

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

WP(C).No. 22572 of 2009 (N)

PETITIONER(S):

THRISSUR DISTRICT LOADING AND UNLOADING
GENERAL WORKERS UNION, PAMBADY UNIT
REPRESENTED BY ITS PRESENT SECRETARY RAJAN
S/O.SEKHARAN, AGED 33 YEARS, KOOTTALACOMPANIPADI
HOUSE, PANIYARKODE P.O., THIRUVILWAMALA
THRISSUR DT.

BY ADVS.SRI.V.M.KRISHNAKUMAR
SMT.P.A.ANITHA

RESPONDENT(S):

1. DISTRICT LABOUR OFFICER, AYYANTHOLE,
THRISSUR DT.

2. ASSISTANT LABOUR OFFICER,
VADAKKANCHERY, THRISSUR DT.

3. HEAD LOAD WORKERS UNION CITU,
THIRUVILWAMALA UNIT, THRISSUR DT
REPRESENTED BY ITS SECRETARY.

4. M.C.JAYAN, MUNDANTHODUKUNNU HOUSE,
PAMPADI P.O., THRISSUR DIST.

5. K.VINODKUMAR, MUNDANTHODUKUNNU HOUSE,
PAMPADI P.O., THRISSUR DIST.

ADDL. R6

6. KERALA HEAD LOAD WORKERS WELFARE FUND BOARD,
REP. BY ITS CHIEF EXECUTIVE OFFICER,
S.R.M. ROAD, ERNAKULAM, KOCHI.

(Impleaded as additional R6 vide order dated 17.08.2009
in. I.A.10425/09)

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ADDL.R6 BY ADV. SRI.KOSHY GEORGE, SC, KHLWWB
ADDL.6 BY ADV. SRI.P.V.JYOTHI PRASAD,
BY ADV. SRI.V.E.ABDUL GAFOOR
BY GOVERNMENT PLEADER SRI. MANOJ KUNJACHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 22572 of 2009 (N)

APPENDIX

EXHIBITS

P1- TRUE COPY OF THE MEMORANDUM OF SETTLEMENT DATED 30.1.2008

P2- TRUE COPY OF THE NOTICE DATED 29.10.08 ISSUED BY R2

P3- TRUE COPY OF THE APPEAL FILED BY THE PETITIONER DATED 11.11.08

P4- TRUE COPY OF THE ORDER DATED 3.2.2009 OF R1

P5- TRUE COPY OF THE REJOINTER FILED BY AJITH KUMAR, EX-SECRETARY,
BEFORE R1 DATED 22.1.08

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P.S. To Judge

K.VINOD CHANDRAN, J

W.P.(C).No. 22572 of 2009

Dated 30th March, 2015

JUDGMENT

The petitioner is a Union of head load workers in the Pambady area in Thiruvilwamala affiliated to the All India Trade Union Congress (AITUC), who challenged the registration granted to respondents 4 and 5 under the Kerala Head Load Workers Act, 1978 (for short 'the Act'). Respondents 4 and 5 are said to be affiliated to the 3rd respondent Union.

2. The specific contention raised by the counsel for the petitioner is that, on 30.01.2008 there was a settlement arrived at under Section 21 (1) of the Act as evidenced at Ext.P1. In the settlement, the petitioner and the 3rd respondent Union were participated. Specifically 56 employees, whose names were shown in the list appended to the Memorandum of Settlement, were

allowed to continue the loading and unloading work in the area which, admittedly is a Scheme notified area.

3. Immediately after the settlement was arrived at, the applications of respondents 4 and 5 were taken up and registration granted in violation of the terms of settlement, is the contention. The Assistant Labour Officer (ALO) being only an Officer who could have recorded the terms of settlement, has decided on the question of grant of registration without any agreement to that effect, is the contention. The petitioner also has a contention that they were not participated in the enquiry and despite receipt of notice, sent in the wrong address, before appearance could be effected, the matter was taken up and decided in their absence. An appeal was filed from the said registration to the District Labour Officer (DLO) which ended in Ext.P4. The challenge against Ext.P4 is essentially urged on the ground of lack of

jurisdiction of the ALO to grant registration in the absence of a settlement.

4. The learned counsel for the respondents relies on a judgment of this Court reported in **Muhammed Shafeek v. District Labour Officer (2015 (1) KLT 314)**, to contend that the Union of workers have absolutely no interest in the matter and this Court has declared that, in considering registration under Rule 26A, the interest of the workers are protected by the Board and there is no need for the Union to be heard. The learned counsel appearing for the petitioner however, distinguishes the said judgment on the ground that, it refers to attached workers under Rule 26A and the said principle cannot apply to registration of workers under the Act who are attached to the Pool constituted by the Board under the provisions of the Act. On a reading of the afore cited judgment, this Court is of the opinion that, the argument of the learned counsel for the petitioner has to be

accepted. Hence, what survives for consideration is to the interference to be caused on Ext.P4 order under Article 226 of the Constitution of India.

5. A reading of Ext.P4 would indicate otherwise. The DLO has detailed the circumstances in which Ext.P1 settlement was arrived at. Undisputedly there was a law and order situation where head load workers, being members of different trade unions, were in a conflict, as to the work to be allotted in the area. A conciliation was called by the ALO in which it has been decided that, only 56 workers who had registration, would be participated in the head load work in the area. However, though the said card holders were specifically noticed in the list appended to the Memorandum of Settlement, the terms of settlement also indicated that those who did not have cards would apply for the same.

6. Ext.P4 also indicates that the applications taken up by the ALO with respect to respondents 4 and 5 were those filed on 28.01.2008, just prior to the settlement arrived at. Ext.P4 refers to the cause of action for the dispute on the ground that many persons who did not have prior registration under the Act, being participated in the work in a Scheme notified area.

7. In such circumstances, it cannot be said that Ext.P1 precludes any further registration to be granted in the area; which a head load worker, who has been carrying on such loading and unloading work in the area, would be entitled to seek under the provisions of the Act. Registration is an exercise which has to be carried out under Rule 26A of the Kerala Head Load Workers Rules, 1981 (for short 'the Rules') which is in the exclusive jurisdiction of the ALO and not the DLO. The DLO in such circumstances, is the Appellate Authority from an order of the ALO, as is evidenced from Rule

26A of the Rules. In such circumstances, the contention of the petitioner that the registration is in violation of the terms of the agreement cannot be countenanced. Obviously the contention is raised on the misapprehension that the order of the ALO is under Section 21. On the contrary, the registration granted is under Rule 26A.

8. True, a settlement was arrived at on 30.01.2008, permitting only 56 employees who had valid registration under the Rules and valid identity cards under the Scheme to be participated in the loading and unloading work of the area. However, the said settlement cannot be said to be one for all time and it cannot preclude a loading and unloading worker from seeking for registration under the Rules and in doing so, also applying for a valid identity card under the Scheme. Hence, the order granting registration to respondents 4 and 5 cannot be said to be an order passed under Section 21 of the Act which specifically refers to a

dispute. The ALO who has granted the registration, has proceeded under rule 26A and no infirmity can be found as to the jurisdiction exercised by the said Officer under the provisions of the Rules. An appeal too has been preferred by the Union before the Appellate Authority which has been rejected by Ext.P4.

9. The learned counsel for the petitioner also has a contention that the objection filed by the petitioner was not considered. It is to be specifically noticed that, Ext.P2 as item No.4, speaks of an objection submitted by the AITUC Union on 29.10.2008. Obviously, the same would have been considered when registration was granted to respondents 4 and 5. In any event, objections of the petitioner Union were considered elaborately by the Appellate Authority. This Court does not find any infirmity or illegality to cause interference; invoking the power of judicial review, of Ext.P4, wherein two fact finding authorities constituted

under the Act have decided in favour of inclusion of two workers and granted registration as per the Rules.

For all the aforesaid reasons, the writ petition would stand dismissed. Parties shall bear their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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