
(2005) 06 KL CK 0028

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16439 of 2005

Obrin

APPELLANT

Vs

Sub Inspector of Police

RESPONDENT

Date of Decision : 23-06-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Headload Workers Act, 1978 — Section 13
Kerala Headload Workers Rules, 1981 — Rule 26A, 26A(3)
Kerala Loading and Unloading (Regulation of Wages and Restriction of Unlawful Practices) Act, 2002 — Section 5

Citation : (2005) 3 ILR (Ker) 305 : (2005) 3 KLT 861

Hon'ble Judges : V. Ramkumar, J;K. Padmanabhan Nair, J

Bench : Division Bench

Advocate : Rajit and Ranjit Babu, for the Appellant; Noorji Noushad, Government Pleader, K.J. Jose Kuttiyany and V.C. James, for the Respondent

Final Decision : Allowed

Judgement

V. Ramkumar, J.—The short question in this Writ Petition for police protection is as to whether the 2nd respondent Trade Union is entitled to obstruct the loading and unloading work in the small scale industrial unit of the petitioner by name "Dash Machines".

2. The above unit which is stated to have been started seven years ago is involved in the manufacture of moulded items such as caps, inner lids, electronic choke cover, CFL holder cover etc. According to the petitioner, the nature of work in the said unit involves the burning of plastic granules and moulding the same into various shapes as per the requirements and packing and bundling the finished products for sale. The employees for doing the aforesaid operations are claimed to be the petitioner and four permanent workers.

3. Opposing the Writ Petition, Advocate Sri. Jose Kuttiyany, the learned counsel appearing for the 2nd respondent Union made the following submissions before

US:

The Industrial Estate at Ollur was started in the year 1957 and from the very inception of the said Industrial Estate, the 2nd respondent Union affiliated to the I.N.T.U.C. is the only trade union working in that Estate. All these years, it was the workers of the 2nd respondent Union who were carrying on the loading and unloading work in all the units including the petitioner's unit on the basis of agreements entered into and Ext.R-2A which was the last of the agreements was in force till 30.9.2003. Thereafter, the petitioner has been unsuccessfully approaching this Court claiming that the petitioner is not bound to engage the workers of the 2nd respondent Union and that the petitioner has got the right to do the loading and unloading work through his own permanent workers. The petitioner has not challenged Ext.P-3 order of the 3rd respondent rejecting the applications filed by the workers of the petitioner for registration under the Kerala Head Load Workers Act, 1978. Paragraph 25 of the Full Bench decision reported in Raghavan v. Superintendent of Police 1998 (2) KLT 732 will show that any dispute regarding any matter connected with the provisions of the aforesaid Act or the Rules or Scheme framed thereunder is to be resolved in accordance with the machinery provided under the said Act and that even while considering the question whether the relief of police protection is to be granted or not the Court will take into consideration the relevant facts including the question of any irreparable injury and therefore the petitioner does not deserve any of the reliefs prayed for in this Writ Petition.

4. We are afraid that we cannot agree with the above submissions. The admitted facts leading to the filing of this Writ Petition are the following:

The petitioner's industrial unit is Situated in the Major Industrial Estate, Ollur, Thrissur. The said Industrial Estate is situated in the erstwhile Ollur Panchayath area which subsequently got included in the Thrissur Municipal area and presently in the area falling under the Corporation of Thrissur. The Kerala Head Load Workers (Regulation of Employment and Welfare) Scheme, 1983 (hereinafter referred to as "the Scheme") made u/s 13 of the Kerala Head Load Workers Act, 1978 ("The 1978 Act" for short) has been extended to the aforesaid area. The State Government has not so far notified the said area to be an "Industrial Area" u/s 5 of the Kerala Loading and Unloading (Regulation of Wages and Restriction of Unlawful Practices) Act, 2002 ("the 2002 Act" for short) so as to give absolute discretion to the employer to engage workers of his own choice notwithstanding anything contained in the 1978 Act. The issue concerning the question whether the area is covered by the Scheme framed under the 1978 Act and whether Section 5 of the 2002 Act can be pressed into service by the employer without a notification covering the said area, were all settled by this Court in Ext.R-2(C) judgment dated 1.12.2003 of a Division Bench in W.P.(C) No. 30237/03. Loading and unloading operations in the petitioner's unit were being carried out by the workers of the 2nd respondent Union having registration under Rule 26A of the Rules framed under the 1978 Act and agreements used to be

executed between the employer of the 2nd respondent Union and the last of the agreements namely Ext. R-2A expired on 30.9.2003. After 30.9.2003 there is no agreement between the petitioner and the 2nd respondent Union. The petitioner and others had approached this Court for police protection by filing W.P.No. 23829/04 and connected cases contending inter alia that since the loading and unloading work carried on in the units of the petitioners and others employing their own permanent workers was only incidental to the manufacturing process, that the petitioners' workers are not head load workers covered by 1978 Act and therefore, the workers of the 2nd respondent Union had no right to object to the loading and unloading operations carried on by the workers of the petitioner and other employers. The 2nd respondent Union resisted the said Writ Petitions contending inter alia that such disputed questions of fact should not be resolved by this Court in Writ Petitions filed under Article 226 of the Constitution of India. Accepting the said objection, a Division Bench of this Court as per Ext.P-1 judgment dated 24.9.2004 dismissed the Writ Petition leaving the said issue to be decided by the appropriate forum. Thereafter, the workers of the petitioner and other employers in that Industrial Estate applied for registration under the 1978 Act before the 3rd respondent, Assistant Labour Officer. The 3rd respondent gave notice of the said applications to the 2nd respondent Union which opposed the request for registration. As per Ext.P-3 order dated 27.12.2004, the 3rd respondent rejected the applications holding that on the showing of applicants themselves their principal employment was not loading and unloading work and that loading and unloading work was only incidental to their main work.

5. Both sides have not disputed before us the above finding entered by the 3rd respondent. It is true that the petitioner has not challenged Ext.P-3 order of the 3rd respondent rejecting the application for registration preferred by the workers of the petitioner. But the stand of the 2nd respondent Union as upheld in Ext.P-3 order is that loading and unloading work in the Unit of the petitioner is only incidental to the main work of manufacture and therefore the permanent workers of the petitioner are only doing loading and unloading work occasionally. If so, it is paragraph 21 of the Full Bench decision reported in 1998 (2) KLT 732 (supra) that applies. The said paragraph reads as follows:

"21. Yet another point raised before us was the case of workers employed in the establishments, who are doing the work of loading and unloading along with other duties. Learned counsel for the petitioners would contend that in such circumstances, the workers cannot be treated as head load workers coming under the definition of that term under the Act. We do not think that this is an issue where an answer in general can be given. It will depend on the facts of each case. If the worker is doing loading and unloading work regularly in the establishment, he cannot be taken out of the purview of the Act only for the reason that he is discharging some other duties also. On the other hand, if he is principally employed to carry on the work other than loading and unloading and if occasionally he does the work of loading and unloading, it may not be possible

to treat him as ahead load worker coming within the definition. But, as mentioned earlier, it will depend on the facts of each case."

(Emphasis supplied)

The correctness of the above observation of the Full Bench was not canvassed before us by either side. Thus, in a case as the present, where loading and unloading work is only incidental to the main work of the industrial unit, the worker attached to the employer doing such loading and unloading work is not a head load worker and, therefore, the 1978 Act or the Rules or the Scheme do not apply to such worker. If so, the employer is not bound to engage a head load worker, much less, a registered head load worker of the 2nd respondent Union, for doing the loading and unloading work in the establishment where loading and unloading work is incidental to the main work. In other words, the 2nd respondent cannot put forward any right to engage its workers for the loading and unloading operations in the petitioner's unit.

6. Incidentally, we wish to mention another aspect of the matter, that has come to our notice. The workers of the 2nd respondent union claim to have registration under Rule 26A(3) of the Rules framed under the 1978 Act. If so, they are holders of identity cards issued by the Assistant Labour Officer in Form XI of the said Rules. A conjoint reading of Clauses 6, 6A and 6B of the Scheme will show that except in the case of permanent head load workers employed by an employer or contractor, all other head load workers employed in an area to which the Scheme is extended should not only be head load workers registered under Rule 26A(3) of the Rules and holding identity cards issued by the Assistant Labour Officer in Form XI of the Rules, but they should also obtain a further registration under the provisions of the Scheme and should be holding identity cards in Form C issued by the Convener of the Committee. Where the Committee resolves to register additional workers in a Scheme area, either as a result of occurrence of vacancies of head load workers or as a result of expansion of the Scheme, Clause 6B of the Scheme insists that head load workers having registration under the Rules for a period of at least 2 years alone shall be eligible to apply for registration under the Scheme. This means that in a Scheme covered area a head load worker doing loading and unloading work should not only be a duly registered head load worker holding identity card in Form XI of the Rules, but should also possess an identity card in Form C of the Scheme, unless he is a permanent head load worker employed by the employer.

7. The result of the foregoing discussion is that as long as the work of loading and unloading in the industrial unit of the petitioner is ancillary or incidental to the main work, the permanent workers (who are not head load workers) employed by the petitioner can do such loading and unloading operations. By doing loading and unloading work as incidental to their main work, such workers will not become head load workers and resultantly the 2nd respondent union cannot compel the petitioner to employ the head load workers of the 2nd respondent union for such loading and unloading operations in the unit of the

petitioner. If so, the petitioner will be entitled to adequate and effective protection from the 1st respondent in the event of any obstruction by the 2nd respondent union or its workers. There will be a direction to the 1st respondent to that effect.

This Writ Petition is accordingly allowed on the above terms.