
(1982) 01 KL CK 0010
In the High Court Of Kerala

Gwalior Rayons Silk Manufacturing (Weaving) Co. Ltd. and
Another

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 04-01-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1982) 1 LLJ 356

Hon'ble Judges : T. Chandrasekhara Menon, J

Bench : Single Bench

Judgement

T. Chandrasekhara Menon, J.—In the first of these petitions, the first petitioner therein is a company governed by the Companies Act, 1956, having its registered office at Nagda, Madhya Pradesh, I which is carrying on business in manufacturing viscose staple fibre, textiles, etc. It supplies viscose staple fibre to the second petitioner as and when required by the second petitioner which is also a company registered under the Companies Act, 1956, with registered office in Komalapuram, Alleppey, carrying on business of manufacturing yarn from polyester fibre and viscose staple fibre. First petitioner is supplying viscose staple fibre to the second petitioner on a regular basis and it is alleged that for the said purpose the first petitioner has taken on lease a godown, No. 2A, in the factory premises of the second petitioner. It is further alleged that as and when viscose staple fibre is required the second petitioner makes requisition to the first petitioner's representative at Alleppey and necessary staple fibre in bales is released to the second petitioner from the godown let out to it. In order to maintain regular supply to the second petitioner, the first petitioner stocks adequate quantity of viscose staple fibre in bales in godown No. 2A.

2. There is now a labour dispute between the second petitioner and his workmen represented by respondents 6 to 9. Since the outward movement of the finished products have been paralysed on account of strikes from 11-4-1981 onwards, the second petitioner expressed their inability to consume any more viscose

staple fibre. The second petitioner finds it difficult to make payment and take possession of the viscose staple fibre from the godown belonging to the first petitioner. It is alleged that a large amount is due to the first petitioner from the second petitioner towards the value of the viscose staple fibre already supplied.

3. The first petitioner has come to this Court for police protection in the matter of removal of viscose staple fibre from the godown alleging that the workmen are preventing removal of such fibre from the godown. They are also obstructing the movement of the products of the second petitioner. In this writ petition, the second petitioner is not making any prayer regarding the removal of finished products as the second petitioner proposes to move a separate writ petition for the reliefs. O. P. No. 2375 of 1981 is filed mainly on behalf of the first petitioner therein for police protection for removing 279 bales of viscose staple fibre stored in godown No. 2A at the factory premises of the second petitioner which belongs to the first petitioner.

4. It is contended that there is no industrial dispute between the first petitioner and the workmen represented by respondents 6 to 9. Therefore, the workmen of the second petitioner represented by respondents 6 to 9 have no right to prevent the removal of 279 bales of viscose staple fibre from the factory premises of the second petitioner. Whenever lorry comes for removing the finished goods, the workmen forcibly prevent the entry of the lorry. The same is the case in the case of removal of viscose staple fibre on behalf of the petitioner. An atmosphere of terror is precipitated in the factory area and no lorry drivers will come in the premises without assurance of police protection. The police are refusing protection. According to the petitioners, the workmen represented by respondents 6 to 9 are committing numerous offences such as illegal detention, unlawful assembly, nuisance, trespass, etc., which respondents 1 to 5 are bound to prevent under the Criminal Procedure Code and the Kerala Police Act. But, in the guise of an alleged industrial disputes, respondents 1 to 5 are not taking any action or giving police protection to the first petitioner. Therefore, what they pray for is a writ of mandamus or other appropriate writ, order or direction directing respondent 1 to 5 to render adequate police protection to the first petitioner for removal of 279 bales of viscose fibre stored in the godown at the factory premises of the second petitioner and which belongs to the first petitioner.

5. O.P. No 4775 of 1981 is filed by a company manufacturing computed peripherals. The factory is situated within the building belonging to O/E/N India Limited. A portion of the factory building has been leased out to the petitioner by a registered lease deed. The petitioner employs about 15 workers. The goods that are manufactured are mainly supplied to users of computers. O/E/N India Limited is a company registered under the Companies Act manufacturing electronic components. Respondent No. 3 in the O. P. have raised certain disputes including the payment of bonus against the said company. What the petitioner complains is that in the guise of the strike the employees of the respondents have prevented the movements of the goods and the personnel

from and to the factory of O/E/N India Limited. The entrance for the O/E/N India Limited and O/E/N Micro Systems Limited are the very same. The employees belonging to respondents 3 to 5 are also preventing the workers of the petitioner from entering into the factory. There is no dispute between the petitioner company and their employees and the employees belonging to the petitioner are always willing and ready to do their work provided they are allowed to enter the factory.

6. The goods that are manufactured by the petitioner - company in O.P. No. 4775/81 are being done in the premises belonging to O/E/N India Limited, which has been leased out to the petitioner. The manufactured goods are kept ready for despatch, but, on account of the activities of the respondents 3 to 5 unions, the petitioners are being prevented from removing the goods from the factory premises. The employees belonging to respondents 3 to 5 unions are also resisting the petitioner's workers entry into the factory. The petitioner's complaint is that though a request was made for necessary protection, respondents 1 and 2 have not taken any steps. Therefore, the petitioner has asked for a writ of mandamus directing the police officers--the Superintendent of Police, Alwaye, and the Sub-Inspector of Police, Mulanthuruthy, to give adequate police protection to the petitioner and his workmen including the staff to enter into the factory premises and to remove the manufactured item kept therein and for a writ of prohibition restraining respondents 3 to 5 from preventing the petitioner and his workers from entering the factory premises.

7. In the counter-affidavit filed by the sixth respondent, Kerala Spinners Workers Union in O.P. No. 2375 of 1981 by its Secretary, it is contended that the first petitioner therein is colluding with the second petitioner. The two companies are interlinked and have common directors. The attempt of the petitioners is to remove as much finished products and raw materials under the cover of the orders of the Court, even at a time, when they imposed a lock-out of the second petitioner's factory. The work in the factory has come to a stand still at the second petitioner's volition. According to this union, there has been a sale of viscose staple fibre by the first petitioner to the second petitioner in O.P. No. 2375/81) and for the reason that payments are delayed due to lock-out, the materials sold away could not be permitted to be removed, as it is likely to undermine the strength of the striking workmen. The workmen have resorted to a peaceful and legal strike and a strike is a recognised form of action as per the provisions of the Industrial Disputes Act. The Court should not, according to the union, in proceedings under Article 226 of the Constitution, nullify the effect of the strike of the workmen or help a party for abusing its process.

8. A similar contention has been raised by the O/E/N Workers' Union (C.I.T.U), the fourth respondent in O. P. No. 4775 of 1981 in resisting the petitioner's contentions in that O. P. According to the said Union, O/EN India Limited is the real person behind the petition. The Union submits that there are neither workmen nor any officers on the rolls of the petitioner-company. The workmen

employed in the premises concerned, all receive their payments from O/E/N India Limited. No workmen have been advised that they have been transferred to the rolls of the petitioner. All the workmen are interested in the dispute regarding bonus and all of them had struck work in view of the alleged adamant stand taken up by the management of O/E/N India Limited in the matter of the dispute relating to bonus for the year 1980-81. The workers are only conducting peaceful satyagraha. Apart from some inconvenience, there is no law and order problem in the factory premises.

9. Though under the Constitution of India, the right to strike is not a fundamental right as such, it is open to a citizen to go on strike or withhold his labour. Every strike is not illegal and the workers in any democratic State have the right to resort to strike whenever they are so pleased in order to express their grievances or to make certain demands. A strike in the circumstances, is a necessary safety valve in industrial relations when properly resorted. It is a legitimate weapon in the matter of industrial relation. Justice Gajendragadkar, as he then was, speaking for a Division Bench consisting of himself and Justice K.C. Das Gupta, has said in *Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others*, that in the strength between capital and labour the weapon of strike is available to labour and is often used by it, as is the weapon of lock-out available to the employer, though the use of both the weapons by the respective parties must, however, be subject to the relevant provisions of the Industrial Disputes Act (at page 278).

10. I have no hesitation to agree with every sentence in the following observations of Justice Poti, as he then was, in *C. Kannan v. Superintendent of Police, Cannanore 1914 Ker L.T. 516* at p. 518:

6. Every citizen in this country is entitled to protection from authorities on whom the duty to maintain law and order is imposed so as to enable him to carry on his lawful avocation. Resort to this Court for securing police protection cannot be a matter of course. The power conferred on this Court under Article 226 of the Constitution of India is an extraordinary power and is to be invoked only where circumstances are exceptional and so warrant the exercise of such power.

7. Strikes, lock-outs, satyagrahas and demonstrations are nothing new in our country. Promotion of social justice over the last few decades was, to a considerable extent, due to militant and agitational approach of the workmen and not, to any appreciable degree, due to condescension by the management. It is but true that in the process of securing to the workmen more amenities and privileges and better conditions of service the Industrial Tribunals Labour Courts, and the Courts of this country have played a vital role. A negative approach to lawful agitation by the working class to secure higher wages and better living conditions cannot be justified by resort to the plea of maintaining law and order in the industrial sector.

8. I am particularly referring to these because I am afraid police protection

ordered by this Court might have been used at times to crush lawful and peaceful strikes and demonstrations. The order of this Court for police protection is capable, in the hands of unscrupulous managements, of turning into vicious instruments of suppression of legitimate agitations. It is particularly so when the police may need the order of this Court only as a disguise or cover for suppressing the agitation by the workmen in furtherance of their legitimate demands.

9. I have referred to this situation only to highlight the necessity of extreme caution in dealing with an application for police protection. It appears to me that the Court must safeguard against abuse of its order and ensure that the order is not exploited for any purpose other than that intended by the Court.

10. It is true that managements placed in perilous circumstances and denied protection by the police may have to seek assistance from this Court and it may then be the duty of this Court to pass necessary orders to protect the life and property of such management. But such orders, it appears to me, shall not be permitted to be used by the police in any way to prejudicially affect the lawful agitation by the workmen. It is no doubt true that any demonstration and any satyagraha would cause inconvenience to the management. It may very often cause considerable , embarrassment too. It is impossible to conceive of any demonstration or strike which is not intended to bring pressure upon the management to concede to the workmen's demands. But it is not the role of this Court to interfere with the right of the workmen to carry on their agitation, so long as it is peaceful, so long as it does not turn violent.

(Italics Underline is supplied)

11. I might also state here that Mahatma Gandhi's methods of resistance to what one sincerely considers wrong or evil is fully relevant even in an independent country in a democratic set up. Gandhian methods are in perfect consonance with a democratic society as a means for effecting social change. If in many circumstances ordinary methods are found to be of no avail and violence has to be prevented; one cannot find fault with social engineers if they go back to Gandhiji and his methods of fighting the evil. It is true, no doubt, that during the post-independence period, the weapon of resistance to Government or to any other constitutional authority has come to be misused. Any disobedience of law whether evil or unevil is wrongly termed satyagraha now. But that is no reason why Gandhian methods should be considered to be against law.

12. The Constitution of India, in its preamble, has solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens--

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all;

Fraternity assuring the dignity of the individual and the unity and integrity of the Nation.

In its Directive Principles of State Policy, it is stated that--"The State shall, strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life." Further "The State shall, in particular, direct its policy towards securing--(a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; (d) that there is equal pay for equal work for both men and women; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that childhood and youth are protected against exploitation and against moral and material abandonment." These basic and general principles, were given a more precise direction when Parliament accepted in December, 1954. the socialist pattern of society as the objective of social and economic policy. Industrial policy as other policies, must, therefore, be governed by these principles and directions.

13. In such a set up if the executive arm of the State decides that in a dispute between Labour and Capital, the State should as far as possible not step in with its police power to tilt the balance in favour of the capital the Court shall not act as a spoke in the wheel to interfere with such policy.

14. It is certainly true as Lord Denning has observed in *R. v. Metropolitan Police Commr.* (1968) 1 All E R 763, that it is the duty of the police to enforce the law and though chief officers of police have got certain discretion in the manner of enforcement in certain aspects yet the Court would interfere in respect of a policy decision amounting to a failure of duty to enforce the law of the land. The police cannot be told that they should not take action when an offence is committed. The police officer is answerable to the law and to the law alone. If in the guise of peaceful satyagraha or strike, cognizable offences are sought to be committed and violence is resorted to, the police should interfere. They have no option in the matter. The management can certainly claim that the ingress and egress to their business premises should be protected from obstruction. Police should certainly interfere if there is any imminent danger or peril to life and property. Apart from the above observation, I do not think it would be proper to give specific directions to the police as the petitioners pray for. The police men should not act as breakers of a lawful strike.

15. In proceedings under Article 226 of the Constitution, it will not be possible for this Court to decide whether there has been collusion between the companies concerned or not. O. Ps. are disposed of as above. There will be no order as to costs.