Remani, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Siri Jagan, J.—The petitioner is a firm engaged in the business of professional consultancy and man-power and management services. The petitioner submitted draft standing orders for certification u/s 3 of the Industrial Employment (Standing Orders) Act, 1946 before the jurisdictional Deputy Labour Commissioner, who has been notified as the certifying officer under the Act. The same was certified in accordance with the procedure prescribed u/s 5 of the Act after conducting necessary enquiry and adjudication. Such certification was on May 28, 1998. The Act itself provides for an appeal either by the management or by the workmen if they are aggrieved by any clause in the Standing Orders as certified. None of the parties involved filed appeal against the Standing Orders of the petitioner firm as certified and the same became final. One-and-a-half years after the certification, by Exhibit P-2 notice, purportedly issued u/s 6 of the Industrial Employment (Standing Orders), Act read with Rule 10A of the Kerala Industrial Employment (Standing Orders) Rules, 1958, the respondent directed the petitioner to show cause why the certification should not be rescinded suo

motu. Although the petitioner filed Exhibit P-3 objections to Exhibit P-2 notice and the authorised and elected representative of the employees of the petitioner's establishment filed Exhibit P-4 statement requesting the respondent to withdraw the show cause notice and to affirm the Standing Orders already certified, by Exhibit P-5 order dated January 15, 2000 purportedly issued u/s 2(c) of the Industrial Employment Standing Orders Act, 1946, the respondent cancelled the certified Standing Orders dated May 28, 1998. The petitioner is Challenging Exhibit P-5 order of the respondent, in this Original Petition.

2. The contentions raised by the petitioner are as follows:- (1) The respondent being a certifying officer himself u/s 2(c) of the Act, has no jurisdiction to cancel his own earlier order. (2) Exhibit P-2 notice was issued by the respondent invoking his appellate jurisdiction u/s 6 of the Act and Rule 10A of the Standing Orders Rules, for which the respondent has no suo motu powers conferred; by the Act. (3) The Standing Orders once certified can only be affirmed, modified or amended in appeal, and cannot be cancelled either by the certifying authority or the appellate authority, especially since none of the parties involved had no objection against the certified Standing Orders. (4) Going by Exhibit P-2 notice and Exhibit P-5 order, it is very clear that the respondent has invoked purported jurisdiction under the Act at the instance of a third party, viz, the Regional Provident Fund Commissioner, who has nothing to do with the certification of the Standing Orders of an establishment, for which also there is no provision anywhere in the Act. (5) Exhibit P-5 order was not preceded by any adjudication. (6) The reasons mentioned for cancelling are also unsustainable in law.

3. In answer to the above contentions, the learned Government Pleader would submit that Exhibit P-5 order was not passed by the respondent in exercise of the appellate powers, but only invoking his powers as the Certifying Officer which he also is as per Section 2(c) of the Act. According to the learned Government Pleader, by virtue of Section 21 of the General Clauses Act, as the person who has the power to certify the Standing Orders, the Certifying Officer has power to cancel the same also. The learned Government Pleader would submit that the reasons mentioned in Exhibit P-5 are perfectly sustainable for cancellation of the certification of the Standing Orders.

4. I have considered the rival contentions in detail.

5. Regarding the question as to whether the respondent has powers to cancel the certification already granted, invoking Section 21 of the General Clauses Act, the petitioner relies on a decision of the Supreme Court in *Indian National Congress (I) Vs. Institute of Social Welfare and Others*, to canvass for the position that Section 21 does not apply in respect of the action of a statutory authority who is required to act quasi-judicially. Relevant paragraph of the said judgment reads thus:

39. On a perusal of Section 21 of the General Clauses Act, we find that the

expression "order" employed in Section 21 shows that such an order must be in the nature of notification, rules and bye-laws etc. The order which can be modified or rescinded on the application of Section 21 has to be either executive or legislative in nature. But the order which the Commission is required to pass u/s 29-A is neither a legislative nor an executive order but is a quasi-judicial order. We have already examined this aspect of the matter in the foregoing paragraph and held that the function exercisable and order passed thereunder is a quasi-judicial order. In that view of the matter, the provisions of Section 21 of the General Clauses Act cannot be invoked to confer powers of deregistration/cancellation of registration after enquiry by the Election Commission. We, therefore, hold that Section 21 of the General Clauses Act has no application where a statutory authority is required to act quasi-judicially.

6. A reading of the Industrial Employment Standing Orders, Act and Rules would certainly go to show that the certification of the Standing Orders by the certifying authority under the Act is a quasi-judicial act involving an adjudication. Sections 3, 4 and 5 of the Act make elaborate provisions for certifying Standing Orders; which read thus:

3. Submission of draft standing orders:

(1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment.

(2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.

(3) The draft standing orders submitted under this Section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any to which they belong.

(4) Subject to such conditions as may be prescribed, a group of employers, in similar industrial establishment may submit a joint draft of standing orders under this Section.

4. Conditions for certification of standing orders.

Standing orders shall be certifiable under this Act if:

(a) Provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and

(b) The standing orders, are otherwise in conformity with the provisions of this Act, and it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing

orders.

5. Certification of standing orders:

(1) On receipt of the draft u/s 3, the Certifying Officer shall forward a copy thereof to the trade union, if any of the workmen, or where there is no such trade union, to the workmen, in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representative of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act; and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after, making any modifications therein which his order under Sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under Sub-section (2) to the employer and to the trade union or other prescribed representatives of the "workmen

The order of the certifying authority is subject to appeal u/s 6 which provides thus;

6. Appeals.

(1) Any employer, workmen, trade union or other prescribed, representatives of the workmen aggrieved by the order of the Certifying Officer under Sub-section (2) of Section 5 may, within thirty days from the date on which copies are sent under Sub-section (3) of that Section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

(2) The appellate authority shall, within seven days of its order under Sub-section (1) send copies thereof to the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.

Further, Section 10 provides for modification of the Standing Orders in the following words:

10. Duration and modification of standing orders.

(1) Standing orders finally certified under this Act shall not except on agreement between the employer and the workmen or a trade, union or other representative body of the workmen be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.

(2) Subject to the provisions of Sub-section (1), an employer or workmen or a trade union or other representative body of the workmen may apply to the Certifying Officer to have the standing orders modified and such applications shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made, by agreement between the employer and the workmen or a trade union or other representative body of the workmen, certified copy of that agreement shall be filed along with the application.

Under Section 11, the certifying and appellate authorities have powers of a Civil Court in respect of certain matters. Section 11 reads thus:

11. Certifying Officers and appellate authorities to have powers of Civil Court.

(1) Every Certifying Officer and appellate authority shall have all the powers of a Civil Court for the purposes of receiving evidence administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of Sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Clerical or arithmetical mistakes in any order passed by a Certifying Officer or appellate authority, or errors arising therein from any accidental slip or omission may, at any time, be corrected by that Officer or authority or the successor in office of such officer or authority, as the case may be.

Section 13 provides for penalties for violation of the provisions of the Act thus:

13. Penalties and procedure.

(1) An employer who fails to submit draft standing orders as required by Section 3, or who modifies his standing orders otherwise than in accordance with Section 10, shall be punishable with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

(2) An employer who does any act in contravention of the standing orders finally certified under this Act for his industrial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues."

(3) No prosecution for an offence punishable under this Section shall be instituted except with the previous sanction of appropriate Government.

(4) No Court inferior to that of a Metropolitan or Judicial Magistrate of the second Class shall try any offence under this Section.

Therefore the function exercisable by the certifying officer u/s 5 is a quasi judicial function. Hence, the petitioner is correct in contending that Section 21 of the General Clauses Act cannot be invoked to cancel the certification granted by the Certifying Officer under the Act after an adjudicatory process in view of the Supreme Court decision supra.

7. The Standing Orders in question were certified by the Deput/Labour Commissioner and Secretary, State Advisory Contract Labour Board, Trivandrum. The respondent is the Labour Commissioner, Thiruvananthapuram, a superior officer. Of course, u/s 2(c) of the Act, the Labour Commissioner is also a certifying officer, but nothing is mentioned in Exhibit P-2 notice or Exhibit P-5 as to why the Labour Commissioner himself took upon himself the task of issuing Exhibit P-2 notice and passing Exhibit P-5 order. The Act does not contemplate any powers on the Labour Commissioner to suo motu review or cancel the certification made by the jurisdictional certifying officer.

8. Further the respondent himself was not sure-about his powers to cancel certification which is clear from the fact that in Exhibit P-2 he invoked appellate powers under the Act and after receiving the explanations from the management of the workmen, he changed over to his purported powers as a Certifying Officer himself, as defined in Section 2(c).

9. The Act and Rules do not contemplate any powers even on the jurisdictional certifying officer to cancel the certification already made. Of course, it contains provisions whereby the Standing Orders can be modified or amended; but certainly not cancelled. As such, I am satisfied that the respondent has acted without jurisdiction in issuing Exhibits P-2 and P-5.

10. I shall also consider the sustainability of the reasons mentioned in Exhibits P-2 and P-5 for cancellation of the Standing Orders. The first reason mentioned is that out of the 57 employees of the establishment only 23 are permanent and the remaining persons are probationers, contracted experts, apprentices/trainees who are expressly excluded from the ambit of the term "employee" and that the act applies only to those establishments where the number of Workmen employed is 50 or more in any day of the preceding 12 months. The respondent does not state in Exhibit P-5 as to from where he obtained this information. Admittedly, there were 57 employees, 23 of whom, even according to the respondent, were permanent. He speaks of probationers, contracted experts, apprentices/trainees who, according to him, are expressly excluded from the ambit of the term, "employee", this is clearly against the provisions of the Act. The Act does not contain the term "employee" therein. What is defined in the Act is the term "workman". u/s 2(c) of the Act, the term "workman" has the meaning assigned to it in clauses of Section 2 of the Industrial Disputes Act. Section 2(s) of the Industrial Disputes Act, defines "workman" as follows:

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context

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XXX XXX XXX

(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal/discharge or retrenchment has led to that dispute but does not include any such person:

xxxxx xxxxx xxxxx

The definition of workman, includes apprentice. Simply because some of the employees are shown as probationers, they do not become any the less the workmen. It is not known as to what the respondent meant by contracted experts and how they go out of the definition of "workman". Therefore all the three categories are also liable to be included in computing the total number, of workmen for the purpose is of the Act. Even otherwise, even though the Act would be compulsorily applicable only to establishments employing 50 or more workmen, there is nothing in the Act which would prohibit an establishment from getting its Standing Orders certified under the Act, if both the employer and workmen desire it. It has to be so since the object of the Act is to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. It is always desirable for every industrial establishment to have Standing Orders approved by a statutory authority after obtaining the views of the workmen also, so that the management and workmen would be aware of their rights and duties with precision and they can arrange their conduct and affairs accordingly, which would in turn promote industrial harmony. As such, the first reason mentioned in Exhibit P-5 is totally unsustainable.

11. The second reason is that "considering the fairness and reasonableness of the standing order submitted for certification, it may be noted that certain provisions contained therein are illegal, unfair and unreasonable." This reason is as vague as vague can be and is to be rejected on that ground itself.

12. The last reason mentioned is as follows:

(3) The first paragraph of the standing order says that, "this standing order shall regulate the service conditions and shall be applicable to the employees of Muthoot Pappachan Consultancy and Management Services; Muthoot Buildings, its branches and other offices as existing at present or as may be established in

future, Hence it is clear that while granting certification of the above standing order; the certifying officer has acted without jurisdiction.

This is explained by the learned Government Pleader to mean that the certifying officer had no State-wise jurisdiction and since the quoted provisions in the Standing Orders refer to branches and other offices that has to mean branches and offices elsewhere. I am unable to countenance this contention. Admittedly, the establishment is at Thiruvananthapuram. The jurisdictional certifying officer has certified the Standing Orders. That being so, the mention of "branches and other offices existing at present or may be established in future" does not in any way affect the jurisdiction of the certifying officer to certify the standing orders of an establishment which is within his jurisdiction, In any event, the relevant clause does not mention about any branch or office outside the jurisdiction also. Even assuming that branches outside the jurisdiction of the certifying officer are mentioned in the Standing Orders, the Jurisdiction of the Certifying Officer would not be ousted in so far as he is certifying the Standing Orders of an establishment within his jurisdiction. As such, none of the reasons mentioned in Exhibits P-2 and P-5 are also , clearly unsustainable. Even assuming that these reasons are sustainable that would certainly not necessitate cancellation of certification since these can be remedied by suitably modifying the Standing Orders.

13. In the above circumstance, Exhibit P-5 is clearly without jurisdiction and against the provisions of the Act and Rules. Accordingly, Exhibit P-5 is quashed and it is declared that Exhibit P-1 as originally certified by the Certifying Officer would stand.

Original Petition is allowed as above.