

(2003) 01 KL CK 0097
In the High Court Of Kerala
Case No : O.P. No. 1902 of 2003

Pareeth

APPELLANT

Vs

Sub Inspector of Police

RESPONDENT

Date of Decision : 27-01-2003

Acts Referred:

Headload Workers Rules, 1981 — Rule 26A

Citation : (2003) 2 KLT 128 : (2003) 3 LLJ 837

Hon'ble Judges : Cyriac Joseph, J;A.K. Basheer, J

Bench : Division Bench

Advocate : T.P.M. Ibrahim Khan, for the Appellant; P.V. Lonachan and K. Gopalakrishna Kurup, Government Pleader, for the Respondent

Judgement

Cyriac Joseph, J.—The petitioner in this Original Petition is one M.S. Pareeth, Proprietor of M/s. Madathil Traders, Nadakal P.O., Erattupetta, Kottayam District. The respondents are - Sub Inspector of Police, Erattupetta Police Station; Circle Inspector of Police, Erattupetta; The Deputy Superintendent of Police, Pala; Ramli, K.T.U.C.(J), KTUC(J) Office, Muttom Junction, Erattupetta; C.H. Basheer, I.N.T.U.C., INTUC Office, Aruvithura, Erattupetta; Sekharan, A.I.T.U.C., AITUC Office, Vadakkekkara Unit, Erattupetta; Pari, S.T.U., STU Office, League House, Market P.O., Erattupetta and Joy George, C.I.T.U., CITU Office, Thekkekkara, Erattupetta. The main prayer is for a direction to respondents 1 to 3 to afford adequate police protection to the petitioner to carry on his business within his premises through his permanent workers. The petitioner also prays for a declaration that the petitioner is entitled to carry on his trade and business within his premises by employing his own permanent workers and employees of his choice.

2. According to the petitioner, he is a dealer in Asbestos Sheet, Cement and Ors. building materials for the last so many years. The office and godown were situated in Thalappalam Village adjacent to the Erattupetta Grama Panchayat. The office and godown were in rented premises. For the purpose of shifting his

business from the rented premises, the petitioner purchased a suitable premises within the territorial jurisdiction of Erattupetta Grama Panchayat. At present he is doing business in the newly purchased premises. It is contended that the petitioner has got his own permanent workers for doing the loading and unloading work in connection with his business. Three workers who have been specially engaged for doing the loading and unloading works have got registration under the provisions of the Kerala Headload Workers Act, 1978 (hereinafter referred to as "the Act"). They are M/s. Sanilkumar. P.T., Kannan. A., and Dominic Kurian. They are working as attached workers of the petitioner's shop. Photo copies of the identity cards issued to the said three workers by the registering authority (Assistant Labour Officer) under the provisions of the Act have been produced as Ext.P1 series. It is seen that the identity cards were issued in Form XI under Rule 26A(3) of the Kerala Headload Workers Rules, 1981 (hereinafter referred to as "the Rules"). In Column No. 6 of the identity card, name and address of the employer are shown as M.S. Pareeth, Madathil, Nadackal P.O., Erattupetta. In Column No. 7 of the identity card, the area where the worker normally works is shown as Madathil Traders Godown, Near College Stop. Learned counsel for the petitioner submits that from the Registration Numbers in the identity cards, it could be seen that the identity cards were issued in June, 2002. It is also stated in the Original Petition that even after the shifting of the petitioner's shop to his own premises, all the above three workers continued to do the work in the new place of business. The petitioner's workers were doing the loading and unloading work within the premises which are enclosed by the compound wall and a well built gate. On 15.1.2003 at about 11 A.M. some persons claiming to be the members of respondents 4 to 8 Trade Unions forcibly entered the premises of the petitioner and prevented the petitioner's workers from doing the loading and unloading works. The members of respondents 4 to 8 Trade Unions threatened the petitioner and his workers with dire consequences if they continued the works. They attempted to manhandle the petitioner, his brothers and his permanent workers. Having left with no other alternative, the petitioner's workers ran away from the premises. One of the mini lorries with half load of materials in the vehicle is stranded in the premises of the petitioner. Respondents 4 to 8 and their members are not permitting the petitioner and his permanent workers either to unload the remaining materials or to take the lorry out of the compound. The members of respondents 4 to 8 unions are preventing the petitioner and his workers from entering into the premises. Though the petitioner approached respondents 1 to 3 by filing a petition requesting to take appropriate action against those who committed the atrocities within the premises of the petitioner's shop, the said respondents did not take any action to redress of the grievance of the petitioner. A copy of the petition dated 15.1.2003 submitted by the petitioner to the first respondent with copies to respondents 2 and 3 has been produced as Ext.P2.

3. A counter affidavit has been filed on behalf of respondents 6 to 8. There is no representation for respondents 4 and 5. The Government Pleader appears for

respondents 1 to 3.

4. In the counter affidavit filed by respondents 6 to 8, it is alleged that the petitioner is conducting business under the name and style of "Madathil Hardwares". To the knowledge of respondents 6 to 8, the said business is conducted by the petitioner along with his brother Shri, M.S. Abdul Khader. The statement in the O.P. that the petitioner is the proprietor of the business M/s. Madathil Traders is denied in the counter affidavit. Respondents have also denied the claim that the office and godown of the petitioner's business was situated in Thalappalam Village adjacent to Erattupetta Grama Panchayat. According to the respondents, the Scheme framed under the Kerala Headload Workers Act has not been made applicable to Thalappalam Grama Panchayat. The business "Madathil Hardwares" was being conducted for the last so many years within the area of Erattupetta Grama Panchayat, which is an area to which the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 (hereinafter referred to as "the Scheme") has been made applicable. The respondents have also denied the claim of the petitioner that the business was shifted from Thalappalam Grama Panchayat to Erattupetta Grama Panchayat. According to the, respondents, the petitioner and his brother have only opened a new godown as part of their business "Madathil Hardwares". The respondents have further denied the averment of the petitioner that the workers named in Ext.P1 series are the permanent workers attached to his shop. According to the respondents, Ext.P1 series are only identity cards issued to persons who are registered under Rule 26 of the Act. It is contended that they are persons registered to work within the area of Thalappalam Grama Panchayat. It is pointed out that "near College Stop" shown in Ext.P1 series is an area coming within Thalappalam Grama Panchayat. It is further contended that the said three workers are not persons registered under the Scheme and they are not eligible to work in Erattupetta Grama Panchayat without having a registration under the Scheme. It is also contended that when the new godown of Madathil Traders was opened, the petitioner and his brothers denied employment to the registered workers. On a complaint made by respondents 6 to 8, the Kerala Headload Workers Welfare Board has initiated action against Sri. M.S. Abdul Khader, the brother of the petitioner. A true copy of the notice dated 20.1.2003 issued by the Kerala Headload Workers Welfare Board, Erattupetta Sub Office to the said Abdul Khader has been produced as Ext.R6(e). According to the respondents, the real dispute is regarding denial of employment to workers registered under the Scheme.

5. In reply to the counter affidavit filed by respondents 6 to 8, the petitioner has filed a reply to clarify the factual position.

6. Having heard Mr. T.P.M. Ibrahim Khan learned counsel for the petitioner," learned Government Pleader appearing for respondents 1 to 3 and Mr.Gopalakrishna Kurup appearing for respondents 6 to 8, we find that the petitioner is claiming protection for the loading and unloading work in connection

with the business of "M/s. Madathil Traders" and not "Madathil Hardwares". From the materials placed on record, the existence of M/s. Madathil Traders cannot be disputed. Whether M/s. Madathil Traders and Madathil Hardwares are one and the same establishment or whether the shop of the petitioner is a new godown of Madathil Hardwares cannot be decided in this petition under Article 226 of the Constitution of India as it involves disputed questions of fact. It is also not necessary to resolve that dispute in this petition since the petitioner has sought protection for loading and unloading work only in the premises of M/s. Madathil Traders, the location of which has been clearly and specifically stated in the Original Petition.

7. It is also not disputed that the three workers mentioned in the Original Petition, viz. Sanilkumar, P.T., Kannan, A. and Dominic Kurian have obtained identity cards issued under Rule 26A(3) of the Rules. The relevant provision in Rule 26A of the Rules is extracted hereunder:

"26A. Registration of Headload Workers :-

(1) Any headload worker may submit his application for registration in Form IX to the Registering Authority concerned, with as many additional copies as there are employers or contractors from whom he claims to work:

(2) On receipt of such application the Registering Authority shall issue notice in Form X to the employers or contractors from whom the headload worker claims work, with copy of the application inviting objections, if any, on such application.

(3) After considering the objections, if any, received and after giving an opportunity of being heard, the Registering Authority shall register the name of the headload worker in the Register of Headload Workers, on being satisfied that the headload worker is eligible for registration and communicate the fact to the parties within two weeks of such registration. The Registering Authority shall also issue identity card to the registered headload worker in Form XI. If the name is not registered, the Registering Authority shall communicate the fact to the applicant with reasons therefor."

The identity cards issued to the above mentioned three workers are seen issued in Form XI as mentioned in Rule 26A (3). The registration under Rule 26A (3) of the Rules is with reference to a particular employer or employers. Column No. 6 in Form XI is for entering the name of the employer if the worker is employed by a particular employer. In the identity cards issued to the three workers the name of the employer is shown as "M.S. Pareeth, Madathil, Nadackal P.O., Erattupetta". Hence, it cannot be denied that the above mentioned three workers are the permanent attached workers of the petitioner and that they have got registration under Rule 26A of the Rules.

8. Mr. Gopalakrishna Kurup, learned counsel for respondents 6 to 8, submits that Ext.P1 identity cards will entitle the workers to do loading and unloading work only in the area mentioned in the identity card. Learned counsel invited our

attention to Column No. 7 in the identity card regarding the area where the worker normally works. As per the entries in Column No. 7 of the identity cards issued to the said three workers, the area where the worker normally works is "Madathil Traders Godown, near College Stop". It is not disputed that the location described as "near College Stop" is within Thalappalam Grama Panchayat. But, Mr. T.P.M. Ibrahim Khan, learned counsel for the petitioner, submits that the identity cards were issued when the petitioner was running his business in the rented premises near the College Stop, and hence, in Column No. 7 of the identity cards the area where the worker normally works was shown as "near College Stop". Mr. Ibrahim Khan contends that consequent to the shifting of the business to the petitioner's own premises in Erattupetta Grama Panchayat area, he is entitled to engage the said three workers for loading and unloading work and those three workers are entitled to do the work. But, according to Mr. Gopalakrishna Kurup, the said three workers cannot work within the Erattupetta Grama Panchayat unless they get fresh registration under Rule 26A and the Scheme. However, we do not find any need for such fresh registration to enable the said three workers to do the loading and unloading work in the petitioner's new premises even if it falls under the Erattupetta Grama Panchayat. Section 25 of the Act provides for registration of headload workers. As per Sub-section (1) of Section 25 of the Act, every headload worker shall register his name with such authority or officer under the scheme on the commencement of functional operation of the scheme, provided that the headload workers whose names had already been registered in the prescribed manner or as provided in the scheme with such authority or officer will be deemed to have registered their names under these provisions. As per Sub-section (2) of Section 25 of the Act, a headload worker other than a headload worker employed on a regular basis in an establishment and who is registered as headload worker under the rules, shall be allowed or required to work in or for an establishment in an area where a scheme which stipulate payments of wages to headload worker by or through a committee, only if he has registered and obtained an identity card also under the provision of the scheme. Hence, the provisions of Sub-section (2) of Section 25 do not apply to headload workers employed on a regular basis in an establishment and who are registered as headload workers under the Rules. The three workers mentioned in the Original Petition are headload workers employed on a regular basis by the petitioner in his establishment and they are registered as headload workers under Rule 26A of the Rules. Therefore, the provision in Sub-section (2) of Section 25 of the Act requiring registration and obtaining of identity cards under the Scheme cannot be attracted in their case. In this context, it is useful to refer to Section 26(1) of the Act which reads thus:

"26. Employment of persons in new establishment: (1) Notwithstanding anything contained in this Act, when a new establishment or firm has started otherwise than by the change of ownership or name or by shifting of an establishment or firm from one place to another, the employer may employ on a regular basis any person of his choice for carrying out the loading and unloading work in his

establishment or firm.

Provided that any headload worker employed or engaged for loading or unloading work in or for an establishment or firm shall not be denied his employment in that establishment or firm".

It is clear from the above provision that a headload worker employed or engaged for loading and unloading work in or for an establishment or firm shall not be denied his employment in that establishment or firm when the establishment or firm is shifted from one place to another. Hence, the petitioner cannot deny employment to the three workers mentioned in Ext.P 1 identity cards on the ground of shifting his business from Thalappalam Panchayat area to Erattupetta Grama Panchayat area. Any such denial of employment will be against the spirit of the provisions contained in the Act and the Rules. Therefore, we are of the view that the three workers mentioned in the Original Petition cannot be denied employment by the petitioner on account of the shifting of the business from an area within one Grama Panchayat to an area within another Grama Panchayat. The object of the Act is to regulate the employment of Headload Workers in the State of Kerala and to make provision for their welfare, for the settlement of disputes in respect of their employment or non-employment and for matters connected therewith. An attached headload worker who holds an identity card under Rule 26A of the Rules cannot be denied employment by the employer on account of the shifting of the business from one place to another.

9. Mr. Gopalakrishna Kurup contends that the three workers mentioned in the Original Petition require fresh registration under the Scheme for employment in Erattupetta Grama Panchayat. However, the learned counsel is not able to point out any provision in the Scheme which requires fresh registration under the Scheme for permanent attached workers holding identity cards issued under Rule 26A(3) of the Rules. Since the petitioner has admitted that the three workers mentioned in the Original Petition are his permanent attached workers, in our view, they do not require any fresh registration under the Scheme. In this context, it is also pertinent to note the difference between the identity card issued in Form C under the Scheme and the identity card issued in Form XI under Rule 26A of the Rules. In the former, there is no column for the name and address of the employer, whereas, in the latter. Column No. 6 is for entering the name and address of the employer. It is clear that the identity card issued in Form C under Para 6A(3) of the Scheme is not for a permanent attached worker of a particular employer. In fact, Para 6A of the Scheme provides that at the commencement of a Scheme in any area, a headload worker who is not permanently employed by an employer or a contractor and who is registered under the provisions of the Kerala Headload Workers Rules may submit his application in Form A to the Convener of the Committee concerned for registration in the Committee under the Scheme along with two passport size photographs. It means that registration under Para 6A of the Scheme is not necessary in the case of a headload worker who is permanently employed by an

employer or a contractor. Since the three workers mentioned in the Original Petition are stated to be the permanent workers of the petitioner and since they have already obtained registration under Rule 26A of the Rules, they do not require any further registration under Para 6A of the Scheme.

10. Learned Senior Government Pleader brought to our notice Section 21 of the Act which provides for settlement of disputes. Section 21 of the Act reads thus:

"21. Settlement of disputes:-

(1) Where a dispute which is 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.

(2) On receipt of a report under Sub-section (1), 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.

(3) 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.

(4) 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, 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. Learned Senior Government Pleader is right in pointing out that if respondents 6 to 8 have any dispute regarding the employment of three workers mentioned in the Original Petition or the non-employment of workers registered under the Scheme for the Erattupetta Grama Panchayat area, they can resort to the remedy available u/s 21 of the Act. The judgment in this Original Petition will not stand in the way of respondents 6 to 8 resorting to the remedy available u/s 21 of the Act.

11. In the light of the above discussion, we have no doubt in our mind that whatever be the disputes, regarding the relationship between Madathil Traders and Madathil Hardwares, the petitioner who is the proprietor of M/s. Madathil Traders is entitled to have the loading and unloading work in his business premises carried out by his permanent attached workers in whose favour Ext.P1 identity cards have been issued under Rule 26A of the Rules. The petitioner is entitled to have the loading and unloading work done without any obstruction by respondents 4 to 8 and their supporters. If any such obstruction is caused and if

any complaint is received in that regard, respondents 1 to 3 are bound to remove such obstruction and to take necessary and effective action to enable the petitioner to have the loading and unloading work done by his permanent attached workers who have got identity cards issued under Rule 26A of the Rules.

12. Hence, the Original Petition is disposed of with a direction to respondents 1 to 3 to take prompt and effective action to enable the petitioner to get the loading and unloading work in his business premises done by the three workers mentioned in the Original Petition, viz. M/s. Sanilkumar. P.T., Kannan. A., and Dominic Kurian, in whose favour identity cards have been issued under Rule 26A of the Rules. If there is any obstruction by respondents 4 to 8 or their supporters, respondents 1 to 3 shall take prompt and effective action to remove such obstruction and to give necessary protection to the petitioner for the smooth functioning of the petitioner's establishment.