

(2012) 06 KL CK 0234

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 7782 of 2012 (W)

Thrissur District Loading and Unloading General Workers
Union (Regd) (AITUC)

APPELLANT

Vs

District Labour Officer Thrissur, Pin-680003 and Others

RESPONDENT

Date of Decision : 07-06-2012

Acts Referred:

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

Citation : (2012) 06 KL CK 0234

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : Renjith Thampan SR. and Sri. V.M. Krishnakumar, for the Appellant;
Koshy George, For Addl. R 11. and Government Pleader Sri. G. Gopakumar, for
the Respondent

Final Decision : Dismissed

Judgement

K. Surendra Mohan, J.—The petitioner is a trade union. The petitioner has filed this writ petition aggrieved by Ext.P5 order of the first respondent dismissing an appeal filed against the proceedings of the second respondent. According to the petitioner, the second respondent has granted registration to respondents 3 to 9 under Rule 26A of the Kerala Headload Workers Rules, 1978 ("the Rules" for short). Though the petitioner had challenged the said action before the first respondent by filing an appeal, the appeal has also been dismissed by Ext.P5. According to the counsel for the petitioner, there were disputes between the petitioner and the tenth respondent. The disputes were settled at the instance of the first respondent by Ext.P1 settlement. Clause 1 of 2 Ext.P1 settlement stipulates that the legal representatives of deceased employees of the union would be given registration after due enquiry. According to the petitioner, the second respondent has no authority to grant registration to any person other than the legal representatives of the deceased employees.

2. Adv.Koshy George, appears for the additional 11th respondent. According to

the counsel, it is not open to the petitioner to object to the grant of registration u/s 26A of the Rules to others for the reason that the refusal of such registration would violate the fundamental rights of the said persons. The counsel also places reliance on a judgment of this Court, *Rajeev v. District Labour Officer* (2010 (4) KLT 783) to support his contention.

3. I have heard the counsel for the petitioner as well as the counsel for the additional 11th respondent. I have considered the rival contentions anxiously.

4. A reading of Sec. 26A of the Rules shows that the Registering Authority has on receipt of an application for registration to conduct an enquiry to consider the objections, if any, raised by other persons and has thereafter to decide whether to grant or refuse the registration sought for. The jurisdiction that is vested in the second respondent by the statute cannot be fettered by the agreements like Ext.P1 entered into between private parties, even if they are in the presence of statutory authorities like the first respondent. The discretion under Sec. 26A has to be exercised in accordance with law, for the purpose of which the same has been conferred. The registration that is sought for, is refused for the reason that grant of such registration is impermissible in the light of Ext.P1. Such an action would be unsustainable and liable to be set aside as being violative of the fundamental rights of the persons who have sought for the registration. In the decision reported in *Rajeev v. District Labour Officer* (2010 (4) KLT 783), this Court has considered whether the refusal to grant registration for the reason that the applicant had no previous experience as a headload worker was permissible. This Court has held that rejection of the application for registration on any such ground would be violative of the fundamental rights of the applicants. This Court has observed in paragraph 6 (at page 790) as follows:

If for working as a headload worker in a scheme covered area, registration under R.26A is mandatory, it defies logic as to how for registration under R.26A, respondents 1 and 2 can insist that applicants who apply for registration under R.26A should be already headload workers working under the employer as proved by registers maintained as per Rules. For example take the case of a young man who comes of age and decides to pursue headload work as an avocation and means of livelihood for himself and his family. He finds an employer, but the employer tells him that he cannot employ him as a headload worker unless he gets a registration under R.26A, which the employer is bound to insist upon in view of Cl.6 of the Scheme. He files an application under R.26A. Can he be denied registration on the ground that he is not already a headload worker working under the said employer? I do not have to think twice to give a big "NO" as an answer because that is the only logical answer. If registration is denied to such an individual that would be violation of his fundamental right under Art. 19(1)(g) of Constitution of India, which guarantees to every citizen of India the right to practice any profession, or to carry on any occupation, trade or business. No legislation can deny that fundamental right to a citizen. If there is a legislation denying such a right to any citizen that would be unconstitutional and

liable to be struck down as such or read down to make it constitutional.

I am in respectful agreement with the above conclusion. As clear from the observation referred to above, even in a scheme covered area the exercise of discretion under Sec. 26A would have to be made on the basis of the principles acceptable in law. The area in the present case is not a scheme covered area. Therefore, the petitioner cannot claim a right which is not available even in a scheme covered area, to challenge Ext.P5. The appellate authority has found in Ext.P5 that on the basis of Ext.P1, registration has been granted to even persons who are not the legal representatives of deceased persons. The appellate authority further finds that the services of additional headload workers are necessary in the area and therefore it was necessary to grant registration to the applicants. It is to be noticed that the petitioner does not dispute the above findings in Ext.P5. I find that the appellate authority has considered the contentions of the petitioner in the proper perspective. I do not find any ground to interfere with Ext.P5 or to grant any of the reliefs sought for in this writ petition. For the above reasons, this writ petition is dismissed.