

CHAIRMAN AND MANAGING DIRECTOR, THE FERTILIZERS
AND CHEMICALS TRANVANCORE LTD. & ANR.

v.

GENERAL SECRETARY FACT EMPLOYEES ASSOCIATION &
ORS.

(Civil Appeal No. 3803 of 2019)

APRIL 11, 2019

**[ABHAY MANOHAR SAPRE AMASUNG
INDU MALHOTRA, JJ.]**

Code of Civil Procedure, 1908 - Res judicata - Industrial Disputes Act, 1947 - s.10 - Central Government na Appellant No. 1-PSU da 1978 ki mamanggi gi karmachari singgi thabak tagi pothabagi chahi adu 60 dagi 58 ta hanthahannaba yathang pikhi — Respondent sing-Trade Union singna yathang adugi mayokta writ petition tharakkhi — High Court ki Single Judge na petition adu thupchinkhi — Intra-Court appeal da, High Court ki Division Bench na High Court ki Single Judge ki order adu yakhi — Khudongchadaba mayoknaraduna, Trade Union singna special leave petition khara Supreme Court ta tharakkhi, makhoising adubusu thupchinkhi — Makha tabada, Trade Union singna haijarakpadagi issue adugi matangda industrial reference ama State Government na Labour Court ta thakhi — State Government na pikhiba reference adu res judicata gi niyom gi makhada yakhidre haina Labour Court na rai takhi — Khudongchadaba mayoknaraduna, Trade union singna Labour Court ki rai adubu shingnaduna atoppa writ petition amagasu thakhi — High Court na Labour Court ki rai adu kakkhi amadi reference adu res judicata na athingba thamde haina rai takhi — Appeal tourubada, asumna rai takhi: Trade Union singna tharakkhiba Special Leave Petitions adu thupchinkhrabagi matungda, chahi hanthahanbaga mari leinaba issue adugi waroi amada yourakkhi — Reference adubu khannanaba shakti makhoida (Labour Court) leite amadi madugi (reference) achumbasing adubu yenglaga wayel chatthaba ngambagi shakti leite haina Labour Court na marik chumna takhiba rai sing adu High Court na kakkhiba adu chumde — Lis ki party amahektana haijarakpada Judicial forum amattana issue sing adugi achumbasing aduda amukka hanna wayel chatthabagi shakti leikhide — Labour/industrial proceeding singdasu chatnaba, Code ki Section 11 gi makhada yaoba res judicata gi niyom singgi matung enna issue adu hanjinna wayel chattharakkhibagi thingkhibani.

Appeal sing adu yaraduna, Court na

RAI TAKHI: 1. Case asida, chahi 60 dagi 58 ta hanthahanbagi matang da Trade Union/Respondent sing na chatthariba case adugi ahanba round da original petition sing (O.P. Nos.14598, 14599 & 14976/2003) adu Kerala High Court ta thanggatlakhibani haiba asida yetnainingai leitre. Single Judge na madugi achum aran khannaraba matungda tang 12.08.2003 gi order amada hairiba writ petition sing adu thupchinkhi. Respondent/Trade Union sing aduna makha tana intra court appeal sing da (No.1565, 1595, 2112 & 2113/2003) issue adu Division Bench ta thanggatki. Division Bench aduna tang 18.12.2003 gi order da appeal adu thupchinkhi. Trade Union/respondent sing aduna makha tana Court asida special leave to appeals tharakshi amadi tang 23.04.2004 gi order da, Court asina SLP sing adu thupchinkhi amadi Division Bench ki order adu yakhi. [Para 28] [749-C-E]

2. Order sing asi chatnahankhibagi phal oina, chahi 60 dagi 58 da hanthahanhiba aduga mari leinana thorakhiba issue, loinana madudagi thorakpa makha taba issue sing adu waroi amada yourakshi maramdi Lis ki party singdugi marakta issue adugi achum aran khannaraba matungda mangjounana rai pikhrabani. [Para 29][749-F]

3. Lis ki party amahektana haijarakpada judicial forum amattana issue sing adugi achumbasing aduda amukka hanna wayenbagi shakti leikhide. Issue adu hanjinna wayel chattharakhiba maramna, labour/industrial proceeding singdasu chatnaba Civil Procedure Code ki Section 11 da yaoba res judicata gi niyom gi makhada thingkhibani. [Para 30][749-G]

4. Maram asina, appellant(PSU) aduna chahi hanthahanba aduga mari leinana thamlakkhiba wapham adu State aduna Industrial Disputes Act ki Section 10 gi makhada amuk hanna examine tounaba Labour Court ta reference tharakhiba adu State adugi shakti yaodadani. *A fortiori*, reference aduda thamlakkhiba wapham sing adu adjudicate tounaba reference adubu Labour Court na khannanabagi shakti leikhide. [Para 31][749-G; 750-A]

R.C. Tiwari v. MP State Co-operative Marketing Federation Ltd. & Ors. (1997) 5 SCC 125 : [1997] 3 SCR ; Pondicherry Khadi & Village Industries Board v. Kulothangan & Anr. (2004) 1 SCC 68 : [2003] 5 Suppl. SCR 62 ; Executive Engineer, ZP Engg. Divn. & Anr. v. Digambara Rao & Ors. (2004) 8 SCC 262: [2004] 4 Suppl. SCR 716 - mateng louri.

Case Law Reference

[1997] 3 SCR 795	mateng louri	Para 24
[2003] 5 Suppl. SCR 62	mateng louri	Para 26
[2004] 4 Suppl. SCR 716	mateng louri	Para 27

CIVIL APPELLATE JURISDICTION : 2019 gi Civil Appeal No. 3803.

Kerala High Court, Ernakulam gi tang 25.01.2017 gi Judgement amadi Order dagi 2012 ki Writ Appeal No. 1820 da.

Loinana

2019 gi Civil Appeal No. 3804.

Appearing party sing oina, J. P. Cama, P. V. Surendranath, Sr. Advs., Ritin Rai, Rohan Dhariwal, Vidor Bhatia, Siddhartha Jha, Abhipsit Mishra, Ms. Anindita Mitra, Ms. Resmitha R. Chandran, Ms. Lekha Sudhakaran, Roy Abraham, Ms. Seema Jain, Ms. Reena Roy, Akhil Abraham, Himinder Lal, C. M. Patel, Raji Joseph, Advs.

Court ki Judgement pikhiba

ABHAY MANOHAR SAPRE, J. 1. Leave pire.

2. Appeal sing asi tang 25.01.2017 da Ernakulam da leiba Kerala gi High Court na takhiba aroiba rai amadi thokkhiba order bu shingnaduna 2012 ki W.A. Nos. 1820 amadi 1824 da tharakkhibani, maduda High Court ki Division Bench na appellant singna tharakkhiba writ appeal sing adu thupchinkhi amadi Single Judge na tang 21.08.2012 ta W.P. No. 33938/2008 amadi 2556 of 2009 da takhiba rai adu yakhi.

3. Appeal sing asida mamangda thamkhraba achumba waphamsing asina mayek sengna taklagadaba atenba warol ama yaori.

4. Hairiba appellant sing asina respondent sing adubuni amadi hairiba respondent sing (respondent Nos. 1-10) asina writ petition sing adugi petitioner sing adubuni, makhoisingdagi appeal sing asi lakhibani.

5. Appellant No. 1 asi Public Sector Undertaking amani, amadi makhal kayagi fertilizer amadi chemical sing puthokpa amadi yonba gi thabak touribani. PSU asigi Kerala State ki Travancore da factory ama leiri. Respondent No. 1 dagina 10 faoba asina hairiba matam aduda appellant No. 1 gi pot puthokpasi unit ta thabak suriba karmachari singdugi Trade Union singni.

6. Tang 23.01.1978 da, appellant No. 1 (PSU) amadi Respondent Nos. 1 dagina 10 ga (Trade Union sing) gi marakta Memorandum of Settlement ama chatnahankhi, maduda party singdugi marakta, wapham ateiga loinana yanaba ama leikhi madudi Udyogamandal Division, Head Office ta leiba appellant adugi Undertaking da thabak touriba karmachari sing pumnamakki oina, amadi settlement ki numit aduda Undertaking adugi roll sing da yaokhibasingdugi oina chatnaduna lakliba chahi 60 da thabak tagi pothabagi matam adu lengdana adumak leigani.

7. Yanaba amasu thamkhi madudi hairiba Memorandum of Settlement aduda amadi adugi matungda thabak khallaba miyoishing adu chahi 58 gi matung da thabak tagi pothagani.

8. 19.05.1998 ta, Central Government na Central Government ki Public Sector Undertaking loinamakta yathang ama Central Government na thokkhi amadi board-level gi makhagi karmachari singgi superannuation gi chahi adu chahi 58 tagi 60 da hengatnaba haina yathang pikhi. Masi PSU khudingmakki oina tangai fadaba oihankhi. Appellant No. 1 na yathang adu soidana thabakta onthoknabagi thajaba pikhi amadi tang 27.05.1998 ki yanaba amagi makhada karmachari khudingmakta chatnahankhi.

9. Appellant (PSU) adugi sel thum gi phibham nongma nongma gi sokchillakpana maram oiduna, mamangda pankhiba yathang adu thabak oina pangthokpada awaba oikhi. Appellant (PSU) aduna, maram aduna, wapham adu Central Government ta khanghankhi. Tang 02.09.1999 amadi tang 11.07.2001 gi chithi singgi khuthangda, Central Government na appellant (PSU) aduda sel thum gi performance henna chaokhatnaba pambei sijinanaba yathang pikhi amadi karmachari sing adubu rationalization touduna yengsinba ngamba chang amada puraknaba khanghankhi. Masida karmachari singgi thabak tagi pothabagi chahi adu hanthahannaba yaokhi. Sel thum gi amang ata sing adu hanthahannaba kupna khannaraba amadi pambei kaya ama loukhatlaba matung da, Central Government na tang 25.04.2003 gi chithi amagi khuthangda appellant (PSU) aduda 1978 ki mamang gi karmachari singgi thabak tagi pothabagi chahi adu 60 dagi 58 ta hanthahannaba khanghankhi. Tang 25.04.2003 gi Central Government ki chithi adubu elladuna appellant (PSU) aduna tang 29.04.2003 da 1978 ki mamang gi karmachari singgi thabak tagi pothabagi chahi adu 60 dagi 58 ta hanthahannaba order ama thokkhi.

10. Masina respondent sing (Trade Unions) na tang 29.04.2003 gi order adugi ain gi oiba achumba adubu shingnaraduna Kerala High Court ta original petition sing (OP Nos. 14598, 14599 & 14976/2003) adu tharakpa yanabagi machak oikhi.

11. Single Judge aduna tang 12.08.2003 gi order da tang 29.04.2003 gi order adubu yakhi amadi original petition sing adu thupchinkhi. Single Judge aduna atoppa wapham singgi marakta thamkhi madudi ahanbada, appellant (PSU) adu sel thum gi awaba ama mayoknakhi amadi awabagi phibham adu saphanabagidamak appellant adugi industry adu hinghannaba kanagadaba thabak kharasu paikhatkhi; Ani subada, Trade Union singna tang 18.08.2001 gi yanaba amagi makhada, thorakhiba phibham adugi matangda, thabak subagi mising adu industry adu kannabagidamak 20% hanthahankhi; Ahum subada, 1978 gi mamang gi karmachari sing khaktagi oina thabak tagi pothabagi chahi adu 60 da adum thamba adu chummi haina takpa maram amata phangkhida; Mari subada, thabak tagi pothabagi chahi adu hanthahannabagi warep adu Constitution gi Article 14 da akaiba thokhankhida amadi industry adu kannabagidamak thabak tagi pothabagi chahi adu karmachari khudingmakki oina manahannabagidamak loukhatkhibani; amadi Manga subada, karigumba chahi adu hanthahallamdabada, leiriba industry adu makha tana chalaiba oithoklamloi. (Single Judge ki order gi Paras 11 amadi 12 yengbisi). Madumak oidunasu, aroiba Para da, writ petitioner sing aduna ain na piba atoppa remedy singgi khudongchaba adu louba yagani haina Single Judge na thamkhi.

12. Respondent (Trade Unions) sing aduna khudongchadaba mayoknaraduna wapham adu intra court appeal da Division Bench ta thangatlakkhi (WA Nos. 1565, 1595, 2112 & 2113/2003). Tang 18.12.2003 gi order gi da, Division Bench aduna appeal sing adu thupchinkhi amadi Single Judge ki order adu yakhi. Division Bench aduna atoppa wapham singgi marakta thamkhi madudi, ahanbada, karmachari pumnamaki maraktagi 10% na pukhatlakliba dabi aduda ayaba pirubada lemhouriba karmachari 90% adugi interest ta soklakpa yai; Ani subada, appellant (PSU) adu sel thum gi phibham da awaba mayoknakhi, maram aduna oiriba pumnamakki phibham sing adu yenglaba tungda, ayetpa pinabagi maram leite; Ahum subada, Memorandum of Settlement ki clause 14 na pikhi madudi settlement adugi matangda party sing adugi marakta thorakliba yetnaba adu arbitration gi pambei na, Labour Commissioner aduna yasinnaba purakhangadabani, amadi Labour Commissioner na wapham adu khannaraba matungda hairiba adumak pangthokkadabani. (Single Judge ki order gi Para 8 yengbisi).

13. Trade Unions (respondents) singna khudongchadaba mayoknaraduna special leave petition sing (CC Nos. 3653-3655/2004) Court asida tharakkhi. Tang 23.04.2004 gi order da, Court asina SLP sing adu thupchinkhi.

14. Masina yumpham oiraduna, tang 18.05.2004 gi order da, GO na tang 22.01.2008 da semdokhrabagi matung enna, Trade Union na haijarakpadagi State Government na industrial reference (No. 10/2004) asi Labour Court, Ernakulam da makhagi wahang asibu khannanaba thamlakkhi:

“FACT, Ltd., Udyogamangal gi management na 1978 ki mamanggi karmachari singgi thabak tagi pothabagi chahi adu 60 dagi 58 ta hanthahankhiba adu chumlibra natragana chumdabra?”

“Chumdrabadi, karmachari sing adugi karamba relief phangnabagidamak hak leigani?”

15. Trade Union na haijarakpadagi State Government na atoppa reference (No.4/2005) amagasu tang 02.03.2005 ki order da makhada piriba wahang asibu khannanabagidamak Labour Court ta thanggatlakshi:

“ FACT, Ltd. Udyogamangal Ltd. ki management na karmachari 42 gi thabak thadatkhiba adu chumlibra natragana chumdabra? Chumdrabadi, karmachari sing adugi karamba relief phangnabagidamak hak leigani?”

16. Labour Court aduna, tang 02.07.2008 gi rai gi matung enna reference (No.10/2004) gi paokhum adu Trade Union singgi mayokta amadi appellant (PSU) adugi maikeida pirakshi. Labour Court ta thanggatlakshiiba reference aduda thamlakshiiba wapham adu case adugi mamanggi round da High Court amadi Supreme Court na mangjounana khannakhraba oibana amadi wapham adu Court asina SLP sing adubu kakkhibagi phal oina waroi amada yourakhraba maramna, State na thamlakshiiba reference adu res judicata gi niyom na yakhide. Atoppa reference (No.4/2005) adusu, manaba maram dagi tang 02.08.2008 gi rai na thupchinkhi.

17. Trade Unions/employees (respondents oiriba) sing na khudongchadaba mayoknaraduna writ petition sing (Nos.33938/2008 amadi 2556/2009) adu tang 02.07.2008 gi rai adubu shingnaraduna High Court of Kerala da tharakshi.

18. Single Judge na tang 21.08.2012 ki order gi matung enna writ petition sing adu yakhi amadi Labour Court ki tang 02.07.2008 amadi tang 02.08.2008 gi rai sing adubu kakkhi. Asumna rai takhi madudi State na Labour Court ta thanggatlakshiiba reference adu res judicata na athingba thamkhide. Single Judge na makha tana karmachari sing adu thabakta amuk hanjilhanbagi mahutta makhoi khudingmakki phangpham thokpa tolob adugi 30% pinabagi rai takhi.

19. Appellant (PSU) aduna khudongchadaba mayoknaraduna intra court appeal sing tharakshi. Division Bench ki impugned order amana appeal sing adu thupchinkhi amadi Single Judge ki order adu yakhi, maram asidagi appellant(PSU) na Court asidagi special leave to appeal adu phanglaba matungda hairiba appeal sing asi tharakshibani.

20. Maram aduna, appeal sing asidagi khannanabagi thorakliba atenba wahang adudi, Labour Court ta State na tharakhiba reference adu High Court na res judicata gi niyom na athingba leite haina thamkhiba adu chummi haina lougadra haiba asini. Wahei amaromda, khannanaba thorakliba wahang adudi, reference aduda State na refer touriba issue adu party sing adugi marakta writ petition sing, writ appeal sing aduda High Court na hanana rai takhiba matamda amadi aroibada Court asina SLP sing aduda case adugi mamanggi round da rai takhiba matam aduda, State aduna hairiba issue adu Industrial Disputes Act, 1947 ki Section 10 (makha tabada “ID Act” haina palliba) gi makhada Labour Court ta nouna adjudication tounabagidamak tharakhiba reference adu State adugi shakti leikhibra haiba asini.

21. Mr. J.P. Cama, appellant singgi learned counsel amadi Mr. P.V. Surendranath, learned senior counsel, Mr. Roy Abraham amadi Mr. C.M. Patel, respondent singgi learned counsel gi waphamsing tare.

22. Party singgi learned counsel singgi waphamsing taraba matungda amadi case adugi ayeeba submission sing yaona record adu munna yengsillaba matungda, eikhoina appeal sing asi ayaba pingle amadi impugned order adubu kakladuna, tang 02.07.2008 amadi 02.08.2008 gi Labour Court ki rai sing adubu chatnahalle.

23. Eikhoigi mot ta, Code of Civil Procedure, 1908 (makha tabada “the Code” haina palliba) gi Section 11 da taklamba *res judicata* gi niyom adu labour proceeding sing da chatnaba yabra natraga yadabra haiba wahang adu, *res integra* oina leitre amadi Court asigi rai ahum na paokhum pikhre.

24. Ahanba case adudi **R.C. Tiwari vs. MP State Co-operative Marketing Federation Ltd. & Ors.** (1997) 5 SCC 125 ni. Case asida, co-operative society amagi karmachari amabu thabak tagi louthokkhi. Maram asina, mahakna, M.P. Co-operative Society gi Section 55 amadi 64 gi makhada mahakki thabak thadatkhilagi yetnaba adugi matangda Registrar da refer tourakkhi. Karmachari adugi mayokta domestic inquiry toukhibagi record ta yaoramba mahakki asoiba houna lonchat adugi finding adu Deputy Registrar na yakhi amadi mahakpu thabak tagi louthokkhiba adu ain na yai amadi achumbani haina rai takhi. Labour Court aduna thabak tagi louthokpa adugi ain gi oiba achumba adu khannanaba reference ama State aduna makha tana ID Act ki Section 10 gi makhada Labour Court ta thakhi. Labour Court aduna, madumak oidunasu, domestic inquiry adu chatnaba yadre haina thamkhi amadi, maram asina, thabak tagi louthokkhiba adu ain gi mityengda asoibani haina Labour Court na rai takhi. Maram aduna, employer aduna, MP High Court ta writ petition ama thakhi. High Court aduna writ petition adubu ayaba pikhi amadi Labour Court ki rai adu loukhide. Karmachari aduna makha tana Court asida wapham adu appeal oina tharakkhi. Court asina appeal adu thupchinkhi amadi High Court ki rai adu yakhi.

25. Court asina rai takhi madudi State aduna ID Act ki Section 10 gi makhada Labour Court ta thakhiba reference adu Code ki Section 11 gi makhada piriba *res judicata* gi niyom aduna yakhidre amadi, maram aduna, Labour Court ta tharakhiba reference adu kakkhi. Asumna rai takhi madudi, karmachari adubu thabaktagi louthokhibagi thoudok adu mamangda Deputy Registrar na thoudok adugi achumbasing adu yenglaba matungda karmachari adugi mayokta lepkhiba leikhi, masida Labour Court ki reference proceeding sing aduda amukkasu yengsinba yakhide. Para 4 da asumna rai takhi:

“4. Achumbani haina loure madudi, Deputy Registrar na record toukhiba petitioner adugi asoiba houna lonchat adugi finding leikhi. Madu res judicata da chingi. Chingnaningai leitana, Section 11 CPC asi chatnade maramdi masi court natte, Societies Act ki makhada akhannaba shakti piduna semba tribunal amani. Maram asina, mutatis mutandis gi makhada piriba niyom asi Act adugi makhada piriba procedure aduda chatnei. Masina res judicata oina mathou touwi. Maram asina, High Court aduna Labour Court na yetnaba adu amuk hanna khannabagi shakti leite haina takhiba adu achumbani haina louwi amadi reference adumak ain gi mityengda asoibani.”

26. Ani suba case adudi **Pondicherry Khadi & Village Industries Board vs. P. Kulothangan & Anr.**, (2004) 1 SCC 68. Case asidasu, constructive *res judicata* gi niyom sing yaona *res judicata* gi niyom adu industrial adjudication aduda chatnaba yabra natraga yadabra haiba wahang adu Court asina yengsinkhi. Court asina **R.C.Tiwari** (supra) gi case aduda chatnakhiba ain adu thengnakhidraba, chap manaba mityeng adu thamkhi, masi Para 10 amadi 11 da mayek sengna takli:

“10. Eikhoigi mot ta, appellant asina chumna yetlakkhi madudi industrial dispute adu hanagi writ proceedings aduda khannakhraba chap manaba wapham aduga mari leinakhi amadi res judicata gi niyom sing na yakhide. Pumnamakna yanaraba waphamni madudi, apunba Civil Procedure Code asi industrial adjudication da chatnaba yadraba, Code asigi Section 11 gi makhada yaoriba res judicata gi niyom sing asi constructive res judicata gi niyom sing yaona, chatnaba yai. Maram asina, State of U.P. v. Nawab Hussain da, maral siriba officer aduna mangonda sirakliba maralsing adubu mayoknanaba maram chaba tanja pikhide haina disciplinary proceeding singbu shingnaraduna tharakhiba writ petition ama thupchinkhiba adu, hairiba thupchinkhibagi order adu matik yaodana thokkhibani haina shingnaraduna amuk hanjinna case tharakpana res judicata oina chingkhi. Court asinasu rai takhi madudi: (SCC p. 808)

Chap manaba fact khara adudagi ani natraga anidagi henba case thaba yanabagi machaksing thorakhanba yai. Asigumba case asida, miyoi amana case thaba yanabagi machak ama khanduna matam amakhaktada case thaba yahallabadi, amadi atoppa machak aduna makha taba case tounabagidamak khakhchinduna thamlabadi, case ki potlum adu hengatkani. Maram asina court singna masigumba thouwong asi case ki process adubu lanna sijinnabani haina louwi.

11. Res judicata gi niyom asi court ta chatnabani. Chap manaba party sing adugi marakta hanagi proceeding sing da hakthengnana amadi mapung oina khannakhraba issue sing adu hanjinna wayel chatthaba yahandriba asi court sing adudani, makha taba proceeding adubu wayel chatthariba court aduna, hanagi proceeding sing adu mamanggi court aduna thupchinkhibada matik chai haina louraba, amadi hairiba court aduna wapham adu takhraba amasung hanana rai takhiba oirabadi. Case asida, Madras High Court ta respondent aduna tharakkhiba writ petition adugi party sing amadi industrial dispute aduga mari leinaba party sing adu amattani. Case animak adugi tharakpagi machak adudi appellant aduna respondent adubu thabakta amuk hanjilhanbagi ayaba pikhidabanani. Madras High Court na matik leina issue adugi achum aran yenglaga ningthina maram piraba order ama thoktuna amadi contested hearing chattharaba matungda warep loukhi. Case asi *Workmen v. Board of Trustees of the Cochin Port Trust*³ amadi *Pujari Bai v. Madan Gopal*⁴ gi case sing gumna technical ground amahektada hanagi proceeding sing adugi wayel pikhibagi thoudoktu natte. Industrial dispute adugi wahoudok oiriba thabak ta amuk hanjilhanbagi “hanthaba relief” adu writ petition aduda respondent aduna mangjounana claim toukhre. Masi High Court na yakhide. Writ proceeding sing aduda takhiba rai adugi achum aran da respondent aduna shingnakhide. Maram aduna, rai aduna aroiba oikhi. Writ petition aduda adverse order ama phangbana maram oiduna, respondent aduna Labour Court ta issue adu reagitate toubu yakhide amadi respondent aduna thanggatlakliba dispute adubu khannanaba amadi High Court na writ proceeding sing aduda takhiba rai adugi mayokta issue adu nouna rai tabada Labour Court ki matik leikhide.”

27. Ahum suba case adudi **Executive Engineer, ZP Engg. Divn. & Anr. vs. Digambara Rao & Ors.**, (2004) 8 SCC 262 ni. Case asidasu, Court asina Kulothangan (supra) da takhiba rai adugi mateng louraduna chap manaba mot adu thamkhi, mamangda Court asina R.C.Tiwari (supra) gi case aduda thamkhiba wahei asumna:

“15.....Wapham asi yanare madudi res judicata gi general niyom adu industrial adjudication da chatnare.”

28. Case asigi fact sing adu khannarakpada, chahi 60 dagi 58 ta hanthahanbagi matang da Trade Union/Respondent sing na case ki ahanba round da original petition sing (O.P. Nos.14598, 14599 & 14976/2003) adu Kerala High Court ta thakhibani haiba asida yetnaningai leitre. Hairiba writ petition sing asigi achum aran khannaraba matungda Single Judge na tang 12.08.2003 gi order amana thupchinkhi. Respondent/Trade Union sing aduna makha tana intra court appeal sing da (No.1565, 1595, 2112 & 2113/2003) issue adu Division Bench ta thanggakhi. Appeal adu tang 18.12.2003 gi order da Division Bench aduna kakkhi. Trade Union/respondent sing aduna makha tana Court asida special leave to appeals tharakshi amadi tang 23.04.2004 gi order da, Court asina SLP sing adu thupchinkhi amadi Division Bench ki order adu yakhi.

29. Eikhoigi mityeng da, Order sing asi thokkhibagi phal adudi, chahi 60 dagi 58 da hanthahanba aduga mari leinana thorakhiba issue ga loinana madudagi thorakpa makha taba issue sing adu waroi amada yourakshi maramdi Lis ki party sing adugi marakta achum aran khannaraba matungda mangjounana rai takhre.

30. Lis ki party amahektana hairakpada judicial forum amattana issue sing asigi achumbasing adu yengduna wayel chatthabagi shakti leikhide. Issue adu amuk hanjinna wayel chattharakpaga maramna labour/industrial proceeding singdasu chatnaba Civil Procedure Code ki Section 11 da yaoba res judicata gi niyom gi makhada thingkhibani.

31. Maram aduna eikhoigi mot ta, appellant(PSU) aduna chahi hanthahanbagi matangda thanggatlakhiba wapham adu, State aduna, Industrial Disputes Act ki Section 10 gi makhada amuk hanna khannanaba Labour Court ta reference tharakhiba adu State adugi shakti leikhide. *A fortiori*, reference(sing) aduda thamlakhiba wapham(sing) adu adjudicate tounaba tharakhiba reference(sing) adubu Labour Court na khannanabagi shakti leikhide.

32. Mamangda neinariba asi yenglaga, eikhoigi munna kxantharaba mityengda, Labour Court na reference adubu khannanaba shakti makhoida leite amadi madugi achum aran yenglaga wayel piba ngambagi shakti leite haina chumna takhiba rai sing adu High Court na loukhidaba adu chumde. High Court aduna Labour Court ki rai sing adubu ayaba piramgadabani.

33. State na Labour Court ta tharakhiba reference sing adu State adugi shakti yaodanani haina eikhoigi mot amuktang leikhrabadi, case adugi achum aran amuk yengsinbagi mathou tadre. Awoibamakkidi, masibu hanna yengsinba asi ain na yade maramdi Court asigi thak faoba yourakkraba

case asigi mamanggi round da warep loukhraba oibana wapham asida amuk hanna khannaningai leitre, madugi phal oina yetnaba adu loisinhanduna respondent/Trade Union singgi mayokta rai pikhrabani.

34. Mamangda neinariba waphamsingsida yumpham oiraga, appeal sing adu mahei yalle amasung ayaba pire. Impugned order adu kakle amadi Labour Court ki rai sing adu amuk hanna chatnahalle.

Ankit Gyan

Appeals yare.