
(2005) 08 KL CK 0014
In the High Court Of Kerala
Case No : Writ Petition No. 22317 of 2005

Venkatraman

APPELLANT

Vs

Sub Inspector of Police

RESPONDENT

Date of Decision : 17-08-2005

Acts Referred:

Headload Workers (Amendment) Act, 1998 — Section 2
Kerala Headload Workers Act, 1978 — Section 2
Kerala Headload Workers Rules, 1981 — Rule 26A
Kerala Loading and Unloading (Regulation of Wages and Restriction of Unlawful Practices) Act, 2002 — Section 5

Citation : (2006) 108 FLR 179 : (2005) 4 ILR (Ker) 255 : (2005) 4 KLT 365 : (2006) 1 LLJ 471

Hon'ble Judges : S. Siri Jagan, J; M. Ramachandran, J

Bench : Division Bench

Advocate : K. Surendra Mohan, for the Appellant; M.A. Khader Kunju, Government Pleader and Paulson C. Varghese, for the Respondent

Final Decision : Allowed

Judgement

M. Ramachandran, J.—According to the petitioner, in view of the prevailing arrangements that workers on permanent basis are employed in their establishment at Puthencruz, attending to all the works available, any claims by outsiders for a right to the unloading work that may be there, is not legally tenable. The company imports and distributes various chemicals from other States of hazardous nature, and these require expert handling. The chemicals and compounds come in trucks or Tanker Lorries and the commodities are got unloaded by the regular workers in the establishment. On an average, 5 to 6 lorry loads of materials come in a month. The commodities are stored in their godown and they are in due course packed into smaller containers/units, according to the requirement of the customers. There are 9 permanent workmen on regular rolls, and this had been the pattern of work for the last about 6 to 7 years.

2. However, demand had come from respondents 4 to 6, trade unions, whereby the petitioner has been requested that the loading and unloading work of goods could have been carried out only by members represented by them and since the petitioner did not have any registered head load workers in the establishment, he was disabled from employing any such workmen for the work. The petitioner was not prepared to come in terms with the above demand. It is stated that from the month of May, 2005 onwards, use of force commenced and there has been trespass and obstruction. The petitioner, exasperated, had requested the police to come to their help, but as there was no assistance and the obstruction was practically pushing them to a position of stand still, by this Writ Petition it is requested that appropriate orders are to be passed, whereby the right of the petitioner for carrying on the work in their discretion, by employing regular workmen for all available work, is to be upheld and police protection from interference of respondents 4 to 6 or any strangers is directed to be granted.

3. With reference to the averments in the Writ Petition, as also supplemented by the reply affidavit, Mr. K. Surendra Mohan appearing for the petitioner submits that the right as above has been recognised by a Full Bench of this Court in the decision reported in *Raghavan v. Superintendent of Police* 1998 (2) KLT 732 as also *Sebi Manavalan v. S.I. of Police* 2001 (2) KLT 78 99 . According to the petitioner, the workmen on regular rolls are predominantly attending to packing work and other incidental activities on a routine basis and on stray occasions when lorry loads arrive, they attend to the unloading work also. Inflammable and toxic chemicals of hazardous nature are being dealt with and this also is a reason which compels the petitioner to make use of the expertise of the own workmen, as otherwise, establishment will be answerable in respect of injuries that may be sustained by persons, who are inept in handling such materials.

4. The Full Bench decision referred to a circumstance where the provisions of the Headload Workers Act, Rules or Scheme may not apply to an establishment. It should be an arrangement, where regular workmen were also attending to the casual jobs of loading or unloading, though their principal engagement was in connection with the other works that are available in the establishment. Counsel submits that the principal job of their regular workers is packing of the bulk consigned goods as smaller packets and containers and therefore the observations of the Court in the said judgment are applicable on all fours. The Kerala Headload Workers Act is not applicable because of the above factual situation and therefore he has a right to make use of his own workmen. The requirement of registration is not there.

5. However, the claim as above is controverted by Sri. Paulson C. Varghese, who had entered appearance on behalf of respondents 4 to 6. He submits that from December 2000 onwards by a Gazette Notification (Ext.R 6 (a)), the area in which the establishment is situated has been brought under the Scheme (Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983) and by operation of the provisions of the statutory scheme there is absolute

prohibition for any employer to carry out any work of loading/unloading in the establishment through unregistered workmen. It is submitted that when permanent workers are not registered, an automatic ban comes into play and the admission as above in the Writ Petition is sufficient for this Court to come to a conclusion that the basic claim for avoiding utilisation of registered headload workers is impermissible. It is further submitted that work had been attended to by them for quite some time in the establishment and the present objection was without bona fides and with ulterior motives. A detailed counter affidavit also has been filed, in support of the contentions as above. Counsel submits that in the guise of a police protection case, the attempt was to get an extraneous issue adjudicated by this Court, and the application deserved to be rejected.

6. The emerging facts, therefore, can be summarised as following:

(i) The establishment functions in a scheme notified area from 19-12-2000 onwards, (ii) Normally the industry comes within notified activities as envisaged by Schedule u/s 2(j) of the Act.

(iii) Loading/unloading work is essentially to be carried out in the establishment, but it is confined to 5 or 6 occasions in a month.

(iv) There is a regular work force attached to the establishment. The factory is engaged in works involving hazardous materials.

(v) The employer has not registered themselves under the scheme, and do not avail of services of the workmen of the pool, notified for the area.

7. The questions are, whether these circumstances justify the demand of the 4th respondent that only registered workmen will be entitled to attend to the loading/ unloading work and therefore in the absence of registration, the work is to be attended to by the registered workmen employed by the committee. Or is this a situation which is exempted in view of the observation of the Full Bench, cited supra.

8. Mr. Paulson C. Varghese is justified in submitting that the hazardous or toxic nature of the chemicals by itself may not be a circumstance for an employer to adopt a stand that experts employed by him alone are entitled to carry out the work even if it be in a scheme notified area. Counsel had adverted to the provisions of the Kerala Loading and Unloading (Regulation of Wages and Restriction of Unlawful Practices) Act 2002, which in fact was a supplemental enactment to the earlier legislation, namely the Kerala Headload Workers Act. Although the above legislation may not at all apply to the work that is being carried on by the employer, we may examine the contentions raised, however. The new Act u/s 5 provided for an exemption, whereby an employer was to have the right to carry out such operations for non-domestic purposes by employing workmen of his choice. Likewise, in respect of an industrial work, in export processing zone, industrial or commercial area, tourism project area, or agricultural market as the Government may, by notification in the official

Gazette, declare as such, the employer could claim such exemption. Apart from this, there is no exemption available as seen from the provisions of the Act. Counsel also points out that the Schedule had been amended in the year 1996, whereby establishments employing or engaging workers for loading or unloading works of liquefied petroleum gas products also had been included within the purview of the Act, which indicated that the nature of the commodity was usually not a yardstick. The question is as to whether there was loading/unloading work available, by carrying on head or person or in a trolley, any article or goods in or from or to a vehicle or any place in the establishment.

9. Therefore, the plea of the petitioner that because of the toxic nature of the commodity, he is entitled to exclusively employ trained workmen of his choice does not appear to have any statutory support, but we may examine the argument of Mr. Surendra Mohan that regular workmen are being employed principally for re-packing of bulk commodities, so as to cater to the needs of customers, and the loading/unloading work was only incidental.

10. We notice that the claim put up by the respondents 4 to 6 was in respect of unloading work of bulk commodities, which came by lorries. There is no claim in respect of handy packed items, which were necessarily to be handled in the establishment. From the circumstances, which have been highlighted, it is clear that the unloading work was not having any regularity and did not form part of the daily activities of the employer. The case of the petitioner is that when lorry loads come, the regular workers attend to such work, and it has been recognised as part of their duties.

11. Counsel submitted that it may not be essential that they are to obtain registration under the Act for two reasons. The first is that such work was being carried on from 1996-97 onwards uninterruptedly. The second reason is that such work, which forms only a minor/incidental work earned out in addition to the regular work of re-packing, and therefore the workers are not to be considered or identified as headload workers. The workmen do not come within the definition, the counsel submits, on the authority of the Full Bench decision in Raghavan's case (cited supra).

12. The Full Bench in Raghavan's case (cited supra) had considered the issue and had observed as following:

"Yet another point raised before us was the case of workers employed in the establishments, who are doing the work of loading and unloading along with other duties. Learned Counsel for the petitioners would contend that in such circumstances, the workers cannot be treated as headload workers coming under the definition of that term under the Act. We do not think that this is an issue where an answer in general can be given. It will depend on the facts of each case. If the worker is doing loading and unloading work regularly in the establishment, he cannot be taken out of the purview of the Act only for the reason that he is discharging some other duties also. On the other hand, if he is

principally employed to carry on the work other than loading and unloading and if occasionally he does the work of loading and unloading, it may not be possible to treat him as a headload worker coming within the definition. But, as mentioned earlier, it will depend on the facts of each case."

13. We feel that in the above context, the prime enquiry has to be conducted with reference to the definition of headload worker as found in Section 2(m) of Headload Workers Act, 1998. A person has to be employed directly or through contractor engaged in or for an establishment, for loading or unloading work, for him to be identified as a headload worker. Therefore, if principally and predominantly a person is not engaged for headload work, he is not a "headload worker" as coming under the Act. Other provision of the enactment lends support to such conclusion. Take for example the restriction regarding hours of work. An adult worker is not to be employed for more than eight hours per day. A person who is above the age of 60 is not to be so employed. Stipulations regarding fixation of pay, intervals etc. also show that what is contemplated is a legislation for a category of a distinct description. A person who may casually attend to loading/unloading work in an establishment is therefore not entitled to be identified as a headload worker.

14. It is also brought to our attention that yet another Division Bench of this Court had also occasion to consider the issue, in the light of the judgment of the Full Bench. It was a case where application for registration under Rule 26A of the Kerala Headload Workers Rules had been rejected by the competent authority pointing out that as the works carried out by the persons concerned were only incidental in nature and their principal work carried out in the establishment was not the avocation of head load work, they were not entitled to registration. Although the establishment was in a scheme notified area taking notice of the situation that had precipitated, it had been held that such workmen were not to be treated as headload workers. Consequence was that the provisions of the Act automatically became inapplicable in respect of the group. *Radhamani Vs. State of Kerala*, .

15. We may also advert to a functional approach that has been adopted by a learned single Judge with reference to a similar issue, cited earlier. In *Sebi Manavalan v. S.I. of Police* 2001 (2) KLT 78 Case No. 99 , Mr. Justice K.A. Abdul Gafoor had held that handling of goods such as electronic items is not really headload-work, but a work connected with the manufacture. It has, therefore, been held that merely because the workers engaged by an employer were not registered workmen, it may not be possible for third parties to obstruct the work as illegal. The above two decisions had taken notice of the practical aspects. In a scheme notified area, an employer who is expected to engage headload workers on a regular basis is to register himself, make advance remittances about the work which was likely to arise, and avail deputation of workmen from the committee. Perhaps, Government had felt certain difficulties in the working of the scheme, and Scheme 26 A had been introduced, requiring registration of

employers, on 28-1-2001. It reads as following:-

"26A. Registration of Employers:-- Every employer or contractor who employ or engage in or for an establishment any headload worker registered under the scheme, shall register their name with the committee concerned by paying such fees and in such manner as may be prescribed."

Registers were to be mandatorily kept. These go to show that the provisions were intended to cover establishments, which were regularly employing headload workers.

16 When we take notice of the preamble of the Kerala Headload Workers Act, 1978, viz., "whereas it is expedient to regulate the employment of headload workers in the State of Kerala and to make provision for their welfare, for the settlement of disputes in respect of their employment or non-employment and for matters connected therewith;" and the Kerala Loading and Unloading (Regulation of Wages and Restriction of Unlawful Practices) Act, 2002, it could be seen that the exception carved out by the Full Bench, and the reasoning given by decisions are acceptable. The unorganised sector of employees was being extended a protection, by providing for regularity of work. It did not intend to snatch away a portion of work from regular workmen, and in fact dealt hardly with any issues in respect of such group. In all appearances, it does not intend to cover engagement of casual nature, and it is not as if every activity of loading/unloading in the scheme notified areas should be carried out by workers included in the scheme. We are however compelled to observe that precision in the prescription is not a quality claimable by this special statute. It is a bagful of provisions, without bearing in mind the workability of the bundled ideas.

17. Mr. Paulson submits that the issue as to whether the work as above was incidental or not could not have been decided in these proceedings. But prima facie, the work of re-packing appears to be the predominant work in the establishment, and as commodities come only on 5 to 6 times a month, it is gatherable that the regular workers are predominantly engaged as general workers and unloading is work for a couple of hours in a week. Of course, we do not wish to close the doors of any enquiry in this area, and the observation as above may be treated as one specifically for the disposal of this case. If the Unions have any serious disputes about these aspects, the finding as above may not interfere with the enquiry to be made by a competent fact finding authority, in appropriate proceedings.

18. The cumulative circumstances, therefore, compel us to come to a conclusion that the demand for grant of work as coming from respondents 4 to 6 has no legal basis. The petitioner will have the right to carry on the work, including unloading work, by engaging his own workmen. Neither the employer, nor the employees are obliged to register themselves under the Act, Rules or Scheme. In case obstructions come from third persons, the police shall render adequate assistance as the circumstances may require.

The Writ Petition will stand allowed. No costs.