

(1991) 03 MAD CK 0015
In the Madras High Court

Ergadyue (P) Limited

APPELLANT

Vs

K.C.P. Limited and Others

RESPONDENT

Date of Decision : 18-03-1991

Acts Referred:

Citation : (1991) 2 MLJ 35

Hon'ble Judges : Bakthavatsalam, J

Bench : Division Bench

Judgement

Bakthavatsalam, J.—The prayer in the writ petition is as follows:

...to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents 3 and 4 to afford necessary assistance to

the petitioner company for preventing the second respondent union its men or agents from obstructing entry into the factory premises of the first

respondent company at Tiruvottiyur, Madras-19, and the removal of 1 No. Upper drum shell plate (plate size: 63 mm thick; 2460 mm width and

4635 mm length) belonging to the petitioner company from and out of the factory premises of the first respondent without being prevented or

obstructing by the second respondent Union, its men or agents....

2. Notice of motion has been ordered by me on 8.1.1991. A counter affidavit has been filed by the first respondent.

3. I have heard the arguments of Mr. M. Balachandar, the learned Counsel for the petitioner, Mr. CHarikrishnan, the learned Counsel for the first

respondent company, Mr. K. Chandru, the learned Counsel for the second respondent Union and Mr. M. Muthappa, the learned Government

Advocate for respondents 3 and 4. This is a case where the petitioner company has handed over Boiler Upper drum shell plate to the first

respondent for being rolled (part processing). Though the first respondent company accepted the said job, since it declared a lock-out, no part-

processing could be done and the plate handed over by the petitioner remains in the Engineering Unit of the first respondent. Here is a case where

the petitioner company has given a raw material for processing, which has not been done by the first respondent company. The only thing remains

to be done is to return the said plate to the petitioner company. In so called ""police protection"" cases, Courts have taken the view-about the

finished products only. I have myself decided the issue raised from the same respondent company in The K.C.P. Limited by its Managing Director,

Madras v. The Inspector of Police Tiruvottiyur and Ors. W.P. No. 18167 of 1990, dated 3.1.1991, referring to all the cases on the said issue.

4. Mr. K. Chandru, the learned Counsel appearing for the second respondent Union argues that if the raw materials are going to be allowed to be

taken out it would be against the interests of the workers. I do not think so. An argument was put forth before Mohan, J., (as he then was) that if

persons were to be allowed to remove the goods, the bargaining position or the power will be diluted and the said argument was not accepted by

the learned Judge in a case in Mining and Allied Corporation v. Superintendent of Police (1987) 2 L.W. 294, which has been affirmed by a

Division Bench of this Court in Writ Appeal No. 1126 of 1987 dated 21.7.1987 and also a SLP was dismissed by the Supreme Court in SLP

No. 7879 of 1987 dated 28.7.1987. Regarding the said bargaining power, the Supreme Court in Bharat Surfactants (Private) Ltd. and Another

Vs. Union of India (UOI) and Another, , has held as follows:

...This bargaining power should be considerably reduced if it is not permitted to demonstrate.

...

Though not raised to the high pedestal of a fundamental right, it is recognised as a mode of redress for resolving the grievances of workers. But the

right to strike is not absolute under our industrial jurisprudence and restrictions have been placed on it....

But, on the facts of this case, I do not see any reason to accept the contention of Mr. K. Chandru, the learned Counsel appearing for the second

respondent Union. After all, the petitioner who has given the raw material for

part processing wants to take back the raw material now, when the work is not completed. Nothing has been done on the raw material and the labourers will certainly have no right to insist upon that the said raw material should be kept inside the factory itself without being useful to anybody, either to the petitioner company or to the respondent company. I am not able to appreciate the attitude taken by the second respondent Union in this case. As such, taking the view that the petitioner has got the right to take back its raw material with police help, a writ of mandamus is to issue as prayed for. I further direct that when the raw material is taken back, it should be done in the presence of the representatives of the second respondent Union. The writ petition is ordered accordingly. No costs.