

(2011) 06 KL CK 0003

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16019 of 2011 (B)

K. Nasar Muhammed and O.K. Arshad

APPELLANT

Vs

Rasheed Kallanandi and Others

RESPONDENT

Date of Decision : 27-06-2011

Acts Referred:

Citation : (2011) 06 KL CK 0003

Hon'ble Judges : R. Basant, J;M.C. Hari Rani, J

Bench : Division Bench

Advocate : C. Khalid, for the Appellant; Grashious Kuriakose, for the Respondent

Final Decision : Allowed

Judgement

R. Basant, J.—The Petitioners claim to be traders purchasing coconuts and other agricultural products from cultivators and retailers. They are engaged in the business of transporting the same to neighbouring States in the vehicles owned by them or hired by them from other transporting agencies. According to the Petitioners, there is illegal obstruction to their right to carry on business. This comes from Respondents 1 to 3 who call themselves officials of the Lorry Turn Office. According to the Petitioners, Respondents 1 to 3 are arbitrarily imposing restrictions on the right of the Petitioners to engage transporters of their choice. Respondents 1 to 3 and their Association appear to insist that only such transporters to whom the work is assigned by their Association by turn alone shall be permitted to take up the work of the Petitioners. According to the Petitioners, this insistence has no sanction of law. An Association of transporters may impose regulations among the members on the basis of consent of such members. But the Petitioners' option to engage persons who are not members of the Association and to get their work done by such persons cannot in any way be obstructed by Respondents 1 to 3. They cannot resort to such an exercise and attempt to justify the same on the basis of the rules framed by the Association for their own guidance. It may be ensured that the Petitioners are given protection to engage transporters of their choice if such transporters are willing

to transport their goods and articles. This, in short, is the plea of the Petitioners.

2. Respondents 1 to 3 have entered appearance through counsel. To start with it is submitted that Respondents 1 to 3 or other members of the Association shall not in any way object to or obstruct the option of the Petitioners to engage transporters of their choice. Respondents 1 to 3 have no intention to raise any such obstruction, it is conceded.

3. However, the learned Counsel for Respondents 1 to 3 submits that such a self-imposed rule among the transporters will cater better to the interests of harmony. One transporter/transporting agency shall not then be entitled to corner all work. Equal and equitable distribution of work can be achieved by such self-imposed restriction on the part of transporters/members of the Association of Respondents 1 to 3. In these circumstances, the learned Counsel only prays that police/revenue authorities may be directed to officially recognize the practice and ensure that there is fair and equitable distribution of work among the transporters. Such a healthy arrangement would better cater to the interests of workmen employed in the transporting industry also, submits the learned Counsel for Respondents 1 to 3.

4. Sri. Pramod, Advocate, submits that he wants to file an application on behalf of the workmen of the transporters who are members of the Lorry Owners' Association (i.e., Respondents 1 to 3). He wants to get impleaded. According to him, the arrangement of turn of work brought in by the Owners' Association/ Respondents 1 to 3, will cater to the interests of the workmen better. It is hence prayed that police protection may not be granted to the Petitioners.

5. The learned Government Pleader, after taking instructions, submits that the police have been assured that Respondents 1 to 3 or persons acting under them shall not in any manner obstruct the freedom of the Petitioners and others similarly placed to engage lorry operators of their choice to transport their goods. However, members of the Association of Respondents 1 to 3 shall take up such work only in accordance with the system introduced by the Association of lorry owners. They have no objection against non-members of the Association who have not accepted the self-imposed rule regarding turn system taking up any work. However, the counsel reiterates that it will be advantageous and fair to introduce such a system in the interests of harmony.

6. The learned Counsel Respondents 1 to 3 submits that it is not as though the Petitioners have come to this Court with bona fides. They are only name lenders to some lorry owners who are not members of the Association of Respondents 1 to 3. They do not want to join as members of the Association and want to independently corner all the work. The counsel reiterates that the Petitioners have come to this Court without bona fides.

7. We have considered all the relevant circumstances. There is no law or rule which obliges the Petitioners to engage only transporters/lorry operators as decided/dictated by Respondents 1 to 3. The Petitioners are not in law obliged to

engage any such particular transporter suggested by Respondents 1 to 3. We are unable to locate on any piece of law, rules or binding agreements under which the Petitioners can be compelled to engage lorry operators following the turn system introduced by the Association of lorry operators. 8. We are, in these circumstances, satisfied that the prayer of the Petitioners is only to be allowed.

9. In the result:

(a) This writ petition is allowed.

(b) Respondents 4 and 5 are directed to afford protection to the Petitioners in the event of any obstruction by Respondents 1 to 3 against the Petitioners engaging lorry operators/ transporters of their choice to transport their goods.