

(1990) 02 KL CK 0058

High Court Of Kerala

Case No: O.P. No. 843 of 1990

Swati Roller Flour Mills (P) Ltd.
and anothers

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision: Feb. 21, 1990

Acts Referred:

- Kerala Headload Workers Act, 1978 - Section 18

Citation: (1990) 1 KLJ 513

Hon'ble Judges: K. Sreedharan, J

Bench: Single Bench

Advocate: K.K. Usha, for the Appellant; N. Sankara Menon, for the Respondent

Judgement

K. Sreedharan, J.

When C.M.P. No. 1928/90 came up for orders, I heard learned counsel appearing on either side in detail. Since all arguments, raised by the parties in the pleadings, have been put forward at length, I am disposing of the Original Petition itself. First petitioner is a company registered under the Indian Companies Act. Government of Kerala allotted land in the industrial development area, Kochuveli for the company to start Flour Mill. Machines required for the Mill were imported from Hungary. Highly sophisticated and modern machineries have been installed. The Mill started production in early January, 1990, For the purpose of loading and unloading wheat and wheat products first petitioner engaged a contractor 2nd petitioner. He has his permanent workers. The wheat lifted from Food Corporation of India Godown were brought to the factory on 6-1-1990. Persons claiming to be members of the unions headed by respondents 4 to 11 obstructed the unloading work. Petitioners sought the help of police for getting the wheat unloaded.. With much difficulty the quantity brought on 6-1-1990 could be unloaded. When lorry loads of wheat were brought to the Mill on 9-1-1990 followers of respondents 4 to 11 damaged the goods, pelted stones on the factory and caused injury to the workers. Members of the staff of the

company were beaten up. One had to be admitted in the hospital. On account of the obstruction caused by the followers of respondents 4 to 11 the work could not be carried on in the factory. Petitioners sought help of respondents 2 and 3 for carrying on the work in the factory without any obstruction from the followers of respondents 4 to 11. No effective protection was afforded by respondents 2 and 3 Hence this Original Petition.

2. Petitioners filed C.M.P. No. 2051/1990 for impleading the Deputy Labour Commissioner, Trivandrum, as Additional 12th respondent That petition was allowed and the officer has, been impleaded as Additional 12th respondent. On the basis of the instruction received from him, learned Government Pleader submitted before court that no Scheme under the Headload Workers Act, hereinafter referred to as "the Act, has been extended to the place where the factory belonging to the petitioners is located.

3. Counter affidavits have been filed by almost all the contesting respondents. The contentions raised therein are that the Headload workers in the locality alone are entitled to attend to the loading and unloading works in the factory. By engaging permanent workers, petitioners cannot deny the Headload workers of the locality employment. The permanent workers engaged by the petitioners are not registered Headload workers either The so-called permanent employees having not been registered under the Act are not entitled" to attend to the loading and unloading works.

4. The Kerala Headload Worker's Welfare Fund Board represented by its Chief Executive has filed C.M.P. No. 1928/90 for impleadment in this proceeding. The averments made therein are that the business of the petitioners come under the coverage of the Act and the Scheme framed there-under, that the scheme has been notified on 4-1-1985 for Wards 1 to 50 of Trivandrum Corporation, that the Committee which is to be constituted under the Act has to take over the loading and unloading works available in the area and that the registration formalities are in progress. It, is therefore, stated that the Headload Workers Welfare Fund Board is a necessary party in this proceeding.

5. As stated earlier, the Deputy Labour Commissioner, Trivandrum has stated that the Scheme under the Act has not been extended to Kochuveli where the establishment belonging to the petitioners is situated. Since the Scheme has not been extended I do not think it necessary" to implead the Headload Workers Welfare Fund Board in this proceeding. Even otherwise, under the Act if there is any dispute regarding the implementation of the provisions of the Act. the dispute is to be settled by the Labour Officer. The Board has no locus standi to get itself impleaded in this proceeding. Accordingly, the Board's application, CMP. 1928/90, is dismissed.

6. Petitioners have their own permanent employees to attend to the loading and unloading works in their factory. When such is the position, can a Headload worker claim right to attend to the loading and unloading work in the factory U/s. 18 of the Act, the Government is to appoint committees for specified areas for the purpose of exercising the powers and performing the functions of the committee's under the Act and the Scheme in relation to that area. This shows that the Committee is to be constituted for those areas to which the Scheme has been extended. According to 12th respondent, the Deputy Labour Commissioner, the area where the factory of the petitioners is situated, is not one to which the Scheme has been extended. Even in respect of an area to which the Scheme is extended the function of the committee is dealt with clause (8) of Section 18 of the Act. Sub-clause (a) of clause (8) of Section 18 casts a duty on the Committee to pool the headload workers who are not employed under any employer or contractor. To such headload workers who are so pooled, work is to be allotted. The Committee is entrusted with the responsibility to arrange and regulate employment of the headload workers who are pooled. The Committee has no plenary power to control all loading and unloading work in any area. If such be the authority of the Committee, I cannot accept the argument advanced by respondents 4 to 11 that their members alone are to attend to the loading and unloading work in the petitioners' establishment. As per the Act, registered headload worker can get the work assigned depending on the requirement of the employer. The allotment is also to be made by the committee. The Scheme of the Act does not recognise any union of headload workers. So, no union can advance a claim on behalf of its members to attend to the loading and unloading work in an establishment. In other words a union cannot pressurise the employer to engage its members only to carry on the work. An employer who has got permanent workers to attend to the loading and unloading work cannot be forced to engage the members of any union. If a concern is having its permanent employees to attend to the loading and unloading workers, then the headload workers in the locality cannot claim any right to be engaged by such employer. If an employer who has no permanent employees to attend to the loading and unloading work or an employer having such permanent workers requires service of others to attend to the loading and unloading work in his establishment, then such an employer has to approach the committee u/s. 18 of the Act for getting the headload workers allotted to him. Only in such a situation can the headload workers, registered under the Act claim work in the establishment belonging to an employer. On a reading of the provisions of the Act, the Rules framed there-under and the Scheme published, it is evident that the provisions contained therein will not apply to an establishment having permanent workers to attend to the loading and unloading work, If an employer does not require the services of additional workers for attending to the loading and unloading works, no head-load worker can interfere with the loading and unloading work in the establishment when it is carried on by permanent workers. Petitioners have got their permanent workers to attend to the loading and unloading works. Neither respondents 4 to 11 nor their

followers and sympathisers, have got the right to interfere with the petitioners" right to carry on the work of loading and unloading with their permanent workers. In case, respondents 4 to 11 and their followers and supporters cause any obstructions to the loading and unloading work within the premises of the petitioners" establishment, that obstruction will have to be removed by respondents 2 and 3. Respondents 2 and 3 should take effective and adequate steps to give protection to the petitioners and their permanent workers to carry on the loading and unloading works in their establishment without any obstruction from respondents 4 to 11, their supporters and followers.

The Original Petition is disposed of in the above terms.