

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 12884 of 2009 (E)

PETITIONER(S):

R.MURUGAN, MANAGING PARTNER,
M/S.P.R.S. HOSPITAL, KILLIPPALAM, THIRUVANANTHAPURAM.

BY ADV. SRI.GOPAKUMAR R.THALIYAL

RESPONDENT(S):

1. ARJUNAN, JOINT CONVENOR,
HEAD LOAD AND GENERAL WORKERS UNION (CITU)
KILLIPPALAM, THIRUVANANTHAPURAM.
2. SREEKUMAR, JOINT CONVENER,
HEAD LOAD AND GENERAL WORKERS UNION (CITU)
KILLIPPALAM, THIRUVANANTHAPURAM.
3. THE CHAIRMAN, HEAD WORKERS WELFARE
BOARD, DISTRICT COMMITTEE, VANCHIYOOR
THIRUVANANTHAPURAM.
4. THE DISTRICT LABOUR OFFICER (G),
THIRUVANANTHAPURAM.
5. THE REGIONAL JOINT LABOUR COMMISSIONER,
KOLLAM (APPELLATE AUTHORITY UNDER THE
HEAD LOAD WORKERS ACT).

BY ADV. SRI.THOMAS ABRAHAM
BY ADV. SMT.MERCIAMMA MATHEW
BY ADV. SRI.DIPU.R
BY ADV. SRI.K.S.HARIDAS
BY ADV. SRI.RENIL ANTO KANDAMKULATHY,SC,KHLWWB
BY ADV. SRI.KOSHY GEORGE, SC, KHLWWB
BY ADV. SRI.AJITH PRAKASH, SC, KHLWWB
BY SRI.VIJAYACHANDRA BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXHIBITS

- P1- TRUE COPY OF THE LETTER ISSUED BY R3 DATED 20.10.08
- P2- TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER
- P3- TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER DATED 19.11.08
- P4- TRUE COPY OF THE INTERIM ORDER PASSED BY THIS HONOURABLE COURT IN WP(C).34667 OF 2008 DATED 3.12.08
- P5- TRUE COPY OF THE LETTER ISSUED BY R4 dated 12.12.08
- P6- TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER BEFORE R4 DATED 19.12.08
- P7- TRUE COPY OF THE ORDER PASSED BY R4 DATED 25.2.09
- P8- TRUE COPY OF THE MEMORANDUM OF APPEAL DATED 12.3.09
- P9- TRUE COPY OF THE ORDER PASSED BY R4 DATED 15.4.09
- P10- TRUE COPY OF THE SAID REMITTANCE SLIP

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P.S. To Judge

K.VINOD CHANDRAN, J

W.P.(C).No. 12884 of 2009

Dated 18th March, 2015

JUDGMENT

The petitioner is the Managing partner of a hospital and challenges Exts.P7 and P9 orders passed by the Original Authority and the Appellate Authority under the Kerala Head Load Workers Act, 1978 (for short 'the Act'). The impugned order directed that the head load workers in N2 Pool under the Head Load Workers Welfare Fund Board has to be engaged in loading and unloading work in the petitioner's hospital. The contention of the petitioner was that the hospital/Union does not come under the definition of "establishment" as defined under the Act and the same was not considered. An appeal filed was rejected by Ext.P1. The Appellate Authority found that the petitioner's establishment would come under Item No.5 of the Schedule of the Act.

2. Item No.5 of the Schedule under Section 2(j) reads as under:-

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

2. The petitioner contends that hospital would not be covered under the said item since no loading or unloading work is carried on in the hospital and the activity is totally different, being the care and treatment of patients. However, medical supplies and the equipments brought to the hospital as also the Oxygen Cylinders, which are again required for patient care, are unloaded by its own staff members. There is no requirement for specific head load workers to be engaged in the establishment and they have not engaged any such head load workers, is the contention.

3. The learned counsel appearing for the respondent/Union, however, would contend that they had been carrying on the loading and unloading work in the establishment for long. With respect to the loading and unloading work of cylinders, definitely the members of N2 Pool have a right insofar as separate contractor is engaged for supplying the Cylinders who, in fact engages the head load workers under the Board, is the contention.

4. On the issue of coverage under item No.5 of the Schedule to the Act, the issue is no longer *res integra* since it has been decided by a Larger Bench reported in **Theresa Jose v. Sub Inspector of Police (2015 (1) KLT 485 [L.B])**. The Larger Bench has found that to come under item No.5, the operations of loading and unloading work should be the main and

predominant operation in an establishment. It has been held so -

"We thus are of considered opinion that item No.5 of the Schedule is to be interpreted to be an establishment which fulfills following three conditions (i) An establishment is employing workers for loading and unloading of goods (ii) the workers employed may also be carrying on other operations incidental and connected thereto. Paragraph 21 of the Full Bench judgment in Rahavan's case (1998 (2) KLT 732 [F.B.]) has also stated that if principally, the workers are employed to carry on the work other than loading and unloading, and the loading and unloading work is only occasional, they do not come within the definition of Head load Workers. The Full Bench has also rightly observed that whether the nature of work of the head load worker is predominant work or not is a question which depends on the facts of each case."

5. In such circumstances, going by the binding precedent, the hospital cannot be said to be one liable for registration under the Act. However, it is to be noticed that even the petitioner admits that supply of Oxygen

Cylinders is by an outside agency and loading and unloading work are also done by them. In such circumstances, definitely the members of the respondent/Union would have a right to carry on loading and unloading of the Oxygen Cylinders in the hospital premises. However, with respect to the medical supplies and medical equipments, hospital would be exempted under sub-section (m) of Section 2, the definition of "headload worker", which specifically excludes "delicate or sophisticated articles".

With the above observation, the writ petition would stand allowed. Parties shall suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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