
(1996) 12 AP CK 0004
In the Andhra Pradesh High Court
Case No : W.A. No. 1179 of 1988

S.K. Sarawagi and Co. Pvt. Ltd.

APPELLANT

Vs

Dock Labour Board and Another

RESPONDENT

Date of Decision : 31-12-1996

Acts Referred:

Citation : (1997) 2 ALT 280 : (1998) 3 LLJ 834

Hon'ble Judges : Neelam Sanjiva Reddy, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : T. Anantha Babu, for the Appellant; K. Srinivasa Murthy, for the Respondent

Final Decision : Allowed

Judgement

N.Y. Hanumanthappa, J.—Aggrieved by the order passed by the learned single Judge in Writ Petition No. 16823 of 1984 dated July 6, 1988, the petitioner preferred this appeal.

2. For the purpose of convenience the parties are referred to as in the writ petition. The petitioner is an exporter in manganese ore. A site was allotted to it on a lease basis in the Visakhapatnam Dockyard to load the manganese ore into the plot allotted to it. The petitioner secures manganese ore by bringing through dumpers for loading into the ships. Earlier it used to get by rail and get unloaded into the plot. The loading and unloading operations are carried on through the petitioner's Clearing and Forwarding Agents. Its clearing and forwarding agents are utilising the Dock Labour allotted by the Dock Labour Board. The payment of wages to the Dock Labourers are paid by clearing and forwarding agents according to the rates in force fixed by the Dock Labour Board. The petitioner is not utilising the services of the dock Labourers when the dumpers are brought for unloading the manganese ore into the site allotted. In spite of the same, the first respondent passed offending resolution dated November 29, 1984 resolving to collect at Rs. 12.50 Ps. per tonne from the employer/ exporter whenever dumpers are used; resolving to consider extension of the relief to the exporter of

low grade manganese ore to an extent of Rs. 6.25 Ps. per tonne in such cases. It was also resolved to charge Rs. 12.50 Ps. increased wages to the workers. It was also further resolved to approve u/s 53 of the Major Port Trusts Act, 1963, remission of Rs. 5/- per metric tonne of manganese ore brought by dumpers to Visakhapatnam Port and exported on the basis of the certificates issued by the Dock Labour Board. These were the resolutions which were challenged in the writ petition by the writ petitioner on the following grounds:

The Board's demand is unauthorised one. No basis for such a demand as the petitioner is not a listed employer and it is not bound under the Visakhapatnam Unregistered Dock Workers (Regulation of Employment) Scheme, 1968 (for short "1968 Scheme"). When the petitioner is not bound by 1968 Scheme, any demand made by Respondent No. 1, let alone the demands under challenge are without any authority of law. Section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (for short "the Act") gives power to the Government to establish Dock Labour Board for the Visakhapatnam Board and u/s 5B, the functions of the Board have been enumerated. It shall be responsible for administering the scheme for the Port in exercise of the power conferred u/s 3 of the Act. The Visakhapatnam Dock Workers (Regulation of Employment) Scheme, 1959 (for short "1959 Scheme") envisages under Regulation 7, the functions of the Board to maintain the register of the workers. They have to supply the workers as and when demanded by the listed employer. The petitioner had applied to admit as a listed employer but the same was rejected. According to the petitioner, the obligation to take the services of the dock labour would arise when the petitioner is a registered employer. When the petitioner's request to list it as an employer had been rejected, it is not bound by the 1959 scheme. It is bound under the 1968 scheme. As the petitioner is unlisted employer, no responsibility can be fixed on it to take the services of any dock labourer. The dumpers are not engaging any dock labourer to unload the manganese ore. The dumper itself dumps the manganese ore without any assistance of the manual labour of the dock workers. Thus there is no statutory liability on the petitioner to comply with the resolutions passed.

3. On the other hand, the Respondents opposed the claim of the petitioner. According to the respondents, the petitioner is governed by the provisions of the Act and the schemes framed by the respondents thereunder. When once it is not disputed that it transfers the cargo to export by way of shipping, naturally the unloading work has to be done by the dock workers. Thus the petitioner is liable to pay their wages.

4. The learned Single Judge considering the arguments on either side and also advertent to the scope of Section 2(a), 2(b), 2(c) and 2(e) of the Act and to the schemes framed thereunder held that the petitioner is liable to pay the wage prescribed by the Board. The learned Single Judge proceeded to pass the order on an assumption that even for unloading the ore by using dumpers services of dock workers are necessary.

5. Sri Anantha Babu, learned Counsel appearing for the appellant contended that the order passed by the learned Single Judge is a result of mistaking the nature of work which the workers carry on and the authorisation given to the petitioner to store in an area leased to it. The demand now made amounts to one of illegal demand and the petitioner is not liable to pay any such fee in the absence of getting any services from the Board. The demand made by the Board is without jurisdiction as its jurisdiction extends only to those who are listed employers but not to the petitioner who is not a listed employer. The learned single Judge got confused himself with regard to the duties of the Port Trust and the Dock Labour Board. Because single Judge felt that the area leased to the petitioner is the one belonging to the Board. The area belongs to the Port Trust and it is leased to the petitioner on a separate lease agreement for the purpose of storing manganese ore. Earlier the petitioner was transporting manganese ore from mining area to the plot through rail. At that time, for the purpose of unloading, the services of the Dock workmen were absolutely necessary. However, due to shortage of rail wagons and mechanisation development, the petitioner as an experiment measure switched on to an improved mechanisation of unloading. Accordingly (it) purchased dumpers and using the same for the purpose of transporting and dumping on the plot allotted to it. When once the dumper is driven to the plot, the dumper itself unloads the ore without the help of workmen. So far as the ore brought by the rail is concerned, it requires unloading by workmen for which the petitioner is paying charges. The view of the learned single Judge that whether an employer is a listed employer or otherwise makes no difference is quite erroneous. The learned single Judge should not have relied on some of the unauthenticated minutes produced by the Respondents. The learned single Judge also erred in not noticing that when the petitioner is not a listed employer, there is no financial nexus between the Board and the petitioner. The learned single Judge should have noticed that if really the petitioner was liable to pay the charges, there was no necessity for the Board to send a draft agreement which was refused to be signed (sic.) by the petitioner. Thus arguing he sought that the appeal be allowed.

6. As an answer to these contentions, Sri K. Srinivasa Murthy, learned Counsel appearing for the Respondents contended that whether the petitioner is a listed employer or not is quite immaterial, when once it is using the port area for the purpose of dumping ore, irrespective of unloading done by dumper or by workmen, the petitioner is liable to pay the charges for the workmen. The idea behind making the demand to pay the wages to the workmen is a social measure to see that the workmen are paid their wages and not deprived of by using improved and mechanised methods to dump the ore as the same would result in an indirect way of throwing away the workmen. In port area, the listed transporter or contractor alone can take the ore to the plot allotted and not (to) any third person. The unloading has to be done only by the dock workmen and not by any third party. As per the scheme formulated pursuant to the 1948 Act, 21 days wages are to be given to the dock workmen whether their services are

utilised or not. At no time, the Board had authorised the petitioner to make use of the dumpers. The contention of Sri Anantha Babu, learned Counsel for the petitioner would have been tenable if unloading of the ore taking place from the dumper directly to the ship. But it is not so. On the other hand, it will be unloaded on the plot allotted to the petitioner. Then it has to be transported into the ship by the dock workmen who are the members of the registered Union. The petitioner participated in the proceedings pertaining to the liability or otherwise to pay the wages of the dock-men in spite of making use of dumpers for transporting ore and bargained in the said meeting for reducing the quantum of wages. Having thus participated it is now not open for the petitioner to say that it is not liable to pay any charges as wages to the workmen for the ore unloaded by dumpers.

7. He further contended that the scheme in question is not new to the Visakhapatnam Port Trust but it is prevailing in all major ports. Thus arguing he urged that the appeal be dismissed.

8. In order to understand correctly the question involved in this case, better if we once again refer to some of the provisions of the Act and the scheme. As far as the scheme is concerned, there are two schemes viz., the Visakhapatnam Unregistered Dock Workers (Regulation of Employment) Scheme, 1968 and the Visakhapatnam Dock Workers (Regulation of Employment) Scheme, 1959. It is proper to advert to some of the provisions of the Act. Section 2(b) of the Act defines a dock worker as "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". Section 2(c) of the Act defines employer as " "Employer" in relation to a dock worker means the person by whom he is employed or to be employed as aforesaid". Section 2(e) of the Act defines scheme as " "Scheme" means a scheme made under this Act". Section 3 of the Act deals with the scheme for ensuring regular employment for workers. The scheme which is applicable as mentioned in the counter-affidavit filed by the respondents is the 1968 Scheme. The objects, application and commencement of the scheme is as follows :

"(1)The objects of the Scheme are to regulate the employment of the dock workers to whom this scheme applies and to ensure efficient performance of work by the said workers.

(2) The Scheme relates to the Port of Visakhapatnam and applies to the dock workers of the classes specified in the Schedule and to the employers of such dock workers, but does not apply to

(a) Workers engaged in any class or description of work carried out in workshops or in respect of sailing vessels or by ship's crew; or

(b) Workers engaged in any class or description of dock work carried out in relation to any ship of the Indian Navy.

Provided that the Scheme shall not apply to any dock worker or employer unless he is listed as such under the Scheme.

(3) It shall come into force on the date of its publication in the Official Gazette."

9. Clause 3(f) defines daily worker as "a dock worker who is not a monthly worker. Clause 3(g) defines dock work means work ordinarily performed by dock workers of the classes to which this Scheme applies. Clause 3 (h) defines dock employer means the person and/or firm by whom a dock worker to whom this Scheme applies is employed or is to be employed. Clause 3(j) defines Listed Employer means a dock employer listed by the Chairman under Clause 15 and includes for the purpose of Clause 22 an authorised agent of such employer.

10. Clause 16 speaks about the listing of dock workers which reads as follows :

"(1) Any dock worker, who has been in the employment of an employer to whom this Scheme applies and has worked under him for such number of days or shifts during such period as may be prescribed by the Board, shall subject to the following conditions be eligible for being listed, namely

(i) the number of workers of each class to be selected for listing shall not exceed the number determined by the Board and approved by the Central Government. Selection for listing shall be made as far as possible, on the basis of seniority as determined by the length of service rendered by a worker in the class in which he is to be listed and in cases where the said seniority list is not available, selection shall be made on such other basis as the Board may determine.

Provided that such worker shall be medically fit and shall not be more than 58 years of age.

Provided further that a dock worker who is found medically unfit temporarily may be listed provisionally subject to the condition, that

(a) the ailment leading to temporary unfitness is declared as being curable within a reasonable period;

(b) the period of provisional listing shall not exceed six months unless an extension is granted by the Board ; and

(c) if after the period or extended period of provisional listing the worker is still found unfit, his listing shall not be renewed.

(ii) Only Indian citizens shall be eligible for being listed.

(2) Workers shall be listed under this Scheme in accordance with the following procedure, namely:

(i) Each eligible dock worker shall apply to the Board through his employer on or before such date as may be fixed by the Board or any Committee appointed under Clause 14 for the purpose. The application shall be submitted in duplicate in the form prescribed by the Board, and shall be accompanied by three copies of

passport size photograph of the worker concerned, the cost of which shall be borne by him.

(ii) A listed employer shall not refuse to forward the application of a worker who has been in his employment and has worked under him for such number of days or shifts during such period as may be specified by the Board under Sub-clause (1):

Provided that if any question arises whether or not a worker has been in the employment of his employer and has worked under him for such number of days or shifts as may be prescribed by the Board, it shall be referred to such Officer, authority or Committee as the Board may specify and the decision of such officer, authority or committee, as the case may be, shall be final.

(iii) The period for which a worker of a class specified in the Schedule has served on work relatable to that class under a particular employer shall as far as possible be recorded on the basis of payment of wages made to the worker previously, either directly by the employer or through any of the employer's agents.

(iv) While forwarding an application of dock worker the employer shall if he does not recommend the application state the reasons for which he does not recommend the application.

(v) Every worker shall pay to the Board a listing fee of twenty-five paise on his name being listed.

(vi) If the application is in order, the Board shall enter the name of the worker in the list of workers and retain one copy each of the application and the photograph for record and return the other copy of the application with a photograph affixed on it together with a photo-identity card to the worker concerned direct or to the listed employer through whom the application has been received, who shall hand over the same to the worker concerned.

(3) Notwithstanding any other provision of this Scheme, where the Board is of opinion that a dock worker has secured his listing by furnishing false information in his application or by withholding any information required therein, or where it appears that a worker has been listed improperly or incorrectly, the Board may direct the removal of his name from the list; Provided that before giving any such direction, the Board shall give him an opportunity of showing cause why the proposed direction should not be issued.

(4) Notwithstanding any other provision of this Scheme, the Board-in meeting may by order direct the removal permanently or for such period as may be specified in the order, of the name of a listed worker who does not make himself available for work for any length of time as the Board may decide;

Provided that before giving any such direction the Board shall give such listed worker an opportunity to show cause why the proposed direction should not be

issued.

(5) A copy of every order refusing to list a worker shall be communicated to him.

(6) Without prejudice to the provisions contained in Sub-clause (c) of Clause 12, the Board may also from time to time permit the listing of dock workers on a temporary basis through Employment Exchange or otherwise as the Board may decide."

11. Clause 22 speaks about the obligations of listed employer which reads as follows :

"(1) Every listed employer shall be bound by the provisions of the Scheme.

(2) Every listed employer shall pay to the Board such administrative charges as may be fixed by the Board from time to time.

(3) A listed employer shall not employ a worker other than a dock worker who has been allocated to him by the Administrative Body in accordance with the provisions of Clause 12.

(4) A listed employer shall in accordance with arrangement made by the Administrative body submit all available information of his current and future Labour requirements.

(5) A listed employer shall pay to the Administrative Body in such manner and at such times as the Chairman may direct the amount by way of levy, administrative charges and other charges payable under Sub-clause (2) and gross wages due to the dock workers.

(6) A listed employer shall keep such records as the Board may require, and shall produce to the Board or to such persons as may be designated by the Chairman upon reasonable notice all such records and any other documents of any kind relating to listed dock workers and to the work upon which they have been employed and furnish such information thereto as may be set out in any notice of direction issued by or on behalf of the Board.

(7) A listed employer shall not pay a listed worker anything in cash or in excess of the wages normally and actually due to the workers.

(8) A listed employer shall not assign transfer or in any manner part with any interest or benefit in or under the listing as employer by the Board to any other person without the prior approval in writing of the Chairman,"

12. Clause 25 of the Scheme speaks about the restriction on employment which reads as follows:

"No person other than a listed employer shall employ any worker on dock work nor shall a listed employer engage for employment or employ a worker on dock work unless that worker is a listed worker. If, however, on any occasion the Administrative body considered it necessary to employ temporarily a worker

other than a listed worker, it can do so after obtaining the prior approval of the Deputy Chairman and where this is not possible, shall report to the Deputy Chairman within 24 hours the full circumstances under which such workers were employed. The Deputy Chairman shall place before the Board in meeting at the earliest opportunity all such cases of temporary employment of workers other than listed workers approved by him."

13. The type of work has been mentioned in the schedule of the Scheme.

14. During the course of the arguments, existence of one more scheme was brought to our notice but the same was not referred to in the counter. Even otherwise it is clear that to fasten the liability to pay the wages to the workmen even if the cargo is transported by dumpers, there should have been agreement between the petitioner and the respondent but no such agreement is existing. Some of the resolutions the copies of which are filed along with the writ petition go to show that the petitioner had made it clear that it is not prepared to pay any wages to the workmen unless it is listed as an employer. But the request to enlist the petitioner was rejected by the Board unanimously. Even with regard to supply of workmen, there are copies of the letters written by the Board to the petitioner refusing its request to supply workmen by giving reason that there is no adequate supply of gangs due to non-availability of Labour as the indents for the gangs is more than availability in the shifts. Respondents never informed the petitioner that if the petitioner uses dumpers, it is liable to pay the dock labour charges. It is also not the case of the Board that the plot in question used for the purpose of unloading the cargo belongs to the Board.

15. The learned single Judge, keeping in mind the object of ameliorating the grievances of workmen, who are socially and economically oppressed, and to give effect to the resolution of Indian Labour Organisation (ILO) and also attaching importance to the mechanisation and nationalisation of service, better utilisation of men, machines and management in industrial undertakings, held that in the process of mechanisation and nationalisation, the workmen shall not be thrown out of employment and their services shall be protected and facilities be given. However, accepting the contention of the respondent Board, the petitioner had agreed to participate in the meeting to reduce the burden from Rs. 12.50 to Rs. 10.00 per tonne and further went on making requests to the department to supply workmen. The learned single Judge was made to understand that the petitioner is utilising the services of the dock workmen even at the time of dumping. But, the contents of the letter dated January 19, 1984 addressed by the petitioner to the Chairman, Visakhapatnam Dock Labour Board relate to some other transactions but not for reducing the charges from Rs. 12.50 to Rs. 10.00 for dock-workmen whenever dumping takes" place. The relevant portion of the letter reads as follows:

"By this opportunity we also beg to bring to your kind notice that the final FOB export price for Low grade Manganese ore, as recently fixed by MMTC, is only Rs. 225/- per DMT which is not sufficient even to meet the standing charges such as

labour wages, royalty, transportation, over-heads, railway freight, unloading charges, port dues, OHL charges, stevedoring duties & taxes etc. Therefore, the plight of the Low grade Manganese ore exporters can very well be realised. At the rate of labour wages and levy prevailing at present at Vizag Port the "per ton" impact on Manganese ore unloading from wagons alone works out to about Rs. 35/- which is exorbitant by any standards. It can further be appropriate to mention that for the commodity for which total FOB cost is as low as only Rs. 225/- per DMT the cost of one operation alone i.e., wagon unloading is working out to more than 15% of total price realisation. If the situation is let to continue at this rate, it may well be apprehended that the shipments of Low grade Manganese ore from Visakhapatnam Port will completely be wiped off in the very near future. In case it is desired that the exports of this low priced commodity are carried on and traffic maintained it is imperative that ways must be found to bring the wagon unloading cost within Rs. 10/ -per M/ton.

In the premises, we most respectfully beg to request your goodself to kindly consider all aspects submitted above and accord due justice to the Low grade Manganese ore trade which is struggling for survival at your esteemed port."

16. It is clear from letters written by Visakhapatnam Dock Labour Board addressed to the International Shipping Corporation, Listed Employer, Visakhapatnam that there is short supply of gangs to the addressees because of non-availability of Labour as the indents for gangs are more than the available strength in particular shifts. There is no mention as to work relating to the dumping by the workmen at the port.

17. Two similar letters were written on February 9, 1983. It is stated that the said letters were written to the petitioner's agent. The short supply of gangs have been showed at page No. 59 of the material papers filed in the paper book. The contention that the petitioner has agreed to abide by the claim of the Board and undertook to pay the dock charges to the dock workmen whenever the dumping takes place is vague and such a system does not exist in other ports namely Madras, etc.

18. According to Mr. Anantha Babu, it is quite incorrect. It has been demonstrated that by introducing dumpers, workmen have not been affected at all including emoluments, as only 20% of the manganese is being brought by the tippers and the remaining 80% is being brought by rail and still labour is being utilised for loading and unloading. The emoluments given to the port and dock workers are very high when compared to other labourers. He denied that other dock Labour Boards have levied such charges.

19. From the facts narrated and arguments advanced, it is clear that the petitioner became a lessee in respect of an area allotted by the Port Trust upon which the Board has no control or authority. The Port Trust also allowed the petitioner to bring the Iron ore and other material in the tippers and unload on the area allotted to it. After dumping the ore and related material in the area

allotted, the same has to be transported from that place to the ship. For such transporting of the ore from the area where it is dumped to the ship concerned, it has to be done by making use of the dock workmen and they will be entitled for charges. Whenever the services of the dock workmen are utilised, the Board collects the charges and credits the same to its funds. The agents of the petitioner operate in the area allotted to them and nothing more. The nature of the work explained by Sri Ananta Babu, learned Counsel for the petitioner-appellant does not require the services of either workmen or stewards. There is no privity of contract to show that the petitioner was a party to the resolution and that in the case of dumping ore, it is bound to answer the demand made by the Dock Board. The reference made to the charge of Rs. 10/- to the dock workers has no relevance. On the other hand, it refers to some other transaction, It is not the case of the respondent that in any process of mechanisation, the Dock Labour Board has to be compensated. In letter dated October 13, 1996 written by Ministry of Transport, Department of Surface Transport, Government of India to various members of Dock Boards, in paras 19 and 20 speaks about clarification of definition of "Dock Work" which is extracted hereunder:

"Shri Venkata Rao stated that "dock work" has been clearly envisaged in the schemes and the dock workers should be employed in all the operations which fall within the definition of dock work. After ascertaining position from other Deputy Chairman, it was noticed that no uniform practice was followed in the DLB's.

Shri Abraham asked for the progress of implementation of Voluntary Retirement Scheme introduced for FC1 workers. After reviewing he directed that option statement signed by the workers should be obtained before funds are disbursed to avoid any eventuality of workers saying that he did not opt for Voluntary Retirement Scheme."

20. From the above, it is clear that the petitioner a registered employer and the area relating to dumping belongs to the Board and not to the Port Trust. The respondents failed to satisfy these two ingredients. To fix the liability, there shall be an agreement or legal compulsion either under the Port Trusts Act or under the Dock Labour Act, There is no such legal compulsion compelling the petitioner to pay charges to the dock workers even in the absence of utilising their services. When the policy decision was taken by the Board, the petitioner was neither a party nor gave its consent. The policy is not binding on the petitioner. Thus petitioner is bound (sic. not bound) to answer the demand. The nationalisation and mechanization have not affected the service conditions of the workmen, as still 80% of the loading, unloading and dumping is done by dock workmen, Their service conditions are better when compared with other Dock Boards. The Board is running on profits. When the petitioner made a request to the Board to register itself as registered employer and if such request was considered by the Board, the Board would have been in a position to dictate terms to the petitioner. On some occasions the petitioner made a request to supply gangs and the same

was rejected due to paucity of workmen. There is nothing to show that the Board requested the Port Trust to prevail upon the petitioner to pay charges to the dock workmen even for dumping the ore.

21. There is no letter, direction or a condition in the lease agreement between the petitioner and the Port Trust when ore is brought to the allotted yard either by rail or by tippers, the petitioner is bound to pay charges to dock workmen. The Board's demand that the petitioner is liable to pay charges to the workmen is quite incorrect and without any authority of law. It is relevant to extract the Board's Resolution dated October 8, 1994 No. 7 which reads as under :

"Since M/s. S.K. Sarawagi & Co. the exporter of low grade Manganese Ore, are not listed employers, there is no financial nexus between the Board and M/s. S.K. Sarawagi & Co. It would, therefore, be necessary for M/s. S.K. Sarawagi & Co. to enter into an agreement with the Board for the Board's decision in regard to the above charge to be legally binding."

22. Since the petitioner is not a registered employer, the decision of the Dock Labour Board that the petitioner is liable to pay charges to workmen has no basis.

23. For the above reasons this Writ Appeal is allowed and consequently, the order passed by the learned Single Judge is set aside. However, this order shall not come in the way of Dock Labour Board in making request either to the Union of India or to the Port Trust to take necessary steps so that the petitioner can also be brought on par with other employers and pay charges to dock workmen even in case of dumping.