
(1998) 06 KL CK 0077
In the High Court Of Kerala
Case No : O.P. No. 7458 of 1998

Plakattu Granite Industries

APPELLANT

Vs

Supdt. of Police

RESPONDENT

Date of Decision : 02-06-1998

Acts Referred:

Citation : (1998) 2 KLJ 132

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : Bechu Kurian Thomas, for the Appellant; K. Ramakuamr and Mr. C.A. Joy, Government Pleader, for the Respondent

Judgement

K.A. Abdul Gafoor, J.—The petitioner is a limited company operating an industrial unit. According to the petitioner, for the purpose of loading and unloading materials, lorries are being hired. Recently, the drivers and cleansers attached to the said lorries demanded for regularisation. The petitioner could not concede to their demands. Thereupon, the workers attached to the said lorries began to obstruct the permanent workers of the company. On 15.4.98, a complaint was so lodged against the company by one among the workers. According to the petitioner, it is unable to provide employment to the workers attached to such hired lorries. Such workers have moved the conciliation officer and conciliation proceedings are pending. The petitioner is regularly deputing an officer to participate in the conciliation conference representing the management. On the other hand, the union-the 3rd respondent has walked out of the conciliation conference. It is because of the obstruction caused by the members of the 3rd respondent, who are also the workers attached to the hired lorries. The petitioner is unable to continue the functioning of his industrial unit. He seeks police protection for the smooth functioning of his industrial unit. He also has approached this Court seeking a direction to afford adequate police protection to the life of the Directors of the Company, its employees, to the customers and also for the peaceful conduct of the business of the petitioner's company.

2. The 3rd respondent union submits that an agreement is already subsisting between the petitioners and the said union and other unions representing the workmen as seen from Ext.R3 (a). As per the said settlement enhanced wages are being paid to the workmen. But it is not being given to the lorry drivers and cleaners. Therefore, they rightly demanded wages payable as per Ext.R3(a) settlement which is being denied by the Management. Therefore, they are resorting to peaceful agitation to win over the demands for giving effect to Ext.R3(a) settlement reached between the Management and the workmen. Apart from that, there is no force employed by the members of the 3rd respondent. It is also submitted that the petitioner Company is employing about ten workers but the said workers are not being paid the wages in terms of Ext.R3(a). It is also contended that the petitioners did not wait for any single day after filing a petition before the police to file this Original Petition. On that ground it is submitted that there is no bonafides in moving this Original Petition. It is also the contention of the 3rd respondent that there is no whisper in the Original Petition with regard to Ext.R3(a) settlement. The management cannot, by rendering police protection be allowed to flout Ext.R3(a) settlement to deny the workmen the benefits arising out of the settlement. Even the protection rendered in term of the interim order had interfered with the right of the workman to freely and peacefully agitate to win over their demands. Therefore, no police protection shall be granted.

3. Even assuming that the case put forward by the 3rd respondent Union is correct, they cannot obstruct the willing workman. They are absolutely free to launch strike and make demands of their choice and also to persuade other workmen to follow their suit and to join with them for agitation or strike. If there is willing workmen that workmen cannot be prevented from working by the striking workers.

4. In Gwalior Rayons Case (1982 Lab. I.C. 367) this Court held that-

Though under the Constitution of India, the right to strike is not a fundamental right as such, it is open to a citizen to go on strike or withhold his labour. Every strike is not illegal and the workers in any democratic State have the right to resort to strike whenever they are so pleased in order to express their grievances or to make certain demands. A strike in the circumstances is a necessary safety valve in the industrial relations when properly resorted to; It is a legitimate weapon in the matter of industrial relation.

Therefore, if the workmen under the 3rd respondent have got a grievance that Ext.R3(a) is not given effect to by the management they can resort to strike to win over their demands. That cannot be disputed.

5. But at the same time, if the workmen belonging to any other union or even belonging to the 3rd respondent union themselves are willing to work inspite of the call made by the 3rd respondent union, such willing workmen cannot be prevented by the striking workers. I have taken the view in T.C.M. Ltd. v. District

Collector (1997(1) KLT 470) that,

When we accept that the workers have got a right to strike it has also equally to be accepted that the workers shall have the right not to strike. Trade unions are expected to function in a democratic manner. When there are several unions, each of them will take its own decisions.

Thus, when one union resort to strike, they cannot prevent other workers who are willing to work. When the petitioners submits that the workmen attached to the lorries are preventing the other workmen, that may result in law and order situation. In such case, the petitioner is perfectly justified in seeking police protection. Even if the petitioner did not wait for a day after filing the representation before the police, that will not disable the petitioner from moving this Court. The petitioner did not mention about Ext.R3(a) settlement because as per the pleadings contained in the Original Petition, to the workmen attached to the hired lorries, cannot come within the purview of Ext.R3(a).

6. In the said circumstances, the following directions are issued:

- i) The 2nd respondent shall render police protection at the cost of the petitioner for the peaceful conduct and the functioning of the petitioner's factory.
- ii) If any willing workmen is prevented by any striking workmen, necessarily, such prevention shall be averted by the police.
- iii) By reason of the aforesaid two directions, the police shall not interfere with any legitimate right of the striking workmen to peacefully demonstrate by shouting slogans or launching sathyagrah.

The Original Petition is disposed of as above. No costs.