

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

W.P.(C).No.34203 of 2014 (A)

PETITIONER(S):-

COCHIN PORT LABOUR UNION (REG NO.287/69),
DLB BUILDING (ANNEXE) INDIRA GANDHI ROAD,
WILLINGDON ISLAND, COCHIN - 682 003,
REP. BY GENERAL SECRETARY, B.HAMZA.

BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY.

RESPONDENT(S):-

1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF LABOUR AND EMPLOYMENT,
SHRAM SHAKTI BHAVAN, RAFI MARG, NEW DELHI - 110 001.
2. THE REGIONAL LABOUR COMMISSIONER (CENTRAL) COCHIN,
KENDRIYA SHARAMSADAN, OLIMUGHAL, KAKKANAD, KOCHI - 682 030.
3. AMBUJA CEMENTS LTD. (UNIT - COCHIN),
BEHIND Q1 BERTH, MATTANCHERRY WHARF, WILLINGDON ISLAND,
COCHIN- 682 003,
RERRESENTED BY THE DEPUTY GENERAL MANAGER.
4. K.R.JAMES,
CONTRACTOR, DILATE ASSOCIATION, AMBUJA CEMENTS LTD.,
COCHIN BULK TERMINAL, WILLINGDON ISLAND, COCHIN- 03.
5. A.J.RAJAN,
CONTRACTOR, K.R.ASSOCIATES, AMBUJA CEMENTS LTD.,
COCHIN BULK TERMINAL, WILLINGDON ISLAND, COCHIN- 03.

R1 & R2 BY ASSITANT SOLICITOR GENERAL OF INDIA SRI.N.NAGARESH.

R3 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR

SRI.P.GOPINATH

SRI.P.BENNY THOMAS

SRI.K.JOHN MATHAI

SRI.JOSON MANAVALAN

SRI.KURYAN THOMAS

R4 & R5 BY ADVS. SRI.SHAJI P.CHALY

SRI.R.SANJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1: TRUE PHOTOCOPY OF THE LETTER DATED 18/5/2014 TO THE
2ND RESPONDENT.
- EXT.P2: TRUE PHOTOCOPY OF THE VERSION SUBMITTED BY THE
PETITIONER ON 27/6/2014.
- EXT.P3: A TRUE PHOTOCOPY OF THE MINUTES OF THE CONCILIATION
MEETING HELD ON 27/6/2014.
- EXT.P4: TRUE PHOTOCOPY OF THE REPORT BEARING NO.2(51)/2014/B.1
DATED 14/8/2014.
- EXT.P5: TRUE PHOTOCOPY OF THE ORDER BEARING NO.L-29011/2014-IR(M)
DATED 29/09/2014 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/

[true copy]

K. Vinod Chandran, J.

W.P(C) No.34203 of 2014-A

Dated this the 05th day of March, 2015

JUDGMENT

The only dispute raised in the above writ petition is whether the “appropriate Government” under the Industrial Disputes Act, 1947 [for brevity “ID Act”] is entitled to reject a reference as has been done in Exhibit P5, the impugned order herein.

2. I have heard the learned counsel for the petitioner, the learned counsel appearing for the 3rd respondent, the learned counsel appearing for the contractors [respondents 4 and 5] as also the learned Assistant Solicitor General of India for respondents 1 and 2.

3. The brief facts to be noticed are, that, the petitioner is a Union of contract labourers under the contractors, respondents 4 and 5, who have been awarded work under the 3rd respondent. The petitioner's members are employed by the contractors for such work, for which the contractors pay the weekly wages. The dispute is with respect to the weekly off wages. It is not disputed that the members of the Union are being granted weekly off; but, however, they take up a contention that they are entitled to wages for such off days also. The

learned counsel for the respondents 4 and 5, however, opposes such entitlement on the basis of Section 52 of the Factories Act, 1948. This Court, however, is not looking into the entitlement, as it has to be done by a Court or Tribunal constituted under the ID Act.

4. Admittedly a conciliation was attempted and the Conciliation Officer, by Exhibit P4, submitted a failure report to the Government, being the Central Government. The Central Government, by Exhibit P5, refused to refer the dispute to the Tribunal for the following reason:

“It is reported that the claimant union has failed to substantiate their demand. Hence, the matter raised cannot be construed as an Industrial dispute”.

It is to be noticed here that the report, which is a failure report at Exhibit P4, does not consider the sustainability of the claim; but only reports the failure of the conciliation proceedings on the question of weekly off wages.

5. The Hon'ble Supreme Court in ***Telco Convoy Drivers Mazdoor Sangh and Another v. State of Bihar and Others*** [1989 KHC 920] held that, the Government, in considering the question of

making a reference under Section 10(1) of the ID Act, is performing an administrative function and not a judicial or quasi judicial function. The question of sustainability of the claim would have to be considered by a Court or Tribunal constituted under the ID Act. The Government cannot, by itself or on the basis of the report, find that the claim is not sustainable.

6. Resultantly, Exhibit P5 would stand set aside. The 1st respondent, more specifically the Ministry of Labour, Government of India, is directed to refer the dispute to the Court or Tribunal constituted under the ID Act, within a period of three months from the date of receipt of a copy of this judgment.

Writ petition would stand allowed. No costs.

Sd/-
K. Vinod Chandran,
Judge

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[true copy]