

(2011) 12 AP CK 0034

In the Andhra Pradesh High Court

Case No : Writ Petition No. 31277 of 2011

M/s. Raghavendra Ware Housing, H and T Contractor, Vasavi Towers, Behind M and M Kakinada, East Godavari District **APPELLANT**

Vs

The State of Andhra Pradesh and Others **RESPONDENT**

Date of Decision : 21-12-2011

Acts Referred:

Andhra Pradesh (Andhra Area) District Police Act, 1859 — Section 1, 21
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 149, 341
Penal Code, 1860 (IPC) — Section 339

Citation : (2012) 2 ALT 86

Hon'ble Judges : Vilas V. Afzul Purkar, J

Bench : Single Bench

Advocate : E. Manohar, for Sri. Kakara Venkata Rao, for the Appellant; Suresh Reddy, SC For APSWC, Respondent No. 5, G.P For Home, Respondent Nos. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Sri. Justice Vilas V. Afzul Purkar

1. Petitioner, a handling and transportation contractor, was awarded with handling and transportation contract of food grains by the fifth respondent - A.P. State Warehousing for a period of two years in respect of Dawarapudi (Investors Godown) at Dawarapudi, East Godavari District.

2. The grievance of the petitioner is that a group of 50 local people are not allowing the petitioner to take up the said contract work with the help of its labourers and are making a demand that the entire contract work should be entrusted to the local people only and on account of the illegal and unlawful demand and criminal activity, the handling and transportation at the said godown by the petitioner is seriously affected. On account of the said obstruction to the workers of the petitioner from attending to the work on behalf of the fifth

respondent undertaking, the petitioner requested for police protection under representation dated 03.11.2011 by personally apprising respondents 1 to 4. The fifth respondent was also informed of the said obstruction and one of the investors under their letter dated 16.11.2011 has been in turn pressurizing the petitioner to sort out the said problem immediately. As there was no action on behalf of respondents 1 to 4, petitioner filed the present writ petition to enforce the duties of respondents 1 to 4 to maintain law and order and also to protect petitioner's labour in order to carry out the operations at the godown.

3. Learned senior counsel appearing for the petitioner has placed reliance on the duties of Police Officers, as envisaged u/s 21 of the Andhra Pradesh (Andhra Area) District Police Act, 1859 (for short "the Act") and submits that the unauthorized obstruction to the lawful work of the petitioner on behalf of the fifth respondent and failure of respondents 1 to 4 in discharging their legal duty of protection, affects the petitioner's right to carry on lawful business. Learned senior counsel points out that, on the one hand, petitioner is not allowed to carry on its lawful work at the instance of the unauthorized and illegal acts of local people and the fifth respondent, on the other hand, is holding petitioner responsible for consequences arising out of financial losses.

4. The first respondent has filed a counter affidavit stating that on enquiry it was revealed that the petitioner and the fifth respondent have recently entered into an agreement but as there is a separate registered union existing at the said godown maintained by the fifth respondent, the members of the said union, who are depending on working at the said godown, have already filed a case through the union members against the authorities of the fifth respondent before the Deputy Commissioner of Labour, East Godavari seeking stocking charges and other benefits. The first respondent, therefore, stated that there is a civil dispute regarding payment of stocking charges and the same being pending with the Deputy Commissioner of Labour, petitioner's representation was disposed of on 10.12.2011 by stating that providing of police protection was found to be improper. A letter of 10.12.2011 is also appended to the counter, which reiterates the said stand, specifically stating that the Office of the Superintendent of Police is unable to provide police protection as that will lead to severe law and order problem.

5. In the light of these averments, it is appropriate to notice Section 21 of the Act, which is extracted hereunder:

21. Duties of Police-officers: - Every police officer shall, for all purposes in the Act contained, be considered to be always on duty and shall have the powers of a Police Officer in every part of the General Police District. It shall be his duty to use his best endeavours ability to prevent all crimes, offences and public nuisances; to preserve the peace; to apprehend disorderly and suspicious characters; to detect and bring offenders to justice; to collect and communicate intelligence affecting the Public peace; and promptly to obey and execute all orders and warrants lawfully issued to him.

6. It is evident from the above that it is the duty of every police officer to prevent all crimes, offences and public nuisances to observe peace. The word "Police" defined u/s 1 of the Act is inclusive of all persons appointed under the Act.

7. The existence of a lawful agreement between the petitioner and the fifth respondent being not in dispute, the petitioner herein is, in fact, acting as an agent of the fifth respondent and the Governmental function required to be discharged cannot be allowed to be obstructed by any other person without any legal entitlement. It may be that there is some other union existing at the godown of the fifth respondent but the work relating to handling and transportation for the current term having been awarded to the petitioner, neither the said union nor any other person can obstruct the same. Any such unlawful obstruction is required to be prevented by respondents 1 to 4 in their capacity as police officers entrusted with a duty contemplated u/s 21 of the Act, extracted above.

8. Learned senior counsel for the petitioner placed reliance upon a decision of the Supreme Court in *Howrah Mills Co. Ltd. and Another Vs. Md. Shamin and Others*, In that case, the petitioner had approached the police authorities to give necessary protection in respect of its property, which was subject matter of reference before BIFR. It was alleged that attempts to repair the compound wall around the property of the petitioner was obstructed by the erstwhile employees, when as per BIFR's orders the company had sold part of the land and attempts were also made to interfere with the property of the petitioner. While the learned single Judge of the Calcutta High Court had granted interim order of police protection, the appeal by a fraction of shareholders before the Division Bench succeeded. In the SLP filed before the Supreme Court, the Supreme Court recorded its views and the order of police protection was restored. It would be appropriate to extract paras 9 and 12 as under:

9. It appears to us that this is a case where the State should be equally interested in seeing to it that the property was fully protected, until the scheme proposed by the BIFR is implemented and the revival of the industry is ensured. It is said that six thousand workers are involved and their welfare, along with the welfare of the creditors and of the management, depends upon the scheme being put through. One would have expected the State of West Bengal to readily respond to a request for protecting the property from trespassers so as to ensure that the revival of a sinking industry is achieved and its workers are protected. Even otherwise, in a situation like the present, it is the duty of the police of the State to give necessary protection to the struggling industry to tide over the crisis and protect its property from interference by law less elements and unauthorized persons. Going by the Police Regulations, Bengal 1943, Regulations 666 and 669, it may even be possible to say that the protection in such circumstances should be afforded even without insisting on payment by the private party seeking protection. But in this case, the appellants have

approached the Court praying for protection expressing their readiness to meet the charges for such protection on the basis that they are liable to pay such charges. In fact, the order for protection was extended to the appellants from the filing of the writ petition till this date only on that basis. Therefore, we are of the view that it would not be appropriate to hold, on the facts of this case that the appellants have no obligation at all to meet the costs of the protection given to them by the police.

12. Mr. Roy, Learned Counsel for the State has categorically submitted before us that the State would perform its duties in the matter of maintenance of law and order and it shall provide protection to the property of the first appellant - Company in discharge of the statutory duties of the State and the Police. In this context, the Authorities may consider whether it is necessary to engage a large force of policemen at this stage and consider posting only such number of personnel as may be found necessary for the protection of the property. That would enable a reduction in the cost of protection to be paid by the appellants and the State would be free to reduce the charges payable by the appellants for protection of the properties. In the light of the directions as above and the observations, I.A. Nos. 4 and 5 of 2006 will stand disposed of.

9. Another decision of the Full Bench of the Kerala High Court in *Reliance Telecommunications Ltd. v. S.I. of Police* (WP (C) No. 6433 of 2010 dated 08.04.2010) is also relied upon by the learned senior counsel where the petitioner had sought police protection when it faced obstruction from local public against construction of mobile towers. The Full Bench placed reliance upon Section 29 of the Kerala Police Act and Section 149 of the Code of Criminal Procedure, 1973 and held that the police have a statutory duty to prevent commission of any cognizable offence and any situation that amounts a threat to law and order and as such, extraordinary jurisdiction under Article 226 of the Constitution of India would be justified directing police protection to be granted against such obstruction. Paras 17, 18 and 34 are relevant, which are extracted hereunder:

17. Section 29(b) of the Kerala Police Act, clearly says that there is a duty cast upon the Police to prevent the commission of cognizable offences. Under Clause "g" of Section 29, Police is also to discharge such duties as imposed by any other law for the time being in force. By virtue of Section 29(r), it shall be the duty of every Police Officer to perform all duties imposed on him by rules for the time being in force under the said Act, in the manner and subject to the conditions therein prescribed. Similarly, u/s 149 of the Code of Criminal Procedure, the Police is bound to prevent cognizable offence and there is a duty upon every Police Officer in this regard.

18. Causing physical/forceful obstruction to the construction of the Mobile Tower or connected activities being pursued by the valid licence/permit holders or the workers under them very much amounts to "wrongful restraint" as contemplated u/s 339 of the IPC and this is an offence punishable u/s 341. By virtue of the

classification of the offence u/s 341 in the First Schedule of the Code of Criminal Procedure, it is a "cognizable" one. Since there is a duty upon every Police Officer to prevent any such cognizable offence and to prevent the threat to "law and order", if there is a violation on the part of the Police Officer in discharging the above statutory duties, whether this Court can shut its eyes to make it dark, referring to the "Civil remedy" available to the party and declining to interfere under Article 226, is the question that assumes more importance.

34. Points sought to be clarified as per the reference dated 2-11-2009 in W.P.(C) Nos. 24384 & 25157/2009 are answered as follows:

(i) In view of the observation in paragraph 8 of *Sadananda Bai's Case* (2008 (3) K.L.T. 542) and similar observations in paragraph 8 of *Essar Telecom Infrastructure (P) Ltd. Vs. The Circle Inspector of Police and Others*, holding that this Court is very much having the power to provide the remedy, in case of violation to discharge the duty by the Police, further reference doubting the power of this Court under Article 226 is quite unwarranted. In view of the law declared by this Court as stated in the foregoing paragraphs, the observations to the contrary in the above two decisions (*Sadananda Bai's case* and *Essar Telecom's case*) are not correct or sustainable.

(ii) Relegation to the Civil Court, in the event of forceful obstruction to the construction or energization of Mobile Phone Tower is not an effective alternate remedy and interference by this Court, granting "Police protection", invoking the power and discretionary jurisdiction under Article 226 of the Constitution of India is warranted to advance the course of justice.

10. Ms. Rachna Waddepalli, learned Assistant Government Pleader for Home, submits that, as stated by the first respondent in his counter affidavit and the letter of rejection, the registered union, which is existing at the godown maintained by the fifth respondent for the last several years agitating for its rights and entitlement in the matter is already before authorities under the Industrial Disputes Act. Learned Assistant Government Pleader for Home, therefore, submits that the dispute being of civil nature pending before a competent authority, it cannot be said that the action of respondents 1 to 4 in declining assistance is not justified. She has placed reliance upon decisions of the Supreme Court in *P.R. Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others*, and *Moran M. Baselios Marthoma Mathews II and Others Vs. State of Kerala and Others*, and submits that the order of police protection, as sought for in this case, has necessarily to be assessed by the police authorities on the threat perception and also as to whether it is for protection of a right declared by a competent authority or authority.

11. The decision in *P.R. MURLIDHARAN's case* (2 supra) is clearly distinguishable, on facts, as protection sought for with respect to the property in that case was under adjudication and the said civil right claimed by the petitioner was not established and was still pending adjudication before the civil Court. In

such circumstances, it was felt that when civil suits are pending, the High Court would be usurping the jurisdiction of the civil Court, which is yet to determine the contentious issues. It was, therefore, held in para 12 that a person could not approach the High Court for the purpose of determining disputed question of fact when a claim for status was under adjudication. Similarly, in the decision in MORAN M. BASELIOS MARTHOMA MATHEWS II's case (3 supra) the writ petition seeking grant of police protection was found to be the subject matter of contest between two groups, who were claiming entitlement to manage the Church. In a writ petition seeking police protection in the garb of deciding a limited aspect, the writ Court cannot go into disputed questions of fact, especially when the contest between two groups is pending adjudication in several civil suits between both the groups.

12. The analogy of the facts and the ratio of the two decisions relied upon by the learned Assistant Government Pleader, referred to above, is wholly inapplicable to the facts and circumstances of this case, as the entitlement of the petitioner to work the said contract on behalf of the fifth respondent is neither the subject matter of any dispute nor any adjudication in that regard is decided adverse to the petitioner. Even according to the counter affidavit and the impugned order of rejection, the dispute raised by the union, which is obstructing the work, relates to recovery of their wages and entitlement, which has no nexus whatsoever with the contract awarded to the petitioner by the fifth respondent for handling and transportation of food grains. The movement of food grains being an important State function, any obstruction thereto by any unauthorized person, who has no right whatsoever relating to the said work, would certainly require respondents 1 to 4 to extend police protection in lawful discharge of the mutual obligation between the petitioner and the fifth respondent. The duty entrusted on respondents 1 to 4 by Section 21 of the Act, extracted above, clearly justifies that the petitioner is entitled to protection and it is wholly improper for the respondents to decline the same by stating that giving police protection would lead to serious law and order problem. Respondents 1 to 4, therefore, cannot shirk from their responsibility, as police officers and they are bound to provide police protection, as sought for in the discharge of lawful obligation of the petitioner, which he owes to the fifth respondent under the agreement aforesaid.

13. In a different context, the Supreme Court has very aptly quoted the observations of Lord Denning in *State of Maharashtra and Others Vs. Sarangdharsingh Shivdassingh Chavan and Another*, and the following paragraphs thereof would be apt to be extracted as under:

In *R. v. Metropolitan Police Commissioner* [(1968) 1 All. E.R. 763], the Court of Appeal considered the question whether the Commissioner of Police could give instruction to the cadre not to take action against clubs for violating gaming laws and held that he was not entitled to do so. The facts of the case show that Albert Raymond Blackburn applied for a mandamus to the Commissioner of Police of Metropolis requiring him to assist him in the prosecution of gaming clubs, which

contravened the provisions of Betting, Gaming and Lotteries Act, 1963 and in particular to assist him in respect of the complaint lodged on March 21, 1967 in relation to Golden Nugget Club, Piccadilly and to reverse or procure the reversal of a policy decision taken by him or his superiors that the time of the police officers would not be spent on enforcing the provisions of the Betting, Gaming and Lotteries Act, 1963. The Divisional Court of Queen's Bench dismissed the application. The Court of Appeal noted that the policy decision contained in communication dated April 22, 1966 was a confidential instruction issued to the senior officers of the metropolitan police whereby they were directed not to proceed against the clubs for breach of gaming laws unless there was complaint of cheating or they become haunts of criminals. As a result of the said instruction, the big gaming clubs in the metropolis were allowed to carry on their activities without any police interference. In his opinion, Lord Denning M.R. made the following observations:

I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.

In view of the above, therefore, the writ petition is allowed as prayed for. However, there shall be no order as to costs.