

(2011) 09 KL CK 0022

In the High Court Of Kerala

Case No : Writ Petition (C) No. 14496 of 2011

Popular Motor Corporation

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Headload Workers Act, 1978 — Section 2

Citation : (2011) 4 ILR (Ker) 74 : (2011) 4 KLJ 51

Hon'ble Judges : Pius C. Kuriakose, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : P. Santhalingam, for the Appellant; T.K. Vipindas (Government Pleader) for respondents 1 and 2, Sri T.K. Ajith Kumar for respondents 3 and 4 and Sri Koshy George (S.C., KHLWWB) for 5th respondent, for the Respondent

Judgement

Abdul Rehim, J.—The petitioner herein is a dealer of Two Wheeler and Three Wheeler vehicles manufactured by M/s Bajaj Automobiles. There are 5 permanent workers engaged by the petitioner in their stocking yard, assigned with the work of driving down two wheeler and three wheeler vehicles from big Trailer Trucks, in which such vehicles are brought. According to the petitioner, a ramp is provided, which will be attached to the Trailer Trucks, and the two wheelers and three wheelers will be driven down from the Trucks through the "sliders" provided on the ramp. It is stated that all the 5 employees of the petitioners are hobbling valid driving licences and they have got requisite experience and expertise to drive/ride the vehicles from the Trucks to the ground. It is further stated that no manual or physical unloading work is involved in getting down the vehicles from the Trailer Trucks. It is also contended that the 5 permanent workers of the petitioner are registered employees, under the ESI Act and the Provident Fund Act.

2. Recently, the petitioner had shifted their stock yard to a new premises, which is a property having an extent of 70 cents surrounded by compound wall on all sides and protected under a locked gate. Grievance of the petitioner is that the

respondents 3 and 4 are putting claims that their members alone are entitled to do the work of unloading of the vehicles from the Trucks and they are creating obstructions to the works of the petitioner. According to the petitioner, no head load work is involved in the process of driving/riding down the vehicles from the Trucks and the respondents 3 and 4 have no manner of right to claim such works. With respect to the obstructions caused, the petitioner submitted Ext.P-1 complaint before the 2nd respondent. Since no protection was granted, this writ petition is filed.

3. When the Writ Petition came up for admission, this Court directed the petitioner to implead the Kerala Headload Workers Welfare Board. Accordingly, Additional 5th respondent was impleaded. In the counter-affidavit filed on behalf of respondents 3 and 4 it is contended that, the petitioner started functioning in the present premises only before one month. It is stated that the scheme formulated under the Kerala Headload Workers Act has been extended in operation to the area in question and the unloading of Motor Vehicles from the carriers is a work coming within the purview of the Headload Workers Act. Therefore the petitioner is not entitled to do such works by engaging workers who are not registered under provisions of the Headload Workers Act, Rules, and Scheme formulated there under. It is further contended that the area in question is coming within pool No. 40, constituted under the scheme and there are 30 workers included in the above said pool. It is also contended that out of the 30 workers, 7 are having valid driving licences, authorizing to drive two wheeler and three wheeler vehicles. It is disputed that the work of bringing down vehicles from the Trucks needs expertise. According to respondents 3 and 4, the workers in the pool alone have got experience in similar works since they were doing such works for other dealers. All the contentions in the counter-affidavit was refuted by the petitioner through a reply affidavit filed on 14-6-2011.

4. As directed by this Court the Chief Executive of the Kerala Headload Workers Welfare Board have filed a statement, in which it is contended that an amendment was brought to the definition of "Headload Worker", u/s 2(m) of the Kerala Headload Workers Act, 1978, incorporating that the workers engaged in the process of unloading through "sliding" are also Headload workers. It is contended that the amendment was intended to bring laborers who are engaged in the work of unloading materials from vehicles through the method of "sliding" through ramps, within the ambit and scope of Headload Worker.

5. On the basis of the above statement, this Court directed the Government Pleader to explain as to why the amendment was brought in, or rather to explain the legislative intention underlying the amendment. In a statement filed on behalf of the 1st respondent it is mentioned that, even though Government have examined the matter in consultation with the Law Department, the Labor Commissioner, and the Chief Executive of the Welfare Board, the actual reason for bringing the amendment or the legislative intention behind such amendment, could not be traced out from the records available. However, it is mentioned that,

the draft bill for the amendment was originated based on a memorandum, for expanding the definition of "headload worker" for controlling unlawful practices and with an intention to repeal the Kerala Loading and Unloading (Regulation of Wages and Restriction of Unlawful Practices) Act, 2002. It is farther clarified in the statement that "sliding" is a process used for unloading articles from loaded vehicles and in such process the articles have been slid to workers' heads or shoulders, from the height of a vehicle.

6. From the rival contentions, a controversy arises as to whether the unloading of two wheelers and three wheelers from big carriers (Trailer Trucks) by driving/riding down the same through ramps is a head load work or not, and as to whether persons doing such work can be termed as a "headload worker" or not. A scanning of the amended definition of "Headload Worker" and the explanation given there under will be beneficial. The relevant portions of the definition of "Headload Worker" under of Section 2(m) (as amended) reads as follows:

2(m) "Headload Worker" means a person employed or 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 articles or articles in or from or to a vehicle or any place in such establishment or stacking articles, excluding delicate or sophisticated articles, in a vehicle or unloading by sliding using manual labor from a mechanically propelled vehicle or a person who does in connection with the work in ports, the works like filling of fertilizers in sacks, weighing and stitching of sacks, bundling, breaking seals of containers, stacking 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 for wages in or from or to a vehicle, or any place in such establishment or stacking articles excluding delicate or sophisticated articles in a vehicle or unloading by sliding using manual labor from a mechanically propelled vehicle but does not include a person engaged by an individual for domestic purposes.

Explanation I.-- ***

Explanation II.--For the purpose of this clause, "delicate or sophisticated articles" mean articles which require to be handled by trained or skilled persons,

7. Sri P. Santhalingam, learned Senior Counsel appearing on behalf of the petitioner pointed out that, by virtue of the amendment what is incorporated is, "unloading by sliding using manual labor from a mechanically propelled vehicle". According to him, the two wheelers and three wheelers are unloaded from the Trucks, not by sliding using manual labor, but those vehicles are actually driven down from the Trucks through the ramp. Therefore, even though the amendment had incorporated sliding of articles, the unloading of the two wheelers and three wheelers which are driven down from the Trucks through the ramp will not come within the scope of "unloading by sliding using manual labor". He points out that, the work of driving/riding the vehicles down to the ground can only be done by

persons who knows driving of two wheelers and three wheelers and it can be done only by persons specifically authorized through driving licences issued by competent authorities. Therefore it is contended that, the work in question is one need expertise (skill) and proper authorization. He points out that, unloading of "delicate or sophisticated articles" stands excluded from the purview of the definition u/s 2(m) and in Explanation II of the said section it is clarified that, "delicate and sophisticated articles" means articles which require to be handled by trained or skilled persons. Since driving/riding of vehicles require a skill as well as an authorization, the workers engaged in unloading of two wheelers and three wheelers, who are skilled in driving/riding, cannot be brought under the definition of Headload Workers and the articles included in such unloading process are delicate and sophisticated articles. Hence they are exempted from the ambit and scope of the articles handled by head load workers by virtue of the letter of the definition itself, is the contention.

8. Even though Learned Counsel appearing for the contesting respondents as well as standing counsel appearing for the 5th respondent made feeble attempt to dispute correctness of the above said interpretation, they are not in a position to deny the factual aspects regarding the nature of the work.

9. On analyzing the factual matrix of the case within the scope of the legal provision, we are of the considered opinion that, inspite of inclusion of the process of unloading by sliding using manual labor from the mechanically propelled vehicles within the purview of the definition of the head load worker, we are in perfect agreement with the contention of the senior counsel that unloading of two wheelers and three wheelers or four wheelers from big Trailer Trucks by driving/riding down such vehicles through ramps, will not come within the purview of the definition u/s 2(m) of the Kerala Headload Workers Act, 1978, since it requires skill of driving/riding and proper authority of a driving licence. At any stretch of interpretation or imagination, the process of unloading in such cases can not be presumed as unloading of article using manual labor, without any skill and training.

10. Therefore, we hold that the work of the petitioner in unloading two wheelers and three wheelers from heavy Trailer Trucks by driving/riding down the vehicles through ramps, done by the petitioner through engaging their permanent workers, is not an unloading work coming within the purview of the Kerala Headload Workers Act. The workers employed for doing such work will not come within the purview of the definition of "Headload Worker" u/s 2(m) of the said Act.

11. Based on the findings rendered above, we are of the considered opinion that the contesting respondent unions (respondents 3 and 4) or anybody claiming under them, have no manner of right to obstruct the work of unloading of vehicles done by the petitioner by engaging their permanent workers. The 2nd respondent is duty bound to remove such obstructions, if any caused and to afford protection for such works. Hence we direct the 2nd respondent to take

effective steps for removal of such obstructions and to afford protection, as and when required.

The Writ Petition is disposed of with the above directions.