

(2014) 07 KL CK 0289
In the High Court Of Kerala
Case No : W.P.(C) No. 29734 of 2008

Proper Channel and Others	Vs	APPELLANT
Managing Director, KSRTC Bhavan and Others		RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 4 KLJ 291

Hon'ble Judges : Manjula Chellur, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : C.V. Manuvilsan and K. Vidya Manuvilsan, Advocates for the Appellant; Babu Joseph, Johnson P. John, SCs and Girija Gopal, GP, Advocates for the Respondent

Judgement

A.M. Shaffique, J.—This writ petition is filed in the form of a public interest litigation calling upon the State of Kerala to compensate Kerala State Road Transport Corporation (KSRTC) to the extent of Rs. 8,21,41,445/-. The amount quantified is the loss of revenue for KSRTC for four days on which "Hartals" were called for by certain political parties. Another relief sought for is to take appropriate action on Ext. P4 representation submitted by the petitioner to KSRTC.

2. The petitioners have taken up this case for KSRTC alleging that the State Government did not take appropriate action for assessment and payment of compensation to KSRTC as they were unable to operate the Road transport services in the State of Kerala during the dates when the aforesaid "hartals" were called for. Petitioners rely upon Exts. P1 an information received from the Public Information Officer of KSRTC indicating the revenue loss during the aforesaid period.

3. According to the petitioner, there is failure on the part of the State machinery to provide police protection for the smooth functioning of KSRTC service in the State and failure to do so makes the Government liable to pay compensation to

KSRTC. It is further contended that KSRTC is duty bound to initiate appropriate legal action against the wrong doers, that is the persons who had called for "hartals" which virtually had paralysed the State. Since loss to KSRTC is loss to the public at large, this writ petition is filed seeking the reliefs, as prayed for. It is also contended that KSRTC did not operate the services as per the advice given by the police officials and therefore State is liable to compensate KSRTC in that regard.

4. Statement is filed on behalf of the 1st respondent KSRTC inter alia indicating that on various dates when "hartals" were called for by various organisations, KSRTC had operated services but the revenue received was much less than what was expected in a "non-hartal" day. That apart, it is contended that during certain hartals several buses were damaged. It is further stated that KSRTC is sustaining huge loss of revenue due to such "hartals" called for by political parties and other organisations. There have been instances where the vehicles as well as the personnels of KSRTC have been attacked and therefore KSRTC was compelled to stop operation of the fleet. If KSRTC is compelled to operate the entire fleet during "hartals", the loss will be much more than what is expected as the commuters abstain from journey on "hartal" day. It is further indicated that KSRTC had to operate its services on convoy basis during "hartal" days with limited police protection and the passenger turn out was very less during such occasions. They further stated that the unit officers have been instructed to assess the loss that had been incurred due to the damage of buses on "hartal" days accurately to initiate appropriate steps for recovering such amounts.

5. An additional statement has been filed by the 1st respondent stating the damage sustained by the different units during "hartal" days. Counter affidavit is filed producing the details regarding the loss suffered by KSRTC on account of destruction of buses and bus stations during "hartal" days.

6. Counter affidavit is filed by the 2nd respondent inter alia stating that the Government is always ready and willing to give maximum protection to the general public and KSRTC to operate the services with the resources available with the police department. Government has strived its level best to create an atmosphere for free movement of travelers. In respect of untoward incidents, appropriate action has been taken. It is further stated that on account of various organisations calling for "hartal", people remain at home and there will be less traffic on public roads. The fact that KSRTC had not operated their full schedules is correct but it is on account of shortage of adequate staff and less number of commuters. Government further indicates that they have no obligation to pay the revenue loss to KSRTC as it is the total amount they may receive during the relevant time when the full schedules are operated but the expenses have not been taken into account for assessing compensation.

7. Statement is filed by the Special Government Pleader on 10/02/2014 producing Government order dated 17/12/2003. In the said Government Order, appropriate directions have been issued to individual Officers to initiate action for

recovering the damages caused to public property on account of "hartal". The aforesaid Government Order had been issued based on various judgments of this Court calling upon all Officers of the State and Corporations who are controlled by State to take immediate and prompt action to recover damages and in cases where, pursuant to call for "hartal", public property or property belonging to the Corporation is damaged or destroyed by the perpetrators of the act leading to destruction/damages and those who have issued the call for "hartal".

8. Having regard to the nature of contentions urged, it is now a settled position that calling of a "bandh" and holding of "bandh" is unconstitutional and it tends to retard the progress of the nation by leading to national loss of production. A Full Bench of this Court in Bharat Kumar K. Palicha and Another Vs. State of Kerala and Others, held that political parties and organisations calling for such "bandhs" and enforcing it are liable to compensate the Government, the public and the private citizens for the loss suffered by them for such destruction. The said judgment has been affirmed by the Apex Court in Communist Party of India (M) Vs. Bharat Kumar and Others, .

9. The validity or otherwise of calling for "hartals" and the legal implications relating to the same was considered by a Full Bench of this Court in George Kurian Vs. State of Kerala, . The Full Bench took note of the Division Bench judgment of this Court in Kerala Vyapari Vyavasayi Ekopana Samithi v. State of Kerala, 2000 (2) KLT 430 and held that "forced hartal" is also illegal.

10. Petitioner is now projecting a cause with reference to the loss suffered by KSRTC on account of such "forced hartals". The Supreme Court in James Martin Vs. State of Kerala, while considering the case relating to destruction of property and loss of lives on account of the irresponsible and illegal acts of certain miscreants during "bandh", "hartal" or strike held that unless such acts are controlled with iron hands innocent citizens will suffer and they will be the victims of the high handed acts of some fanatics with queer notions of democracy and freedom of speech or association. Any soft or lenient approach for such offenders would be an affront to rule of law and challenge to public order and peace. In George Kurian's case (supra), this Court had taken note of the law as evolved with reference to "hartal" as well, and issued further directions in addition to the directions issued in the earlier case. Para 13 of the judgment is relevant which reads as under:

"13. Already forced hartals and general strikes were declared to be illegal and unconstitutional by the Division Bench and approved by the Apex Court and they are equated to bandh and bandh like situations. But whatever name it is called, whether general strike, hartal or any other name, nobody can create a bandh like situation or obstruct the fundamental rights of others. The directions issued by the Division Bench and Full Bench as approved by the Supreme Court shall be strictly adhered to. Apart from the directions issued by the Full Bench in Bharath Kumar's case and Division Bench quoted in para 9 of this judgment as modified by the Hon'ble Apex Court, we issue the following directions also:

(1) Whenever a hartal or a general strike is called, the Government should take adequate measures to see that normal life of the citizens is not paralysed. That is to be done not by declaring holidays or postponing examinations; but, by giving effective protection to those who are not participating in such hartals or strikes. Government should be able to deal with the situation with strong hands. Considering the past experience, if the Government is feeling that they are unable to give adequate protection, it should request the Centre for deputing breakdown and violation of fundamental rights of the citizens;

(2) The District Administration should be given sufficient direction to avail paramilitary force as provided under Chapter X of the Code of Criminal Procedure to maintain public services if law and order problem arises during the hartal or general strike by unlawful assembly of hartal or strike supporters;

(3) In cases of damage to public property, action should be taken to recover the damages from the persons who actually cause damages and also from the political parties, organizers and persons who give actual call for such hartal or general strikes. In view of the happenings in the past, they cannot say that they did not visualize such a situation which was created by anti social elements and directions issued in this regard in Para. 18 of Bharat Kumar's case which is affirmed by the Supreme Court shall be followed strictly and if no proper action is taken, it should be realized from the defaulting officers and stern action should be taken against such officers;

(4) Effective action should be taken under the Prevention of Damages to Public Property Act, 1984 and circular dated 17/12/2003 (produced as Ext. R1(d) in W.P. (C) No. 20078 of 2003) shall be implemented strictly;

(5) Those who call for hartals or strikes by whatever reason should make it clear in their call that nobody will be compelled to participate in the hartals or strikes, that traffic will not be obstructed and those who are willing can go for work and that fundamental rights of others to move about will not be affected. They should also instruct their supporters to see that no coercion or force is used for compelling others to participate in the strike or hartal;

(6) With regard to the injuries and damages caused to the private persons and their properties, Government should adequately compensate them immediately as Government has failed to fulfill its constitutional obligation to protect lives and properties of the citizens and the Government should take steps to recover the same from the persons who caused such damages or injuries and also from the persons and political parties or organizations who called for such hartals or general strikes. Criminal cases also should be taken against the offenders as well as the abettors to the offence. Such criminal cases registered should be pursued with enthusiasm and it should not be withdrawn merely on political pressure and investigation should be conducted fairly not with a purpose of filing a subsequent refer report as undetected;

(7) Government should see that an atmosphere is created so that citizens can

move about on the roads freely without fear and vehicular traffic is not obstructed and public transport can ply without any hindrance;

(8) Damages caused to the public or private properties etc. and recovery steps initiated should be published by the Government. Circular dated 17/12/2003 issued by the Government regarding recovery of damages should be implemented fully;

(9) Government should also take appropriate action against the District Administration and Police authorities if effective steps are not taken by them against the persons who use force or who are trying to impose their will on others to deprive the fundamental rights of majority of the citizens in the guise of hartals and general strikes."

11. Having regard to the law on this point, there cannot be any doubt that any person suffering a loss on account of an illegal act is liable to be compensated for the loss suffered on account of such action or inaction. If KSRTC is of the view that they have suffered loss on account of any organisation or political party calling for "hartals", it shall always be open for them to claim such damages by way of compensation through an appropriate procedure known to law. In fact, the Government had also issued appropriate instructions requiring the Government controlled Corporations and the Unit Heads of Government Departments to assess loss and claim damages. Unless such action is initiated by persons who had suffered damages, it may not be possible for this Court to direct payment of compensation by the Government. Of course, if KSRTC is of the view that despite their willingness to operate services during "hartal" days, there is failure on the part of the State Machinery to provide police protection for operating their services, an action will lie at the instance of KSRTC. But, having regard to the fact that KSRTC has not moved its little finger to claim any compensation from the Government or from any other person involved in calling "hartal" and holding the same, it may not be possible for this Court in exercise of the jurisdiction under Article 226 to direct the Government to pay compensation to KSRTC.

12. Calling for "hartals" for any reason has become a normal practice in the State. Already the Supreme Court as well as this Court have laid down the law on this point. "Forced hartal" is illegal. But, if the public at large keep away from carrying on their normal day to day activities by attending their School, College, Office, business premises, trading activities etc., there is no reason why KSRTC should operate all their schedules when commuters are very less. The question is whether the public are willing to come forward to claim compensation for the loss suffered by them. Unless such action is initiated before a court of law and the damages is assessed and decreed, it may not be possible for any Court to direct payment of compensation to an aggrieved person. It might also be true that, taking into account the might of the organisation that calls for such hartals, the public at large may not be in a position to initiate appropriate action against the organisation calling and holding such "hartals". It is therefore necessary that the

Government should step in and provide a simple and easy method to any person including statutory Corporations like KSRTC or a private individual to claim compensation for any loss they may suffer on account of such "forced hartals". Appropriate legislation should be enacted granting suo motu powers to a competent authority to call for claims, assessment of compensation, recovery etc. Unless such measures are taken, the menace of "forced hartals" cannot be curbed.

13. It is relevant to note that despite issuance of the Government order dated 17/12/2003, no action has been initiated by KSRTC for recovering their loss by way of property damage. Such inaction on the part of the KSRTC has apparently resulted in the present public interest litigation.

14. Therefore, though we are unable to grant any relief in this public interest litigation, we direct the 1st respondent to ensure that the Government order dated 17/12/2003 is strictly complied with by all Government and Government controlled Departments/Corporations.

This writ petition is disposed of as above.