

(2005) 07 KL CK 0038

In the High Court Of Kerala

Case No : Writ Petition (C) No. 20503 of 2005

Crown Maritime Co. (I) Ltd.

APPELLANT

Vs

Dy. Superintendent of Police

RESPONDENT

Date of Decision : 18-07-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 18

Citation : (2005) 3 ILR (Ker) 815 : (2005) 3 KLT 1021

Hon'ble Judges : S. Siri Jagan, J;M. Ramachandran, J

Bench : Division Bench

Advocate : T. Madhu and K.N. Ajayan, for the Appellant; N. Nagaresh, Manjnu Komath, Sunil V. Mohammed, K.G. Sarathkumar, N. Satheesh and M.A. Khader Kunju, Government Pleader, for the Respondent

Judgement

M. Ramachandran, J.—This is an application for police protection. The first petitioner has a subsisting agreement with the Cochin Port Trust. One of the works so assigned is the construction of Rubble Mount reclamation wall and dredging and filling the area on the western side of Bolgatty. The agreement is dated 27-6-2005. There is an upper time limit prescribed for execution of the work. According to the first petitioner, part of the said work has been given on sub contract to the second petitioner. The second petitioner is fairly experienced in such work and pleadings indicate that almost regularly he was engaging a set of workmen. The claim of the petitioners is that when the second petitioner had entered into an agreement with respondents 4 and 5 Unions, and a ratio had been agreed upon in between them about right of engagement, third parties had no right to insist that they are also to be inducted to the work.

2. According to the second petitioner, the required strength of workmen is about 20. However, at the bar, it had been submitted that additional workmen might be necessary, and in principle, he has no objection to take workmen, but as matters presently stand, in view of an agreement entered into by him with respondents 4 and 5, his hands are tied up. The gist of the submission is that the petitioners

are interested in carrying on the work within the time frame stipulated, but because of demand from third parties and union rivalry, it is not possible for them to commence the work.

3. Respondent No. 6 onwards had been impleaded in the Writ Petition, who are Trade Unions, and who have been making demands for participation in the work. Petitioners submit that there can be no legal basis for any such demand and when the petitioners are not inclined to engage persons other than those who are nominated by respondents 4 and 5, the other Unions can have no say in the matter. Consequently, the demand for work and the obstruction of the construction activities on the basis of such demands, are illegal and the police have a duty to extend their helping hand so as to see that law and order is maintained and the work is permitted to be carried out smoothly, in public interest.

4. The petitioners also refer to a judgment in W.P.(C).No. 195456 of 2004 (Ext.P3), by which this Court had granted reliefs practically in the lines that had been requested for in the present Writ Petition.

5. Counter affidavits have been filed by respondents 4 and 5 (the beneficiaries as of now) as also by respondents 6, 7 and 8. By their stand, the 4th and 5th respondents support the cause of the petitioners, the 5th respondent especially relying on Ext.R5(a) settlement dated 25-05-2005. The 4th respondent has adverted to the above settlement as well as an earlier settlement dated 20-11-1999. According to them, they have exclusive right for engagement under the second petitioner thereby. It is also pointed out that when additional workmen are required, the contractor will have only a restricted right to engage freshers.

6. Normally, settlement between the parties have a binding effect as between them and we have also to take notice of the principle that an employer has a right to enter into a contract with a body, at his discretion. Therefore, a third party, even if it be a union, may not be normally entitled to butt in and demand employment from an unwilling employer.

7. However, Mr. N. Nagaresh, appearing for the 6th respondent, submits that the contentions raised by respondents 4 and 5 suffer from a good amount of suppression. The principal contractor (1st petitioner) as well as the second petitioner had been engaging in the works tendered by the Cochin Port Trust, a public authority, for quite some time and in view of the developmental activities on the anvil, such works are expected to continue in larger scales at least for some more years. Taking notice of the circumstance that a public authority like the Cochin Port Trust had floated the work, on the basis of the observations that had been made by this Court in some other Writ Petitions, in a right spirit and responsibly, the contractor and the sub contractor had already entered into settlements with the trade unions representing the workmen in the locality. Ext.R6(a) settlement had been signed by the parties on 18-09-2004. Major trade

unions had been parties to the above and according to the counsel, this alone has to govern the situation, and contracting out with splinter unions was not only unethical, but also illegal.

8. Although the 4th and 5th respondents attempted to disown the above, legally they have to accept the factual situation so presented. This revelation has really tilted, the balance in favour of workmen, at least represented by the 6th respondent. When a binding settlement is there between the parties, so long as it holds the field, the terms cannot be watered down by another settlement, or behind a party to the settlement, as could be gatherable from the wordings of Section 18 of the Industrial Disputes Act. M/s. Crown Maritime Company (1st respondent herein) had assured by the above settlement that in respect of every work available in the locality under the auspices of the Cochin Port Trust, they are prepared to follow certain code of conduct. If that be the case, an arrangement whereby employees represented by the 6th respondent were kept out, could not have been authentic. The second petitioner was also a party to the settlement and could not have wriggled out of such liability. It is apparent that the second petitioner has not really recognised anybody represented by respondents 4 and 5 as his employees. He is to engage any person sent up by the Unions. Such a pooling, which has not any statutory backup, is likely to concentrate powers on Union leadership, and will be disadvantageous to the workmen community. We do not think that the byelaws of the Union concerned, nor the Trade Unions Act authorises the Unions to function as labour supply contractors. Ext.R5(a) is therefore not enforceable.

9. We had also opportunity to hear Mr. Majnu Komath, who appeared for the 7th respondent. He had referred to the Minutes of a meeting which had been attended to by workmen in general. An agreed solution had been formulated, and their complaint is that later on this has been practically ignored. However, this Union is not a party to Ext.R6(a) settlement. Mr. Sunil V. Mohammed, appearing for the 8th respondent, also refers to the restrictive practices that are employed by the Trade Unions, and especially concentrated his attack on respondents 4 and 5. It is submitted that the work is for workmen and not for Unions and so long as the settlements did not take notice of the claims of individual workman, restrictive practices were likely to crop up, as the workmen will have to pay premium for getting employment. They were to dance to the tune of big bosses for employment and continued engagement.

10. Mr. Sunil V. Mohammed had also adverted to the minutes of the meeting held on 26-11-2004, a copy of which is produced as Ext.R8(a), and points out that the management representatives had participated and an agreed resolution had been there, in respect of the projects of Puthuvype. But the Unions had been engaging on infights and the workmen are required to go begging. By annexing rights for nomination, the majors were attempting to muster power, wealth and following.

11. It is clear that settlements, minutes and resolutions were passed from time

to time and perhaps it discloses only the anxiety of the real individual workman to get employment. When once persons are engaged as contract labourers, thereafter at least the records should indicate the name of the individual workman, and branding them generally as persons sponsored by Unions, alone will not suffice. Prescriptions to be adhered to under the Contract Labour (Regulation and Abolition) Act should also be taken notice of to the required extent.

12. For the present, we feel that the issue could be given a quietus by recording the submission of the counsel for the petitioners that sufficient representation could be given to the members nominated by the 6th respondent Union. It should be in the same proportion as enjoyed by the 4th and 5th respondents. Though relief cannot be granted straight away, the rights of respondents 7 to 11 for seeking remedies are not being disturbed by us, but they should not resort to any path of violence. Submission of the petitioners are recorded that they would constructively participate in conferences duly called for at the instance of the authorities. They are not interested in the private cause of Unions as such, but have to meet the deadlines set by the principals and require the work force to carry out such work.

13. The police should see to it that there is no obstruction about the work being attended to by the petitioners, taking due notice of the directions as above noted.

The Writ Petition is disposed of with the above direction. No order as to costs.