

(1994) 06 KL CK 0004
In the High Court Of Kerala
Case No : O. P. No. 14081 of 1993

M. Farisa Beevi

APPELLANT

Vs

Supt. of Police and Others

RESPONDENT

Date of Decision : 01-06-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1)(c), 12(4)

Citation : (1994) 2 KLJ 1029

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Advocate : B. Krishnamony, for the Appellant; T.M. Mohammed Youseff and Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.A. Mohammed, J.—This is a writ petition filed by one M. Farisa Beevi, who is the owner of 1.50 acres of garden land in Velinalloor Village. In this petition she has sought for a direction from this court to respondents 1 to 3 to grant adequate police protection to cut and remove the rubber trees from her garden land and to carry out the replantation work. The background of the case can be summarised thus: The above said 1.50 acres of land owned by the petitioner is fully planted with rubber trees. The tapping work was done by the petitioner herself for a long time. When she fell ill, she engaged 4th respondent, Jameela Beevi for tapping the rubber on daily wages for a period of one year. Her services were terminated after paying all the amounts legally due to her. Thereafter, the petitioner herself was doing the tapping work. However, the 4th respondent and her husband respondent trespassed on the aforesaid property and destroyed rubber trees. Apprehending the continued trespass and destruction of the trees, she filed suit O. S. No. 265/90 before the Munsiff's Court, Kottarakkara praying for a permanent injunction restraining the respondents 4 and 5 from entering the property and cutting and removing timber trees. In that suit an ex-parte decree,

evidenced by Ext. P1 was passed on 31-7-1992. The said decree is still continuing in force. When the petitioner wanted to replant the area, a contract was entered with one Badarudeen on 12-1-1993. By the said contract, Mr. Badarudeen had agreed to cut and remove the old, rubber trees and also replanting on payment of a sum of Rs. 18,500/-. He started the work pursuant to the contract on 19-1-1993. However, Mr. Badarudeen was forced to withdraw from contract and to escape from the scene in view of the threat of violence caused by the respondents 4 to 7. The contract could not therefore be enforced. The threat and violence by the respondents 4 to 7 was continued. In that situation, the petitioner filed Ext. P2 representation before the Government on 27-6-1993. On the same day the copies of Ext. P2 was forwarded to the respondents 1 to 3 who are the police officers of the area. In Ext. P2 representation, the petitioner pleaded for adequate police protection to cut and remove all the rubber trees in the property in her possession. In that petition it is also pointed out that an order of injunction was obtained against the counter petitioners, therein, from the Munsiff's Court, Kottarakkara in O. S. No. 265/90 - However, no tangible action was taken by the respondents 1 to 3 although the unlawful activities of the respondents 4 to 7 continued. It was in that background the present writ petition was filed.

2. The contesting respondents 4 to 7 filed a counter affidavit. Their contentions are summarised thus: The 4th respondent was appointed as a tapper in the year 1978 and on 1-4-1986 she was illegally denied the employment by the petitioner. The Kottarakkara Taluk Thottam Thozhilal Union raised an industrial dispute before the Labour Officer in respect of the denial of employment to the 4th respondent. There is a dispute also with regard to the non-payment of wages as per the rules. The conciliation proceeding was initiated by the Labour Officer but with no success. The Munsiff's court has passed the decree in O. S. No. 265/90 without notice to the respondents. The contract referred to in the writ petition is only a pretext for the denial of employment to the 4th respondent. During the pendency of the industrial dispute, it is not proper for the petitioner to cut and remove the rubber trees or to take police action for denying the employment to the 4th respondent.

3. Heard the learned counsel appearing for the petitioner and the respondents 4 and 5. The Government Pleader appearing on behalf of respondents 1 to 3 was also heard.

4. The learned Government Pleader filed a statement on behalf of the additional 8th respondent, District Labour Officer, Kollam, who was impleaded in the present proceedings as per the order dated 22-3-1994 in C. M. P. No. 7422/94 As per that statement; it is seen that the Deputy Labour Officer, Punalur has entertained the dispute raised by the president, Kottarakkara Taluk Thottam Thozhilali Union, Nilamel in respect of denial of employment to Smt. Jameela Beevi. It further indicates that though the Deputy Labour Officer, Punalur had convened a number of conciliation meetings, an amicable settlement could not

be reached,. Consequently, he sent a failure report to Government u/s 12 (4) of the Industrial Dispute Act recommending to refer the dispute to Labour Court, Kollam for adjudication. Further it can be seen from the said statement, the Labour Commissioner by his letter dated 3-3-1994 recommended to Government to refer the dispute for adjudication as per Section 10 (1) (c) of the Act. When such recommendation is made, normally the Government will refer the dispute to the Industrial Tribunal for adjudication, in which case all the claims raised by the 4th respondent will be decided by it on merits. What is involved in this case is an existing dispute and not an apprehended dispute. The adjudication by the Tribunal is an alternative form of settlement of dispute, on a fair and just basis having regard to the prevailing circumstances in the industry. There is no reason to think that the Tribunal will not decide the question in a proper and equitable manner. What is required is some per-severance on the part of the employee to get the claims settled by the Tribunal and not violence or obstruction against the employer. When this being the proper procedure for adjudication of the dispute between employer and employee as envisaged under the law, the 4th respondent has no right to cause violence or to obstruct the cutting and removing of rubber trees by the petitioner from the property owned by her. The petitioner in this case, has sought the relief of police protection against the respondents 4 to 7 for the obvious reason that they had obstructed cutting and removing trees and effecting re-plantation. Only because the 4th respondent was employed as a casual labourer for some time or even assuming as a permanent labourer, she did not get any right to commit waste in the property of the employer; or to cause violence or obstruction against the employer or persons engaged by her for slaughter aping or re-plantation. A Division Bench of this court in Pathansmthitta ailia T.T. Union v. Kurian Jacob (1993 (1) K.L.T: 633) in a similar set of circumstances upheld the grant of police (protection) by (a learned Single Judge. There the Division Bench observed: "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". This being the legal position, the action of the respondents 4 to 7 in this case is only to be declared unlawful. The following observation of the Division Bench is also relevant in the present case. "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," Therefore, it can only be said that the 4th respondent has approached the proper forum for adjudication of the dispute involved in this case.

5. A Division Bench of this court in Pathanapuram Taluk P. W. Congress v. Salim (1991 (1) K.L. T. 44 (S.N) observed: "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". The learned counsel for the 4th respondent advanced an argument that the petitioner should be directed to

deposit some amount towards the wages and other benefits claimed by the worker which is to be adjudicated by the Tribunal. Such a claim can not be allowed in the present proceeding and a similar claim raised before the Division Bench in 1991 (1) KLT 44 (S.N), supra has been negated.

6. It is brought to my notice a recent decision of a Division Bench of this court in Kerala Spinning Mill Workers Union v. Kerala Spinners Ltd. 11994 (1) KLT 417). In para 12 of the said judgment, the Division Bench said: "But, at the same time, when there have been acts of violence by workmen against the person and property of the employer, if the police, to whom the employer has resorted to, do not give adequate and timely protection, the employer must have a legal remedy to enforce his right to protection of his person and property. We are governed by the rule of law and the State has a solemn duty towards its citizens for protection of their person and property" (Emphasis supplied). The above decision also points out the question as to whether and if so, what wages are payable to a worker has to be decided in various proceedings workers or management may take under various Acts.

7. From the decisions referred to above, it is well settled, when there are acts of violence by the workmen against the person and property of an employer, it is the duty of the police to give adequate and timely protection to protect the life and property of the employer. The facts and circumstances revealed in this case persuade me to say that this is a fit case where this court should direct the police to grant adequate police protection to the petitioner for cutting and removing the timber trees for replantation and to remove obstructions created by the respondents 4 to 7.

8. While ordering the police protection, it cannot be said that I overlooked the claims of the 4th respondent raised against the employer. Of course, I have taken note of all the contentions regarding wages but at the same time I cannot decide them in one way or other at this stage. I definitely see the claims urged by the 4th respondent under different heads. It is made abundantly clear, this question has to be decided by the Industrial Tribunal or any other appropriate authority prescribed in that behalf. At any rate, these are Lot matters which I can decide in the present proceedings under Article 226 .

9. It is brought to my notice, the Ext. P1 judgment which is available in this case, of course, it is an ex-parte decree passed on 31-7-1992. By the said decree the respondents 4 and 5 have been permanently restrained from entering the property and causing any damage or waste. It is true that the decree is not varied or set aside by the superior court. As long as that decree remains it cannot be said, the police has no power to enforce obedience to it or facilitate its implementation. But it must be shown why remedy available under Order 21 Rule 32 is inadequate or ineffective in the circumstances of the case for invoking the jurisdiction of this court under Article 226. Since I have already ordered police protection on some other ground, I do not propose to deal with this question any further in this case. In the the result, I allow this Original Petition

directing the respondents 1 to 3 to afford police protection to the petitioner to preserve her property in Velinalloor Village and to cut and remove rubber trees and to carry on re-plantation work. The petitioner shall intimate the police as and when she requires police protection and on such intimation, the police shall afford protection as directed above. The Original Petition is allowed. No order as to costs.