

(2011) 07 KL CK 0147

In the High Court Of Kerala

Case No : Writ Petition (C) No. 13798 of 2011

Swathanthra Thozhilali Union

APPELLANT

Vs

Kerala Headload Workers Welfare

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Kerala Headload Workers Act, 1978 — Section 14(8), 18, 18(8), 2, 21

Citation : (2011) 3 ILR (Ker) 709 : (2011) 3 KLJ 609

Hon'ble Judges : P.N.Ravindran, J

Bench : Single Bench

Advocate : V.K. Mohammed Yousuf, for the Appellant; Koshy George (S.C. KHLWWB), for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice P.N. Ravindran, J.—Ext. P-1 resolution adopted by the Palakkad District Committee of the Kerala Headload Workers Welfare Board (hereinafter referred to as "the Board" for short) is under challenge in this writ petition. The brief facts of the case are as follows:

2. The petitioner is a trade union representing headload workers of Pool I A of Mannarkkad Grama Panchayat. The second respondent is the Secretary of yet another trade union which represents headload workers of Pool I B. Both the pools have 21 workers each. Till the decision impugned in this writ petition was taken, headload workers of Pool I A were doing the loading and unloading work on Mondays, Wednesdays, Fridays and Saturdays and headload workers of Pool I B were doing the loading and unloading work on Tuesdays, Thursdays and Sundays. In other words, all seven days of the week were working days. While matters stood thus, the Palakkad District Committee of the Board (hereinafter referred to as "the Committee" for short) that met on 28-4-2011 resolved with the dissent of 2 out of the 7 members present at the meeting that henceforth headload workers of Pool I A shall work on Mondays, Wednesdays and Fridays, that headload workers of Pool I B shall work on Tuesdays, Thursdays and

Saturdays and that Sunday shall be a holiday. The leader of Pool I A thereupon submitted Ext. P-2 representation dated 20-5-2011 before the Chairman of the Committee requesting him to cancel the said decision. Copies of Ext. P-2 representation were submitted to the District Labour Officer, Palakkad and the Assistant Labour Officer, Mannarkkad. Besides Ext P-2 representation submitted by the leader of Pool I A, the Secretary of the petitioner trade union submitted Ext. P-3 representation dated 19-5-2011 before the Chairman of the Committee requesting him to cancel Ext. P-1 decision. The instant writ petition was thereafter filed challenging Ext. P-1. The main contention raised in the writ petition is that before the decision evidenced by Ext. P-1 was taken, no notice was issued to the petitioner union and no discussion was held with the headload workers of the petitioner's union. Yet another contention raised is that the Committee has no power or authority to take the impugned decision.

3. The second respondent has filed a counter-affidavit. Relying on Sections 14(8) and 18(8) of the Kerala Headload Workers Act, 1978 (hereinafter referred to as "the Act" for short) and paragraphs 5, 8, 10, 19 and 20 of the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 (hereinafter referred to as "the Scheme" for short), it is contended that the Committee has the competence and authority to take the impugned decision. It is also contended that at the meeting in which the decision was taken, besides the Chairman of the Committee, six other members were also present, that out of the said six members, two represented employers and four represented trade unions and two of the trade union representatives dissented to the decision. It is also stated that such a decision was taken in view of Exts. R-2(b), R-2(c) and R-2(d) representations submitted by the leader of Pool I B, that the petitioner did not participate in the discussion, that the leader of Pool I A stated that the workers are not in a position to take a decision, and therefore, it cannot be said that the impugned decision was taken without notice to or hearing the petitioner trade union or the workers of Pool I A. The counter-affidavit proceeds to state that the Committee has the competence and authority to re-arrange the shift system of workers and that it was taking note of the fact that there was no work on Sundays and the workers of Pool I B were getting work only on Tuesdays and Thursdays that the Committee decided to distribute the work equitably among the two groups of workers.

4. I heard Sri V. K. Mohammed Yousuf, learned counsel appearing for the petitioner, Sri Koshy George, learned standing counsel appearing for the first respondent and Sri P. K. Vijaya Mohanan, learned counsel appearing for the second respondent. The learned counsel appearing for the petitioner contended that the provisions of the Act or the Scheme do not empower the Committee to change the existing shift system and to direct that the workers of Pool I A shall work on Mondays, Wednesdays and Fridays, that workers of Pool I B shall work on Tuesdays, Thursdays and Saturdays and that Sunday shall be a holiday and therefore, the impugned decision is liable to be set aside. The learned counsel also submitted that before the impugned decision was taken, neither the

petitioner union nor the workers of Pool I A were put on notice. The learned counsel also contended that even assuming that the workers of Pool I B had a dispute regarding the terms of employment, the dispute should have been settled in the manner provided in Section 21 of the Act and not by the Committee in the manner done by it.

5. Per contra, Sri Koshy George, learned counsel appearing for the first respondent and Sri P. K. Vijaya Mohanan, learned counsel appearing for the second respondent contended that under the provisions of the Act and the Scheme, the Committee can arrange and regulate the employment of headload workers, that the impugned decision was taken to equitably distribute the work among the two groups of workers employed in the same locality and that having regard to the general welfare of the headload workers, the impugned decision cannot be assailed. The learned counsel for the respondents also placed reliance on the decisions of this Court in *Chumattu Thozhilali Congress v. State of Kerala*(1) and *Abdul Rahman v. State of Kerala*(2) in support of their contentions.

6. I have considered the submissions made at the Bar by the learned counsel on both sides. It is evident from the pleadings and the materials on record that the impugned decision was taken pursuant to the demand made by workers of Pool I B in Exts. R-2(b), R-2(c) and R-2(d) representations. The leader of Pool I B has in Ext. R-2 (b) representation stated that the workers of Pool I A are working on Mondays, Wednesdays, Fridays and Saturdays, while the workers of Pool I B are working on Tuesdays, Thursdays and Sundays, that as Sunday is a holiday there is no equitable distribution of work and therefore the work may be equitably distributed. The Committee has by Ext. P-1 resolution accepted the said request and decided that the workers of each Pool shall be entitled to work only during three days a week and that Sunday shall be a holiday.

7. The short question that arises for consideration in this writ petition is whether the said decision is within the competence of the Committee. Section 18 of the Act empowers the Government to appoint a Committee for every revenue district in the State. Sub-section (8) of Section 18 of the Act stipulates that the functions of the Committee shall be, (a) to pool the headload workers who are not employed under any employer or contractor (b) to arrange and regulate employment of such headload workers and to pay them wages (c) to take disciplinary action against them wherever necessary and (d) to do all such acts as are necessary for the implementation of the Act and the Scheme. It is relying on Clause (b) of sub-section (8) of Section 18 that the learned counsel for respondents 1 and 2 contended that the Committee is competent to arrange and regulate the employment of headload workers in the manner directed in Ext. P-1.

8. Paragraph 8 of the Scheme stipulates that every registered headload worker to whom registration has been granted by the Convenor of the Committee shall work only in the area allotted by the Committee. Paragraph 10 of the Scheme stipulates that every headload worker shall be deemed to be employed by the Committee of that area and his work shall be supervised by the person for whom

the workers have been allotted, as well as by any officer of the Committee. Paragraph 19 of the Scheme stipulates that Committee shall determine the number of headload workers needed for their area and for this purpose increase or decrease the number in their register. Paragraph 20 of the Scheme stipulates that the Chairman of the Committee shall make necessary arrangements to pool the registered workers into as many groups as are needed and to locate these groups at the locations decided by him. The learned counsel for the respondents relied on the aforesaid provisions of the Scheme also in support of their contentions.

9. In *Chumattu Thozhilali Congress v. State of Kerala* (supra) the question considered was the validity of the merger of two pools of headload workers working in two different railway stations. The headload workers of Pool No.46 who were working in Palakkad Town Railway Goods Station moved the District Labour Officer for amalgamation with Pool No. 45 which consisted of headload workers stationed in Palakkad Junction Railway Station, on the ground that they had very little employment opportunities. The union representing headload workers of Pool No.45 working in Palakkad Junction Railway Station objected to the said proposal. Conciliation proceedings were initiated u/s 21 of the Act with notice to all parties and the District Labour Officer thereafter passed an order amalgamating the two pools. The District Labour Officer also directed identity cards to be issued to 30 additional workers who were working in Palakkad Junction Railway Station. The trade union representing headload workers of Palakkad Town Railway Goods Station thereupon filed an appeal before the Regional Joint Labour Commissioner, Ernakulam challenging that part of the decision. The decision to merge the two pools of workers was not challenged. The Regional Joint Labour Commissioner while upholding the merger held that the District Labour Officer erred in not stating the guidelines on the basis of which work has to be given to the workers and consequently directed the District Labour Officer to take a fresh decision in the matter. The direction regarding the issuance of identity cards to the additional 30 workers was also set aside on the ground that workers have not been properly identified. The entire matter was thus remitted to the District Labour Officer. The orders passed by the District Labour Officer and the Regional Joint Labour Commissioner were challenged in this Court. Upholding the merger, this Court held that when the concerned authorities found that work in the area where the members of one of the pools were working had gone down and it was necessary to merge the pools, the decision can be sustained under paragraph 20 of the Scheme. This Court also held that the issue which arose before the District Labour Officer would fall within the definition of the term "dispute" occurring in Section 2(h) of the Act. In *Abdul Rahman v. State of Kerala* (supra), this Court upheld the power of the Committee to transfer workers of one pool to work in another pool in the same area. It was held that the Act and the Scheme confer power on the Committee to determine the number of headload workers needed in an area and to post headload workers according to the need. In the above two decisions referred to and relied on by

the learned counsel for the respondents, the question whether the Committee has the power to distribute the work among two different groups of workers by altering the terms and conditions of their employment was not considered.

10. It is evident from Ext. R-2(b) representation submitted by the leader of Pool I B that till the impugned decision was taken, the workers of Pool I A were working on Mondays, Wednesdays, Fridays and Saturdays and the workers of Pool I B were working on Tuesdays, Thursdays and Sundays. This arrangement was in force for the past several years. The grievance voiced by the leader of Pool I B was that while workers of Pool I A get work during four days a week, the workers of Pool I B get work only during two days a week for the reason that Sunday is a holiday. It was in this factual background that the impugned decision was taken and the number of days of work distributed evenly among the two pools. From a reading of Ext. R-2(b), it is evident that the complaint therein was connected with the employment of headload workers and the terms and conditions of their employment. The workers of Pool I B who had lesser number of working days wanted parity in employment. Such a dispute, in my opinion, is a dispute as defined in the Act and can be settled only in the manner laid down in Section 21 thereof.

11. Section 2(h) of the Act defines the term "dispute" to mean any dispute or difference between employers and employers or between employers and headload workers or between headload workers and headload workers, which is connected with the employment or non-employment or the terms of employment or the conditions of employment, of any headload worker. The said definition will cover any dispute or difference between headload workers and headload workers which is connected with the employment or non-employment or the terms of employment or the conditions of employment of headload workers. The claim made by the headload workers of Pool I B would certainly fall within the definition of the term "dispute" occurring in section 2(h) of the Act. The dispute raised by them was connected with their employment and the terms and conditions of their employment as headload workers. The power of the Committee to arrange and regulate the employment of headload workers in exercise of the power conferred on it under Clause (b) of sub-section (8) of section 18 of the Act cannot in my opinion be invoked to alter the terms and conditions of employment which was in existence for the past several years. The power to arrange and regulate the employment of headload workers can only be for the purpose of maintaining discipline and to ensure that headload workers work only in the designated areas and do not demand wages except in accordance with the provisions of the Scheme. Such power is conferred on the Committee in view of the fiction created by Paragraph 10 of the Scheme that every headload worker shall be deemed to be employed by the Committee of the area where he works and the stipulations therein that his work shall be supervised by the person for whom the workers have been allotted as well as by an Officer of the Committee. The Committee cannot under the guise of exercising the power under Clause (b) of sub-section (8) of Section 18 of the Act decide a

dispute between headload workers and headload workers, which is connected with the employment or non-employment or the terms of employment or the conditions of employment, of a headload worker. The power conferred on the Committee under Paragraph 19 of the Scheme to determine the number of headload workers needed for the area over which the Committee has jurisdiction and for that purpose to increase or decrease the number cannot also be invoked to alter the terms and conditions of employment of headload workers. The power under paragraph 19 of the Scheme is to be exercised for determining the number of headload workers needed for an area and not for any other purpose. The power under Clause (b) of sub-section (8) of Section 18 of the Act and paragraph 19 of the Scheme cannot therefore be invoked to decide a dispute between two sets of workers regarding their entitlement to work or the terms of their employment or the conditions of their employment. Such a dispute can in my opinion be resolved only in the manner provided in Section 21 of the Act. In view of the provisions contained in Section 21 of the Act which provides for resolution of disputes connected with employment or terms of employment or conditions of employment of headload workers, by the conciliation Officer, appointed under the Act, the Committee could not have decided the dispute raised by the headload workers of Pool 1B by directing that workers of Pool I A shall work on Mondays, Wednesdays and Fridays, that workers of Pool I B shall work on Tuesdays, Thursdays and Saturdays and that Sunday shall be a holiday. Ext. P-1 resolution adopted by the Committee cannot therefore be sustained. The workers of Pool I B should have in my opinion raised the dispute before the Assistant Labour Officer having jurisdiction and taken steps to have the dispute raised by them resolved in terms of Section 21 of the Act. In that view of the matter, it is not necessary for me to decide whether the impugned decision is bad for violation of the principles of natural justice.

For the reasons stated above, I allow the writ petition and set aside Ext. P-1 resolution. Consequently, I direct that the status quo as it obtained immediately prior to Ext. P-1 resolution shall be maintained till the headload workers of Pool I B seek a resolution of the dispute in the manner provided in Section 21 of the Act. Thereafter, the rights of parties will be governed by the decision taken in such proceedings. I make it clear that I have not expressed any opinion on the merits of the rival contentions regarding the entitlement for work and that it will be open to both parties to raise all their contentions before the Conciliation Officer.