

(1993) 05 KL CK 0002
In the High Court Of Kerala
Case No : W.A. No. 502 of 1998

Malappuram District Head Load Workers Federation	APPELLANT
Vs	
P. Kunju Mohammed and Others	RESPONDENT

Date of Decision : 27-05-1993

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Industrial Disputes Act, 1947 — Section 25H
Kerala Headload Workers Act, 1978 — Section 13

Citation : (1993) 2 KLJ 116

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : T.H. Abdul Azeez, for the Appellant;

Final Decision : Dismissed

Judgement

Jagannadha Rao, C.J.—This is yet another case where workmen claiming to be registered under the Kerala Headload Workers Act, 1978 go on obstructing industrialists and other persons who run their own shops or industries by claiming that such industrialists or other owners should not have the choice of engaging their own workmen. We are clearly of the view that if any industrialists or an employer wants to employ his own workmen for the purpose of running his industry or for the purpose of his shop or other organisation, he has a right to engage workers of his choice and this right falls clearly from Article 19(1) of the Constitution of India. The Kerala Headload Workers Act, 1978, is, in no way, intended to interfere with the said right. If, however, the employer or the person who starts industry is unable to secure workmen of his choice, then, it is open to him to take the services of the headload workers registered under the Headload Workers Act, 1978. However, if the employer or other persons who starts industrial business has his own band of workmen, we are unable to see how they can be prevented from employing the workmen of his choice. A Division Bench of this Court consisting of Malimath, C.J. and Viswanatha Iyer, J. in Ibrahimkutty v. Superintendent of Police (1991 (1) KLT 829). has observed, in this behalf, as

follows:

Merely because the fifth respondent is obstructing police protection is denied to the appellant. It is necessary to bear in mind that the appellant has come to this court for relief on the ground that the fifth respondent is obstructing and that the obstruction is illegal. When we asked the learned counsel for the fifth respondent to point out the provisions which confer on them the right to get employment under the appellant, in the matter of the work of loading and unloading, the learned counsel was not in a position to point out any provision which confers such a right. In the absence of such a statutory provision conferring such a right on the members of the fifth respondent, the right of the appellant to carry on his business by engaging labourers of his choice cannot be denied to him. As regards the resolution of the dispute contemplated by the Head Load Workers Act is concerned, there is no injunction or prohibition for resort being had to the authorities concerned for resolution of their disputes in accordance with the provisions of that Act, if the provisions of that Act are applicable. But, that has nothing to do with the right of the appellant to engage labourers of his choice, there being no statutory prohibition against such an action, and when there is no statutory right conferred on the members of the fifth respondent.

2. Similarly, another Division Bench consisting of one of us (Jagannadha Rao, C.J.) and Krishnamoorthy, J. in *Kochayyan Subramanian v. Cochin Cadalas* (1992 (1) KLJ 696 has observed as follows:

On a perusal of the provisions of the Headload Workers Act and the Rules, we do not find any provision therein conferring any preferential right for employment on the registered headload workers, - in the absence of any Scheme made u/s 13. Unless there is a preferential right such as the one in Sec. 25H of the Industrial Disputes Act, 1947, the headload workers cannot, in our view, contend that they should be employed on a preferential basis. While the Act and the Rules contain no such provisions, the question will be whether the scheme made u/s 13 in 1983 creates any such preference. Assuming that the scheme of 1983 confers such a preferential right to employment, it must be established that the scheme is extended to the particular area. Inasmuch as it is admitted before us that the scheme has not been extended to the area in question, we are of the view that the appellants and their followers have no right to obstruct the loading and unloading inside the factory of the writ petitioner. The learned single Judge was, therefore, right in granting police protection to the writ petitioner, and in giving directions to the police authorities to see that the appellants and their followers do not obstruct any loading and unloading operations inside the factory of the writ petitioner.

In that view of the matter, the appellant - Union has no locus standi to question the directions issued by the learned single Judge granting police protection to the writ petitioner - employer to engage his own workers.

There are no merits in the CMP seeking leave to appeal nor in the appeal. Both

are accordingly dismissed.