

(2011) 11 KL CK 0035
In the High Court Of Kerala
Case No : O.P. No. 21498 of 2001

The Commonwealth Trust (India) Ltd.

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19, 19(1)

Kerala Handloom Workers Welfare Fund Act, 1989 — Section 2, 4(1), 4(3)

Citation : (2012) 1 KLJ 255

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : U.K. Ramakrishnan, P. Vijayamma and Uma Gopinath, for the Appellant; Noushad Thottathil (GP), for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—The petitioner is challenging the constitutional validity of Sections 4(1) and (3) of the Kerala Handloom Workers' Welfare Fund Act, whereby the rate of contribution payable by the worker is enhanced from Re. 1 to Rs. 3, whereby the employer has to effect double the amount remitted by the worker. The case of the petitioner is that, there is no rationale on the part of the respondents in enhancing the same as per the Ordinance bearing No. 19 of 2001, which was subsequently replaced by the Kerala Handloom Workers' Welfare Fund (Amendment) Act 2001. The petitioner is a company, constituted under the relevant provisions of the Indian Companies Act 1956 and it is having two factories, one situated near the head office of the company at Calicut and the other one at the beach, known as "beach unit". It is stated that the beach unit has been subsequently closed down due to various adverse circumstances. It is admitted that the petitioner is an "employer" as defined u/s 2 (f) of the Kerala Handloom Workers' Welfare Fund Act. By virtue of the mandate u/s 4 (1) of the Act, every worker is suppose to contribute a sum of Re. 1 as the contribution to the fund and a equal contribution is to be made by the employer as well, as stipulated u/s 4 (3). It is stated that, the petitioner has been effecting the

payment in compliance with the statutory requirement.

2. Over and above the payment as aforesaid, the petitioner contends that, the petitioner has been effecting other statutory payments, particularly under the Employees Provident Fund Act, ESI Act and various other labour enactments. By virtue of the nature of the operations being pursued by the petitioner and the adverse market conditions coupled with other relevant factors, the very existence of the unit came to be in doldrums. But without any regard to the actual facts and figures as above, the contribution payable under the Act was arbitrarily enhanced to a tune of Rs. 3 from Re.1, in the case of contribution payable by the worker u/s 4 (1) and the contribution payable by the employer u/s 4 (3) was stipulated as "double the payment" of the contribution to be effected by the workers. By virtue of the amendment brought into force as per the Ordinance in question, the petitioner who was to effect a contribution of only Re. 1 per month, per worker, has to part with Rs. 6 per worker, which was enough to uproot the petitioner. This made the petitioner to challenge the constitutional validity of the said amendment by filing this Writ Petition. During the pendency of the above proceedings, the Ordinance was replaced by the Kerala Handloom Workers' Welfare Fund (Amendment) Act 2001, and the Writ Petition was got amended accordingly.

3. The respondents have filed separate counter affidavits, pointing out that, the amendment is very much within the power and prerogative of the State and it is traceable to the relevant entries in the List III under the 7th schedule of the Constitution of India.

4. The learned counsel for the petitioner submits that the stand taken by the first respondent in paragraph 3 of their counter affidavit dated 15.10.2007, referring to the petitioner's liability as a "dealer" is not correct or sustainable, more so, in view of the law declared by this Court, as per the decision rendered in Sivaraman v. State of Kerala, 2000 (2) KLT 85. wherein it has been held that the Act does not contemplate any such liability upon the dealer. The learned counsel further submits that, there is absolutely no rationale for enhancement of the contribution, in more particular, the liability now cast upon the employer u/s 4 (3), making it "double the amount" of contribution payable by the worker.

5. The learned Government Pleader appearing for the respondents submits that the idea and understanding of the petitioner as to the power, competence and jurisdiction of the State with regard to the amendment brought about, initially by virtue of the Ordinance and subsequently replaced by the Act, is thoroughly wrong and misconceived. It is stated that the power of the State is very much traceable to the Entries 20 and 23 of the concurrent list of the 7th schedule which read as follows:

20. Trade unions; industrial and labour disputes

23. Social security and social insurance; employment and unemployment

The learned Government Pleader also submits that, the basic contention of the petitioner is that, the contribution payable under the Act will amount to a "tax fee", for which no power is traceable to the relevant entries under the 7th schedule and as such, the amendment is without jurisdiction, being ultra virus. It is pointed out by the learned Government Pleader that the sustainability of similar contention with respect to other Labour Welfare Statutes, particularly the Toddy Workers' Welfare Fund Act and the Motor Workers' Welfare Fund Act has already been considered and repelled by this Court as per the decision reported in Unni Mammu Haji v. State of Kerala, 1989 (1) KIT 729 and Bhaskaran Nambiar v. Radhakrishna Menon, 1990 (1) KLT 254

6. Whether the amendment violates the Articles 14 and 19 of the Constitution of India is to be looked into with reference to the observation made by the Supreme Court in The State of Madhya Pradesh Vs. G.C. Mandawar, . wherein it has been held as follows:

The power of the court to declare a law void under Article 13 has to be exercised with reference to the specific legislation which is impugned. It is conceivable that when the same legislature enacts two different laws but in substance they form one legislation, it might be open to the court to disregard the form and treat them as one law and strike it down, if in their conjunction they result in discrimination. But such a course is not open where, as here, the two laws sought to be read in conjunction are by different Governments and by different legislature. Article 14 does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory. Nor does it contemplate a law of the Centre of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of the two enactments, the source of authority for the two statutes being Article 14 can have no application.

The said decision was followed by the Apex Court in the subsequent decision in P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others, . The observations made by the Apex Court were relied on by a Division Bench of this Court, while considering the constitutional validity of the Motor Transport Workers' Welfare Fund Act 1985 and it was categorically held that the challenge raised against the Statute, raising a plea that the contribution under the Welfare Fund Act amounts to "tax fee" was repelled. It was held that the power to enact the Statute was very much traceable to entry 22 and 23 in the Concurrent List (List III) of the 7th schedule, as observed by the Apex Court and the alleged infringement of Article 19 (i) (g) was held as not correct or sustainable. The infringement of Articles 14 and 19 (1) (g) was further examined by a Division Bench of this Court, while examining the statutory validity of the Toddy Workers' Welfare Fund Act 1969 and the legislative competence of the State referring to entry 24 of "List III". Placing reliance on the decision Gasket Radiators Pvt. Ltd. Vs. Employees' State Insurance Corpn. and Another, . it was held that the challenge was quite wrong and unfounded. Applying the same logic and

reasoning in the decision cited supra to the case in hand, this Court finds that there is no merit in the contentions raised by the petitioner, questioning the competency of the State to bring about the enactment, more so, when there is no dispute with regard to the power traceable to entry 22/23 of the "List III" of the 7th Schedule. It is also relevant to note that there was no dispute for the petitioner, when the Statute was brought into force in the year 1989 and became aggrieved only by virtue of the enhancement of the rates later. In other words, the petitioner is only aggrieved because of the enhancement of quantum of contribution from Re. 1 to Rs. 3, further making the employer to satisfy the employer's contribution at the rate of "double the amount" payable by the worker. When the power is traceable to a specific entry under the Constitution and when there is no challenge in this regard, to what extent the enhancement ought to have been made comes within the legislative wisdom of the State. It is stated in the counter affidavit filed by the first respondent that the enhancement was made only after considering all the relevant aspects, particularly when the enhancement was brought about only after the 12 years of the original enactment, by which time, the status of the economy had got varied to a substantial extent, in view of the devaluation of the money. The contention of the petitioner is that, the petitioner is not in a position to meet the "day to day needs" and that enhancement ought to have made with reference to the "financial capacity" of the employer as well. This Court finds it difficult to accept the said proposition mooted by the petitioner, particularly, in the context of considering the constitutional validity of the Statute. The grounds raised by the petitioner to challenge the constitutional validity of the Statute are totally inadequate and inappropriate, which do not support the reliefs sought for.

The Original Petition is devoid of any merit. No interference is called for and it is dismissed accordingly.