

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 23RD DAY OF DECEMBER 2022 / 2ND POU SHA, 1944

WP (C) NO. 22622 OF 2012

PETITIONERS:

- 1 LT.COL. E.V.KRISHNAN
CHAIRMAN AND MANAGING DIRECTOR,
POORNAM INFO VISION (PVT) LTD.,
V.C. VALLEY APARTMENTS,
P.B. NO. 5400, CSEZ.P.O.
COCHIN-682037.
- 2 GEORGE.M.J.
ACCOUNTS AND ADMINISTRATIVE MANAGER,
POORNAM INFO VISION, (PVT) LTD.,
V.C. VALLEY APRTMENTS,
P.B. NO. 5400, CSEZ.P.O.
COCHIN-682037.

BY ADVS.
SRI.N.SUKUMARAN (SR.)
SRI.N.K.KARNIS
SRI.S.SHYAM

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO
LABOUR DEPARTMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 DISTRICT LABOUR OFFICER (ENFORCEMENT)
ERNAKULAM, KAKKANADU,
COCHIN-682030.
- 3 ASSISTANT LABOUR OFFICER
ERNAKULAM 1ST CIRCLE, KAKKANAD,
COCHIN-682030.
- 4 THE TAHSILDAR (RR)
KANAYANNOOR TALUK OFIFCE,

W.P.(C) No.22622/12

-:2:-

ERNAKULAM, COCHIN-682011.

SRI.ASHOK M.CHERIYAN,ADDL.ADVOCATE GENERAL

SRI.K.A.NOUSHAD, GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 24.11.2022, THE COURT ON 23.12.2022 DELIVERED
THE FOLLOWING:

“C.R.”

BECHU KURIAN THOMAS, J.

W.P.(C) No.22622 of 2012

Dated this the 23rd day of December, 2022

JUDGMENT

Can the Inspector appointed under the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958 adjudicate and decide the quantum of wages payable as compensation as per the provisions of the Act? The above question inter-alia arises for consideration in this writ petition.

2. Petitioners are the persons in control of M/s. Poornam Info Vision Pvt. Ltd. They are aggrieved by the order issued under the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958 (for short 'the Act'), imposing an amount of Rs.48,72,678/- towards double the rate of wages allegedly payable to the employees for working on three national and eight festival holidays. Petitioners also challenge the show-cause notices issued and the revenue recovery proceedings initiated against them personally.

3. First petitioner is the Chairman and Managing Director of a 100% export oriented unit, providing services allegedly of an intellectual nature to its counterpart in the United States of America.

Second petitioner is its Administrative Manager. According to the petitioners, the unit is situated in the Cochin Special Economic Zone and is duly licensed under the Commissioner of Customs.

4. The issue that has arisen for consideration stems from an inspection by the Assistant Labour Officer on 02.11.2010 consequent to which, several irregularities under various labour legislations were noticed, including those under the Act and by Ext.P4 notice, petitioners were directed to rectify the said violations. It is pertinent to mention that one of the anomalies noticed was non-payment of double the rate of wages to the employees for working on national and festival holidays and to give compensatory off to the employees.

5. In the reply submitted, petitioners pleaded that there were no violations as noticed in the inspection note and that though the Act as such is not applicable to them, leave under various heads was granted to the employees. Thereafter, a show-cause notice was issued by the third respondent on 21.03.2011, directing the petitioners to pay additional wages to the employees for working on national and festival holidays and also to produce the register and records and to show cause why prosecution proceedings and other legal steps should not be launched against the petitioners.

6. On 04.04.2011, petitioners submitted an explanation stating that the various statutes specified in the show-cause notice were not

applicable to their establishment and requested to drop the proposal to prosecute them.

7. Pursuant to the aforesaid explanation, the impugned order Ext.P9, styled as a show-cause notice dated 25.04.2011 was issued, stating that the employees who had worked on national and festival holidays were not provided with double wages and compensatory off and hence there is a violation of section 5(2) of the Act. Petitioners were also directed to pay double the rate of wages to the employees amounting to Rs.48,72,678/-, whose details and the calculations were annexed with the same. Consequent to the above order/show-cause notice, revenue recovery proceedings have been initiated as Ext.P12 and Ext.P12(a), proposing to recover the same from the properties of the petitioners personally.

8. A counter affidavit was filed by the third respondent, primarily contending that Ext.P9 is only a show-cause notice and that no final orders have been issued. It was also stated that no objection to the rate of calculation or the quantum of the amount mentioned in the statement have been made and that since the petitioners did not dispute the amount claimed, the third respondent initiated revenue recovery steps.

9. The first respondent, on the other hand, filed a counter affidavit stating that Ext.P9 is a final order and that the Inspector has

the power to do all that is required for the purpose of the Act and since the payment as directed was not forthcoming, the revenue recovery proceedings were resorted to.

10. Sri. N.Sukumaran learned Senior Counsel assisted by Sri.S.Shyam, learned counsel for the petitioners contended that the entire proceedings leading to Ext.P9 and the consequential revenue recovery proceedings are ex-facie without authority, vitiated by malice in law and therefore void under law. Learned Senior Counsel also submitted that the third respondent did not have any authority to enter into a process of adjudication or to arrive at the quantum allegedly payable by the petitioners towards wages under the Act for allegedly working during holidays. Learned counsel also contended that the Inspector under the Act is not vested with any authority to adjudicate on the quantum payable and if at all any quantum is payable as contemplated under the Act, only the employees could have initiated proceedings in accordance with law. He further emphasized that till date, no application had been filed by any employee claiming wages for allegedly working on national and festival holidays, which itself indicates that the adjudication and the determination of quantum by the Inspector, as seen in Ext.P9, is an illegal and arbitrary exercise. It was further pointed out that the revenue recovery proceedings initiated against the petitioners

personally, is also ex-facie illegal since the liability, if any, at the most, is only that of the company and not that of the petitioners personally.

11. Sri.K.A.Noushad, learned Government Pleader referred to the various statutory provisions of the Act and submitted that being a beneficial legislation, a liberal interpretation ought to be adopted. It was submitted that the object of the statute was to ensure the grant of national and festival holidays to persons employed in industrial establishments in the State and to pay wages at twice the rate in case the employee works on such holidays. Viewed in the above perspective, it was contended that the Inspector being vested under section 7 to exercise all such powers as an officer for carrying out the purpose of the Act, he was entitled to issue an order in the nature of Ext.P9, quantifying the amounts due from the petitioners' establishment.

12. Sri.Ashok M.Chериyan, learned Additional Advocate General assisted by Sri.K.A.Noushad and Adv. Sabeena P.Ismail contended that the revenue recovery proceedings have been initiated as per the provisions of section 5(4) of the Act and that petitioners are not entitled to raise a challenge in this proceeding against Ext.P9. It was submitted that if at all petitioners want to question the proceedings their remedy is to follow the procedure contemplated under section 70 of the Kerala Revenue Recovery Act, 1968 (for short 'the RR Act') and

make the entire payment under protest and thereafter contest the demand. In support of the said contention, learned Additional Advocate General relied upon the unreported decision in **Jaya Chandran v. The Managing Director, Kerala State Coir Corporation Ltd. and Others** (W.P.(C) No.11184 of 2010). It was also argued on behalf of the respondent that by virtue of the principle of the doctrine of implied power, it could be presumed that the Act has conferred upon the Inspector power to do all such acts as are necessary for carrying out the purposes of the Act, including the power of issuing an order quantifying the amount due to an employee. Reliance was placed upon the decision in **Bidi, Bidi Leaves and Tobacco Merchants' Association, Gondia and Others v. State of Bombay** AIR 1962 SC 486, in support of the contention on the doctrine of implied power.

13. I have considered the rival contentions.

14. Since the learned Senior Counsel for the petitioner confined his submissions to the question of jurisdiction or authority of the third respondent to issue Ext.P9 and the validity of the revenue recovery proceedings, the question of applicability of the Act to the petitioners' establishment is not being considered, and the said question is left open.

15. To appreciate the contentions advanced, it is pertinent to

glance at the scheme and a few provisions of the statute under consideration. The object of the Act, as is seen from the preamble is as follows:

"An Act to provide for the grant of National and Festival holidays to persons employed in industrial establishments in the State of Kerala."

16. Section 3 of the Act states that every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January, 15th August, the 1st May and 2nd October and nine other holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees, specify in respect of any Industrial Establishment. Section 4A of the Act, stipulates that notwithstanding anything contained in section 3, an employer may, by notice in writing, require any employee to work on any holiday allowed under that section. However, section 5 of the Act states that an employee shall be entitled to be paid wages for each of the holidays allowed under section 3, whether or not the employer required him to work on that holiday. Section 5(2) states that if an employee works on any holiday allowed under section 3, he shall be entitled to twice the wages and to avail himself of a substituted holiday on any other day. Section 5(4) stipulates that any amount due to an employee under this Act shall be recoverable as arrears of land revenue under the Revenue Recovery Act.

17. Section 7 deals with the powers of Inspectors, and since the same is relevant for the case, the same is extracted as below:

S.7. Powers of Inspectors .-Subject to any rules made by the Government in this behalf, an Inspector may, within the local limits for which he is appointed,-

- (a) enter, at all reasonable times and with such assistants, if any who are persons in the service of the Government or of any local authority as he thinks fit, to take with him, any place which is or which he has reason to believe is, an industrial establishment;*
- (b) make such, examination of the premises and of any prescribed registers, records and notices and take on the spot or otherwise, the evidence of such person as he may deem necessary for carrying out the purposes of this Act.*
- (c) exercise such other powers as may be necessary for carrying out the purposes of this Act:*

Provided that no one shall be required under this section to answer any question or give any evidence tending to incriminate himself.

18. The contention raised on behalf of the Government is that the Inspector is entitled to adjudicate/quantify the wages liable to be paid to the employee and the source of power can be traced to section 7(c) of the Act.

19. As mentioned earlier, Section 5(2) of the Act creates a right upon the employee to receive twice the wages if he works on a holiday and also to receive a substituted holiday. The amount due to an employee can be recovered as arrears of land revenue under the

Revenue Recovery Act. However, quantifying the amount due to an employee or adjudicating on the right of a person to be entitled to a particular sum and the corresponding obligation of another person to pay a certain quantified sum, are matters that are required to be decided after considering competing claims. Nowhere in the Act has the Legislature conferred such a power of adjudication or a power of quantifying the amount due to an employee on the Inspector. Specific powers have been stipulated, as can be exercised by the inspector. When specific powers of inspection and verification have been conferred on the inspector, without any power of adjudication, the intention of the legislature is explicit. As the term Inspector itself suggests, he is entitled to inspect, identify and even file complaints. His power stops with that, and it cannot be extended to confer the power of adjudication.

20. Adjudication can be carried out by an authority vested with powers of adjudication. Without specific conferment, the court cannot read into a statute the power of adjudication as conferred upon an Inspector. It is trite law that the authority created by a statute has to act within the four corners of the statute and therefore, such power of adjudication cannot be read into section 7(c) of the Act. Reference can be made to the decisions in **B.M.Malani v. Commissioner of Income Tax and Another** [(2008) 10 SCC 617] and **M.P. Wakf**

Board v. Subhan Shah by LR's and Others [(2006) 10 SCC 696].

21. The contention, relying upon the principle of the doctrine of implied powers, though impressive at first blush, on closer scrutiny, I find myself unable to accept the said principle as applying to the circumstances of the present case. There are limitations to the doctrine. The doctrine of implied powers applies when the legislature has conferred a right upon an authority to do a particular thing; then and only then, can all powers essential or indispensable to carry out the said function be implied to be available to such an authority. In other words, when there is a specific conferment of an express power of a substantive nature upon an authority, ancillary powers can be read into such an express grant. Moreover, only a fair and reasonable power alone can be read into the statute by resorting to the doctrine of implied power. Further, such a power can be implied only when the statute becomes incapable of compliance or a dead letter. Liberal reliance upon the said doctrine to confer power, even of an adjudicatory nature, upon an inspector can lead to drastic consequences.

22. In fact in the decision in **Bidi, Bidi Leaves and Tobacco Merchants Association, Gondia v. State of Bombay** (AIR 1962 SC 486), relied upon by the respondent themselves, it is observed in paragraph 20 as follows " *This doctrine can be invoked in cases "Where an*

Act confers a jurisdiction it also confers by implication the power of doing all such acts or employing such means, as are essentially necessary to its execution (Maxwell on Interpretation of Statutes, 10th ed., p. 361)". In other words, the doctrine of implied powers can be legitimately invoked when it is found that a duty has been imposed or a power conferred on an authority by a statute and it is further found that the duty cannot be discharged Or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exist. In such a case,, in the absence of an implied power the statute itself would become impossible of compliance. The impossibility in question must be of a general nature so that the performance of duty or the exercise of power is rendered impossible in all cases. It really means that the statutory provision would become a dead letter and cannot be enforced unless a subsidiary power is implied."

23. In view of the above, I am of the considered opinion that the Inspector appointed under the Act is not conferred with the power of adjudication.

24. In this context it is relevant to mention that an employee who claims that he is entitled to double the wages for having worked on a holiday has the option to move the Labour Court under section 33C(2) of the Industrial Disputes Act, 1947 or the civil court in accordance with law. It is not a situation where he is left without any remedy and once an adjudication is done, recourse to the Revenue Recovery Act is also permissible as per section 5(4) of the Act. The

contention that merely because the power of revenue recovery is conferred under the statute, the same indicates conferment of power of adjudication on the Inspector is stretching the language and intent of the Act beyond permissible limits.

25. Apart from the above, section 70 of the Revenue Recovery Act deals with the process for recovery of amounts due. The Act by itself does not create any new right and the person who is initiating the revenue recovery can only recover the amounts that are legally due. Reference in this context can be made to the decision in **State of Kerala and Others v. V.R.Kalliyankutty and Another** [(1999) 3 SCC 657]. When amounts have not been legally quantified or when there is no corresponding adjudication, a remedy of recourse to the Revenue Recovery Act is not permissible. The following observations are pertinent: *"The Kerala Revenue Recovery Act does not create any new right. It merely provides a process for speedy recovery of moneys due. Therefore, instead of filing a suit, (or an application or petition under any special Act), obtaining a decree and executing it, the bank or the financial institution can now recover the claim under the Kerala Revenue Recovery Act. Since this Act does not create any new right, the person claiming recovery cannot claim recovery of amounts which are not legally recoverable nor can a defence of limitation available to a debtor in a suit or other legal proceeding be taken away under the provisions of the Kerala Revenue Recovery Act."*

26. The decision in **Jaya Chandran v. The Managing Director, Kerala State Coir Corporation Ltd. and Others** (W.P.(C) No.11184 of 2010) is distinguishable on the facts itself. In the said case, there was no dispute on the amount since a cheque was already issued, which on presentation was dishonoured and instead of initiating proceedings under section 13A of the Negotiable Instruments Act, 1887, the Inspector notified under section 71 of the Revenue Recovery Act proceeded to recover the amounts so due, from the defaulter. The principles referred to in the facts of the said case cannot be made applicable to the present case where the amount due has not been quantified by any person authorised under law.

27. Apart from the above, Ext.P12 and Ext.P12(a) revenue recovery proceedings have been initiated against the personal property of the petitioners. First petitioner is the Managing Director while the second petitioner is the Administrative Manager. They cannot be proceeded against personally for the alleged liability of the company. On this reason also, Ext.P12 and Ext.P12(a) are liable to be quashed.

28. In view of my finding on the lack of jurisdiction for the third respondent to issue Ext.P9, I quash Ext.P9 notice/order and all proceedings pursuant thereto. Consequently, the revenue recovery proceedings initiated as Ext.P12 and Ext.P12(a) shall also stand

quashed.

The writ petition is allowed to the above extent.

Sd/-

BECHU KURIAN THOMAS

JUDGE

vps

APPENDIX

- EXT.P1 TRUE COPY OF THE CERTIFICATE ISSUED TO POOMAM INFO VISION PVT. LTD. DTD 14.2.2002
- EXT.P2 TRUE COPY OF THE LICENCE ISSUED BY THE COMMISSIONER OF CUSTOMS, COCHIN DTD 14.3.2017 TO POOMAM INFO VISION PVT. LTD.
- EXT.P3 TRUE COPY OF THE CERTIFICATE ISSUED UNDER ISO 9001 TO POOMAM INFO VISION PVT. LTD.
- EXT.P4 TRUE COPY OF THE NOTICE OF INSPECTION PREPARED BY THE 3RD RESPONDENT DATED 2.11.2010
- EXT.P5 TRUE COPY OF THE INTERIM REPLY SUBMITTED BY THE 2ND PETITIONER TO EXT.P4 DTD 8.11.2010
- EXT.P6 TRUE COPY OF THE DETAILED REPLY SUBMITTED BY THE 2ND PETITIONER TO EXT.P4 DTD 15.11.2010
- EXT.P7 TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY THE 3RD RESPONDENT TO THE 1ST PETITIONER DTD 21.3.2011
- EXT.P8 TRUE COPY OF THE REPLY ISSUED BY THE 2ND PETITIONER TO EXT.P7 DTD 4.4.2011
- EXT.P9 TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY THE 3RD RESPONDENT TO THE PETITIONERS DTD 25.4.2011
- EXT.P10 TRUE COPY OF THE REPLY SUBMITTED BY THE 2ND PETITIONER TO EXT.P9 DATED 3.5.2011
- EXT.P11 TRUE COPY OF THE SUMMONS ISSUED IN S.T.CASE NO.2551 OF 2011 TO THE 1ST PETITIONER
- EXT.P11(A) TRUE COPY OF THE SUMMONS ISSUED IN S.T.CASE NO.2551 OF 2011 TO THE 2ND PETITIONER
- EXT.P11(B) TRUE COPY OF THE SUMMONS ISSUED IN S.T.CASE NO.2551 OF 2011 TO POOMAM INFO VISION (PVT.) LTD.
- EXT.P12 TRUE COPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT TO THE 1ST PETITIONER DTD 12.9.2012 (SERVED ON THE 1ST PETITIONER ON 24.9.2012)

**EXT.P12 (A) TRUE COPY OF THE NOTICE ISSUED BY THE 4TH
RESPONDENT TO THE 2ND PETITIONER DTD 12.9.2012
(SERVED ON THE 2ND PETITIONER ON 24.9.2012)**

**EXT.P13 TRUE COPY OF THE OBJECTION TO EXT.P12 SUBMITTED
BY THE 2ND PETITIONER DTD 26.9.2012**