

(1993) 06 KL CK 0004

In the High Court Of Kerala

Case No : O.P. No. 4826 of 1989-1

D.C.T.U. (INTUC-1) and Others

APPELLANT

Vs

K.J. Vincent and Others

RESPONDENT

Date of Decision : 07-06-1993

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)

Kerala Headload Workers Act, 1978 — Section 13, 18, 2(m), 21

Citation : (1993) 2 KLJ 292

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : M.V. Joseph, for the Appellant; Mathew Zacharia, Koshy George and Govt. Pleader (Jose K. Kochupappu), for the Respondent

Judgement

Jagannadha Rao, C. J.

1. The four matters are connected and can be disposed of together. O.P. No. 4826 of 1989 is filed on 9-6-1789 by Desiya Chumattu Thozhilali Union, INTUC-I (hereinafter called "Union A"), impleading the police authorities as respondents 1 to 3 and the Headload and General workers Union (hereinafter called "Union B") Mangalam Dam Unit, as the 4th respondent, praying that a writ of mandamus be issued directing respondents 1 to 3 to give adequate police protection to the members of the petitioner Union "for loading, unloading work" in Kudiamplakkal Estate in Chellikayam W.A. No. 548 of 1993 is filed by the S.I. of Police, Mangalam Dam and another and W.A. No. 611 of 1993 is filed by Secretary, Desiya Chumattu Thozhilalai Union (i.e. Union A) both questioning the judgment of the learned Single Judge in O.P. No. 54 of 1993 dated 17-2-1993. The said O.P. was filed by one K.J. Vincent, who is the owner of the 10 acres estate in S. No, 561/3 of Mangalam Dam Village in Alathur Taluk. Respondents 1, & 2 in the O.P. are police officials while respondents 3 therein is the Secretary of Union A. The estate owner sought the issue of a writ of mandamus to the police officers to afford sufficient police protection to transport timber from his estate in Sy. No.

561/3, alleging unlawful obstruction by the members of Union A. That was an OP filed on 4-1-1993.

2. In O.P. No. 54 of 1993 a learned Single Judge of this Court, by judgment dated 17-2-1993 allowed the estate owner's plea and directed that the police officials give protection to the estate owner by removing any obstruction from Union A. Aggrieved by the said order, Union A has filed W.A. No. 548 of 1993 while the police authorities filed W.A. No. 611 of 1993. The ostensible reason for the police to file the said W.A. was that in the earlier O.P.No. 826 of 1989 filed by Union B, there was an order in CMP No. 14194 of 1989 dated 26-6-1989 by a Division Bench of this Court that the police give protection to the writ petitioner therein is., Union B, "for the purpose of giving effect to the order of the Deputy Labour Officer, Palghat, in proceedings No. G. 758/89 dated 13-4-1989". They contend that it is difficult to obey the Judgment in O.P. No. 54 of 1993 dated 17-2-1993 and the "contrary" directions in the CMP in O.P.No. 826 of 1989 dated 26-6-1989.

3. Contempt Case No. 92 of 1993 is filed by the estate owner Sri. K.J. Vincent for implementation of the judgement in O.P. No. 54 of 1993 dated 17-2-1993 for removing obstruction by Union A and its members

4. Sri. K.J. Vincent, the estate owner, is thus torn between the claims of two Unions, Union A and Union B the Unions raising claims under the Kerala Headlead Workers Act, 1978. The case of estate owner is set out in his O.P.No. 54 of 1993, out of which the two appeals and the contempt case arise. The plantation is a rubber planation. The owner wants to replant the area after removing the rubber trees which are, at present, standing on the land. Over 50 rubber trees are cut and when that cut trees were being removed, there was obstruction by the members of Union A and no timber could be transported on and after 28-12-1992. On 2-1-1993 the petitioner submitted a representation to the police authorities stating that he had his own estate workers whom he was employing and that the obstruction by the members of Union A was illegal and should be removed. The petitioner has to replant the new rubber plants before 1-6-1993, when the monsoon is to start.

5. Union A filed a counter affidavit in O.P. No. 54 1993 stating that there was dispute between Union A and Union B since early of 1989 with regard to loading and unloading work in Paittala, Anapady, Kadamankunnu, Padikala Kulambu, Neichapara and Chellikayam in Vandazha Panchayat, that the dispute came up before the Deputy Labour Officer, Palghat, who, after calling for a report from the Asst. Labour Officer, took a decision on 13-4-1989 as per Ext. R3 (a) which upheld the claims of Union A under the abovesaid Act. It appears that Union B preferred an appeal No. 7 of 1989 against Ext. R3 (a) before the Regional Joint Labour Commissioner, Ernakulam and the same is pending. Union B also appears to have filed O.P.No. 3511 of 1989 for quashing Ext. R3 (a) proceedings and the said O.P. was allowed at the admission stage - without notice to Union A -stating:

It is agreed by both sides (Union B and Government Pleader) that the Scheme of the Act has not been extended to the area in question. Therefore the impugned order (i.e., Ext. R3 (a)) is without jurisdiction.

Naturally, Union A states in its counter that the order in O.P. No. 3511 of 1989 is not binding and that Ext. R3 (a) is still in force and its validity is pending in departmental appeal. Union A then filed W.A.No. 420 of 1989 and obtained stay on 20-5-1989 and stay was made absolute. Union A also filed O.P. No. 4826 of 1989 on 7-6-1989 and obtained a direction for police protection in favour of Union A for the purpose of implementing Ext. R3 (a) proceedings. The O.P. was admitted on 26-6-1989 and interim direction was granted in C.M.P. No. 14194 of 1989 on 26-6-1989, and it is stated that obstruction by Union B was removed. They allege that Mr. Vincent is a sympathiser with the political philosophy of Union B and is giving the work to members of Union B inspite of the order Ext. P3 (a) of the Deputy Labour Officer, Palghat for cutting and removing the rubber trees in trucks. They say that Union A complained to the police on 30-12-1992 to prevent members of Union B being employed and then Mr. Vincent filed Ext. P1 petition on 2-1-1993 before the police. It is also stated that the police has called the leaders of Union B on 3-1-1993 who contended that the estate is at Malayamkulumbu and not at Paittala and that Ext. P3 (a) did not apply. It is stated that then both Unions agreed to go before the Tahsildar, Alathur Taluk for deciding whether the estate was located in Paittala or in Malayamkulumbu. Before any decision is given, Mr. Vincent had filed this O.P. The estate is only in Paittala, that Malayamkulumbu is part of Paittala, and hence Ext. R3 (a) which applied to Paittala required, that only members of Union A should be employed by the estate owner, Mr. Vincent.

6. From the aforesaid facts, one thing is clear and, in fact admitted before us, that the estate owner Mr. Vincent was not a party to Ext. R3 (a) proceedings of the Deputy Labour officer, Palghat holding that in Paittala area, members of Union A alone could be employed. It appears to us that Union A and Union B are, between themselves deciding whom Mr. Vincent should employ in his property for cutting and removing the rubber plants by trucks. That indeed is a very curious state of affairs.

7. The question is whether the Kerala Headload Workers Act, 1978 permits workmen of two Unions to agree or to obtain an order from a Deputy Labour Officer as to which of the Unions-members should be employed by any employer intending to secure workmen for his work?

8. The Kerala Headload Workers Act, 1978 and its provisions have been considered in detail by a Division Bench consisting of one of us (Jagannadha Rao, C.J.) and Krishnamoorthy, J. in Kochayyan Subramanian v. Cochin Cadalas (1992 (1) KLJ 696). We pointed out that, on the facts of that case, it was admitted that the Scheme promulgated by the Government of Kerala in 1983 u/s 13 of the Act had not been extended to the area in question. The position before us in the present case is identical inasmuch as the Scheme of 1983 has not been extended

to the area in question before us. We are not to be understood as laying down that if the Scheme is extended to the area in dispute, the employer can be compelled not to engage workmen of his choice even in exercise of his Constitutional rights under Article 19 of the Constitution of India.

9. But, the position in the present case also is that there is no Scheme applicable to the area in question and, therefore, nothing can, in our opinion, come in the way of the employer, Mr. Vincent, engaging workmen of his own choice for the purpose of cutting the trees and removing them and transporting the same. Further, we cannot understand as to how the appellant-Union can claim a right for being employed to cut the trees. The definition of "headload worker" in Section 2(m) of the Act deals only with loading and unloading articles. As the Scheme is not extended to the area, there could be no occasion for the employer to register himself under the Scheme.

10. It has become the unfortunate practice of group of persons to claim preferential employment, against the wishes of employers, even in areas to which the Scheme is not extended and create serious inconvenience or sometimes, problems of law and order. In fact, even in notified areas to which the Scheme is extended, the question remains to be decided whether the Act does or whether it can - and if so, to what extent it can - encroach upon the employers' right to have workmen of his own choice, consistent with the provisions of Article 19 of the Constitution of India.

11. Now, the plantation belongs to the employer and he has to permit any worker to enter inside the plantation, cut the trees and then conduct the loading. If any other person, who does not have such permission from the plantation - owner seeks to enter the plantation against the will of the plantation-owner, it will, prima facie, amount to trespass. Then how could two Unions, assuming it be with the help of a Deputy Labour Officer, decide for themselves - particularly in an area which is not brought under the Scheme (and as said earlier, we do not decide anything even if the area is notified under the Scheme) - that a particular estate-owner is to employ the members of one of the Unions on his property. One can understand if the estate-owner is a party to such an agreement. Admittedly, Mr. Vincent is not a party to anything decided by the Deputy Labour Officer or to Ext. R3 (a). It looks strange that workmen can divide employment between themselves without any consent or concern of the employer himself.

12. As stated earlier, we held in Kochayyan Subramanian's (supra) that the workmen have no such claim to preferential employment against the wishes of the employer particularly in non-notified areas. Even in the case of a notified area, it was held in Swati Roller Flour Mills (P) Ltd. and another Vs. State of Kerala and others, by one of us (Sreedharan, J.) as follows :

Under S. 18 of the Act, the Government is to appoint committees for specified areas for the purpose of exercising the powers and performing the functions of the committee's under the Act and the scheme in relation to that area. This

shows that the committee is to be constituted for those areas to which the scheme is extended. Even in respect of the area to which the scheme is extended the function of the committee is dealt with clause (8) of S. 18 of the Act. Sub-clause (a) of Cl. (8) of S. 18 casts a duty on the committee to pool the headload workers who are not employed under any employer or contractor. To such headload workers who are so pooled, work is to be allotted. The committee is entrusted with the responsibility to arrange and regulate employment of the headload workers who are so pooled. The committee has no plenary power to control all loading and unloading work in an area. As per the Act, registered headload worker can get the work assigned depending on the requirement of the employer. The allotment is also to be made by the committee. The Scheme of the Act does not recognise any union of headload workers. So, no union can advance a claim on behalf of its members to attending work in an establishment. In other words, a union cannot pressurise the employer to engage its members only to carry on the work. An employer who has got permanent workers to attend to the loading and unloading work cannot be forced to engage the members of any union. If a concern is having its permanent employees to attend to the loading and unloading works, then the headload workers in the locality cannot claim any right to be engaged by such employer. If an employer who has no permanent employees to attend to the loading and unloading work or an employer having such permanent workers requires service of others to attend to the loading and unloading work in his establishment, then such an employer has to approach the committee u/s 18 of the Act for getting the headload workers allotted to him. Only in such a situation can the headload workers registered under the Act claim work in the establishment belonging to an employer.

If that be so, there can a fortiori be no such rights in non-notified areas.

13. A situation similar to the one before us arose in *Ibrahimkutti. v. Superintendent of Police* (1991 (1) KLT 829). The learned Judges followed the judgments in two unreported judgments of this Court in WA 124 of 1988 and WA 228 of 1988. There, when the employer approached the Court for police protection for engaging workmen of his choice and for removal of obstruction by certain other workmen, the learned single Judge refused to grant orders but directed the Assistant Labour Officer to initiate conciliation proceedings as per Section 21 of the Act. Setting aside the said judgment and allowing the Writ Petition of the employer, Malimath, C.J., speaking for the Division Bench observed:

Merely because the fifth respondent is obstructing police protection is denied to the appellant. It is necessary to bear in mind that the appellant has come to this court for relief on the ground that the fifth respondent is obstructing and that the obstruction is illegal. When we asked the learned counsel for the fifth respondent to point out the provisions which confer on them the right to get employment under the appellant, in the matter of the work of loading and unloading, the learned counsel was not in a position to point out any provision which confers

such a right. In the absence of such a statutory provision conferring such a right on the members of the fifth respondent, the right of the appellant to carry on his business by engaging labourers of his choice cannot be denied to him. As regards the resolution of the dispute contemplated by the Headload workers Act is concerned, there is no injunction or prohibition for resort being had to the authorities concerned for resolution of their disputes in accordance with the provision of that Act, if the provisions of that Act are applicable. But, that has nothing to do with the right of the appellant to engage labourers of his choice, there being no statutory prohibition against such an action, and when there is no statutory right conferred on the members of the fifth respondent.

14. Recently, a question arose before us, specifically in relation to rubber plantations in Pathanamthitta Jilla T.T. Union v. Kurian Jacob (1993 (1) KLT 633). We held as follows:

It is true that before the contract to slaughter was entered into between the first and second petitioners, respondents 4 to 8 in the writ petition or other members of the union were being engaged by the first petitioner for the purpose of upkeep of the estate. But since the trees have now reached the stage of being slaughtered, the owner of the estate has a right to engage independent workers to slaughter the trees and at that time to extract maximum latex from the trees. Such a right in the employer has been accepted in large number of decisions of this Court. Apart from that the appellant or its members cannot claim a legal right to obstruct somebody else getting his work done or doing his work in his own estate. If the appellant has some legal right and the same is in breach, it is for the appellant to claim damages or sue for specific performance or go before the various authorities under the Industrial Disputes Act and seek peaceful and lawful remedies.

15. Yet another Division Bench in Pathanapuram Taluk P.W.C. and others Vs. Salim and others, , while dealing with a related controversy, observed in paragraph 5 thereof as follows :

We are living in a civilised society and not during times where the law of the jungle prevails. If the trade - unions feel that they are entitled to the amount, they are at liberty to file a suit against the employer, the owner of the estate who sold the trees. If they wish to claim the amount on the basis of industrial dispute, they are entitled to seek relief in accordance with the procedure contemplated under the Industrial Disputes Act. But, under no circumstances, they are entitled to exert pressure or resort to violence to prevent the purchaser from taking the timber. They are not entitled to cause any obstruction or impediment to the purchaser to cut the trees and remove them from the estate.

16. In the light of the provisions of Article 19(1) of the Constitution of India, the provisions of the Act and the rulings of this Court, we are, therefore, clearly of the view that the decision, if any, in Ext. R3(a) as between Union A and Union B cannot in any manner curtail the rights of the employer Mr. Vincent in engaging

workmen of his choice, particularly in an area which is not covered by any Scheme u/s 13 of the Act, and that Mr. Vincent is a free agent in engaging his own workmen. The contention for Union A that some of the workmen so employed by Mr. Vincent belong to Union B is of no consequence. In the result, we dismiss WA 548 of 1993 filed by the police authorities against the judgment in OP 54 of 1993 filed by Mr. Vincent. We also dismiss WA 611 of 1993 filed by Union A against the judgment in OP 54 of 1993. The result is that the judgment in OP 54 of 1993 allowing the case of Mr. Vincent is fully affirmed. OP 4826 of 1989 filed by Union A (Desiya Chumattu Thozhilali Union INTUC - I) is dismissed and the interim order in CMP 14/94 of 1989 dated 26-6-1989 is vacated. Contempt Case 92 of 1993 is closed as unnecessary.