
(2012) 04 KL CK 0041

In the High Court Of Kerala

Case No : Writ Petition (C) .No. 28680 of 2010

V.P. Sajeendran

APPELLANT

Vs

Secretary, C.I.T.U. Ayarkunnam Unit and Others

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 246, 246(1), 246(2), 246(3)

Citation : (2012) 2 KarLJ 405 : (2012) 2 KLJ 405

Hon'ble Judges : R. Basant, J;K. Surendra Mohan, J

Bench : Division Bench

Advocate : Mansoor B.H, for the Appellant; Koshy George (SC) and Sunitha Vinod (GP), for the Respondent

Judgement

R. Basant, J.—(i) Is Entry No. 13 of the Schedule of the Kerala Head Load workers Act, 1978 (for short "the Act") valid, legal and constitutional? Is there objectionable transgression by the State legislature into the legislative province earmarked exclusively for the Parliament under Entry Nos. 5 and 53 of List I of Schedule 7 of the Constitution?

(ii) Are the trained employees (distribution boys) of the petitioners performing the work of loading and unloading of LPG cylinders in the godowns of the petitioners only as incidental and ancillary to their work as distribution boys? Can they be held to be workers answering the definition of "headload worker" under Sec. 2(m) of the Act?

(iii) Are the headload workers represented by the respondents/unions entitled to demand such work of loading and unloading of LPG cylinders in the godowns of the petitioners?

(iv) Are directions liable to be issued under Art.226 of the Constitution obliging the respondents/police officials to afford police protection to the petitioners to get the loading and unloading work of LPG cylinders in their godowns done by employing their distribution boys who have admittedly not registered themselves

as loading and unloading workers under the Act?

These questions arise for consideration in these writ petitions which have been taken up for hearing and disposal together as requested by all concerned. On fundamental facts there is little dispute. The petitioners are licensed dealers under the Indian Oil Corporation. They deal in LPG cylinders. They are duly licensed to carry on such business as dealers in accordance with law. According to them, their work, as such dealers, includes the receipt of filled up LPG cylinders at their godowns. Such LPG cylinders are brought in trucks. They have to be unloaded and stacked in their godowns. Thereafter the filled up LPG cylinders are sent to the consumers through distribution boys. The empty gas cylinders are carried back from the customers to the godowns by distribution boys. They stack the empty LPG cylinders in the godowns. When trucks come these stacked empty LPG cylinders are to be loaded into the trucks. This, in short, is the activity of the petitioners.

2. According to the petitioners, the work of unloading filled up LPG cylinders from the trucks and stacking them at the godowns of the petitioners as also the work of loading empty gas cylinders into the trucks is purely ancillary and incidental to the work of the distribution boys and they are undertaking such work. The distribution boys are trained for such work. They cannot be reckoned as headload workers defined under the Act - their work of unloading/loading filled up/empty LPG cylinders from/to the trucks being purely ancillary and incidental to their work of delivery of gas cylinders to the consumers and bringing back empty cylinders from the consumers. There is no dispute about the work of the distribution boys carrying filled up gas cylinders from the godowns to the consumers and bringing the empty cylinders back to the godown from the consumers. There is no dispute or claim for the respondents/unions regarding that item of work.

3. The dispute is about the work of unloading and stacking filled up gas cylinders from the trucks which carry them to the godowns of the petitioners and loading empty gas cylinders stacked in the godown into the trucks which carry them away. Are the petitioners entitled to get such work done through trained distribution boys employed by them? Are the other headload workers of the locality represented by the respondents/unions entitled to claim such work? This is the crucial dispute that has arisen. The respondents/unions representing headload workers are claiming such work. They are obstructing the distribution boys of the petitioners. Police protection may be afforded to the petitioners to get such work done by their distribution workers without any obstruction from the respondents/unions, it is prayed.

4. There is no dispute that the areas in question are scheme covered areas. There is no contention that the distribution boys have been duly registered under the Act.

5. We have heard Advocate Sri. P.B. Krishnan and Advocate Sri. B.H. Mansoor

appearing for the petitioners. We have heard learned Government Pleader and Advocate Sri. Koshy George, the learned Standing Counsel for the Kerala Headload Workers' Welfare Board.

6. The Act is intended 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" as indicated in the title. The preamble reiterates that declaration. According to the learned Standing Counsel for the Welfare Board and the learned Government Pleader, this Act is enacted by the Kerala Legislative Assembly invoking its powers under Entries 22, 23 and 24 of the Concurrent List in the Seventh Schedule of the Constitution of India which we extract below:

22. Trade unions; industrial and labour disputes.

23. Social security and social insurance; employment and unemployment.

24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

The Act is applicable to establishments and an establishment is defined under Sec.2(j) of the Act to mean an establishment specified in the Schedule including the precincts thereof. When the Act was enacted in 1978, there were 11 entries in the Schedule including Entry No. 5 which we extract below:

5. Establishments employing workers for loading or unloading of goods and other operations incidental and connected thereto.

Judicial interpretation including the decision of the Full Bench in Raghavan v. Superintendent of Police, 1998 (2) KLT 732 (FB) appear to have confirmed that all establishments employing workers for loading and unloading of goods in connection with the activity of the establishment are included under the said Entry No. 5.

7. It is in this context that the entry in question, Entry No. 13, was included (along with Entry No. 12) by a Notification issued under Sec. 13(4) of the Act in 1996. The relevant entry reads as follows:

Establishments employing or engaging workers for loading or unloading Liquefied petroleum Gas Cylinders in or from, or to a vehicle.

8. The first contention raised by the learned counsel for the petitioners is that the State legislature is incompetent to undertake a legislation in respect of establishments employing or engaging workers for loading or unloading LPG cylinders. We shall advert to the reasons later. Legislative competence of the State legislature is questioned.

9. A contention is raised by the respondents that if not under Entry No. 13, at any rate, under Entry No. 5 establishments like the petitioners employing or

engaging Workers for loading or unloading goods would be covered by the Act. Therefore the constitutional challenge raised against Entry No. 13 is without any merit, substance or consequence, contend the learned Government Pleader and the learned Standing Counsel for the Welfare Board. The learned counsel for the petitioners respond to this contention by asserting that if the Act, constitutionally cannot apply to establishments covered by Entry No. 13, Entry No. 5 will have to be so understood as to exclude the "establishments" referred to in Entry No. 13. The challenge raised in these cases against Entry No. 13 will not hence become irrelevant because of the language employed by Entry No. 5. Moreover it is pointed out that the wide interpretation canvassed for Entry No. 5 is under challenge and another Division Bench of this Court by reference order dated 14/7/09 in W.P.(c) No. 17688/09 has already referred the matter to a Full Bench to consider the sweep of Entry No. 5. That reference is pending to be answered. Such a wide interpretation given to Entry No. 5 of the Schedule would make all the other Entries irrelevant and unnecessary, argues the learned counsel.

10. We need not consider that question - i.e., the sweep of Entry No. 5 in the present proceedings. We await the orders of the larger Bench on reference. We do, however, note that if the contention of the petitioners is accepted, then as rightly pointed out by the learned counsel for the petitioners, Entry No. 5 will have to be understood in such a manner as to exclude all establishments presently covered by Entry No. 13. If the challenge is accepted, either under Entry No. 13 or Entry No. 5 such establishments will not be covered under the provisions of the Act. Pendency of the reference need not hence restrain us from considering the challenge raised in these petitions.

11. According to the learned counsel for the petitioners, Parliament has exclusive legislative power to undertake any legislation in respect of transportation etc., of LPG cylinders. Legislative competence for the Parliament is reserved under Entry Nos. 5 and 53 of the Union List (List I of the Seventh Schedule), it is contended. The relevant entries read as follows:

5. Arms, firearms, ammunition and explosives.

53. Regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.

LPG cylinder is an explosive coming within Entry No. 5. Liquefied Petroleum Gas is a petroleum product indisputably. Any legislation with respect to Liquefied Petroleum Gas (LPG) and LPG cylinder hence falls within the exclusive domain of the Parliament under Art.246(1). The State legislature under Art.246(2) or 246(3) has no legislative power to make laws in respect of a subject matter covered by Entry Nos. 5 and 53 of the Union List. This, in short, is the contention raised.

12. Sri. P.B. Krishnan, the learned counsel for the petitioner in W.P.(c) No. 36170/10 relies particularly on the non obstante clause with which Art.246(1)

opens and contends that the legislative power is reserved absolutely for the Parliament under Art.246(1) in respect of LPG/LPG cylinder, admittedly an explosive and petroleum product under Entry Nos. 5 and 53 of the Union List. Any legislation with respect to this subject matter can be undertaken only by the Parliament and not by the State legislature. State legislature lacks power and jurisdiction to legislate on the subject. At any rate, the State legislature does not have the power to extend application of the Act to establishments like the petitioners dealing with explosives/petroleum products.

13. According to the learned counsel Sri. P.B. Krishnan, the attempt of the respondents to constitutionally justify the legislation with the help of Entries 22, 23 and 24 cannot be accepted as legislative power is exclusively "reserved on the subject for the Parliament under Art.246(1). The learned counsel for the petitioners rely on the decision in Special Reference No. 1 of 2001, In Re [(2004) SCC 489] in support of their contention that when power to legislate is reserved for the Parliament under the Union List the State Legislature cannot legislate invoking the power under Art.246(2) or (3). They further contend relying on the decision in Associated Timber Industries and Others Vs. Central Bank of India and Another, that the expression "establishment" in Sec. 2(j) read with the Schedule will have to be so understood as to exclude the petitioners' establishments from its sweep and thus avoid any unjustified usurpation of the power of Parliament by the State legislature.

14. The learned counsel for the petitioners further contend that, as a matter of fact, Parliament has already undertaken legislation invoking the power under Entries 5 and 53 of the Union List. Our attention has been drawn to the long title and the preamble of the Explosives Act, 1884 which seeks to regulate "the manufacture, possession use, sale, transport, import and export of explosives". Our attention has further been drawn to Secs. 5 and 7 of the Explosives Act which confer on the Central Government powers to make rules consistent with the Explosives Act to regulate or prohibit "the.....transport.....of explosives". We have been taken through the provisions of the Gas Cylinders Rules, 2004 promulgated in exercise of the powers conferred under Secs. 5 and 7 of the Explosives Act.

15. The definition of "Gas Cylinder" in Rule 2(xxi), the definition of "Liquefied Petroleum Gas" in Rule 2(xxx) as also the stipulation of Rule 3 imposing restrictions on the transport of LPG cylinder are also relied on particularly. We have also been taken through Rule 13 prohibiting employment of children and intoxicated persons for the loading or unloading or transport of any gas cylinder. Reliance is also placed in Rules 17, 18 and 20 of the Gas Cylinders Rules as also entries in Schedule VI of the Gas Cylinders Rules, particularly Entry No. 3.

16. Reliance is placed on all the above to impress upon the court that this is a case where Parliament has not only legislative competence under Entry Nos. 5 and 53 of the Union List; this is a case where actually Parliament has invoked such power and have legislated. The field is therefore firmly occupied by the

legislation enacted by the Parliament. Sri. P.B. Krishnan further points out that even assuming that the Parliament by Statute or Rules has not already covered some of the specific areas covered by the Act, that is no reason to assume that the State Legislature has power to fill up such gaps. Reliance is placed in the decision in *Bharat Coking Coal Ltd., v. State of Bihar*, (1990) 4 SCC 557 (paragraph-18 particularly) to contend that any such gap in the legislation by the Parliament cannot be attempted to be filled up by the State legislature by invoking its powers. Sri. P.B. Krishnan, in these circumstances, argues that in any view of the matter establishments like those of the petitioners which are already covered by the provisions of the Explosives Act and the Gas Cylinders Rules in respect of loading, unloading and transportation of gas cylinders cannot be subjected to legislation in respect of those matters by invoking powers under Entry Nos. 22 to 24 of the Concurrent List.

17. An argument is raised by the respondents that assent of the President has already been obtained for the Act under Art.254(2) of the Constitution and therefore there can be no question of provincial legislature transgressing into the domain reserved for the Parliament under Art.246. The petitioners respond to this contention by relying on the decision in *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, to contend that Art.254 can have no application when the conflict is between the legislative competence of the Parliament under the Union List and the legislative competence of the State legislature under Concurrent List. We find merit in that contention. When there is a conflict between legislative competence of Parliament under the Union List and the legislative competence of the State legislature under Art.246(2), Art.254 can have no application and the same is clearly laid down by the following observations in paragraph-69 which we extract below:

69. There was a controversy at one time as to whether the succeeding words "with respect to one of the matters enumerated in the Concurrent List" govern both (a) and (b) or (b) alone. It is now settled that the words "with respect to" qualify both the clauses in Article 254 (1) viz a law made by Parliament which Parliament is competent to enact as well as any provision of an existing law. The underlying principle is that the question of repugnancy arises only when both the Legislatures are competent to legislate in the same field i.e. with respect to one of the matters enumerated in the Concurrent List. Hence, Article 254 (1) cannot apply unless both the Union and the State laws relate to a subject specified in the Concurrent List, and they occupy the same field.

(emphasis supplied)

18. The learned Government Pleader and the learned Standing Counsel for the Welfare Board contend that it cannot be reckoned that there is any conflict between Entries 5 and 53 in the Union List and Entries 22, to 24 (particularly Entry No. 24) in the Concurrent List. There is no conflict between the provisions of the Explosives Act and the Gas Cylinders Rules framed under the Explosives Act on the one hand and the provisions of the Act on the other. Applying the

doctrine of pith and substance as also the aspect theory both legislations can simultaneously co-exist without any conflict or transgression. There is absolutely no transgression by the State legislature into the legislative province earmarked exclusively for the Parliament under Entries 5 and 53 of the Union List. The Act deals with an entirely different aspect and applying the aspect theory also it cannot be held that there is any conflict between the two legislations. The Kerala legislature is perfectly justified in enacting the Act in respect of the establishments like that of the petitioners dealing with the LPG cylinders. The contention that the Act makes unjustified transgression into the zone earmarked exclusively for the Parliament is unacceptable, it is contended.

19. Our attention has been drawn to the decision in *Bharat Hydro Power Corpn. Ltd. and Others Vs. State of Assam and Another*, . Paragraph-18 of the said decision which we extract below explains the doctrine of pith and substance lucidly.

18. It is likely to happen from time to time that enactment though purporting to deal with a subject in one list touches also on a subject in another list and prima facie looks as if one legislature is impinging on the legislative field of the another Legislature. This may result in large number of statutes being declared unconstitutional because the legislature enacting law may appear to have legislated in a field reserved for the other legislature. To examine whether a legislation has impinged in the field of other legislatures, in fact or in substance, or is incidental, keeping in view the true nature of the enactment, the Courts have evolved the doctrine of "pith and substance" for the purpose of determining whether it is legislation with respect to matters in one list or the other. Where the question for determination is whether a particular law relates to a particular subject mentioned in one list or the other, the Courts look into the substance of the enactment. Thus, if the substance of enactment falls within Union List then the incidental encroachment by the enactment on the State List would not make it invalid. This principle came to be established by the Privy Council when it determined appeals from Canada or Australia involving the question of legislative competence of the federation or the States in those countries. This doctrine came to be established in India and derives its genesis from the approach adopted by the Courts including the Privy Council in dealing with controversies arising in other federations. For applying the principle of "pith and substance" regard is to be had (i) to the enactment as a whole, (ii) to its main objects, and (iii) to the scope and effect of its provisions.

It is unnecessary to refer to other precedents on this aspect which are cited at the Bar. The question will have to be considered whether there has been substantial transgression. If there is only incidental trenching, the same will not amount to encroaching upon the field set apart for Parliament. Of course, the extent of trenching beyond the competence of the legislature may be an element in deciding whether the legislation is colourable. Power to legislate given to the appropriate legislature under Art.246 of the Constitution will have to be

considered carefully. The relevant entries in the three different lists can only be reckoned as relevant heads or fields of legislation. Such entires demarcate the area over which the appropriate legislature can operate. Wide interpretation has to be given to the entires. As it usually occurs some of the entires in the different lists may overlap or appear to be in direct conflict with each other. The duty is onerous on the court in such a situation to reconcile the entries and bring about harmony between them. The underlying principle in such cases has been declared in many precedents. A general power ought not be so construed as to make a nullity of any particular power conferred by the same Constitution and operating in the same field. If by reading the general power in a more restricted sense effect can be given to the particular power in its ordinary and natural meaning such approach has to be preferred. We need only mention that courts must make every attempt to harmonise the apparently conflicting entires in the different lists. A construction which will rob one of the entires of its entire content and make it nugatory will have to be rejected. Every effort will have to be made to uphold the validity of the Statute and the attempt should never be to defeat the same. Of course, courts are expected to show great restraint while considering the plea to declare a Statute to be constitutionally invalid.

20. We may immediately proceed to consider the "aspect theory" while considering the need to give effect to the apparently conflicting entries in the different lists. The basic decision cited on this aspect is the decision of the Full Bench in *Commerce Bank, Khulna v. Amulya Krishna*, AIR (31) 1944 Federal Court 18. We do not think it necessary to refer to the various subsequent decisions highlighting the aspect theory. The mere fact that a provisional enactment may contain provisions bearing upon a subject exclusively reserved to the Dominion Legislature will not suffice to invalidate the provisional enactment. The Federal Court had referred with approval to the statement of the law in *Lefroys'* Treatise on Canadian Constitutional Law. The observations of the learned author have been extracted with approval. It has specifically been quoted with approval that "what is properly to be called the subject matter of an Act may depend upon what is the true aspect of the Act." The position appears to be well settled by now. The subject covered by an entry in the Union List may have several aspects and if any one aspect of a subject matter covered broadly and generally by such entry in the Union List can legitimately be dealt with by the State legislature on the basis of another specific entry in one of the other lists, provincial legislation on that specific aspect cannot be faulted on the ground that the subject matter is broadly and generally covered by the entry in the Union List.

21. Coming back to the controversies in the instant case, it is true that the exclusive competence to legislate on explosives and petroleum products is assigned to the Parliament under Entries 5 and 53 of the Union List. But such general power of legislation will have to be understood in the light of the specific powers under Entries 22 to 24 of the Concurrent List which clothes the State legislature subject to powers of the Parliament to undertake legislation on welfare of labour, social security as also industrial and labour disputes. The State

legislature in enacting the Act had only legislated on the aspect of welfare of labour, social security and industrial and labour disputes. No legislation was undertaken by the State legislature, we conclude, following the doctrine of pith and substance, on any zone earmarked for the Parliament under Entries 5 and 53 of the Union List. There is no trenching even, much less an objectionable transgression. The legislation by the State is only on the aspect of welfare of labour, social security and labour and industrial disputes. The fact that that aspect of legislation may have impact or overlapping on legislative domain earmarked for the Parliament under Entries 5 and 53 of the Union List does not at all amount to objectionable transgression. The Act (including the challenged Entry No. 13 in the Schedule), it has to be held, does not, following the doctrine of pith and substance and the aspect theory, legislate on explosive and petroleum products. It only legislates on the rights/liabilities of workmen and their employees in an establishment where there is loading and unloading work. Merely because the legislation covers the aspect of rights and liabilities of workmen engaged in loading and unloading explosive substances and petroleum products, it is impermissible to contend that there has been objectionable transgression into the competence of Parliament to exclusively undertake legislations on explosive and petroleum products. The aspect of legislations covered by the Act is certainly traceable to the specific power conferred under Entries 22 to 24 of the Concurrent List.

22. We are, in these circumstances, of the opinion that there is no merit in the challenge raised against the competence of the State legislature to make the provisions of the Act applicable to establishments dealing with the explosives and petroleum products by specifically including such establishments in Entry 13 or by the inclusion of such establishment by the wide sweep of Entry No. 5. The challenge raised against the constitutionality of Entry No. 13 must, in these circumstances, fail.

23. According to the petitioners, they have trained distribution boys employed by them to undertake all the work in their establishment. According to the petitioners, the primary and important work in the establishment is to carry filled up LPG cylinders from the godown to the consumers. The empty LPG cylinders from the consumers have to be carried to the godown. This according to the petitioners is the primary, dominant and important work in their establishments. They do not dispute the fact that to undertake this work there must be regular delivery of filled up LPG cylinders to their godowns. They have to be unloaded and stacked. The distribution boys bring the empty LPG cylinders to the godown and the same is stacked there. Periodically the empty gas cylinders will have to be removed from the godown to the principals. There is hence regular work of loading the empty gas cylinders stacked in the godown to the vehicles for transportation to the principals.

24. In short there is no dispute that the work of unloading filled up gas cylinders from the trucks to the godown and loading empty LPG cylinders from the godown

to the trucks must be carried on regularly for effective working of the petitioners' establishments. That this work of loading and unloading is an integral part of the activity of the establishments of the petitioners cannot and is also not disputed.

25. As stated earlier that the area is a scheme covered area and that the distribution boys of the petitioners are not registered under the Act as headload workers is also conceded. There is no dispute that the respondents/trade unions represent registered headload workers of the locality. They are demanding work of unloading filled up gas cylinders from the trucks and stacking them in the petitioners' godowns. They are also demanding the work of loading empty gas cylinders from the godown to the trucks. The short question is whether the petitioners are entitled to get this work done without engaging headload workers represented by the respondents/trade unions and whether they are entitled to get the work done by utilizing the services of their unregistered trained distribution boys. This is the crucial question that arises for consideration.

26. According to the petitioners, this work of loading/unloading to/from the trucks is only incidental and ancillary to the regular and primary work for which distribution boys are employed - viz., to carry the filled up LPG cylinders to the consumers and to bring back empty LPG cylinders. The work being purely incidental and ancillary to the main work of the headload workers, it is contended that distribution boys are not headload workers. They are not liable to be registered as headload workers under the Act. Reliance is placed particularly on paragraph-21 of the decision of the Full Bench in Raghavan (supra). We extract paragraph-21 below:

21. 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 could contend that in such circumstances, the workers cannot be treated as headload workers coming under the definition of that term under this 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.

27. The learned counsel for the petitioners further relies on the decision of a Division Bench in Venkatraman v. Sub Inspector of Police, 2005 (3) KLT 365. On the facts of the given case there, it was held that the unions of headload workers are not entitled to demand the work of loading and unloading in the establishment for the reason that the work was not regular and was only incidental and ancillary to the work of unregistered general workers employed by

the establishment. Reliance is further placed on the decision in *Obrin Vs. Sub Inspector of Police*, where also another Division Bench took the view that the work of loading and unloading in the said industrial unit being purely ancillary and incidental to the main work, the work can be undertaken by unregistered permanent workers of the establishment.

28. The learned counsel for the petitioners has placed reliance on the decision in *Hotel Raj International v. Headload Workers Welfare Board*, 2010 (4) KLT 179 (decision of a Single Judge rendered by one of us) in which also it was held that permanent workers employed by the establishment undertaking the work of loading and unloading in an industrial unit merely ancillary and incidental to the main work of permanent workers need not be registered as headload workers falling within the definition of "headload workers" within Sec.2(m) of the Act.

29. Relying on these decisions the learned counsel for the petitioners contend that distribution boys engaged by the petitioners as permanent workers who are doing the work of loading and unloading LPG cylinders to and from the trucks purely as incidental and ancillary to their main work cannot be reckoned as headload workers. Consequently they are not liable to be registered under the Act. In turn the headload workers represented by the respondents/trade unions cannot be permitted to undertake such work. They are illegally demanding work and obstructing the distribution boys from performing such work. In these circumstances, directions under Art.226 may be issued, it is prayed.

30. Sri. Koshy George, the learned Standing Counsel for the Welfare Board submits that this question as to whether the work of loading and unloading LPG cylinders from/to the trucks to/from the godown of the petitioners is incidental and ancillary to the work of the distribution boys cannot be decided on the basis of the inputs presently available. Though in the light of the decisions referred above the jurisdiction of the High Court in an appropriate case to decide that question cannot be disputed, normally and ordinarily, parties must be left to get the dispute resolved by resort to the machinery/mechanism prescribed under Sec.21 of the Act. The High Court exercising its extraordinary constitutional jurisdiction under Art.226 of the Constitution cannot in all cases aspire to decide such disputed questions of fact authentically and exhaustively. If such decisions were taken in summary proceedings before the High Court, the interests of the workers would suffer. Parties must, in these circumstances, be referred to the authorities under Sec.21 of the Act to get that dispute resolved, it is urged. Sri. Koshy George relying on the decision in *Sathyan v. Sunita Sudhakaran*, 1997 (1) ILR 549 contends that where mechanism is provided in the Statute to settle the dispute and when the High Court does not have effective machinery to authentically decide the controversy, grant of police protection may result in injustice.

31. We have rendered our anxious consideration to this contention. We find merit in that contention. With the available inputs before us in these writ petitions, we find it hazardous and difficult to enter any authentic finding on the disputed

question as to whether the work of loading and unloading filled up/empty gas cylinders is only incidental and ancillary to the work of distribution boys employed by the petitioners. It is necessary to look into the evidence which may be available and which can be produced by the contestants to decide that question authentically. The interests of expediency cannot override the need for an effective, authentic adjudication and resolution of the disputed question. We are certainly of the opinion that the parties must get their disputes resolved by resort to the machinery provided under Sec.21 of the Act. That course, we are satisfied, will cater to the interests of justice and will not prejudice the interests of either party. Such a course would give opportunities to the parties to substantiate their respective contentions and will save the court of the obligation to decide such a crucial and vital question of relevance on the basis of inadequate materials placed before the court.

32. We may hasten to observe that we are not of the opinion that this Court lacks the jurisdictional competence in an appropriate case to decide whether a person is a headload worker or not as defined under Sec.2(m) of the Act. But normally and ordinarily and in the absence of compelling reasons we are of the opinion that the said question must be left for the decision of the competent authority constituted under the Act.

33. Towards the fag end of the hearing, Sri. P.B. Krishnan, the learned counsel for the petitioner in W.P.(c) No. 36170/10 submits that the petitioner does not want to seek any further relief from this Court. His petition may be dismissed as not pressed now, it is submitted. As crucial questions of relevance having general importance were raised, Sri. P.B. Krishnan has continued to assist the court notwithstanding the submission of his client/the petitioner in W.P.(c) No. 36170/10 that he does not require any further relief.

34. As directed by this Court in W.P.(c) No. 28680/10, Assistant Labour Officer, Puthuppally, Kottayam District, was impleaded as additional R6. The learned Government Pleader has taken notice on behalf of R6. He is the Officer competent to initiate proceedings under Sec.21 of the Act. He can initiate proceedings when a dispute exists or is apprehended. The learned Government Pleader submits that if this Court so directs, additional R6 shall forthwith initiate proceedings for settlement of the dispute under Sec.21 of the Act. We are satisfied that appropriate directions can be issued to the additional R6 in this regard.

35. In the result: (A) It is declared that Entry No. 13 of the Schedule to the Kerala Headload Workers Act, 1978 is legal, valid and constitutional.

(B) WP.(c) No. 36170/10 is dismissed as not pressed.

(C) WP.(c) No. 28680/10 is allowed in part.

(i) The additional 6th respondent - Assistant Labour Officer, Puthuppally, Kottayam District, is directed to initiate proceedings under Sec.21 of the Act

immediately to settle the dispute between the petitioner and the respondents 1, 2 and 3.

(ii) Until R6 settles the dispute or the Conciliation Officer passes further orders in the matter, the interim directions issued by this Court initially in this writ petition on 16/9/10 and extended subsequently shall stand revived and shall remain in force.

Hand over a copy of this judgment to the learned Government Pleader for immediate communication to the additional R6.