

(2014) 10 KL CK 0070
In the High Court Of Kerala
Case No : W.P. (C). No. 31476 of 2013 (H)

Thrissur Marbles and Granite Pvt. Ltd.	APPELLANT
Vs	
The State of Kerala	RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Kerala Headload Workers Act, 1978 — Section 18, 2(j)

Citation : (2014) 10 KL CK 0070

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : G. Sreekumar, Advocate for the Appellant; T.J. Michael, Government Pleader, K.A. Hazan, Christopher Abraham, M.M. Fathima Jaleena and K.P. Wilson, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner is a Private Limited Company, who is inter alia engaged in the business of trading in marbles and granite. The petitioner has a business premise in Thrissur District within the Nenmanikkara Grama Panchayat, which admittedly is not a Scheme covered area, with reference to the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 [hereinafter referred to "Scheme"]. The petitioner herein had employees in its own rolls, through whom the loading and unloading works were being carried on.

2. When the members of the 3rd respondent-Union obstructed the same claiming work to their employees, the petitioner filed a writ petition before this Court seeking police protection for carrying on the work. An interim order was passed, as evidenced by Exhibit P7. Later on, it was submitted before Court that the District Labour Officer [DLO], Thrissur was seized of the matter. In such circumstance, a Division Bench of this Court, by Exhibit P11, directed the parties to appear before the DLO, who was also directed to take a decision in the matter. The decision taken by the DLO at Exhibit P12, and confirmed by the Appellate Authority at Exhibit P20 are impugned herein. Since the order of the DLO is confirmed in appeal, reference is made to the findings in Exhibits P12 order.

3. Exhibit P12 proceeds on the premise that the petitioner herein has, by a device employed, insofar as effecting a change in the constitution of the partnership firm, incorporated a Private Limited Company; a different entity and denied the workers, of the partnership firm, employment. It is an admitted fact that the earlier partnership firm and the present Private Limited Company are carrying on the very same business. The latter took over the business of the former. The partnership firm was reconstituted as a Private Limited Company and the property in which the business was carried on was also purchased by the Private Limited Company. The specific case put forward by the members of the 3rd respondent was that they had been carrying on loading and unloading work, being registered headload workers under Rule 26A of the Kerala Headload Workers Rules, 1981 [for brevity "Headload Workers Rules"] and that after constitution as a Private Limited Company, they were denied with such work.

4. After detailed discussion of the case pleaded by the parties, Exhibit P12 found that the headload workers under the 3rd respondent were earlier employed by the partnership firm. The question then to be decided was whether there was any employer-employee relationship, the existence of which alone could necessarily lead to a consideration of the question of denial of employment. However, the DLO disregarded the said issue, on the premise that the workmen under the 3rd respondent were employed by the partnership firm and found that after constitution of the Private Limited Company the members of the 3rd respondent-Union were denied employment.

5. In fact Exhibit P12 clearly found that as per the Kerala Headload Workers Act, 1978 [for brevity "Headload Workers Act"] and the Rules of 1981, the petitioner could carry on loading and unloading work by its own employees even if they are not registered under Rule 26A of the Rules. But, despite entering into such a finding, Exhibit P12 went on to hold that there is denial of employment insofar as the members of the 3rd respondent are concerned. It was in such circumstance that the claim for employment with the petitioner, raised by the members of the 3rd respondent-Union were allowed in Exhibit P12. Exhibit P20 re-produces the very same reasoning in Exhibit P12 and hence confirms the order at Exhibit P12.

6. The learned counsel for the petitioner would rely on the observations in Karunakara Kurup Vs. State of Kerala, , a Full Bench decision in which two Judges, by majority, concurred and held that a correct interpretation of the earlier Full Bench in Raghavan Vs. The Superintendent of Police and Others would indicate that the employment of a headload worker who is registered under the Headload Workers Act and the Rules would only lead to inference of a casual employment and does not indicate a subsisting relationship of employer and employee.

7. The learned counsel appearing for the 3rd respondent, however, would specifically rely on the earlier Full Bench decision in Raghavan (supra) and contend that the principles deduced by the Full Bench as item Nos. (7) and (8) would clearly cover the issue and the only conclusion possible is that, the

members of the 3rd respondent-Union are entitled to the unloading work. Such a contention raised by the learned counsel for the 3rd respondent, is on the premise that the petitioner's employees are only competent to carry on the loading work and the unloading work has to be conceded to the members of the 3rd respondent. It is not clear as to on what grounds such contention is raised and there is absolutely no reasoning projected as to why such distinction should be made.

8. This Court is unable to accept the contention of the learned counsel for the 3rd respondent, since the principles laid down in Raghavan (*supra*) would clearly support the case of the petitioner. Paragraph 24 of the said decision is extracted hereunder:

"24. In the light of the above discussion, following principles can be deduced. (1) The provisions under Chapter III of the Act are applicable to all headload workers coming within the definition of the term under the Act. (2) The definition would take in both permanent workers attached to an establishment as also workers engaged in the establishment from time to time. But, workers engaged for domestic purposes are excluded. (3) The provisions of the Act would be applicable only to those headload workers who are engaged in establishments coming under the Schedule under S. 2(j). (4) All headload workers including permanent workers attached to establishments are liable to get registered under R. 26A. (5) In the areas where the Scheme is made applicable, no headload worker who is not a registered headload worker as per the Kerala Headload Workers Rule, shall be allowed or required to work in that area. It is also necessary that such headload worker shall get a registration under the provisions of the scheme. But, a headload worker who is permanently employed by an employer or a contractor is not liable to get registration under the scheme. (6) An employer is bound to maintain registers and records in respect of every headload worker employed by him as per the provisions contained under R. 27 including supply of wage card to any headload worker. (7) It is open to the employer to engage his permanent headload workers attached to his establishment to do the loading and unloading work whether it is in an area where the Scheme is made applicable or not. (8) But, in an area where the Scheme is made applicable, if the employer requires additional workers, he has to get them through the committee formed under S. 18 and in accordance with the provisions of the Scheme. In an area where the Scheme is not made applicable, there is no such obligation on the part of the employer and he can engage workers of his own choice. But he will be bound to comply with the provisions of R. 27 in respect of such headload workers also. (9) If a headload worker permanently attached to an establishment is carrying on other work also, that, by itself, will not take him out of the definition of "headload worker" under the Act. It will depend upon the nature of the principal engagement and that again has to be decided on the facts of each case".

9. The principle enunciated as item No. (7) specifically indicate that in an area

where the Scheme is made applicable or not, an employer is entitled to employ his permanent headload workers attached to the establishment for loading and unloading work. The only exception as stated in item No. (8) is that in a Scheme covered area if the employer requires additional workers, then such engagement has to be made through the committee constituted under the Act and Rules. It is also specifically noted that in an area where the Scheme is not made applicable, there is no such obligation on the part of the employer, even if there are registered workers available in the said area.

10. Reference can be usefully made to the decision in *Karunakara Kurup* (supra), wherein, on an interpretation of *Raghavan* (supra), the majority held:

"... the Full Bench has categorically held that in an area where the Scheme is not made applicable, the employer can engage workers of his own choice. It follows that the worker has no right to claim that he alone be engaged. This view is in conformity with the scheme of the statute" [para. 12].

As was specifically pointed out by the learned counsel for the petitioner, the later Full Bench, by a majority, also held that the casual employment of a headload worker; definitely would not lead to any inference of employer-employee relationship.

11. Going by the binding precedents of this Court, one cannot discern any denial of employment as such. If the area was a Scheme covered area, necessarily the petitioner should have employees registered under the Rules, even if they be his regular employees; to deny work to employees registered under the Scheme in the area. Only then could the additional work be granted through the committee constituted under the Act and the Rules. In an area where the Scheme is not notified, there is not even an obligation on the employer to register his workers under the Act and Rules. Even if his permanent employees, registered or unregistered, are not sufficient to carry on the loading and unloading work, even then, there would be no obligation cast on an employer in an area where there is no application of the Scheme, to engage those headload workers who are registered under Rule 26A. The crucial aspect in adjudicating the dispute is whether a scheme is notified in the area in which the petitioner is carrying on his business. Admittedly even going by the averments of the 3rd respondent, the scheme has not been notified in the area.

12. The distinction attempted to be drawn by the learned counsel for the 3rd respondent with respect to loading and unloading work is not sustainable. There is absolutely no reason why a person competent to carry on loading work should not be entrusted with the unloading work also. The Act and the Rules also does not recognise any such distinction between loading and unloading work. When the petitioner asserts that he has his own employees to carry on loading and unloading work, the Union of headload workers cannot, on an imaginary distinction between the two, claim that one of the work should be assigned to them. The Act and the Rules contain no such distinction or stipulation. This Court

is of the opinion that the petitioner would be entitled to carry on the loading and unloading work with its employees in the muster rolls. There cannot be any such distinction drawn between the loading and unloading work, reasonably and on facts.

13. The petitioner has also, by way of abundant caution, sought for registration of his employees under Rule 26A, which is said to be rejected and an appeal is said to be pending against such rejection. This Court need not go into the same, since herein the question is as to the right of the members of the 3rd respondent Union to claim employment of loading and unloading with the petitioner. The Scheme not being brought into effect in the area by a notification, as has been categorically held in Exhibit P12, there would be no obligation on the petitioner to carry on the loading and unloading work or any of these, with the registered workers under the Act and the Rules. The denial of employment which has been found in Exhibit P12 and confirmed in Exhibit P20, cannot be sustained, since there is no employer-employee relationship between the petitioner and the members of the 3rd respondent. The authorities have misdirected itself since denial of employment necessarily postulates employer-employee relationship, and what the headload workers, registered under the statute and as per the Scheme, could claim is only "casual employment" under the statute and the Scheme.

In the above circumstance, the writ petition is allowed, setting aside Exhibits P12 and P20. It is declared that the petitioner, so long as the area where operations are conducted are not covered under a Scheme, would be entitled to carry on the loading and unloading work with its own workers, even if they are not registered under the Act and the Scheme. Parties are left to suffer their respective costs.