

## Cochin Port Trust Vs Ernakulam District Lorry Drivers and Cleaners Labour Union and Others

**Court:** High Court Of Kerala

**Date of Decision:** June 6, 1995

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€" Order 47 Rule 1  
Constitution of India, 1950 â€" Article 226

**Hon'ble Judges:** M.M. Pareed Pillay, C.J; P. Shanmugam, J

**Bench:** Division Bench

**Advocate:** P.K. Kurian, C.N. Ramachandran Nair and Antony Dominic, for the Appellant; B. Krishnamani, for the Respondent

**Final Decision:** Dismissed

### Judgement

P. Shanmugam, J.

Whether change in the policy subsequent to the decision of the High Court can be a ground for review of the judgment

is an important question that arises for consideration in this case. The short facts are as follows: The members of the 1st respondent-Union were

working under contractors transporting of Cargo containers at the Cochin Port Trust. By the introduction of tractors by the Cochin Port Trust

workers under the contractors were threatened with denial of employment. When the demand of the Union to absorb them in the service of the

Cochin Port Trust was not conceded, the 1st respondent moved this Court by filing O.P. No. 10598 of 1990 praying for the issue of a writ of

mandamus directing the Port Trust to absorb the persons as greasers and drivers. When the matter came up for final hearing the appellant filed a

counter affidavit quoting resolution No. 301 passed by the Board of 30th November, 1990 conceding the demands of the 1st respondent.

Sreedharan, J. by his judgment dated 24-6-1991 disposed of the writ petition holding that from the counter affidavit filed on behalf of the

respondent it is evident that the members of the petitioner Union are being given preferential treatment for appointment to the post of greasers and

hence the petitioner's grievances have been adequately redressed by the respondents. According to the learned Judge, the petitioner, namely, the

1st respondent Union was not entitled to get any further relief in the matter and accordingly the original Petition was disposed of. When this

judgment was not given effect to, the 1st respondent-Union filed another Original Petition (O.P. No. 8609 of 1992), Thulasidas, J. in his judgment

dated 16-12-1992 while directing the Assistant Labour Commissioner to dispose of the conciliation proceedings within four weeks directed the

appellant to implement the resolution No. 301 dated 30-11-1990 without delay. The learned Judge also held that the workers of the 1st

respondent-Union are entitled to get preference in the matter of the appointment to the post of greasers. In the conciliation proceedings before the

Assistant Labour Commissioner it was represented on behalf of the appellant that the dispute has to be disposed of early so as to implement the

direction of the court. In the discussion it was brought to the notice of the conciliation officer that the resolution No. 301 should be implemented in

the right spirit. Even thereafter when the appellant failed to implement the two decisions of this Court, the 1st respondent issued a lawyer's notice

dated 2-6-1993 calling upon the appellant to implement the directions of the High Court within 10 days and informing them that failing which

contempt proceedings will be taken against the appellant. In pursuance to this notice when the appellant failed to implement the orders, the 1st

respondent also filed contempt application No. 170 of 1993. It was thereafter the appellant moved the learned single Judge by filing a Review

Application (R.P. No. 156 of 1993) seeking review of the judgment of the learned single Judge dated 16-12-1992. The said application was

dismissed on 30-9-1993. Thereafter the above Writ Appeal was filed against the judgment in O.P. No. 8609 of 1992 16-12-1992 and the order

in R.P. No. 156 of 1993 dated 13-9-1993. It is submitted on behalf of the appellant that there was a change in the policy of the Central

Government inasmuch as private enterprises are being encouraged, they are still very much in demand. Therefore the situation is such that there is

no chance for rendering the private tractor operators jobless, which was the very basic assumption which led to the passing of Resolution No. 301.

Therefore, after the conciliation proceedings the Board of Trustees have made another resolution No. 121 dated 29-6-1993 and decided that

there was no necessity for the Port to absorb these private workers. The Board and also decided to rescind the decision taken in the resolution

No. 301. The Board also decided that the Hon'ble High Court be informed of this position requesting for a review in the matter. Therefore it is

submitted that the basis of the earlier resolution is no more in existence and therefore, the learned single Judge ought not to have directed the

implementation of the said resolution. Learned counsel further submitted that in the light of the subsequent resolution dated 29-6-1993 cancelling

the earlier resolution, the learned single Judge ought to have reviewed his earlier order, and ought not to have directed the implementation of

resolution No. 301 dated 30-11-1990. Learned counsel also submitted that inasmuch as the order of the learned single Judge has been stayed

pending disposal of the Writ Appeal, no case for contempt of the order arise in this case.

2. Mr. B. Krishna Mani appearing on behalf of the Addl. respondents while opposing the contentions made on behalf of the appellant submits that

the subsequent events cannot be a ground to review or modify the two decisions rendered by this Court. He submitted that the Port Trust

authorities had only three vehicles in the year 1980 and when they proposed to acquire more vehicles, the 1st respondent-Union submitted a

representation dated 3-8-1988 stating that they were working as drivers and cleaners for the past 12 years and that since the Cochin Port Trust is

going to purchase tractors on their own, they would be deprived of work and therefore requested for providing work by absorbing them in the

service of the Cochin Port Trust. When the representation was not considered, they filed O.P. No. 10598 of 1990 before this Court praying for

the issue of a writ of mandamus to absorb them in the service of the Cochin Port Trust. Finding the genuineness of their grievances, the Cochin

Port Trust passed a resolution No. 301 dated 30-11-1990 and submitted a counter affidavit undertaking to give preferential treatment to the

members of the 1st respondent-Union to the post of greasers. Only in those circumstances the writ petition was disposed of. When the Port Trust

was trying to delay the absorption, even after by calling for details from the 1st respondent-Union for the absorption by letter dated 23-1-1992 the

1st respondent was constrained to file another O.P. (O.P. No. 8609 of 1992). The appellant was trying to delay the implementation of the earlier

judgment on the ground that there was some conciliation proceedings pending consequent on the objections raised from some other Union

regarding their absorption. When O.P. No. 8609 of 1992 was taken up for final hearing, the appellant did not raise any objections to the earlier

resolution to be implemented. In the counter affidavit filed in. O.P. No. 8609 of 1992 it is stated that pursuant to the judgment in O.P. 10598 of

1990 and the undertaking of the Cochin Port Trust recorded in the judgment, the appellant issued notice to the Union to forward the list of tractor

operators for absorption. In the said counter affidavit no objection was raised for the implementation of the earlier judgment except stating certain

technical pleas. The change of policy or the change in the basis of the resolution did not find place in the said counter. A reading of the counter

affidavit it was clear that the Port Trust was trying to delay the implementation of the earlier judgment. Hence the learned single Judge in the

impugned judgment directed the 1st respondent to implement the resolution without delay, and also hoped that the Employment Officer will abide

the requisition of the appellant and give the workers of the respondent Union preference and eligibility. Learned single Judge also directed the

Assistant Labour Commissioner to dispose of the proceedings pending within four weeks from today. Learned counsel for the additional

respondents submits that there is no infirmity in the order of the learned single Judge. It was only after the 1st respondent issued a lawyer's notice

and filed the contempt application before this Court, the appellant filed the review application and the above writ Appeal. There is no cause of

action for the appellant to move the Writ appeal since the grounds made by the appellant in support of the Writ Appeal were not raised before the

learned single Judge. He referred two decisions reported in Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, and Board of revenue and

another v. P.K. Syed Akbar Sahib ( 1973 KLT 497), in support of the proposition that subsequent events, and pleadings cannot be a ground for

reviewing or modifying the earlier judgment.

3. The learned counsel appearing on behalf of the 1st respondent submitted that factually there was no change in the circumstances as claimed by

the Port Trust in the Writ Appeal. According to him, the claim of the appellant that there was change in the policy and the basis for earlier

resolution is no longer in existence are factually incorrect. He further submitted that the Port Trust did not have any vehicles before 1990 and only

when they acquired 19 vehicles in the year 1990, the tractor operators were sought to be eliminated and this acquisition of 19 vehicles rendered

the members of the Union jobless and therefore, the basis for resolution of the year 1990 still survives. In any event he also made a strong plea that

the appellant cannot be permitted to get over the obligation arising out of the decisions of this Court.

4. We have heard the rival submissions. It is submitted on behalf of the appellant that the Port Trust is not obliged to give preferential recruitment

as per the earlier resolution No. 301 dated 30 11-1990. According to him, the basis of the resolution is no longer available and consequent on the

cancellation of the resolution the Board is not obliged to recruit the workers of the 1st respondent-Union. The facts leading to the filing of the

review application (R.P. No. 156 of 1993) are not in dispute. When the Port Trust sought to engage themselves to operate the tractors, the 1st

respondent-Union submitted a representation dated 3-8-1988 for their absorption in the service of the Port Trust. When their representation was

not considered, the 1st respondent filed O.P. No. 10598 of 1990. Before the Original Petition was taken up for final hearing, the Port/Trust came

forward with the resolution conceding the request of the 1st respondent-Union. The Original Petition was disposed of by judgment dated 24-6-

1991 in the light of the resolution and counter affidavit. Thereby the appellant has committed themselves to implement the resolution and this Court

has in effect put the seal of approval on the resolution. If the appellant had not conceded the prayer of the 1st respondent in the said Original

Petition, this Court would have considered the same and passed appropriate orders. The learned Judge while disposing of the original Petition has

clearly taken note, of the stand of the appellant in the counter affidavit and was satisfied that the grievances of the respondent was adequately

redressed. This order has become final. The appellant sought to delay the implementation of the absorption taking the plea that some other union

has objected to their absorption and the matter was referred for conciliation. As the matter was pending for a long time the respondent moved

another O.P. No. 8609 of 1992 The pendency of the conciliation proceedings and the order passed in the earlier Original petition was taken note

of by learned single Judge in the second order and directed the disposal of the conciliation proceedings within four weeks and further directed to

implement the resolution No. 301 dated 30-11-1990 with out delay. It is pertinent to note that in the counter affidavit filed by the appellant before

the learned single Judge they have not raised any change of circumstances warranting the change of the first resolution. As a matter of fact even

before the conciliation proceedings the appellant has taken a clear stand that they will implement the direction of tins Court. It was further recorded

by the conciliation officer that resolution No. 301 should implemented in the right spirit. This was the position as on 24-2-1993. The 1st

respondent filed C.C.C. 170 of 1993 on 22-7-1993 and notice was ordered on 26-7-1993. After this the appellant filed Review petition No. 156

of 1993 on 5-8-1993 and after the dismissal of the review petition on 30-9-1993 the above writ appeal. We do not find any grounds to allow the

appellant to wriggle out the clear directions issued in two judgments of this Court. It is not open to the appellant to get over those decisions on the

plea that long thereafter they have cancelled their resolution. As a matter of fact the subsequent resolution of the appellant (resolution No. 121

dated 29-6-1993) is bordering on the contempt of the orders when they say that there is no necessity to absorb the workers and they have

decided to inform the position to the High Court requesting for a review in the matter. Such a stand by the appellant-Board cannot be

countenanced. Both the earlier orders in the original petitions were passed in the light of the stand taken by the appellant. The workers of the 1st

respondent-Union who had been awaiting to be absorbed from the year 1988 were sought to be denied of their rights which have accrued to them

based on the two judgments of this court. The narration of events go to show the present unreasonable stand of the appellant.

5. The members of the 1st respondent-Union are entitled to get preferential appointment and absorption in the Port Trust Service by virtue of the

appellant's decision and the subsequent order of this Hon'ble Court. The members of the 1st respondent-Union are also entitled to legitimately

expect that the appellant would carry out the resolution and the directions of this Hon'ble court. Any change in the circumstances or the policy

subsequent to these orders cannot take away the vested right accrued to the 1st respondent-Union.

6. The appellant cannot have any objections to the order dated 16-12-1992 since according to them the change of circumstances came into

existence only on 29-6-1993, the date on which the board passed resolution No. 121 cancelling the earlier resolution. The said subsequent event

which has come into existence long after the two orders passed by this court cannot alter the basis of the orders validly passed by this Court. The

appellant cannot be heard to say that the basis have been changed assuming the said averment is true. As rightly contended by the 1st respondent

the Board has acquired 19 tractors and employing workers for them and are in need of greasers farther. But board does not want to absorb the

1st respondent workers but recruit them fresh. The averment that there is scope for private operators and therefore the Board is not bound to

carry out the resolution cannot be accepted. Firstly because the delay of the Board in giving effect to the resolution No. 301 dated 30-11-1990

and the two judgments of this Court cannot be taken advantage of. Secondly the board has been trying to delay the implementation on some

technical grounds which cannot be countenanced. Thirdly the, reason that now in the year 1993 there is scope of private operators and therefore

the undertaking of the year 1990 need not be given effect cannot be taken note of even assuming that such a general statement is established.

Much water has flown and the rights of the parties have been crystalised probably that is the reason which prompted the appellant to file a review

application before the learned single Judge. The dismissal of the review by the learned single Judge is perfectly valid. As rightly pointed out by the

learned counsel for the additional respondents that a subsequent resolution cannot be passed in order to get over or to vary the order passed by

the learned single Judge. Learned counsel relied, upon the decision in Board of Revenue & Another v. P.K. Syed Akbar Sahib (1973 KLT 497).

In the said case a review application was filed by the Government to review the judgment on the ground that a subsequent Division bench decided

otherwise. The Division bench while dismissing the application followed the Supreme Court decision in *M/s. A.C. Estates v. M/s. Sarajuddin &*

*Co. (A.I.R. 1966 S.C. 935, 939)* where the Supreme Court approved the Privy council ruling in 27 Indian Appeals 197 and stated that for review

on the ground of discovery of "new and important matter" the said matter must exist at the time when the order sought to be reviewed was made.

In another decision cited by learned counsel for respondent in *Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury*, following the earlier

decision of the Supreme Court it was held as follows:

8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of order 47,

Rule 1 C.P.C. In connection with the limitation of the powers of the Court under Order 47, Rule 1, while dealing with similar jurisdiction available

to the High court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *Babboo alias*

*Kalyandas and Others Vs. State of Madhya Pradesh*, , speaking through Chinnappa Reddy, J., has made the following pertinent observations

(para 3):

It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every

Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits

to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which,

after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time

when the order was made; it may be exercised where some mistake error apparent on the face of the record is found; it may also be exercised on

any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a

Court of Appeal. A power of review is not to be confused with the appellate power which may enable an Appellate Court to correct all manner of

errors committed by the Subordinate court.

(emphasis is ours)

Applying these decisions and for the reasons set out earlier we hold that the order of the learned Judge dismissing the review application is valid.

7. In the above circumstances we do not find any grounds to interfere with the order passed by the learned single Judge dated 16-12-1992. In that

view we dismiss the writ appeal, however, no order as to costs. Coming to the contempt application we find that the order of the learned single

Judge was stayed by the Division bench in C.M.P. No. 3777 of 1993 dated 24-6-1994. However, there is no acceptable explanation for the

failure on the part of the Board to implement the order passed by this court in O.P. No. 10598 of 1990 dated 24-6-1991 and the subsequent

order in O.P. No. 8609 of 1992 dated 16-12-1992. The second order was stayed only on 24-6-1994. The reasons set out in the counter

affidavit that the basis of the Original Petition have been changed consequent on the cancellation of the resolution and that the said resolution was

rescinded for the same reason and therefore if the board is allowed to implement the resolution No. 301, the Union will be getting an unintended

benefit which was not in the contemplation of the Port Trust while passing the resolution, The stand of the Board in the contempt application is

unfair and far from satisfactory. The Board has not expressed any regret for their inability to implement the order, but has sought to justify their

erroneous stand. However, taking note of the fact that the term of the then Chairman of the Port Trust expired on 31st July, 1993, we do not want

to proceed further in the contempt application. However, we hope that the Cochin Port Trust would implement the directions of the Court without

further delay and reservation. In that view of the matter the contempt application is closed. No order as to costs.