

**(2006) 06 KL CK 0064**

**High Court Of Kerala**

**Case No:** Writ Petition (C) No. 11996 of 2006

Khalid

APPELLANT

Vs

State of Kerala

RESPONDENT

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**Date of Decision:** June 23, 2006

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Contract Labour (Regulation and Abolition) Act, 1970 - Section 34
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 19A
- Kerala Motor Transport Workers Welfare Fund Board Act, 1985 - Section 3, 6, 8(1), 8(5)
- Payment of Bonus Act, 1965 - Section 37

**Citation:** (2006) 3 ILR (Ker) 207 : (2006) 3 KLT 226

**Hon'ble Judges:** V. Ramkumar, J; K.S. Radhakrishnan, J

**Bench:** Division Bench

**Advocate:** G. Prabhakaran, for the Appellant; Roy Chacko, Sr. Government Pleader and P. Ramakrishnan, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

K.S. Radhakrishnan, J.

A learned single judge of this Court in Kunhipokku v. District Executive Officer 1993 (2) KLT 4 while dealing with the power of condonation of delay in Sub-section (5) of Section 8 of the Kerala Motor Transport Workers Welfare Fund Act, 1985 (hereinafter referred to as "the Act") felt that in case Government is not entertaining the appeal filed beyond the period prescribed therein, the aggrieved party can invoke clause 83 of the Kerala Motor Transport Workers Welfare Fund Scheme, 1985 (hereinafter referred to as "the Scheme") which confers power on the Government to remove difficulties. The learned Judge felt that power under clause 83 is akin to what is possessed by Section 19-A of the Employees Provident Funds and Miscellaneous Provisions Act 1952 which enables removal of difficulties arising under the said Act.

2. Petitioner felt that his petition filed beyond the statutory period prescribed under Sub-section (5) of Section 8 of the Act could be entertained by the Government invoking clause 83 of the Scheme especially in the light of the decision in Kunhipokku's case, supra. Government vide Ext. P15 letter dated 11.1.2006 however found no reason to entertain such a petition and dismissed the same. Aggrieved by the same the present Writ Petition has been filed.

3. When the matter came up for hearing before a learned single Judge, Justice S. Siri Jagan, the learned Judge did not agree with the interpretation given in Kunhipokku's case and referred the matter to the Division Bench for an authoritative pronouncement.

4. A Division Bench of this Court in [District Executive Officer Vs. Abel](#), to which one of us, K.S. Radhakrishnan, J. is a party, took the view that Government have no power to condone the delay in filing an appeal beyond sixty days from the date of receipt of the final determination order. The Bench held as follows:

Legislature in its wisdom thought that Government be conferred with no power for condonation of delay with the object of not delaying payment of amount due to the employee on its determination by Chief Executive Officer. Kerala Motor Transport Workers Welfare Fund Act is a welfare legislation. Canon of constructing welfare legislation is distinct from the canon of constructing ordinary law. Court cannot countenance any practice to circumvent or defeat the provisions of the welfare legislation. Kerala Motor Transport Workers Welfare Fund Act and the Scheme framed thereunder are intended to achieve some urgent social demands, that is welfare of motor transport workers. State has got obligation to work out the welfare of the motor transport workers. It is with that objective the Scheme has been framed. Legislature felt that if any person is aggrieved by the order passed by the Chief Executive Officer he could prefer an appeal within a period of sixty days from the date of receipt of the order. Legislature has not conferred power on the Government to entertain any appeal filed beyond the statutory period fixed.

The Bench also felt that the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution shall not be exercised in favour of the party who had not availed of the alternate remedy available under the statute. Petitioner however felt that though his application cannot be entertained by the appellate authority since it was filed beyond the statutory period, the same could be entertained by the Government in exercise of the powers conferred under clause 83 of the Scheme.

5. We will therefore examine whether clause 83 of the Scheme would come to the rescue of a party who had not availed of the statutory remedy of appeal. The Kerala Motor Transport Workers Welfare Fund Act, 1985 is an Act enacted to provide for the constitution of a Fund to promote the welfare of motor transport workers in the State of Kerala. Section 3 of the Act enables the Government to frame a Scheme called the Kerala Motor Transport Workers Welfare Fund Scheme for the welfare of

the employees. Under Sub-section (2) the Fund shall be administered by the Board constituted u/s 6 of the Act. Clause 83 of the Scheme is extracted below for easy reference.

83. Removal of difficulties. -- If any difficulty arises in giving effect to the provisions of this Scheme and in particular, if any doubt arises as to:

(i) the number of persons employed in the establishment;

(ii) whether the total quantum of benefits to which an employee is entitled has been reduced by the employer;

The Government may, by order, make such provisions, or give such directions not inconsistent with the provisions of this Scheme as appear to it to be necessary or expedient for the removal of the doubt or difficulty, and the order of the Government in such cases shall be final.

Clause 83 of the Scheme states that if any difficulty arises in giving effect to the provisions of the Scheme the Government may make such provisions or give such directions not inconsistent with the provisions of the scheme as appear to it be necessary or expedient for the removal of the doubt or difficulty, and the order of the Government in such cases shall be final. So also if any difficulty arises with regard to the number of persons employed in the establishment Government may by order, make such provisions or give such direction not inconsistent with the provisions of the scheme as it appear to it to be necessary or expedient for the removal of the doubt or difficulty.

6. Government in exercise of the powers conferred under clause 83 of the Scheme cannot interfere with an order passed by the Government under Sub-section (5) of Section 8 of the Act. Sub-section (5) of Section 8 specifically says that the decision of the Government on an appeal filed thereunder shall be final. Legislature have given the stamp of finality to the order passed by the Government under Sub-section (5) of Section 8 of the Act. Government while exercising its power under clause 83 of the Scheme cannot take away the stamp of finality attached by the Legislature to the government order passed under Sub-section (5) of Section 8 of the Act. Power conferred on the Government under clause 83 of the Scheme is not intended to set at naught the order passed by the Government under Sub-section (5) of Section 8 of the Act. Government can exercise the powers only if any difficulty arises in giving effect to the provisions of the Scheme and not to the provisions of the Act. Even otherwise Government in exercise of the power under clause 83 of the Scheme cannot interfere with the legislative powers exercised by the Legislature. Similarly, in purported exercise of the power under Clause 83 of the Scheme, the Government cannot sit in appeal over an order passed by a lower authority. What cannot be achieved directly cannot be achieved indirectly. Clause 83 is not intended to remove the difficulties experienced by an employer who is bound to pay contribution to motor transport workers under the Act. When the Government dismisses the

petition to condone the delay in filing a belated appeal u/s 8(5) of the Act, it amounts to confirmation of the order passed by the Chief Executive Officer u/s 8(1) of the Act determining the amount due from the petitioner and there arose no difficulty in giving effect to the provisions of the Scheme so as to warrant an action under Clause 83 of the Scheme.

7. The learned Judge who decided Kunhipokku's case, supra drew a parallel to Section 19A of the Act to explain clause 83. Scope of Section 19-A which was referred to in Kunhipokku's case, supra came up for consideration before the apex court in [Union of India \(UOI\) and Another Vs. Ogale Glass Works](#), . The court held while exercising power u/s 19-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, no occasion will arise for the Central Government to give a direction on the ground that difficulty has arisen in giving effect to the provisions of the Act after the High Court has given its interpretation to the particular provision of the Act. Apex Court in [Jalan Trading Co. \(Private Ltd.\) Vs. Mill Mazdoor Union](#), examined the scope of Section 37 of the Payment of Bonus Act. Section 37 authorises the Central Government to provide by order for removal of doubts or difficulties in giving effect to the provisions of the Act. Condition of the applicability of Section 37 is the arising of the doubt or difficulty in giving effect to the provisions of the Act. This section authorises the Government to determine for itself what the purposes of the Act are and to make provisions for removal of doubts or difficulties. Apex Court held that Section 37 delegates legislative power to executive authority and held it to be invalid. We may in this connection refer to another decision of the Apex Court in *Goverdhan Lal and Ors. v. Union of India and Ors.* (1974) 1 SCC 597 wherein the scope of Section 34 of the Contract Labour (Regulation and Abolition) Act 1970 was under challenge. Section 34 of the Act provides that if any difficulty arises in giving effect to the provisions of the Act, the Central Government may, by order, published in the official gazette, make such provisions not inconsistent with the provisions of the Act as appears to it to be necessary or expedient for removing the difficulty. The court held that it is for the legislature to make provisions for removal of doubts or difficulties and neither finality nor alteration was contemplated in any order u/s 34 of the Act. Clause 83 of the Scheme is a clause framed by the Government as a delegated authority for the internal functioning of the Scheme. Rule making power or the power conferred to frame a Scheme is a separate power which has nothing to do with the removal of difficulties of the Act. Power to remove difficulties conferred on the Government under clause 83 is not a statutory power or legislative power to override the provisions of the Act. If in giving effect to the provisions of the Act any doubt or difficulty arises it is for the legislature to remove that doubt or difficulty and not the Government under the Scheme.

8. We are therefore of the view that in a case where Government have already passed an order dismissing a petition in exercise of the powers conferred u/s 8(5) of the Act that order is final so far as the party is concerned and the Government cannot interfere with that order in exercise of its powers conferred under clause 83

of the Scheme. In view of the above mentioned reasons, we are of the view, Kunhipokku "s case has not been correctly decided and we hold that the Government have no power under clause 83 of the Scheme to sit in judgment over the decision taken by the Government under Sub-section (5) of Section 8 of the Act especially when the Legislature has given the stamp of finality to the order. In such circumstances Government have rightly dismissed the petition. This Writ Petition therefore lacks merits and the same would stand dismissed.