

**(1995) 06 KL CK 0043****High Court Of Kerala****Case No:** W.A. No. 1429 of 1993

Cochin Port Trust

APPELLANT

Vs

Ernakulam District Lorry Drivers  
and Cleaners Labour Union and  
Others

RESPONDENT

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

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1
- Constitution of India, 1950 - Article 226

**Hon'ble Judges:** P. Shanmugam, J; M.M. Pureed Pillay, J**Bench:** Division Bench**Advocate:** V.M. Kurian, C.N. Ramachandran Nair and Antony Dominic, for the Appellant;

### **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 on 30th November, 1990 conceding the demands of the 1st Respondent. Sreedharan, J. by his judgment; dated 24 the June 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 16th December 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 30th November 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 2nd June 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 16th December 1992. The said application was dismissed on 30th September 1993. Thereafter the above Writ Appeal was filed against the judgment in O.P. No. 8609 of 1992 dated 16th December 1992 and the order in R.P. No. 156 of 1993, dated 13th September 1993.

2. 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 29th June 1993 and decided that there was no necessity for the Port to absorb these private workers. The Board had 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 29th June 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 30th November 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.

3. Mr. B. Krishna Mani appearing on behalf of the Additional 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 3rd August 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 30th November 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 23rd January 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. No. 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 Anr. 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.

4. 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.

5. 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 30th November 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 3rd August 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 24th June 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 tendency 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 30th November 1990 without 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 this Court. It was further recorded by the Conciliation Officer that Resolution No. 301, should be implemented in the right spirit. This was the position as on 24th February 1993. The 1st Respondent filed C.C.C. 170 of 1993 on 22nd July 1993 and notice was ordered on 26th July 1993. After this the Appellant filed Review Petition No. 156 of 1993 on 5th August 1993 and after the dismissal of the review petition on 30th September 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 29th June 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.

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

7. The Appellant cannot have any objections to the order dated 16th December 1992 since according to them, the change of circumstances came into existence only on 29th June 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 further. 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 30th November 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 crystallised. 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 and Anr. 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 A.C. Estates Vs. Serajuddin and Co. and Another, at 939 where the Supreme Court approved the Privy Counsel 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, CPC 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 or 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.

8. In the above circumstances we do not find any grounds to interfere with the order passed by the learned Single Judge dated 16th December 1992. In that view we dismiss the writ appeal, however, no order as to costs.

9. 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 24th June 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 24th June 1991 and the subsequent order in O.P. No. 8609 of 1992 dated 16th December 1992. The second order was stayed only on 24th June 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 this Court without further delay and reservation. In that view of the matter the contempt application is closed. No order as to costs.