
(1989) 01 KL CK 0054
In the High Court Of Kerala
Case No : O.P. No. 10143 of 1988

Joy Mathew

APPELLANT

Vs

Superintendent of Police and Others

RESPONDENT

Date of Decision : 13-01-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Headload Workers Act, 1978 — Section 2

Citation : (1991) 1 LLJ 518

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : M.V. Joseph, for the Appellant; A.N. Rajan Babu, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedharan, J.—When C.M.P. 33615/88 came up for orders, counsel appearing on either side wanted the original petition itself to be disposed of. Accordingly, after hearing them in detail, I am disposing of the original petition itself.

2. Petitioner is having a factory engaged in the manufacture of cement hollow bricks. That factory started functioning on 11th November, 1988. Petitioner has 7 workers in the establishment. Of them, M/s. K.C. Ayyappan and K.T. Thankappan are engaged for loading and unloading work. Raw materials like cement, sand and metal are brought to the establishment in lorries. They are unloaded by the above mentioned workers. Finished articles namely, cement hollow bricks are loaded in the vehicles by those employees. Functioning of the factory proceeded smoothly till 2nd December, 1988. At about 9 A.M. on that day, 4 persons came to the petitioner's establishment stating that they are the loading and unloading workers in the area, that they are to attend to the loading and unloading work in the petitioner's establishment and that they will not allow the petitioner's employees to do the said work. At about 11 A.M. on that day a lorry came to the gate of the establishment to load cement hollow bricks. The vehicle was

obstructed. At the intervention of Sri T.M. Meethian, Ex. M.L.A., the obstruction was lifted. On 3rd December, 1988, when obstruction was caused by certain outsiders, petitioner complained to the 3rd respondent. Ext. P1 is the copy of the petition filed before the 3rd respondent. The 3rd respondent came to the establishment and advised the people gathered there to desist from causing any obstruction. When obstructions were caused on 9th and 10th December, 1988, complaints were made to the 3rd respondent. On those days women were also in the gathering for obstructing the ingress and egress of the vehicle to and from the petitioner's establishment. The 3rd respondent, it is alleged, expressed his inability to interfere with their activities because of the absence of women police constables. Petitioner is stated to have given a complaint to the 2nd respondent on 16th December, 1988. That did not bear any fruit. According to the petitioner, some leaders of Marxist Communist Party met him on 17th and asked him to yield to the demand of the Union, that all the loading and unloading work should be allowed to be done by the members of the Union and that the regular workers of the establishment should not be engaged to do such work. The petitioner expressed his inability to accede to that demand. Petitioner approached respondents 1 to 3 for effective protection in carrying on the business. They are not affording any protection. Consequently, the business, according to the counsel, has been closed down on 20th December, 1988. On these averments petitioner has approached this Court inter alia praying for the issuance of a direction to respondents 1 to 3 to give adequate police protection to run the establishment with his workmen without any obstruction from the 4th respondent and its followers.

3. The Superintendent of Police, Ernakulam Rural. Alwaye, has filed a statement admitting receipt of Ext. P1 petition. According to him, on receiving the said petition the Sub-Inspector of Police. Kothamangalam, along with policemen went to the spot, that the persons gathered there had not caused any obstruction, that on enquiry it was revealed that they gathered there in order to get some work in the company which is newly opened, that the Sub-Inspector of Police directed them to approach the Labour Office, that the persons gathered there immediately dispersed and that if any complaint as mentioned in the O.P. has been received before any of the officers certainly necessary action would have been taken.

4. The 4th respondent in his counter affidavit states that the petitioner has not got his own permanent workers, that he is not maintaining any register or records as provided by the Kerala Headload Workers. Act, 1980, hereinafter referred to as "the Act", that since the petitioner has started manufacturing bricks, the local workers who are organised under the Headload and General Workers' Union have requested the petitioner to engage the local workers to do loading and unloading work which is the practice prevalent in the area, that the Union has started a peaceful agitation on 3rd December, 1988 that there is no law and order problem and that the headload workers of the locality whose only means of livelihood is the paltry wages they receive from loading and unloading

bricks are agitating for employment, that it is a peaceful agitation and that they have not created any law and order problem. 5. The factory which was started on 11th November, 1988 had to be closed down on 20th December, 1988 on account of the agitation and obstruction spear-headed by the 4th respondent. From the counter affidavit filed by the Union it appears that they claim rights for its members to do the loading and unloading works under the Kerala Headload Workers Act, Act 20 of 1980. The provision of that Act applies to headload workers as defined in it. The definition in Section 2(m) makes it clear that a person engaged by an individual for domestic purposes will not fall within the ambit of that section. The petitioner has got his permanent workers to attend to the loading and unloading works in his establishment. He was carrying on the work with them. At no point of time had he engaged any outsider to attend to the loading and unloading work in his establishment. In such a situation Act 20 of 1980 has no application to the petitioner. Further "employer" is defined in Section 2(i) of the Act. The said definition reads as follows:

(i) "employer" means.

(i) in relation to a headload worker engaged by or through a contractor, the principal employer:

(ii) in relation to a headload worker who is not employed by any employer or contractor, the committee constituted u/s 18; and

(iii) in relation to any other headload worker, the person who has ultimate control over the affairs of the establishment in or for which the headload worker is employed and includes any other person to whom the affairs of such establishment are entrusted, whether such person is called an agent, manager or by any other name prevailing in such establishment."

As per this definition, only a person who engages headload workers can be treated as an employer. From the evidence in the case it is evident that the petitioner at no point of time had employed or engaged any headload worker as defined in the Act. Of course in his factory loading and unloading work was being carried on by his permanent employees. He had never engaged any headload worker as defined by the Act to attend to the said work. Consequently the provisions of the Act are not applicable to the petitioner or his establishment. The petitioner is having permanent employees to attend to the loading and unloading work in his establishment. So long as he carries out the loading and unloading work with the help of his permanent employees he does not come within the purview of the Headload Workers Act. Consequently he is not bound to maintain any register as provided by the Act. The 4th respondent or for that matter any other organisation of headload workers, cannot initiate any action against the petitioner. By force they cannot be allowed to impose any one on the petitioner as his employee.

6. In the instant case the attempt of 4th respondent is to compel the petitioner to engage persons nominated by them to carry on the work of loading and

unloading in his establishment. On failure they have created a situation compelling the petitioner to close down his business. The 4th respondent and its followers caused all kinds of obstructions. Petitioner's request for help from the police was turned down on the ground that it was a labour dispute. This attitude of the police can be taken as a ruse to shirk from their duties. The 4th respondent has created such a situation in the petitioner's establishment compelling him to close his business. Even then the police did not move their little finger to see that the permanent employees of the petitioner are not denied their employment. Fourth respondent made ladies also to take part in the agitation. This gave a helping hand to police to keep away on the excuse that lady constables are not available to deal with the agitators. The part played by the police helped the 4th respondent to use its muscle power to have a business establishment hardly one month old to be closed down.

7. In Writ Appeals Nos. 124/88 and 228/88 Court has held that the Union of Headload Workers have no legal right to insist that the work of unloading the goods that come by the truck should be done by the workers of the union themselves and not by the workers of the masters choice. Consequently the petitioner is entitled to carry on the loading and unloading work in his establishment with his permanent employees. Neither the 4th respondent nor any of its followers has got any right to interfere with the petitioner's freedom to have the loading and unloading work in his establishment carried on by the employees of his choice. This legal position is binding on all Unions of Headload Workers. The police are duty bound to protect the said right. They are not to shirk from their responsibilities and duties under the guise that the dispute relates to labour.

In view of what has been stated above. 1 direct respondents 1 to 3 to afford sufficient effective police protection to the petitioner to carry on the business in his establishment without any interference from 4th respondent or any other labour union or its followers. If the 4th respondent or other unions carry on the agitation with the help of ladies, respondents 1 to 3 should remove the obstruction so caused, with the help of women police constables. They cannot and should not shirk from their legal duties and responsibilities under the cover that the dispute is purely a labour dispute.

8. The original petition is allowed in the above terms. Issue carbon copy of the judgment to the parties on usual terms.