

(1999) 02 KL CK 0040
In the High Court Of Kerala
Case No : W.A. No. 370 of 1999

Peethambaran

APPELLANT

Vs

Ramachandran

RESPONDENT

Date of Decision : 17-02-1999

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Industrial Disputes Act, 1947 — Section 2

Citation : (1999) 2 ILR (Ker) 643 : (1999) 2 LLJ 832

Hon'ble Judges : Om Prakash, C.J.; J.B. Koshy, J

Bench : Division Bench

Advocate : P. Balagangadhara Menon and B. Raghunandan, for the Appellant; S. Chandrasenan and K. Sasikumar, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, J.—First respondent in this Writ Appeal filed the Original Petition before this Court seeking police protection to him, to his workers, supervisors and his materials from the Appellant-Unions (Respondents 3 and 4 in the Original Petition). He was awarded the work of "construction, of 350 bedded ward for Government Ayurveda College Hospital, Puthiyakavu at Tripunithura". After completing the preliminary works, he started to engage labourers for doing different works. He put up a notice (Ext. P-1) inviting registration of workers who are interested to do different works. According to him, in response to Ext. P-1 notice, about 150 workers registered their names for different works and he started the work on January 6, 1999. At that time third and fourth respondents and a group of people came to the site and obstructed the workers and manhandled one of the workers and threatened the supervisor. Petitioner approached the Police for protection by Ext. P-2. Even though Sub Inspector of Police came to the site and removed some of the obstructers, the threat continued. Because of that, work was stopped.

2. Since Police was not able to provide adequate police protection, he filed the

Writ Petition for police protection. Second appellant union filed counter affidavit stating that in view of Ext. R4(a) agreement, petitioner is bound to engage workers in the ratio of 1:1:1, that is, one workman to be employed by the first appellant union and second workman can be employed by the second appellant union and third workman can be employed by the management and entire workers should be appointed in the above ratio of 1:1:1. In effect, the petitioner-management can appoint only one-third workers and it is the right of the two unions to appoint two-third of the workers. It was further contended that since the Writ Petition was filed suppressing this material, petition should be dismissed and police protection should not be given to effect the rights of the unions on the basis of Ext. R(4)(a) agreement. After hearing the parties in detail, the learned Judge was of the view that trade unions cannot act as recruiting agencies. The learned Judge held as follows:

"..... in effect the trade Unions are now acting as recruiting agencies. I do not think that any trade union has obtained any right under any law to demand that only persons recommended by it can be engaged by persons like the petitioner for the construction work. In other words, only persons who join any of the Union are entitled to get work. This really infringes the fundamental rights of the citizens to work. This Court cannot encourage such unhealthy trend in trade union movement. Under these circumstances, I have no hesitation to hold that the demand of the 4th respondent on the basis of the above agreement is legally unsustainable".

Thereafter, the learned Judge directed that Union cannot obstruct the employees appointed and if any obstruction is caused by the Unions or their men against the engagement of the workers of the choice of the management, petitioner can approach the police for protection and police officers should afford adequate protection to the petitioner for engaging workmen of his choice for the construction of the hospital.

3. This judgment is challenged by the Appellants Unions on the ground that Ext. R4(a) agreement was not challenged by the petitioner in the writ petition and it was not even disclosed in the original petition and, therefore, the original petition ought to have been dismissed. It was further contended that the Unions have got a say in the appointment of employees and the Union's rights are affected by the police protection given. It was also averred that petitioner is giving wages below the minimum wages prescribed and petitioner should not be allowed to exploit labour and the rights of the Unions will be affected if the judgment is not set aside. On the contrary, the respondent contended that Ext. R4(a) agreement is not applicable to the area in question. It is applicable only in Ernakulam Zone and therefore, there is no question of disclosing the same in the writ petition. They are paying much more than the minimum wages and there is effective machinery under the Minimum Wages Act for checking the same and such allegations have no force. Even though the workmen employed by the petitioner can join the unions of their choice, unions cannot dictate the employer whom

they should employ. There are many unions functioning in the area. But, if the contentions of the appellants unions are accepted, only members of their union or people recommended by them can be appointed. It will affect the fundamental rights of all other unions and persons who are not members of appellants unions. It is for the management to make appointment and unions have no matter of right to appoint employees and police protection was rightly given.

4. It is well settled law that normally appointment in private sector is a management prerogative unless there is a statute or binding settlement diluting the above right. In *Malappuram Dt. Headload Workers' Federation Vs. P. Kunju Mohammed and Others*, M. JAGANNADHA RAO, Chief Justice (as he then was) observed as follows:

" We are clearly of the view that if any industrialist 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 of the Constitution of India."

Admittedly, there is no statute like Head-load Workers Act etc. regarding employment of construction workers. Neither the Trade Unions Act nor the Industrial Disputes Act give power to the Unions to make appointments. Ext. R4(a) specifically says that the above agreement was applicable to Ernakulam Zone. In the counter-affidavit or in the appeal memorandum it is not stated that Puthiyakavu, Tripunithura wherein the site is situate is in the same zone. It is true that correctness of Ext. R4(a) is not to be challenged under the Industrial Disputes Act or before this Court. Copy of the Ext. R4(a) agreement produced did not show that it is entered into on a stamp paper or as a settlement u/s 2(p) of the Industrial Disputes Act as a conciliation settlement or as a settlement arrived at, otherwise than in the conciliation proceedings. Whether Ext. R4(a) is valid settlement as defined u/s 2(p) even if it is so, whether it can be set aside as being opposed to public policy, whether it affects the fundamental rights guaranteed by the Constitution of India, whether it is signed by coercion etc. as contended by the respondent management, need not be considered in this proceedings as none of the parties challenged correctness of Ext. R4(a) before this Court. That has to be considered only when that agreement is challenged or a claim is raised on the basis of the settlement.

5. If material facts are suppressed, writ need not be issued by this Court which is discretionary remedy. See Full Bench decision of this Court in *G. Appukkuttan Pillai Vs. Government of India and Others*, . The definite contention of the management is that the settlement is not applicable to this zone. Ext. R4(a) shows that it is applicable to Ernakulam Zone only. Here there is no suppression of material facts as unions were not able to show us that Ext. R4(a) settlement was applicable to the area in question. It is not correct to say that Ext. R4(a) was set aside by the learned single Judge even without a contention to that effect. The learned single Judge only stated that on the basis of Ext. R4(a) unions cannot set up a right in the area in question and unions cannot impose people of

its own choice as employees.

6. In *Pathanamthitta Jilla T. T, Union v. Kurian Jacob*(1994 I LLJ 441) it was held by a Division Bench of this Court that the Union or its members cannot claim a legal right to obstruct somebody else getting his work done or doing his work in his own estate. 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, if the petitioner feels that Ext. R4(a) is a valid settlement and they have got any right under the same, they can approach the appropriate authorities for their relief. Management will be free to contest correctness of Ext. R4(a) in that proceedings. But, that will not in any event give any right to the union or its members to take law into their hands or obstruct ingress and egress of the first respondent or its employees or supervisors or commit assault etc. A Division Bench of this Court in *Kerala Spinning Mills Workers Union Vs. Kerala Spinners Ltd.*, held that when there have been acts of violence by workmen against the person and property of employer, management is entitled to police protection. The same view was taken by another Division Bench of this Court in *Desiya Chumattu Thozhilali Union v. Superintendent of Police* 1993 (2) KLT 280.

7. We are of the opinion that here, there is no suppression of material facts as according to the petitioner there is no settlement in the area in force where the construction work is carried on. Ext. R4(a) clearly states that it is applicable only in Ernakulam Zone. As held by the learned Judge, union cannot impose workmen on the management as normally it is for the management to appoint workers of its choice. The contention that such method is adopted by the petitioner to avoid payment of minimum wages also cannot be accepted as no evidence is adduced to prove the same and it is averred by the first respondent- petitioner that they are giving more than the minimum wages there is effective machinery under the Minimum Wages Act for checking and taking appropriate action against defaulting employers if they pay below the minimum wages. In any event, in the absence of a statutory provision or a binding and valid settlement, the unions cannot insist that unless the persons nominated by them are appointed they will obstruct the work and take law into their hands. Therefore, we see no reason to interfere in the impugned judgment of the learned single Judge. However, this will not be a bar to the appellants unions in raising an industrial dispute, if it is of the opinion that Ext. R4(a) is, applicable to this area also and they get right from the above settlement and then it is for the management to raise all contentions against the validity of the settlement and applicability of the settlement in the area.

Without prejudice to the above right, the Writ Appeal is dismissed.