

(1983) 02 KL CK 0010

In the High Court Of Kerala

Case No : O.P. No's. 7254, 7287, 7962, 8487, 9092 and 9287 of 1982

S. Balakrishnan Nair and Others

APPELLANT

Vs

The Kerla Livestock Development and Milk Marketing Board
Ltd. and Others

RESPONDENT

Date of Decision : 02-02-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Industrial Disputes Act, 1947 — Section 1(4), 18, 2, 7, 8

Citation : (1983) 02 KL CK 0010

Hon'ble Judges : Paripoornan, J;Khalid, J

Bench : Division Bench

Advocate : M.M. Cherian, Asok M. Cherian and Poly Mathai, for the Appellant;
K.S. Rajamony and M. Lalitha Nair for Respondent No. 1 and T.C.N. Menon and
K.P.G. Menon, for the Respondent

Final Decision : Dismissed

Judgement

Khalid, J.—These O. Ps. have been referred by a learned Judge of this Court to be heard by a Division Bench. The question involved in these Petitions is the same and hence are being disposed of by a common judgment. The petitioners in O.P. Nos. 7754, 7962, 8487 and 9092 of 1982 are attached to the Keltron (Controls) while the petitioners in O.P. Nos. 7287 and 9287 of 1982 are attached to the Kerala livestock Development and Milk Marketing Board Limited, for short, MILMA. The petitioners were appointed as apprentices under the Apprentices Act, 1961. The Petitions have been filed for a declaration that the petitioners are workmen entitled for the protection of Chapter V-A of the Industrial Disputes Act, 1947, hereinafter referred to as the I.D. Act, for the issue of a writ in the nature of prohibition restraining the Respondents from terminating the services of the petitioners without following the procedure laid down in the I.D. Act and for other reliefs. Respondents in the Petitions are respectively the Keltron and the Milma.

2. The petitioners were offered one year apprenticeship in the trade of Clerk

(General) under the Apprentices Act, 1961, for short the Act, with the respondents. They were to be paid per month Rs. 250 during the period of apprenticeship training. The petitioners attached to the Keltron continued even after the completion of the contract period on their request since they could not complete full training during the apprenticeship period. Before the expiry of the extended period, they approached this Court with these Petitions and are now continuing on the strength of interim stay orders passed by this court. The apprentices attached to the Milma approached the court before the expiry of the original period itself and are continuing on the strength of similar interim orders passed by this court.

3. The petitioner's case is that though their trade name is Clerks (General), the Act will not apply to them because the necessary notification making the Act applicable to Clerks (General) attached to the Keltron and Milma has not been published. The notifications issued are in respect of the trade Clerks (General) attached to the establishments within the scope of which Keltron and Milma will not come. According to them, they are workmen as defined in Section 2(a) of the I.D. Act which takes in apprentices also. Keltron and Milma come within the definition of "industry" as defined u/s 2(j) of the said Act. Thus they are entitled to the benefits of Chapter V-A of the I.D. Act. It was apprehending termination of their services except in accordance with the provisions of the said Act that they were compelled to move this Court for the prayers made.

4. These averments are countered in the counter affidavit filed in O.P. No. 7754 of 1982 which among other things states as follows: The petitioners are apprentice trainees coming within the Act. They were sponsored as per instructions issued by the Assistant Apprenticeship Adviser as per his letter dated 13th May 1981. They executed agreements as provided for in the Act and Rules. They were continuing after the expiry of the period of apprenticeship as requested by them to complete the full training. They are neither workmen as denned in the I.D. Act nor are they governed by any of the provisions of the said Act. The petitioners come under the designated trade of Clerks (General) and are governed strictly by the Act. u/s 18(b) of the Act the provisions of any law with respect to labour shall not apply to or in relation to the apprentices.

5. This Court had occasion to consider the case of provisional employees in various departments in a Full Bench decision reported in *Umayammal v. State of Kerala* 1982 KLT 829. The question whether the petitioners will get the benefit of this judgment need not detain us because the question that falls for consideration is whether the petitioners are governed by the Apprentices Act or not. If the answer to this question is in the affirmative, that is, in favour of the petitioners, they will be entitled to succeed in these petitions.

6. Before considering the rival contentions put forward before us, it will be necessary to understand the scope of the Act itself. As the preamble says the Act has been enacted to provide for the regulation and control of training of apprentices and for matters connected therewith. The Act was enacted so that

the important industries and establishments in the country could give training to apprentice to make them useful to themselves and to the country after such training. The Act has deliberately made provisions to exclude the apprentices coming within the Act from the existing labour laws so that training could be given to those who want to be trained every year without the obligation of retaining them in service complying with the provisions of the I.D. Act. The Act by its various provisions has made it clear that there is no element of employment when apprenticeship is offered and is accepted. The Act designedly contains well guarded provisions outlining the scope of the term apprenticeship and denying to the apprentices the benefits available under the labour laws. We will do well in this context to refer to the following observations of the Supreme Court in the *The Employees" State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another*, where the object and content of the Apprentices Act has been highlighted:

The heart of the matter in apprenticeship is, therefore, the dominant object and intent to impart on the part of the employer and to accept on the part of the other person learning under certain agreed terms. That certain payment is made during the apprenticeship, by whatever name called, and that the apprentice has to be under certain rules of discipline do not convert the apprentice to a regular employee under the employer. Such a person remains a learner and is not an employee. An examination of the provisions of the entire agreement leads us to the conclusion that the principal object with which the parties enter into an agreement of apprenticeship was offering by the employer an opportunity to learn the trade or craft and the other person to acquire such theoretical or practical knowledge that may be obtained in the course of the training. This is the primary feature that is obvious in the agreement.

* * *

It is, therefore inherent in the word "apprentice" that there is no element of employment as such in a trade or industry but only an adequate well-guarded provision for training to enable the trainee after completion of his course to be suitably absorbed in earning employment as a regular worker. The fact that a trainee may have been absorbed in the company where he is undergoing the training is not relevant for the purpose of comprehending the content of the term.

Before considering the rival contentions put forward, we may note the definition of the words "apprentice", "designated trade", "establishment" and "industry" in Section 2(aa), (e), (g) and (k) of the Act.

2(aa) "Apprentice" means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.

* * *

(e) "Designated trade" means any trade or occupation or any subject field in engineering or technology which the Central Government, after consultation with

the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of this Act;

* * *

(g) "establishment" includes any place where any industry is carried on;

* * *

(k) "industry" means any industry or business in which any trade, occupation or subject field in engineering or technology may be specified as a designated trade;

The provisions of the Act can be made applicable only if any area or industry in any area is notified by the Central Government by notification in the Official Gazette as an area or industry to which the provisions of the Act shall apply with effect from the date mentioned in the notification as is provided in Section 1(4)(a) of the Act. Similarly from the definition of the word "designated trade" it can be seen that any trade or occupation or any subject field in engineering or technology can be brought within the ambit of the Act only if there is a like notification in the Official Gazette specifying any particular designated trade as one for the purposes of this Act. Thus our investigation in these Petitions is restricted to the enquiry whether notification u/s 1(4)(a) has been published and also whether Clerk (General) is one of the designated trades notified under the Act.

7. To the Apprentices Act, 1961 there are ten Annexure. Annexure I is the Apprenticeship Rules, 1962. In Annexure II is given the list of industries specified under Clause (A) of Sub-section (4) of Section 1 of the Act. Item 37 relates to industries like the Keltron and item 40 to establishments like Milma:

37. Machinery (all kinds ** ** other than Transport) & Electrical equipment Manufacture of light electrical machinery apparatus 379 & appliances (including electronic equipment and related products) such as radios, microphones.

40. Livestock and Poultry Production and rearing of 040 ing Livestock (large heads only) mainly for milk and animal power such as cow, buffalo, goat.

The rest of Annexure II is not relevant. Annexure III is the table showing (i) Trades designated (ii) Ratio of apprentices to workers other than unskilled workers (iii) Period of training and (iv) Minimum educational qualifications in respect of each trade designated under the Act. It is by notification C.S.R. 247 dated 12th February 1962 issued u/s 1(4)(a) that various industries were brought within the ambit of the Act in which occurs items 37 and 40 mentioned above. In Annexure III, serial No. 78 reads as "Clerk (General)". The other details given there are not relevant for our purpose. It appears under Group No. 19 called "commercial trades group". It is by notification G.S.R. 1392, dated 4th November 1972, that this was included as a designated trade. Thus we find that by the above two notifications the requirements of the Act are satisfied. It is not

disputed that the petitioners are undergoing apprenticeship training in pursuance of a contract of apprenticeship. The appointment order clearly shows that they are engaged as apprentices in the trade of Clerk (General). Keltron and Milma are establishments, and industry as defined in Sections 2(g) and 2(k) of the Act.

8. If so, what exactly is the complaint of the petitioners and what is the case they project in these writ petitions? They admit that Clerk (General) is a designated trade. What they contend is that it is shown as Serial No. 78 under Group No. 19 under the caption "Commercial trades group". According to them, Keltron and Milma will not answer to the description "commercial trades group". Perhaps group No. 1 Machine Shop trades group, Group No. 4 electrical trades group, group No. 24 electronics trades group may be said to take in an industry like Keltron. But the designated trades in Group No. 1 given are Fitter, Turner, Machinist and Machinist (Grinder) and not Clerk (General). Similarly in Group No. 4 the designated trades given are Electrician, Lineman, Wireman, Auto Electrician and Electrician Aircraft and not Clerk (General). Referring to the various groups seen in Annexure III, the petitioners' counsel submit that the designated trade "Clerk (General)" occurs only in Group No. 19 "Commercial trades group" which will not satisfy the requirement of the Act. The submission is attempted to be reinforced with reference to serial Nos. 74, 75, 76 and 77, namely, Book Keeping and Accountancy, Storekeeper (including Purchaser), Cashier (General), and Sales Assistant (General). According to the petitioners these designated trades are peculiar to Commercial trades group. Which have nothing in common with industry like the Keltron and Milma. Therefore, according to them, the placement of the designated trade "Clerk (General)" under the group heading "Commercial trades group" takes this, designated trade out of the establishment Keltron and Milma.

9. The learned Additional Advocate General submits that this contention is wholly unacceptable. Annexure III makes it clear that Clerk (General) is a designated trade notified as such by a requisite statutory notification. Once it is so notified the trade Clerk (General) in whichever industry it is found comes within the scope of the Act. By way of illustration he invited us to Group No. 5 under the heading "Building and furniture trades group", consisting of the following designated trades : Carpenter, Plumber, Brick Mason/Building Constructor, Brick layer, Furniture Maker and Designer, Cabinet Maker and Sports Goods (Wood) Maker. He says that if there is a Carpenter in any of the industries notified by the Central Government u/s 1(4)(a), then the designated trade "Carpenter" automatically comes within the scope of the Act. He also illustrated with reference to group No. 15 with the caption "Hotel & Catering trades group", which contains designated trades Cook (General), Cook (Vegetarian), Steward (Floor), Baker or Confectioner, etc. He submits that if the Keltron offers apprentice training to the designated trades Cook (General) or Baker or Confectioner and trainees accept apprentice training, they automatically come within the ambit of the Act. To contend contra, according to him, would be to defeat the very object of the Act.

10. We have examined these contentions carefully. The submission made appears specious but is without substance. Annexure III gives the "designated trades" in Serial Nos. 1 to 103. They are not numbered separately under each group. The Group heading is for the purpose of the ratio of apprentices to workers, for the period of training and to lay down the necessary qualifications. If the submission is to be accepted, then "Milma" will go out of the picture because there is no group heading satisfying "Milma". It is not necessary to serialise designated trades with reference to any particular industry. All that the Section contemplates is the issuance of the necessary notification to specify a trade of occupation as a designated trade for the purpose of this Act. Annexure III contains a list of designated trades for the purpose of the Act. If there are apprentices answering to the description of the designated trade in any industry which is included within the relevant notification, the Act is straight away attracted. There may be Clerk (General) not only in commercial trades group but in textile trades, Group No. 16, Hotel and Catering trades Group, Group No. 15, or in Machine shop trades group, Group No. 1. Item No. 37 in Annexure II refers to an industry which makes among other things radios and microphones. Keltron answers to the description of such an industry. Similarly Livestock and Hunting shown as 40 in Annexure II will apply to Milma. All these industries can offer apprenticeship to the designated trade, Clerk (General). That is what has happened in these cases. The petitioners, in our view, directly come within the purview of the Act and will have to go out on the expiry of the apprenticeship period.

11. There is one other point that remains to be considered. According to the petitioners they have been in service for more than a year and as such their services cannot be terminated under the provisions of the Apprentice Act but only under the provisions of the Industrial Disputes Act. It is true that the petitioners have been serving for more than an year. In the case of the Keltron apprentices it was by virtue of permission granted on their representation and in the case of others by the orders of stay passed by this Court. Now all of them are in service on the strength of the interium stay orders passed by this Court.

12. The Keltron petitioners made separate requests to the General Manager as follows:

Since I could not complete my full training in Keltrone during my apprenticeship period I request you to grand me an extension of my apprenticeship period. My apprenticeship contract may suitably be extended in the contract in the existing terms and conditions as stipulated in the contract in order to cover the period of apprenticeship. I have not taken up any employment for the period from 14th June 1982 to 12th July 1982.

It was in pursuance of this specific request that they were allowed to complete their term of apprenticeship training by extending the period upto 15th October 1982, on the same terms and conditions as contained in the original apprenticeship agreements. It was before the expiry of the extended period that

this Original Petition was filed.

13. Both in law and on facts, this contention comes with little grace. If no representation for extension of the period of apprenticeship had been made, termination would have followed on the expiry of the contract period as provided in Section 7. u/s 8 they are only trainees and not workers and no provision of any law with respect to labour can come to their rescue. They were allowed to complete the apprenticeship training at their request. They cannot now turn round and press a claim for retention in service, after taking advantage of an extension at their request, defeating the provisions of the Act. The concerned officer was at liberty to reject the request. It was in the interest of the petitioners that this request was granted. The petitioners cannot be allowed to take advantage of their own act and seek an order to the detriment of their employer only because the employer acted in their own interest. The petitioners cannot in law put forward a claim for extension of service under these circumstances. Regarding service on the orders of the court, they have to go depending upon the result of the petitions.

14. The principle above stated finds support in a decision reported in *New Bihar Bin Leaves Co. v. State of Bihar* AIR 1981 S.C. 676. In this case the Supreme Court was considering the plea of persons who had tendered or bid at auctions regarding Kendu, leaves and who wanted to avoid certain terms of the contract of bid after their accepting the bid. This plea was dealt by the Supreme Court as follows:

It is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him.

* * *

"The aforesaid inhibitory principle squarely applies to the cases of those petitioners who had by offering highest bids at public auctions or by tenders, accepted and worked out the contracts in the past but are now resisting the demands or other action, arising out of the impugned condition (13) on the ground that this condition is violative of Article 19(1)(g) and 14 of the Constitution. In this connection, it will bear repetition, here, that the impugned conditions though bear a statutory complexion, retain their basic contractual character, also. It is true that a person cannot be debarred from enforcing his fundamental rights on the ground of estoppel or waiver. But the aforesaid principle which prohibits a party to a transaction from approbating a part of its conditions and reprobating the rest is different from the doctrine of estoppel or waiver.

The above principle squarely applies to the present plea. The petitioners were allowed to continue on the same terms of the contract on their request. They

cannot now reprobate the contract after enjoying the advantage that they secured by their request. This plea has therefore to be rejected and we do so.

In the result the Petitions are dismissed with the direction that the parties shall bear their costs.

The petitioners' counsel made a fervant appeal that in case we did not agree with their submissions they should at least be given their wages or remuneration till the Petitions are disposed of. Strictly this plea is not supportable in law. They have invoked the discretionary jurisdiction of this Court with a plea which lacks equity. Even so, taking into account the peculiar circumstances of the case and the request made to us, we direct the respondents, Keltron and Milma to pay the wages of remuneration of the petitioners till 31st December 1982.