

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

THURSDAY, THE 15<sup>TH</sup> DAY OF JUNE 2023 / 25TH JYAISHTA, 1945

WP(C) NO. 14986 OF 2023

PETITIONER:

M/S JATAN CONSTRUCTIONS PVT LTD.  
JATAN - TODARMAL MARG AJMER - 305001  
REPRESENTED BY ITS AUTHORISED SIGNATORY.

BY ADVS.  
DEEPU THANKAN  
UMMUL FIDA  
LAKSHMI SREEDHAR  
LEKSHMI P. NAIR  
NAMITHA K.M.

RESPONDENTS:

- 1 STATION HOUSE OFFICER  
KALAMASSERY POLICE STATION.  
KALAMASSERY, PIN - 682033.
- 2 KERALA HEADLOAD WORKERS WELFARE FUND BOARD  
REPRESENTED BY ITS CHAIRMAN,  
KALAMASSERY, PIN - 683513.
- 3 SUPERINTENDENT  
COCHIN CANCER RESEARCH CENTER,  
ERNAKULAM GOVERNMENT MEDICAL COLLEGE,  
KALAMASSERY, PIN - 683513.
- 4 PRASANNAN  
PRESIDENT, POOL NO. 5 HEADLOAD WORKERS UNION,  
KANGARAPADI, KALAMASSERY, PIN - 683513.

BY ADVS.  
K.R.VINOD  
M.S.LETHA  
ADV. RAJEEV JYOTHISH GEORGR-GP,  
ADV. S KRISHNAMOORTHY-SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 15.06.2023, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

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## **J U D G M E N T**

Dated this the 15<sup>th</sup> day of June, 2023

The petitioner is a Company having its registered office in Rajasthan. The grievance of the petitioner is that the persons under the 4<sup>th</sup> respondent are obstructing the attempt of the petitioner to unload their Transformers using mechanical tools.

2. The petitioner states that the Company is the awardee of a tender invited by the INKEL Ltd., Government of Kerala. They are constructing the Cochin Cancer Research Centre, Ernakulam, which is a flagship project of the petitioner.

3. The petitioner has purchased Distribution Transformer Copper wound 11 KV-Dry Type Indoor Case Resin–2000 KVA from Intrans Elector Components Private Limited as per Ext.P2 invoice. When the petitioner attempted to unload the said

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Transformer using crane, the 4<sup>th</sup> respondent and persons under him obstructed the petitioner demanding *Nokku kooli*, alleges the petitioner.

4. Though the petitioner approached the 1<sup>st</sup> respondent seeking protection from the illegal obstruction by the 4<sup>th</sup> respondent and persons under him, protection is not given. Unless this Court direct the 1<sup>st</sup> respondent to provide adequate protection to the petitioner and his workers for unloading the Transformers and other items which required to be unloaded with the aid of the machinery in the worksite for construction, the Cochin Cancer Research Centre at Ernakulam Government Medical College, Kalamassery without any obstruction from the unwanted interference and the illegal action of the 4<sup>th</sup> respondent, the petitioner will be put to irreparable loss.

5. Counsel entered appearance on behalf of the 4<sup>th</sup> respondent and resisted the writ petition. On behalf of the 4<sup>th</sup>

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respondent, it is submitted that the workers under the 4<sup>th</sup> respondent were carrying out all loading and unloading work of the petitioner. The area where the issue arises is an area where the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 has been operationalized. Therefore, only registered headload workers in Pool No.5 have any right to do loading and unloading work. The petitioner does not have any attached registered headload workers having registration under Rule 26A.

6. On behalf of the 4<sup>th</sup> respondent, it is further submitted that a Memorandum of Settlement has been arrived for the period 2021 to 2023 in the construction area in Ernakulam District. The Settlement was signed in the presence of the District Labour Officer (General). The authorised signatory of the petitioner has signed the Memorandum of Settlement. The Memorandum of Settlement takes in Generators, Motor Pumps, Transformers and

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other heavy machinery. In view of Ext.P1 Memorandum of Settlement, the petitioner is bound to engage the registered headload workers under the pool.

7. The 4<sup>th</sup> respondent further pointed out that the petitioner has been engaging the workers under the 4<sup>th</sup> respondent for unloading heavy UPS batteries and other items weighing up to 9.20 Tones. The petitioner has no case that the machinery and UPS which are being unloaded are of such a nature that it can be unloaded only by skilled workers. In view of Ext.R4(D) also, the contention of the petitioner is liable to be rejected.

8. Counsel for the 4<sup>th</sup> respondent further pointed out that Ext.R4(C) application would show that the petitioner had submitted application for registration as an employer under the Kerala Headload Workers Welfare Fund. As the petitioner has already sought for registration, the petitioner is bound to engage registered headload workers from the headload workers' pool.

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9. It is finally contended that there is a Settlement entered into between the petitioner and the respondents, whereunder the petitioner has agreed to engage the pool workers at the rate fixed in Ext.R4(D) Settlement. The said Settlement has been entered into subsequent to the filing of the writ petition. Therefore, the writ petition has become infructuous and for that reason also the same is liable to be rejected.

10. Standing Counsel entered appearance on behalf of the 2<sup>nd</sup> respondent. On behalf of the 2<sup>nd</sup> respondent, it is submitted that the area where the petitioner's Unit is functioning is an area where the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 has been notified and operationalised. Therefore, the petitioner is bound to follow the provisions of the Scheme, 1983. The registered headload workers under the 4<sup>th</sup> respondent were being engaged by the petitioner from time to time.

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11. I have heard the learned Counsel for the petitioner, the learned Government Pleader representing the 1<sup>st</sup> respondent, the learned Standing Counsel representing the 2<sup>nd</sup> respondent and the learned Counsel appearing for the 4<sup>th</sup> respondent.

12. It is an admitted position that the petitioner has to unload Distribution Transformer Copper wound 11 KV-Dry Type Indoor Case Resin-2000 KVA from Intrans Electro Components Pvt. Ltd. as per Ext.P2 invoice dated 30.03.2023. According to the petitioner, the said instrument is a specialised instrument and skilled workers are required for unloading the same.

13. Section 9A of the Kerala Headload Workers Act, 1978 reads as follows:

“Subject to the provisions of this Act, an employer shall engage a headload worker registered under the Act in connection with the work of his establishment. Provided that in case of works which require assistance of skilled persons and which are to be done with due diligence or require the aid of machinery, such works may be done by engaging the persons having such skill or by the machinery, as the case may be.

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2. Every headload worker shall be entitled to wages as prescribed by the Government under the provisions of this Act only if their services have been engaged by the employer or the owner of an establishment.”

The proviso to Section 9A would make it clear that in respect of works which require assistance of skilled persons and which are to be done with due diligence or require the aid of machinery, such works can be done by an employer by engaging persons having such skill or by the machinery as the case may be. It is the specific case of the petitioner that the Transformer in question is being unloaded using a machinery. The transportation of machinery requires due diligence and it has to be done by the skilled workers. In view of the proviso to Section 9A, the petitioner has a right to get the work done by using machinery and skilled workers.

13. The objection of the 4<sup>th</sup> respondent is that there is already Ext.R4(A) Memorandum of Settlement entered into in the presence of District Labour Officer to which the petitioner's



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Authorised Signatory is a signatory. A reading of Ext.R4(A) Memorandum of Settlement would show that the said Settlement is a general agreement only in respect of rates of wages applicable to various loading and unloading work when pool workers are engaged. The said Settlement does not deal with the right of the employers to engage headload workers or their own skilled workers. Therefore, the said Memorandum of Settlement can be acted upon only when the petitioner engages headload workers from the pool.

14. There is a settlement as per Ext.R4(D), entered into on 02.05.2023, during the pendency of this writ petition. A reading of Ext.R4(D) would show that the representative of the petitioner has expressly submitted during the Meeting that a decision on the Settlement can be taken only after approval of the Director Board of the Company. There is nothing on record to show that the Director Board of the Company has approved the said settlement.

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Therefore, the 4<sup>th</sup> respondent cannot stake any claim based on Ext.R4(D) also.

15. I note that the petitioner had engaged registered headload workers earlier, as can be seen from Ext.R4(D). Engagement of registered workers from the pool cannot be a reason to contend that the petitioner cannot load or unload machinery where the petitioner has the protection of the proviso to Section 9A of the Kerala Headload Workers Act, 1978. The fact that the petitioner has applied for registration as employer under the Kerala Headload Workers Welfare Fund cannot take away the right of the petitioner under Section 9A.

In the facts and circumstances of the case, the writ petition is allowed. There will be a direction to respondents 1 and 3 to extend necessary protection to the petitioner for unloading of the Distribution Transformer Copper wound 11 KV-Dry Type Indoor Cast Resin-2000 and other items which required to be unloaded

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with the aid of machinery. It is made clear that this will not prevent the 4<sup>th</sup> respondent from raising any dispute before the Conciliation Authorities invoking Section 21A of the Kerala Headload Workers Act and if such dispute is raised by the 4<sup>th</sup> respondent, the competent Conciliation Authorities may proceed with the dispute untrammelled by any of the observations made in this judgment.

Sd/-

**N. NAGARESH  
JUDGE**

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APPENDIX OF WP(C) 14986/2023

PETITIONER EXHIBITS

- Exhibit P-1            A TRUE COPY OF THE LETTER OF ACCEPTANCE  
OF TENDER ISSUED BY INKEL DATED  
13/10/2021
- Exhibit P-2            A TRUE COPY OF THE INVOICE OF INTRANS  
ELECTRO COMPONENTS PVT LTD DATED  
30/03/2023
- Exhibit P-3            A TRUE COPY OF THE COMPLAINT SUBMITTED BY  
THE PETITIONER DATED 28/04/2023

RESPONDENT EXHIBITS

- EXHIBIT R4 A            THE COPY OF THE MEMORANDUM OF SETTLEMENT  
DATED 28.09.2021
- EXHIBIT R4 B            THE COPY OF THE WORK CARD DATED  
01.04.2023 WITH RESPECT TO THE UNLOADING  
OF MACHINERY HAVING THE WEIGHT OF 9.20  
TONNE
- EXHIBIT R4 C            THE COPY OF THE APPLICATION FOR  
REGISTRATION AS AN EMPLOYERS SUBMITTED BY  
THE PETITIONER BEFORE THE KERALA HEADLOAD  
WORKERS WELFARE BOARD
- EXHIBIT R4 D            THE COPY OF THE MINUTES OF THE MEETING  
DATED 02.05.2023 BETWEEN THE PETITIONER  
AND THE MEMBERS OF THE UNION OF THE 4 TH  
RESPONDENT IN THE PRESENCE OF THE 2 ND  
RESPONDENT