

(1989) 04 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 13211 of 1984 and 5184 of 1985 and Writ Appeal No. 1042 of 1987

Raman C. Amin and Others

APPELLANT

Vs

Dock Labour Board, Visakhapatnam and Others

RESPONDENT

Date of Decision : 20-04-1989

Acts Referred:

Dock Workers (Regulation of Employment) Act, 1948 — Section 5

Citation : (1990) 2 LLJ 553

Hon'ble Judges : Syed Shah Mohammed Quadri, J;K. Amareswari, J

Bench : Division Bench

Judgement

Syed Shah Mohammed Quadri, J.—The points that arise for consideration in these cases are -

(i) Whether the labourers employed in connection with the sampling work fall within the definition of "dock workers" ?

(ii) Whether the action of the Dock Labour Board, Visakhapatnam in collecting charges for 5 dock workers on the basis of notional employment of dock workers is unjust and illegal ?

2. Visakhapatnam Port Trust is one of the Major Port Trusts in India. It is governed by the provisions of the Major Port Trusts Act. The import and export of the goods take place from that port. While exporting and importing the goods, for purposes of quality control, samples of the goods are taken and for that purpose, Samplers, hereinafter referred to as "inspecting agencies" are entrusted with the work of collecting the samples of the goods in the process of export and import and for their analysis as per Indian Standard Specifications. The labourers who work on the port are governed by the Dock Workers (Regulation of Employment) Act 1948, (for short "the Act") u/s 5 of the Act, the Dock Labour Board has been established by the Government which is a Corporate Body. Section 3 of the said Act provides for framing of the scheme for

ensuring regular employment of the workers. The inspection agencies have to get themselves registered under the Act and are obliged to engage dock labourers called dock workers as defined u/s 2(b) of the Act, provided by the Dock labour Board. The Inspection agencies have to pay Rs. 170/- per day per each dock worker. The inspection agencies having engaged the dock workers for a considerable period disputed the obligation to engage the dock workers provided by the Dock Labour Board on the ground that the workers are not collecting samples properly which they are supposed to collect from 8 to 10 different heaps. It is stated that they are collecting samples only from one heap in order to finish their work quickly which ultimately affects the analysis process. It is also stated that engaging the dock workers would be expensive and having regard to the remuneration which they received for the analysis work it has become impossible for them to carry on their work. It is at no other port in India inspection agencies are forced to employ dock workers supplied by the Board and it is further stated there is no provision of law authorising the Board to command the inspection agencies to engage the dock workers supplied by it only. It is also stated that after the installation of automatic sampling plants, there is no need to engage any dock labour but the inspection agencies are nationally charged for five dock workers which is illegal. Therefore, challenging the action of the Dock Labour Board, the inspection agencies filed writ petitions Nos. 13211/84, 4895 of 1985 and 5184/85.

3. In the counter affidavits filed by the Labour Officer of the Dock Labour Board, it is stated that the petitioners applied for listing as employers under Clause 15(2) of the Vishakhapatnam Unregistered Dock Workers (Regulation of Employment) Scheme 1968 (for short "the Scheme"). The Act has been enacted to regulate the employment of dock workers. The category of sampling workers is included in the definition of "dock worker". Before publishing the scheme in the official gazette, objections and suggestions were invited and after considering the same, the scheme was finalised which came into force after its publication in the gazette on 11th January 1969. The petitioners applied to listing themselves as "listed employers" of the Board and recommended that the workers who were in their employment at that time be included in the listed workers. These terms have been defined in Clauses 3(j) and 3(k) of the scheme. After the inclusion of the workers in the listed employers, they continued to employ them for sampling purposes. It is only after about 15 years of following this scheme the petitioners have now raised objection. The allegation that the workers are not carrying out the work properly is denied. It is added that no complaint was ever made with reference to functioning of the workers by the petitioners with the Board. It is stated that the engagement of dock workers for sampling purposes in other ports is not relevant as implementation of the scheme in different ports depends upon the conditions in that particular port. It is stated that sampling plant was not installed when the dispute was raised. But keeping in view the proposal to mechanise the sampling operation by installing the automatic sampling plant, the Board took a decision to collect 0-17 paise per tonne from the inspection

agencies. The Mineral and Metal Trading Corporation (M.M.T.C.) requested to keep the resolution of the Board in abeyance for three weeks till 18th September 1984 for getting clearance from its Head Office; but in the meanwhile the sampling workers filed W.P. No. 13199/84 and the proposal was stayed by the High Court in W.P.M.P. No. 17305/84 on 19th September 1984. In the said proceedings, the petitioners admitted that even after the automatic sampling unit is installed, there would be necessity of one or two persons to do manual work. The Chairman of the Dock Labour Board decided to make enquiries from the petitioners and other sampling employers and the Mineral and Metal Trading Corporation as to whether there would be any element of manual work at the sampling plant. After enquiry it was reported that atleast five sampling workers would be necessary and that the sampling employers were engaging casual labourers for the said work. Though the sampling employers claimed that they were employing their monthly staff, it was also found to be incorrect. They are bound to engage listed workers as per the scheme which is binding on the employer as well as on the workers. It is stated that on 19th March 1985 the representative of the sampling employers agreed in principle to employ dock workers so long as the sampling operations are not fully mechanised. On 25th March 1985, a meeting was convened at the request of M.M.T.C. in which it was proposed that the sampling employers be exempted from the actual employment of dock workers and they would nationally engage listed workers until such time the screening equipment was installed by 21st April 1985. It was decided that a minimum of 5 men would be employed in a shift and this was also ratified by the Board on 27th April 1985. That arrangement would be operative till 21st April 1985 or till such time automatic sampling plant was fully commissioned. It was also resolved to obtain technical opinion of the Chief Mechanical Engineer. V.P.T. with regard to the element of manual work at the sampling plant after it is fully commissioned. The sampling operations were fully mechanised by 31st May 1985. The Plant Manger of the Visakhapatnam Port Trust stated that after mechanisation there would be manual work for 5 men, two for collection of samples, two for loading into carts and one for general miscellaneous work like cleaning. The Board also obtained the opinion of the Chief Mechanical Engineer, Visakhapatnam Port Trust who in his letter dated 19th June 1985, stated that even when the sampling plant was in operation, the labour employment would be given per shift. In these circumstances, it is prayed that the writ petition be dismissed.

4. W.P. No. 4895 of 1985 came up for hearing before our learned brother, Jeevan Reddy, J. who dismissed the writ petition on 19th January 1987. Against the said judgment of the learned single Judge. Writ Appeal No. 1042 of 1987 was filed. As the questions raised in the writ appeal and in Writ Petitions Nos. 13211/84 and 5184/85 are the same, they are being disposed of by a common judgment.

5. Now, adverting to the first point, Sri T. Anantha Babu, the learned counsel for the appellants and the petitioners, submits that the sampling workers cannot be treated as dock workers and, therefore, the inspection agencies are not obliged

to engage them.

6. Our learned brother, Jeevan Reddy, J. has examined the definition of "dock worker" as contained in Section 2(b) of the Act and held that the sampling worker falls within definition of dock worker. This view of the learned Judge is assailed before us.

7. To appreciate this contention of Sri Anantha Babu, it would be appropriate to refer to the definition of "dock worker". Section 2(b) of the Act defines "dock worker" which is in the following terms :

"Dock worker means a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, un-loading, movement or storage of cargoes, or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port."

From a reading of the definition, it is clear that (he is) a person employed or to be employed in or in the vicinity of any port on work in connection with the loading, unloading, movement or storage of cargoes or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port.

8. Thus it is clear that not only the workers who are employed or to be employed in actual loading or unloading, movement or storage of cargoes but also those who work in connection with the loading, unloading, movement or storage or preparation of ships or other vessels for receipt or discharge of cargoes or leaving port are included within the meaning of dock workers. The sampling workers are engaged in taking samples before the export of goods in the process of preparation of the ship or vessel for receipt of the cargo. As such they are included in the definition of dock workers. The same view is taken by a Division Bench of the Bombay High Court in *Therapeutic Chemicals Research Corporation v. C. G. I. T.* (1989) 1 Lab LN 383 :

"Dock worker" means a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, unloading, movement or storage of cargoes, or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port. Two conditions are necessary for a person coming under that definition, one being that such person works in or in the vicinity of a port and, second, that he works in connection with the cargoes. It is not necessary that the work should strictly be of a loading, unloading, movement or storage of cargoes or work of preparation of ships for receipt and discharge of cargoes or leaving port. What is necessary is that the work should be in connection with any of these activities and, therefore, if connection with any such activities is established and is a continuous process necessary for any such activities, then, a person doing such kind of work comes within the purview of the said definition. The Dock Workers (Regulation of Employment) Act is a beneficent piece of legislation and hence has to be liberally construed. The word "connection" means "relation" and, therefore, the work

should be in relation to any of the above activities in order to bring a person within the definition of "dock worker" in the Act. The word "vicinity" should not be given a narrow meaning so as to be construed as being a thing very close to the port. Therefore, the samplers, assistant samplers, boys, chemists and office staff of the petitioners who are agencies recognised under the Export (Quality Control and Inspection) Act, 1963, are "dock workers" as defined in the Act."

Further, Visakhapatnam Unregistered Dock Workers (Regulation of Employment) Scheme, 1968 which is framed by the Central Government under the Act has classified the workers into three categories B, B1, and C (see Clause 17(2) of the Scheme). Item 7 of Category B is "Sampling Workers". Therefore, we have no doubt in our mind that the sampling workers fall within the definition of dock workers. In this view of the matter, we confirm the opinion of the learned single Judge.

9. The next question is whether the action of the Dock Labour Board, Visakhapatnam in collecting charges for 5 dock workers on the basis of national employment of dock workers in unjust and illegal ?

10. Though this question was not specifically raised before the learned single Judge, as we are hearing the other writ petitions, we consider it proper to examine the same.

11. From the resolutions of the Dock Workers Board which consists of representatives of the employers as well as the workers, it is clear that the authorities have examined the question as to how many workers are required for carrying on the sampling work after commissioning of the mechanised sampling plant. The Board through one of its employees ascertained the number of workers required for the sampling work. It was reported that five persons are necessary even after commissioning of the mechanised sampling plant. Further, the Chief Mechanical Engineer of the Visakhapatnam Port Trust which is an independent authority also estimated the requirement of the man power of the sampling work at five. It was at the instance of M.M.T.C. that the Board resolved to have the notional employment of five and on that basis the Board was authorised to take notional employment of five workers for sampling work. This is evident from the resolution of the Board dated 27th April 1985 which is in the following terms :

"Deputy Chairman explained that though it was decided to provide notional employment to the sampling workers, the employers did not place any indent for the workers. Wages and levy amounts were being debited to the accounts of the respective employers. Sri V. V. Rama Rao stated that inspite of the mechanisation, the plant would have enough manual work for 5 to 13 workers in a shift, for which the sampling workers should be engaged. Deputy Chairman informed that as per the assessment made by the Labour Officer, only 5 workers would be required for drawing and screening the samples. When the modifications to the plant were completed with the installation of vibrator screen,

element of manual work would have to be assessed. As the employers and the M.M.T.C. were always stating that the plant would not require any manual work to be performed after its full mechanisation, it was desirable to get the position assessed by the Chief Mechanical Engineer, VPT and obtain his technical opinion. Sri V. V. Rama Rao stated that the plant would require manual work even after it was fully mechanised. Chairman felt that as the requirement was assessed at 5 per shift, sufficient number of workers as per the requirement could be retained in the sampling section till finalisation of the issue and the remaining workers could be transferred to the wagon unloading section. Sri Gangi Reddy stated that though the M.M.T.C. indicated that modifications to the plant would be completed by 21st April 1985, it would take some more time for effecting the modifications. Sri V. V. Rama Rao stated that the issue could be decided once for all after the modifications to the plant were completed. After some discussion, it was resolved as follows :

Resolution No. 36/85; Resolved to ratify the decision of the Chairman to provide notional employment to the sampling workers in every working shift at a sampling plant at 5 per shift from 1st March 1985 to 21st April 1985 or till such date the sampling plant is fully commissioned and to collect wages and levy for the above employment.

Resolved further to obtain the technical opinion of the Chief Mechanical Engineer VPT with regard to the element of manual work at the Sampling Plant after it is fully commissioned and the requirement of labour for the work."

This resolution was operative till 21st April 1985 or the date of commissioning of the plant. After commissioning of the plant, obviously engagement of sampling workers on notional basis came to an end. The Chief Mechanical Engineer determined the man power at five as is evident from his letter of 15th/17th June 1985 which reads :

"With reference to your letter cited, the following information is furnished :

(1) Sampling Plant is fully operating since May 1985 except for the Weigh Printer which will not affect the working of the Sampling Plant.

(2) Even when Sampling Plant is in operation, the labour involvement will be 5 per shift, break up of which is given below :

2 for collection of samples;

2 for shifting the bags to a central place for carrying out further chemical analysis :

1 for clearing the spillages at various stages.

5

In fact it has been observed that during the samples taken in the month of May 1985 through Sampling Plant for the vessels M. V. Rokkohsau Mar, M. V. Jag Laadki, M. V. Samrat Ashok, 5 labourers were engaged by the Samplers."

Therefore, we are of the opinion that the action of the Board in requiring the sampling employers to engage five persons is justified and legal.

12. For the reasons stated above, we dismiss the Writ Appeal No. 1042/87 as well as Writ Petition Nos. 13211/85 and 5184/85. No costs.