



2024:KER:69959

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 9TH DAY OF SEPTEMBER 2024 / 18TH BHADRA, 1946

WP(C) NO. 4739 OF 2024

PETITIONER:

M/S. R.K. VENTURES
AGED 54 YEARS
REPRESENTED BY ITS MANAGING PARTNER REGI. M. KURIAKOSE, DOOR
NO.1/301/C, AMBUNADUKARA, MALAYIDAMTHURUTH, KIZHAKKAMBALAM,
ERNAKULAM DISTRICT., PIN - 683561

BY ADVS.
A.V.THOMAS (SR.)(T-49)
BABY KURIAKOSE
M.V.ASHIM

RESPONDENTS:

- 1 THE DISTRICT SUPERINTENDENT OF POLICE
ERNAKULAM (RURAL), ALUVA, PIN - 683101
- 2 THE DEPUTY SUPERINTENDENT OF POLICE
PERUMBAVOOR, ERNAKULAM DISTRICT., PIN - 683542
- 3 THE STATION HOUSE OFFICER
THADIYITTAPARAMBU POLICE STATION,
VAZHAKULAM (P.O), ERNAKULAM DISTRICT., PIN - 683105
- 4 ASSISTANT LABOUR OFFICER
MINI CIVIL STATION, PERUMBAVOOR., PIN - 683542
- 5 THE SOCIAL DEMOCRATIC TRADE UNION (SDTU)
REPRESENTED BY ITS UNIT CONVENER, MALAYIDAMTHURUTH,
MALAYIDAMTHURUTH (P.O), ERNAKULAM DISTRICT., PIN - 683561
- 6 ERNAKULAM DISTRICT LOADING AND UNLOADING WORKERS UNION
(INTUC)
REPRESENTED BY ITS UNIT CONVENER, MALAYIDAMTHURUTH,
MALAYIDAMTHURUTH (P.O), ERNAKULAM DISTRICT., PIN - 683561



- 7 HEAD LOAD WORKERS POOL NO.59
REPRESENTED BY ITS POOL LEADER, MALAYIDAMTHURUTH,
MALAYIDAMTHURUTH (P.O), ERNAKULAM DISTRICT., PIN - 683561
- 8 KERALA HEADLOAD WORKERS WELFARE FUND BOARD
REPRESENTED BY ITS CHAIRMAN, PUTHENCRUZ SUB COMMITTEE,
PUTHENCRUZ (P.O), ERNAKULAM DISTRICT., PIN - 682308
- 9 ADDL. R9. M/S. INDUS TOWERS LIMITED,
REP. BY MANAGER-LEGAL (KERALA CIRCLE) V.G. SANKARAN,
HAVING ITS REGISTERED OFFICE AT BUILDING NO. 10, TOWER A,
4TH FLOOR, DLF CYBER CITY, GURGAON, HARYANA -122002 AND
HAVING ITS BRANCH OFFICE AT 8TH FLOOR, VANKARATH TOWERS,
PALARIVATTOM, COCHIN, KERALA-682025 IS IMPEADED AS ADDL.
R9 AS PER ORDER DATED 08.04.2024 IN I.A. 2/2024 IN THE
WP(C)

BY ADVS.

REKHA C.NAIR, GOVERNMENT PLEADER

P.K.IBRAHIM

K.S.ARUN KUMAR

K.P.AMBIKA(A-656)

ZEENATH P.K.(K/001999/2023)

JABEENA K.M.(K/002008/2023)

ANAZ BIN IBRAHIM(K/2796/2023)

SATHISAN .P

JAVED HAIDER(K/001709/2018)

ABHIRAM SUNISH(K/001195/2022)

SHIBU B.S(K/001060/2021)

BIJU P.PAUL(K/000648/2022)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15.07.2024, THE COURT ON 09.09.2024 DELIVERED THE FOLLOWING:

**C.R.****JUDGMENT****Dated this the 09th day of September, 2024**

The petitioner firm has entered into an agreement for carrying out the logistic work of M/s. Indus Towers Ltd., an infrastructure provider in the telecommunication sector. As per the agreement, the petitioner has to undertake the storage and transportation of sensitive electronic panels, sophisticated electronic goods, diesel generators, steel items and allied equipment. For carrying out these activities, the petitioner has constructed a warehouse at Malayidamthuruth in Kizhakkambalam. The Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 ('the Scheme' for short) is made applicable to the area in which the warehouse is situated. The petitioner alleges that the registered



headload workers in the area are obstructing the loading and unloading activity carried out in the warehouse. The prayer in the writ petition is to direct respondents 1 to 3 to provide adequate and effective Police protection to the petitioner and its workers for carrying out loading activity in the warehouse and for running the logistic business without any threat, hindrance or obstruction from the members of the 5th and 6th respondent unions.

2. Heard, Sr. Adv. A.V. Thomas appearing for the petitioner, instructed by Adv. Baby Kuriakose, Advs. P.K. Ibrahim, K.S. Arun Kumar, P. Sathisan for respondents 7 to 9 respectively, and Adv. Rekha C. Nair, the learned Government Pleader.

3. It is contended by the learned Senior Counsel that the goods loaded and unloaded at the warehouse are sensitive and sophisticated materials like electronic panels, diesel generators and allied items. Any



mishandling by unskilled persons will damage the articles and cause loss to the petitioner. The articles are therefore to be loaded and unloaded by specially trained workers. The other items like diesel generator sets and steel girders are loaded and unloaded using cranes and forklifts. In such circumstances, the demand that the registered headload workers should be engaged for carrying out the activity, is untenable.

4. In support of the contention that even in a scheme covered area, registered headload workers need not be engaged for loading and unloading of sophisticated and delicate articles or those done with the aid of machinery, reference is made to the definition of 'headload worker' in Section 2(m) and the exemption in Section 9A of the Act. To further buttress the argument, reliance is placed on the decisions in ***Safa System & Solutions v. Station House Officer, Palarivattom and Others [2018 3 KHC 311]***,



Balakrishnan A v. Circle Inspector of Police, North Police Station, Alappuzha and Others [2020 6 KHC 701] and Krishna Kumar and Others v. Deputy Superintendent of Police, Alappuzha and Others [2021 5 KHC 717].

5. Learned Counsel for the 7th respondent submitted that the writ petition was filed even before the warehouse was constructed. Hence, the allegation that the activities were obstructed by the registered headload workers is patently false. As a matter of fact, petitioner had engaged the registered headload workers during construction of the warehouse building and now that the unit has become functional, the petitioner wants to carry out the activities with workers of its choice. The contention that only trained workers can carry out the loading activities is liable to be discarded, since applications have been filed by the petitioner for getting its own workers registered under



the Headload Workers Rules, 1981. Moreover, the registered headload workers of the area are having sufficient experience in handling electrical and electronic equipments, generator sets and steel girders, evidenced by Ext.R7(A) letter. It is contended that, Indus Towers Ltd. being the principal employer, the petitioner has no *locus standi* to file the writ petition. Moreover, Ext.P13 agreement executed between the parties has no legal validity in view of Section 39 of the Act.

6. Learned Counsel for the 8th respondent submitted that a complaint was received from the leader of the headload workers of Pool No.59, alleging that the pool workers were not being engaged in the petitioner establishment. Thereupon, a meeting was convened by the Assistant Labour Officer/4th respondent. In that meeting, the petitioner's representative took an obstinate stand that the registered headload workers



will not be engaged. It is contended that the area is scheme covered and as the registered headload workers are having the requisite skill and experience, they are bound to be engaged. The apprehension that engagement of registered headload workers would result in the costly equipment being damaged is misplaced and is put forth only as an excuse for engaging the petitioner's own workers.

7. Learned Counsel for the 9th respondent submitted that the petitioner's workers have been specially trained to deal with the electronic equipment and other sophisticated articles with due care and caution. It is also submitted that the company had bitter experience whenever the registered headload workers were engaged.

8. The petitioner is relying on Sections 2(m) and 9A of the Kerala Headload Workers Act, 1978 ('the Act for short) to contend that, persons other than



registered headload workers can be engaged for loading of delicate or sophisticated articles even in a scheme covered area. Per contra, the unions and the Kerala Headload Workers Welfare Fund Board contends that, as the registered headload workers of the area are having requisite skill and experience, they alone should be engaged.

9. The rival contentions gives rise to the question whether an employer can engage workers of his choice, even if the registered headload workers in a scheme covered area have the requisite skill in handling delicate or sophisticated articles.

10. While venturing to answer the question, the objective of the Act, which is to regulate the employment of headload workers and make provision for their welfare, is to be borne in mind. No doubt, the definition of 'headload worker' in Section 2(m), excludes workers engaged for loading and unloading of



delicate or sophisticated articles. Likewise, the proviso to Section 9A enables the employer to engage persons other than registered headload workers, if the work requires the assistance of skilled persons or the use of machinery. On the contrary, Clause 6 of the Scheme mandates that no headload worker who is not a registered headload worker under the provisions of the Kerala Headload Workers Rules shall be allowed or required to work in a scheme covered area.

11. This dichotomy can be resolved by resorting to purposive interpretation of the provisions. It is true that the definition of headload workers in Section 2(m) does not take in persons engaged for loading, unloading or stacking delicate or sophisticated articles. By virtue of the proviso to Section 9A, in the case of works requiring assistance of skilled persons and which are to be done with due diligence or require the aid of machinery, an employer can engage persons having such skill. It is



evident from the provisions that the law makers had not envisaged a situation where the registered headload workers themselves are skilled persons. The omission probably was due to the general perception that headload workers survive on their physical ability and brawn alone. Here, it is essential to note that, many among the headload workers, especially the youngsters, are well educated and capable of acquiring the special skills required for handling sophisticated or delicate articles. It is for the Government and the Headload Workers Welfare Fund Board to take necessary steps in that regard. If not, the laudable objective of the Act will be defeated by every other employer claiming that the headload works in his establishment require the service of persons with special skills. While on the issue, it is essential to note that Clause 6 of the scheme makes it mandatory to engage registered headload workers in a scheme



covered area without exception. On purposive interpretation of the above provisions, in the backdrop of the social changes over the years, it has to be held that if the registered headload workers in a Scheme covered area are having the requisite skill and experience in handling delicate or sophisticated articles, they are bound to be engaged for the loading and unloading work.

12. In the case at hand, the registered headload workers are in possession of documents to prove their claim of having requisite skill for handling delicate or sophisticated articles. It is also on record that the Assistant Labour Officer had convened a conciliation conference, but the efforts at settlement did not fructify, since the petitioner was not willing to engage the registered workers.

13. Yet another aspect of importance is the mechanism for resolution of disputes contained in



Section 21 of the Act. As per Section 21(1), the Assistant Labour Officer is conferred with the power to convene a conciliation conference and if no settlement is arrived at, to send a report of the dispute to the Conciliation Officer appointed under Section 3 of the Act. Thereupon, the Conciliation Officer should hold conciliation proceedings and if the parties come to a settlement, send a report to the appellate authority. On the other hand, if no settlement is arrived at, the Conciliation Officer can take a decision on the dispute. Any person aggrieved by the decision of the Conciliation Officer can submit an appeal to the Appellate Authority. In view of the above efficacious mechanism, grant of Police protection, without exhausting the alternative remedy would be inappropriate.

The writ petition is hence disposed of, directing the authorities under the Headload Workers Act to decide



the dispute between the petitioner and the unions, in accordance with the procedure prescribed under Section 21 of the Act. The parties are at liberty to raise all their contentions before the authorities.

Sd/-

V.G.ARUN

JUDGE

NB



APPENDIX OF WP(C) 4739/2024

PETITIONER EXHIBITS

- | | |
|----------------------|---|
| EXHIBIT P1 | THE TRUE COPY OF THE LICENSE DATED 05/08/2023
ISSUED BY THE SECRETARY, KIZHAKKAMBALAM GRAMA
PANCHAYATH |
| EXHIBIT P2 | THE TRUE COPY OF THE APPLICATION ALONG WITH THE
E-CHALLAN DATED 08/08/2023 |
| EXHIBIT P3 | TRUE COPY OF THE TRAINING CERTIFICATES DATED
15/12/2023 ISSUED BY M/S. INDUS TOWERS LIMITED |
| EXHIBIT P3(a) | TRUE COPY OF THE TRAINING CERTIFICATES DATED
15/12/2023 ISSUED BY M/S. INDUS TOWERS LIMITED |
| EXHIBIT P3(b) | TRUE COPY OF THE TRAINING CERTIFICATES DATED
15/12/2023 ISSUED BY M/S. INDUS TOWERS LIMITED |
| EXHIBIT P3(c) | TRUE COPY OF THE TRAINING CERTIFICATES DATED
15/12/2023 ISSUED BY M/S. INDUS TOWERS LIMITED |
| EXHIBIT P3(d) | TRUE COPY OF THE TRAINING CERTIFICATES DATED
15/12/2023 ISSUED BY M/S. INDUS TOWERS LIMITED |
| EXHIBIT P4 | TRUE COPY OF THE APPLICATIONS DATED 10/08/2023
ALONG WITH THE IDENTITY PROOF OF EACH OF THE
ABOVE MENTIONED WORKER |
| EXHIBIT P4(a) | TRUE COPY OF THE APPLICATIONS DATED 10/08/2023
ALONG WITH THE IDENTITY PROOF OF EACH OF THE
ABOVE MENTIONED WORKER |
| EXHIBIT P4(b) | TRUE COPY OF THE APPLICATIONS DATED 10/08/2023
ALONG WITH THE IDENTITY PROOF OF EACH OF THE
ABOVE MENTIONED WORKER |
| EXHIBIT P4(c) | TRUE COPY OF THE APPLICATIONS DATED 10/08/2023
ALONG WITH THE IDENTITY PROOF OF EACH OF THE
ABOVE MENTIONED WORKER |



- EXHIBIT P4(d) TRUE COPY OF THE APPLICATIONS DATED 10/08/2023 ALONG WITH THE IDENTITY PROOF OF EACH OF THE ABOVE MENTIONED WORKER**
- EXHIBIT P5 THE TRUE COPY OF THE COMPLAINT DATED 13/01/2024 SUBMITTED BY THE PETITIONER BEFORE RESPONDENTS 1 TO 3 I**
- EXHIBIT P6 THE TRUE COPY OF THE FIR NO. 804 DATED 25/9/2021 REGISTERED BY THE 3RD RESPONDENT**
- EXHIBIT P7 THE TRUE COPY OF THE JUDGMENT DATED 06/10/2021 IN W.P.(C) NO.15192/2021 OF HIGH COURT OF KERALA**
- EXHIBIT P8 THE TRUE COPY OF THE COMPLAINT SUBMITTED BY THE SRI.T.V.NISSAR BEFORE THE 3RD RESPONDENT**
- EXHIBIT P9 THE TRUE COPY OF THE LETTER DATED 17/01/2024 ISSUED BY THE 4TH RESPONDENT**
- EXHIBIT P9(a) TRUE COPY OF THE RELEVANT EXTRACT OF THE AGREEMENT**
- EXHIBIT P10 A TRUE COPY OF THE STATEMENT DATED 22/01/2024 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT**
- EXHIBIT P11 TRUE COPY OF THE COMPLAINT DATED 03/02/2024 SUBMITTED BY RILE PETITIONER BEFORE THE 3RD RESPONDENT**
- EXHIBIT P12 TRUE COPY OF THE RECEIPT DATED 03/02/2024 ISSUED BY THE 3RD RESPONDENT**
- EXHIBIT P13 TRUE COPY OF THE AGREEMENT DATED 12.11.2023 EXECUTED BY M/S.INDUS TOWERS LTD AND THE PETITIONER**
- EXHIBIT P14 TRUE COPY OF THE COMPLAINT DATED 29/11/2023 SUBMITTED BEFORE THE 7TH RESPONDENT BEFORE THE ASSISTANT LABOUR OFFICER, PERUMBAVOOR**



- EXHIBIT P15** TRUE COPY OF THE FIRE NOC ISSUED BY THE DEPARTMENT OF FIRE AND RESCUE, KERALA DATED 23.08.2023
- EXHIBIT P16** TRUE COPY OF THE PHOTOS OF THE INCIDENT ON 30.01.24
- EXHIBIT P16(a)** TRUE COPY OF THE PHOTOS OF THE INCIDENT ON 30.01.2024
- EXHIBIT P17** TRUE COPY OF THE PHOTOGRAPH OF STOCK KEPT IN THE WAREHOUSE OF THE PETITIONER
- EXHIBIT P17(a)** TRUE COPY OF THE PHOT OF STOCK KEPT IN THE WAREHOUSE OF THE PETITIONER
- EXHIBIT P17(b)** TRUE COPY OF THE PHOT OF STOCK KEPT IN THE WAREHOUSE OF THE PETITIONER
- EXHIBIT P17(c)** TRUE COPY OF THE PHOT OF STOCK KEPT IN THE WAREHOUSE OF THE PETITIONER
- EXHIBIT P17(d)** TRUE COPY OF THE PHOT OF STOCK KEPT IN THE WAREHOUSE OF THE PETITIONER
- EXHIBIT P18** TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE ASSISTANT LABOUR OFFICER, PERUMBAVOOR, DATED 09.08.2023
- EXHIBIT P19** TRUE COPY OF THE LETTER DATED 14.02.2024 ISSUED BY THE 3RD RESPONDENT STATION HOUSE OFFICER, THADIYITTAPARAMBU
- EXHIBIT P20** TRUE COPY OF THE MUSTER ROLL MAINTAINED IN FORM NO.6 FOR THE MONTH OF JANUARY 2024
- EXHIBIT P20(a)** TRUE COPY OF THE MUSTER ROLL MAINTAINED IN FORM NO. 6 FOR THE MONTH OF FEBRUARY 2024
- EXHIBIT P21** TRUE COPY OF THE REGISTER EMPLOYMENT AND WAGES MAINTAINED IN FORM NO V FOR THE PERIOD FROM 04.02.2024 TO 10.02.2024 WITH THE ENDORSEMENT OF THE 4TH RESPONDENT



- EXHIBIT P21(a)** TRUE COPY OF THE REGISTER OF EMPLOYMENT AND WAGES MAINTAINED FORM NO. V FOR THE PERIOD FROM 11.02.2024 TO 17.02.2024 WITH ENDORSEMENT OF THE 4TH RESPONDENT
- EXHIBIT P22** TRUE COPY OF THE REGISTRATION CERTIFICATE RENEWED BY THE ASSISTANCE LABOUR OFFICER, PERUMBAVOOR DATED 09.08.2023
- RESPONDENT EXHIBITS**
- EXHIBIT-R7(A)** TRUE COPY OF THE CERTIFICATE OBTAINED BY E-MAIL ON 27.06.2024 FROM DHL SUPPLY CHAIN
- EXHIBIT-R7(B)** TRUE COPY OF THE REPRESENTATION DATED 03.02.2024 FILED BEFORE THE RESPONDENTS 1, 4 AND 8 (RECEIPT OF 4TH RESPONDENT SHOWN IN 1ST PAGE AND RECEIPT OF 8TH RESPONDENT SHOWN IN 2ND PAGE) ALONG WITH RECEIPT BY 1ST RESPONDENT
- EXHIBIT-R7(C)** TRUE COPY OF THE MEMO SUBMITTED TO THE ADVOCATE COMMISSIONER BY THE 7TH RESPONDENT
- EXHIBIT-R7(D)** TRUE PHOTOGRAPH OF THE NAMEBOARD OF THE ESTABLISHMENT NAMELY, INDUS TOWERS LIMITED,
- EXHIBIT-R7(E)** TRUE COPY OF THE MINUTES OF THE INSPECTION DATED 12.01.2024 SIGNED BY THE 4TH RESPONDENT
- TYPED COPY** TYPED COPY OF THE EXHIBIT-R7(D)

TRUE COPY

P.A. TO JUDGE