

(2015) 01 KL CK 0050

In the High Court Of Kerala

Case No : Writ Petition(C) No. 19953 of 2011 (T)

P.S. Vijayakumar

APPELLANT

Vs

Regional Joint Labour Commissioner

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Citation : (2015) 01 KL CK 0050

Hon'ble Judges : A.V. Ramakrishna Pillai, J.

Bench : Single Bench

Advocate : Thomas Abraham, Merciamma Mathew, K.S. Haridas and V. Renjith Kumar, for the Appellant; R. Ranjith, Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.V. Ramakrishna Pillai, J.—Ext.P11 order passed by the 1st respondent is under challenge in this writ petition.

2. Petitioners are the office bearers of registered trade unions representing head load workers in the Nemom area of Thiruvananthapuram District, where the establishment under the name and style, "Venad Steel Corporation", under the proprietorship of the 4th respondent, is situated. The petitioners allege that the said establishment is situated in the place, where the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983, has been made applicable by the authorities concerned. They further allege that the husband of the 4th respondent, who is running a scrap business since the last more than 10 years, was engaging the workmen represented by the petitioner Unions without any protest or demur; and recently, he started attempts to engage new head load workers as a part of his bid to avoid the registered head load workers of Unions represented by the petitioners, who were doing work as stated above. The petitioners point out that the husband of the 4th respondent wants to avoid registration of his establishment under the Board and for that, he shifted his business activities to a new location very near to his original establishment and

started open attempts to avoid the registered head load workers from being engaged for the loading and unloading work in his business establishment under the pretext that it is a new establishment. The petitioner allege that in Ext.P9 order, it is clearly stated that the head load workers represented by the petitioners are entitled to do loading and unloading work in the 4th respondent's establishment owing to various reasons categorically stated in that order. The District Labour Officer found that the Nemom area, where the establishment which is claimed to be under the proprietorship of the 4th respondent is situated, is a scheme covered area; and there were no attached head load workers having identity cards in the aforesaid establishment and the registered head load workers belonging to Nemom area were doing loading and unloading works in the establishment under the 4th respondent. The petitioners further submit that Ext.P2 applications submitted from the side of the 4th respondent under Rule 26A were rejected by the 3rd respondent as evidenced by Ext.P8 order. Ext.P2 applicants are general workers and not head load workers as defined under Section 2(m) of the Act; it is alleged. The petitioners further allege that ignoring all these aspects, the 1st respondent has passed Ext.P11 order; and on the strength of Ext.P11 order, the 4th respondent and her husband are denying the workmen represented by the petitioner Unions their legitimate right to do loading and unloading work. It is with this background, the petitioners have come up before this Court.

3. The 1st respondent filed a counter affidavit contending that it was after hearing both the parties and after considering all facts and evidence before the 1st respondent, who is the Regional Joint Labour Commissioner, the appellate authority under the Headload Workers Act, 1978, has passed Ext.P11 order. According to the 1st respondent, Ext.P11 was in conformity with the provisions of the law applicable to the situation and the evidence placed before him. Therefore, the 1st respondent prayed for a dismissal of the writ petition.

4. In the counter affidavit filed by the 4th respondent, she had admitted the proprietorship of "Venad Steel Corporation". According to her, the said business has no connection with the business run by her husband under the name "ATS Traders". Both the establishments are separate and independently registered. The workers are also different for both the establishments. The head load workers of the petitioner Unions were never engaged by the 4th respondent in her establishment; and the loading and unloading activities in her establishment are done by her own permanent workers as a part of their work; it is contended. According to her, her business is related to scrap materials and the collected materials have to be segregated and sent to various prospective buyers. The workers are engaged by her for all the works and the loading and unloading activities are not regular on all days. As a matter of fact, the local head load workers are even reluctant to load and unload the scrap materials; and therefore, she has got her own set of workers for doing all the jobs in her establishment; it is contended. She further points out that as the petitioner Unions have obstructed the functioning of the establishment, she has approached

this Court with WP(C) No. 13826/2009 seeking police protection. She contended that the allegations in the writ petition are totally baseless and hence, denied. Thus, the 4th respondent prayed for a dismissal of the writ petition.

5. Arguments have been heard.

6. By Ext.P11 order, the 1st respondent had held that loading and unloading works of the establishment are quite incidental to the main work and the employer of the establishment can carry out that incidental loading and unloading works with the aid of the workers already employed in the establishment; and thus, the claim raised by the petitioner Unions was dismissed.

7. The definite case of the 4th respondent as well as the 1st respondent is that the 4th respondent is engaging workers of her own establishment for doing loading and unloading works in the establishment. This writ petition has been filed challenging the permission given to this act on the ground that the members of the petitioner Unions were doing the loading and unloading works in the Nemom area, which is covered by the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983. It is true that the District Labour Officer has held that the head load workers represented by the petitioner Unions alone are entitled to do loading and unloading works in the establishment of the 4th respondent vide Ext.P9 order. Ext.P9 was passed while disposing of the complaints submitted by the trade unions such as CITU, INTUC and AITUC. This order was taken in appeal by the 4th respondent before the 1st respondent, which was disposed of holding that the 4th respondent is entitled to engage the employees of her establishment for doing loading and unloading works, which are incidental to the main work in the establishment.

8. A Larger Bench of this Court, of which I was a party, in WP(C) No. 17688/2009 (the decision is yet to be reported), considered a reference made by a Division Bench of this Court, which noted the ratio of Full Bench decision in Raghavan v. Superintendent of Police [1998 (2) KLT 732 (FB)], wherein it was observed that in case, it is an area covered by the Scheme, the permanent workers cannot do the loading and unloading work unless they are registered under Rule 26A. One of the questions before the Larger Bench was, in what manner and up to which extent, the Full Bench judgment of this Court in Raghavan's case (cited supra) needed reconsideration. The contention raised before the Full Bench was that workers employed in the establishment, who were doing the work of loading and unloading along with other duties, cannot be treated as head load workers. The Full Bench held that if a 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 works other than loading and unloading and he occasionally does the work of loading and unloading, it may not be possible to treat him as head load worker.

9. The Larger Bench considered the correctness of the said proposition. In the

light of the relevant provisions as well as other judicial pronouncements, the Larger Bench came to the following conclusions;

"29. We thus are of considered opinion that item No. 5 of the Schedule is to be interpreted to be an establishment which fulfills following three conditions: (i) An establishment is employing workers for loading and unloading of goods (ii) the work of loading and unloading for which the worker is employed, is of a predominant nature (iii) the workers employed may also be carrying on other operations incidental and connected thereto.

30. Paragraph 21 of the Full Bench judgment in Raghavan's case (supra) has also stated that if principally, the workers are employed to carry on the work other than loading and unloading, and the loading and unloading work is only occasional, they do not come within the definition of Headload workers. The Full Bench has also rightly observed that whether the nature of work of the headload worker is predominant work or not is a question which depends on the facts of each case. To the above extent we approve the observation made by Full Bench in paragraph 21."

10. In the instant case, the business of the 4th respondent relates to scrap materials. The collected materials have to be segregated and have to be sent to the prospective buyers. The definite case of the 4th respondent is that she had engaged employees for all works and according to her, the loading and unloading activities are not regular on all days. The loading and unloading works arise only twice or thrice in a month, which are carried out by the permanent workers of the 4th respondent. It is also pleaded by the 4th respondent that she has not engaged any head load worker of the petitioner Unions at any time in the establishment. This Court finds no reason to disbelieve the averment of the 4th respondent in the counter affidavit. In view of the facts now placed on record, this Court is satisfied that the establishment of the 4th respondent is not an establishment, in which, for loading and unloading, any worker is employed.

11. On a consideration of the entire materials now placed on board, this Court is of the definite view that the petitioner Unions are not entitled to succeed. The 1st respondent has considered the entire matter in the correct perspective for arriving at a correct conclusion in Ext.P11. This Court finds no reason to annul the findings in the light of the law laid down by the Larger Bench of this Court as stated above.

In the result, the writ petition fails; and accordingly, it is dismissed.