

(2000) 12 KL CK 0053

In the High Court Of Kerala

Case No : R.P. No. 570 in O.P. No. 32616 of 2000

Samyuktha Thozhilali Union

APPELLANT

Vs

Omana Johnson

RESPONDENT

Date of Decision : 19-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Headload Workers Rules, 1978 — Rule 26A

Citation : (2001) 1 KLJ 317 : (2002) 4 LLJ 580

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : Rengith Thampan, for the Appellant;

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—The Original Petition was disposed of on 29.11.2000. According to the petitioner in the review petition he had entered appearance on receiving notice in the Original Petition on 24.11.2000 by filing vakalath and counter affidavit. But he could not appear when the case was taken up and disposed of on 29.11.2000, as his name did not appear in the cause list. Therefore, the review petitioner did not have any opportunity. The judgment deprives the employment chances of the members of the review petitioner. The judgment was rendered without hearing the review petitioner. Therefore it has to be reviewed.

2. I verified the records and found that though vakalath and counter affidavit have been filed by the review petitioner, the second respondent in the Original Petition on 24.11.2000, his appearance was not noted in the cause list thereby disabling the counsel to be present on 29.11.2000 when the case was heard and disposed of. Therefore, the review petitioner has to be allowed. Accordingly, the Original petition was heard afresh.

3. The petitioner is a "small scale industrial unit registered as per Ext. P1

manufacturing hollow bricks. As per the averment in para 2, there is lot of loading and unloading activities in the business concern of the petitioner. So, four persons have been "employed as permanent headload workers". Therefore, the petitioner has got permanent workmen and they are being employed for the loading and unloading operations in the unit. The members of second respondent union are demanding employment replacing the permanent workmen. They are causing obstruction as the petitioner is unable to concede to their demand. Therefore, the petitioner seeks police protection to avert their obstruction.

4 It is contended by the second respondent that the industry of the petitioner is situated in an area where the Scheme framed under the Kerala Headload Workers Act is enforced. In such circumstances, only registered headload workers alone can be employed for loading and unloading work in the establishment. Even if the establishment has its own permanent headload workers, that establishment cannot continue to employ such headload workers unless they have got registration under R.26-A of the rules framed under the Act. The workers mentioned in the Original Petition do not have such registration. In such circumstances, even though they are permanent workers attached to the petitioner's establishment for carrying out the loading and unloading work, they cannot be employed any more so long as the scheme is enforced in the area.

5. It is admitted case by the petitioner that the 4 workers mentioned in the Original Petition have no registration under the Kerala Headload Workers Rules. It is submitted that the unit is registered as a Women's Industrial Unit and therefore 80% of the employees have to be women. That is why the petitioner is employing women workers and is unable to employ the workers of the locality represented by the second respondent. But this aspect has not been averred in the Original Petition. Moreover, the specific case in the Original Petition is that there is lot of loading and unloading work in the establishment of the petitioner and for such work four permanent workers are engaged.

6. When it is the admitted position that the alleged permanent workers employed by the petitioner for loading and unloading, operation of the petitioner's unit are not registered workers, necessarily they would not be entitled to carry on headload work when the scheme is enforced in the area concerned. It is further admitted fact that the scheme is enforced in the area where the unit of the petitioner situates.

7. It has been held by a Full Bench of this Court in *Raghavan v. Superintendent of Police* 1998 (2) KLT 732 considering the impact of registration as follows:

"What will be the consequence, if a headload worker does not get registered under R.26A? If he is not a permanent employee attached to an establishment and if he is working in an area where the Scheme is made applicable he will not be entitled to get registered under the Scheme without first getting registered under R. 26A. Without a registration under the Scheme, he will not be able to work in that area. It is true that the permanent headload worker need not gel

regularised under the Scheme as contemplated by clause 6A. But in view of the provisions contained under clause 6(1), he will not be allowed or required to work in any area to which the Scheme applies from the date of commencement of the functional operation of the Scheme in that area unless he is a registered headload worker under the provisions of the Kerala Headload Workers Rules. The provisions of sub-clause (1) of clause 6 are of general application to all headload workers unlike sub-clause (2) requiring a further registration of headload workers executing headload workers who are permanently employed."

Thus as held by the Full Bench, unless there is registration under the Act, the permanent workers of the employer cannot continue as headload worker after enforcement of the scheme. The only exception is that such worker need not have a further registration under the Scheme.

8. But, counsel for the petitioner contended that based on the dictum in para 22 of the Full Bench judgment special consideration can be given. But the special consideration made mention of in para 22 of the Full Bench decision is the special consideration for granting police protection when there is law and order problem. When there is such problem and when the employer approaches this Court under Art. 226 of the Constitution of India seeking protection of person and property such special consideration emerges importance as to whether there will be irreparable injury. The nature of the industry conducted by the petitioner is not the special consideration made mention of in para 22 of the Full Bench decision.

9. I have also considered the very same issue in John K. Paul v. State of Kerala 1998 (2) KLT 887. There I held that:

"The petitioner does not have a case that any of the headload worker stated to be employed by him in the newly started godown or the show room is registered under the Headload Workers Rules as headload worker. When there is no such registration the prohibition contained in paragraph 6.1 of the Scheme operates and the petitioner cannot employ a headload worker who is not a registered headload worker under the provisions of the said Rules as per paragraph 6.1. If the petitioner employs anybody without such registration stating that they are his own workmen, that will violate paragraph 6.1 of the Scheme statutorily framed."

Therefore, in this case also the petitioner cannot insist that he will be entitled to employ the four workers mentioned in the Original Petition engaged solely for the purpose of carrying on the lot of loading and unloading operation available in the petitioner's establishment, as, admittedly they do not have registration as headload workers under R. 26-A of the Rules framed under the Kerala Headload Workers Act. To exclude the registered workers of the locality and to employ the unregistered workers stated to be the petitioner's permanent workers, no police protection can be granted, because that will be a protection to vitiate the provisions of law. No police protection can be granted to enable an incumbent to violate the provisions of law. The Original Petition therefore fails and is

dismissed. No costs.