
(2016) 12 KL CK 0058
In the High Court Of Kerala
Case No : WP(C). No. 24706 of 2016 (K)

Pynadath Granites Pvt. Ltd

APPELLANT

Vs

K.S. Joy

RESPONDENT

Date of Decision : 19-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 KerLJ 443

Hon'ble Judges : Mr. K.T. Sankaran and Mr. A.M. Babu, JJ.

Bench : Division Bench

Advocate : Sri. P.M. Ziraj, Advocate, for the Petitioner; Sri. G. Sreekumar (Chelur), Advocate, for the Respondent Nos. 1 and 8; Sri. C.S. Ajith Prakash, SS, KhWWB, for the Respondent No. 13; Sri. C.P. Sudhakara Prasad, Advocate, for the Respondent Nos. 9 and 12; Sr

Final Decision : Allowed

Judgement

K.T. Sankaran, J.—The question of general importance arising in this Writ Petition is how to curb the unlawful activity of obstruction of loading and unloading activities in various commercial and industrial establishments in the State of Kerala on account of non payment of "nokkukooli" claimed by the headload workers. It is a matter of common knowledge that "nokkukooli" is in prevalence in the State of Kerala. It is also a matter of experience in the High Court that hundreds of Writ Petitions are being filed every year complaining of obstruction to loading and unloading activities as well as manhandling of employers on the ground that the employers were not willing to pay "nokkukooli".

2. In Jayaprakash v. Government of Kerala (2007(1) KLT 343), a Division Bench of this Court had occasion to consider the menace of "nokkukooli" and held thus :

"5.It is now common knowledge that some unions with muscle power demands ""nokkukooli"" (wages for watching the loading and unloading). These are all practices which would lead to anarchy and unrest in trades and industries. People have even begun to regard headload workers with

fear because of the physical threat posed by them when such illegal demands are not acceded to by the employers and the public. This attitude of "might is right" is what is reflected in these so called conventions or practices initiated and regularised with the help of labour officers who themselves may be obeying orders from political power centres..... The authorities under the Act, Rules and Scheme cannot recognise any sort of work other than what has been contemplated under the Act, Rules and Scheme in the name of some convention or practise existing in a particular area. We are also inclined to hold that such compulsory extraction of wages for such work not contemplated under the Act, Rules and Scheme would even amount to violation of the fundamental rights of the employers, besides affecting the right to work of the regular workers of the employers.

6.....Therefore, we feel that it is high time that the authorities put an end to such practices which is beyond the scope of the Act, Rules and the Scheme for the welfare of the State itself."

3. The judgment in Jayaprakash v. Government of Kerala (2007(1) KLT 343) was passed on 1st December, 2006. It was directed in the judgment that it shall be applicable not only inter-partes but also to all cases before the authorities under the Headload Workers Act, Rules and Scheme which may arise as a general law on the subject and such authorities shall ensure that law as declared in the said decision is promptly applied by such authorities strictly in letter and spirit. However, by the Kerala Headload Workers (Amendment) Act, 2008 (Act 27 of 2008) the Kerala Loading and Unloading (Regulation of Wages and Restriction of unlawful Practices) Act, 2002 (Act 10 of 2002) (hereinafter referred to as "the Unlawful Practices Act") was repealed, which came into force on 6th August, 2008. It is true that in the judgment in Jayaprakash v. Government of Kerala (2007(1) KLT 343) it was not noticed that the Unlawful Practices Act was in existence. Still, in view of the positive directions in the judgment in Jayaprakash's case, one would expect a rigorous law to be in existence to curb the menace of "nokkukooli" which is certainly an unlawful practise which came within the purview of the Unlawful Practices Act. Curiously enough, what came after the decision in Jayaprakash v. Government of Kerala (2007(1) KLT 343) was the repeal of the Unlawful Practices Act, 2002 by the Kerala Headload Workers (Amendment) Act, 2008 (Act 27 of 2008). Later in Paulson Zacharia v. Commissioner of Police (2014 (4) KLT 601) another Division Bench held that the claim for "nokkukooli" was an affront to the Constitution of India by an unauthorised and illegal extraction of money by creating a state of threat and deprivation of property. It was also held that the claim of "nokkukooli" would amount to offences punishable in law and they were anti-social activities.

4. In the present case, by an organised activity of several headload workers belonging to different trade unions, the loading and unloading activities in a quarry had to be stopped since the owner of the quarry refused to pay "nokkukooli". It is interesting to note that the quarry is situated within an area

where the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 (hereinafter referred to as "the Scheme") is not implemented. It is well settled that in an area not covered by the Scheme the employer is not required to employ headload workers of trade unions and the employer is entitled to employ workers of his choice for carrying out loading and unloading operations. In the present case, the loading and unloading operations are being done by mechanical devices. It is well settled that the headload workers registered under the Kerala Headload Workers Act are not entitled to claim employment if the loading and unloading work is carried out using mechanical devices.

5. In *Timber Merchant Association, Pala and others v. Superintendent of Police, Kottayam and others* (2016 (1) KHC 841) a Division Bench has held that the headload workers cannot make any demand that they alone should be employed for loading and unloading work when they are not registered under the Headload Workers Rules. It is also held that when loading and unloading activities are carried out by mechanical devices, the headload workers have no right to demand "nokkukooli".

6. Let us come to the facts of the case. Pynadath Granites Pvt. Ltd., Kuttichira in Chalakkudy Taluk runs a granite building stone quarry. Shibu P. John is the Managing Director of the Company. It is stated in the Writ Petition that the petitioner has obtained all necessary environmental clearance certificate, quarrying permit, explosive license, consent to operate etc. and these averments are not disputed by any of the respondents. The petitioner states that works in the petitioner's quarry are done with the help of mechanical devices since it is impossible and non-profitable to use man power or manual work. Respondents 1 to 8 are the members and leaders of the trade unions in the locality. They are not registered workers under the Kerala Headload Workers Act. They claimed "nokkukooli" for doing no work, but for allowing the petitioner to undertake the work of loading and unloading using mechanical devices. The petitioner succumbed to the pressure of the party respondents and their henchmen and agreed to pay a sum of Rs. 400/- towards "nokkukooli" for each lorry load which was being loaded with mechanical devices. Later, the workers demanded enhancement of "nokkukooli" to Rs. 500/-. Exhibits P6 and P7 are the letters issued by two trade unions demanding hike in the "nokkukooli". It was also threatened in Exhibits P6 and P7 that if the petitioner was not prepared to pay "nokkukooli" at the enhanced rate, he will not be allowed to load the goods using mechanical devices. Pursuant to the threat the quarry had to be closed down for some time. A mediation followed at the instance of leaders of political parties in the area. The petitioner agreed to make enhanced payment of "nokkukooli" and Exhibit P8 letter was issued by him to the 9th respondent. The petitioner relies on Exhibits P11 to P16 receipts issued by the members of the INTUC and the BMS trade unions for having received "nokkukooli" of Rs. 15,700/-, Rs. 26,300/-, Rs. 25,300/-, Rs. 5,300/-, Rs. 17,900/- and Rs. 21,200/- respectively to show that "nokkukooli" was demanded by the headload workers and it was paid. It is

alleged that due to the obstruction and threat caused by the headload workers, the petitioner had to close down the quarry on 16.7.2016. Though petitions were filed before the police, evidenced by Exhibits P18 and P20 to the Sub Inspector of Police, Vellikulangara Police Station, no protection was afforded to the petitioner. The petitioner also relies on Exhibit P17 series photographs taken with the help of close circuit television on 16.1.2016 to show that the headload workers created a law and order issue in the area. It is stated that from the photographs it can be seen that the headload workers used weapons for the purpose of obstructing the vehicles and causing damage to the same.

7. The petitioner prays for the issuance of a direction to respondents 9 to 11 to afford proper and adequate police protection to the life and property of the petitioner, his employees, vehicles and machineries engaged in operating quarry from the threat of respondents 1 to 8 and their henchmen. There is also a prayer to declare that respondents 1 to 8 and their henchmen have no right or authority to demand "nokkukooli" for loading and unloading work carried out by the petitioner in the quarry with the help of mechanical devices. There is yet another prayer to take proper and adequate preventive action against respondents 1 to 8 and their henchmen from causing any untoward incident against the petitioner, his employees, vehicles and machineries.

8. Respondents 2, 11, and 13 filed separate counter statements. In the counter affidavit filed by respondent No.2 it is stated that no "nokkukooli" was claimed by the party respondents. No amount was paid by the petitioner as "nokkukooli". Wages were paid only for the work done. Exhibits P11 to P16 were obtained from uneducated workers and they were made to sign in blank receipts. In the statement filed by the 11th respondent (Inspector of Police, Kodakara), it is stated that the quarry is functioning for the last 26 years and the quarry is being operated with all requisite licence and permits issued by the authorities concerned. Approximately 100 lorry loads of granite stones are being excavated and removed from the quarry per day. Initially, granite stones were loaded into tipper lorries utilising the service of the headload workers. There are several quarries in the area and about 250 headload workers are engaged in various quarries. The petitioner purchased Hitachi and JCB machines to load granite stones. Yet the petitioner was ready to give Rs. 400/- per load as the coolie to headload workers in lieu of their labour loss. When increase in "nokkukooli" was claimed, the petitioner objected and he was not amenable to heed to the demand of the workers. The headload workers obstructed the functioning of the quarry and also threatened the petitioner of dire consequences if their demand was not met. Though the petitioner filed a petition, he intimated the Sub Inspector of Police that no case was to be registered and that only an amicable settlement was needed. It is stated that the quarry has been closed and it has not resumed functioning. Labour cards were not issued to the workers though they were being engaged in loading work for the last several years. It is made clear in the statement filed by the 11th respondent that "there is no objection from the police point of view in permitting the petitioner for mechanised loading of granite stone

excavated in the petitioner's quarry. Police is ready to extend protection to the petitioner as and when required or as ordered by the Hon'ble Court." In the counter statement filed by the counsel for respondent No.13 (Kerala State Headload Workers Welfare Board), it is stated thus :

"It is submitted that the area of Pulinkara Desom in Kodassery Panchayath in Kuttichira Village, Chalakkudy Taluk, Thrissur District where the petitioner's quarry is located is not a scheme covered area under the Kerala Headload Workers "Scheme". Not only that the Headload Workers Board has not received any complaint in this regard either from the petitioner or from respondents 1 to 8 so far. In the absence of the notification implementing the Scheme under that area the Headload Workers Welfare Board has no regulatory control over the above respondents."

9. From the pleadings it is clear that the area where the quarry of the petitioner is working is not an area covered by the Scheme. It is also clear that respondents 1 to 8 are not registered headload workers having identity cards. The documents produced by the petitioner as well as the statement made by the 11th respondent would make it clear that the party respondents demanded "nokkukooli" and the petitioner was paying "nokkukooli" to them. It is also clear that they demanded enhancement of "nokkukooli" and the petitioner was not willing to pay the enhanced rate of Nookukooli. In these circumstances, there is no doubt that the petitioner is entitled to the reliefs prayed for in the Writ Petition.

10. We do not stop with the granting of reliefs to the petitioner. We think it fit in the general public interest to mention about the illegality in the matter of claiming "nokkukooli" and the ways and means to be adopted to deal with the situation.

11. There is no doubt that claiming "nokkukooli" is illegal. The Constitution and the laws in force in the country do not permit a person to claim wages for no work done by him. The laws do not permit obstruction of work in the industrial and commercial establishments on the ground that "nokkukooli" was not paid to the headload workers who did not do any service to the employer. Then how such a practise gained momentum in the State of Kerala? A practise of claiming "nokkukooli", in whatever name you may call it, is not reported from any other State in India or from any other country in the world. This is a system available only in the State of Kerala. Should we allow this state of affairs to continue in our State ? Or should we not think of prohibiting such claims and effectively curbing the practise of claiming "nokkukooli" in the State of Kerala ? It is for the people to decide through their representatives. The desire of the people is reflected in the deeds of their elected representatives. Those elected representatives once decided to make a law to curb the unlawful practices by enacting the Kerala Loading and Unloading (Regulation of Wages and Restriction of Unlawful Practices) Act, 2002 (Act 10 of 2002). The statement of objects and reasons of Act 10 of 2002 stated thus :

"The Kerala Headload Workers Act, 1978 was aimed at creating an administrative machinery to regulate the employment of headload workers, a dispute settling mechanism and a welfare scheme for these workers. The said Act has been in existence for two decades and is time proven. Over a period of time because of lack of regulation certain undesirable practices have arisen in the loading and unloading sector. Intention of the proposed legislation is to curb such practices.

2. Accordingly, the basic objective of this legislation is to lay down the type of activities, the eligibility of the worker, the rights of employers, wages, penalties and procedure for initiating criminal prosecution. It prohibits extraordinary, intimidatory or other unlawful practices connected with loading and unloading and transportation of goods and articles both in domestic and non-domestic sectors. Criminal prosecution is only one of the features of this legislation and is not the sole purpose of this Act. The provisions of this legislation are such that, it is to be expected that the enforcement of this legislation itself would bring to an end, the undesirable practices and occasions for invoking the provisions of criminal penalties and procedure would be seldom."

12. The Unlawful Practices Act defined "unlawful practices" as any of the practices set out in the Schedule to the Act. Item 4 in the Schedule was "demanding, claiming or receiving any amount without executing any work or for the work done by others". This is what is exactly called "nokkukooli".

13. Section 6 of the Unlawful Practices Act provided that no worker shall individually or jointly commit any unlawful practices in connection with or relating to or ancillary to the purposes included in the Act. The term "worker" was also defined in Section 2(k) of the Act, thus:

2(k) : "Worker" means any person either engaged directly or otherwise offering his services for the purposes of doing any loading and unloading work in connection with or relating to any of the domestic or non-domestic purposes under this Act including a member of trade union, but does not include the worker or employee covered by the Factories Act, 1948 or the Plantations Labour Act, 1951 or the Kerala Shops and Commercial Establishments Act, 1960."

14. Section 7 of the Act provided that no worker shall make any unauthorized entry into the property of an employer or other person and create any obstruction or hindrance to the work or activity or process to be carried out or commit any mischief or destruction or damage to the land and property of the employer or other person whether or not such act constituted an offence under any other law for the time being in force. The Unlawful Practices Act provided various measures for curbing unlawful practices. The Act provided for penalty of imprisonment for various illegal activities. Section 16 provided for disqualification from work of a worker who had been convicted by a court of law for an offence under the Act. Quite unfortunately the Unlawful Practices Act was repealed by Act 27 of 2008.

15. Looking at the angle of morality let us consider whether claiming of

"nokkukooli" would be an act which would be contrary to the sanctions of religions.

16. The Holy Bible in the Chapter "Genesis" (3rd Chapter, sentence 19) states thus :

"19. With the sweat of your face you will eat your bread, until you return to ground, the ground from which you were taken, for dust you are and to dust you will return."

17. In Holy Quran, it is stated thus : Allah said:

"And eat up not one another's property unjustly, nor approach and influence the judge that you may knowingly eat up a part of the property of others sinfully" (Quran : Surah 2, Verse 188) Prophet Mohammed (Peace be upon him) said : "Best earning is what is earned by the labor of hand with sincerity" (Ahmed, Hadith No.83 93)

18. Thus it can be seen that the religions do not approve claiming of wages without doing any work. It is unheard of anywhere in the world. Still, why we Keralites suffer this trauma of making payment for no work done.

19. Let us also think in terms of industrial and commercial development of the State. Which investor will be attracted to Kerala who is not assured of a congenial atmosphere in the industrial and commercial sector? People are afraid of organised looters. They are afraid because even if they complain to the police, no action will be taken at all under the pretext that they cannot interfere in labour disputes. Where is the labour dispute when there is no labour at all?

20. Payment of "nokkukooli" by the industrialists and traders would ultimately affect the consumers. The traders or industrialists will not bear the burden of "nokkukooli". That burden would be passed on to the customer who is the ultimate consumer. The consumer has to pay huge amounts as the price of goods.

21. If we continue to tolerate this unlawful practise of "nokkukooli", we will be creating a group of organised law breakers who will ultimately transgress upon the fundamental rights of the law abiding citizens by passage of time. We will be creating a group of people who is interested in doing no work, but interested only in claiming wages. The prevalence of "nokkukooli" will create unrest in the society. It will create law and order problems in the State. The general public will have a feeling that there is nobody to speak for them and they have to bear every burden, whether legal or illegal.

22. We will have to find out methods to curb the illegal system of "nokkukooli". The State can do a lot in this regard. Individuals cannot do. The Government thought it fit to enact a law with the avowed object of curbing unlawful practices connected with loading and unloading and transportation of goods and articles and that was why the Kerala Loading and Unloading (Regulation of Wages and Restriction of Unlawful Practices) Act, 2002 was enacted. But that Act was

repealed later. We leave it to the Government to evolve appropriate methods to curb unlawful practices.

23. The State Police Chief issued Circular No.07/2012 dated 26.3.2012 by which instructions were issued to implement certain directions in the circular to curb "nokkukooli". For the sake of convenience, the circular as such is extracted below :

" No.S8/5044/2012

Police Headquarters, Kerala

Thiruvananthapuram

Dated 26.3.2012

Circular No.07/2012

Sub: Curbing of ""nokkukooli"" - instructions issued.

Ref: (1) Kerala Head Load Workers Act, 1978

(2) Judgment dated 1.12.2006 in W.A.No.3717 of 2001 of High Court of Kerala.

(3) Judgment dated 27.5.1993 in W.A.502/93 of High Court of Kerala.

(4) Judgment dated 29.9.1999 in O.P.No.23688/99 of High Court of Kerala.

""nokkukooli"" is conventionally understood as the amount demanded by any group of persons claiming to be headload worker/workers of an area when a person or organisation loads material on to or unloads from a vehicle with the help of friends or lawful helpers instead of employing those who stake the claim for such amount. The recipient of ""nokkukooli"" does not do any physical work either in loading or unloading and is not engaged by the owner or consigner or consignee of the load. When loading/unloading is done through machines like forklift and cranes, then also ""nokkukooli"" may be demanded by local head-load workers or unions without having any claim on the management.

(02) The demand for ""nokkukooli"" is based on an unlawful claim that some group has sole rights to receive payment for any sort of "loading and unloading" happening in their respective area, even if the group has not done any work. Often the perpetrators threaten and intimidate the owner/contractor for extorting these illegal charges. Such threatening and intimidation is illegal and infringes on constitutional rights of the citizens.

(03) Under the circumstances it is the bounden duty of the police to take all legally possible measures to curb the practise and to ensure peace and tranquility. The demand or claim of any amount without executing any work or for the work done or to be done by the others from any person by intentionally putting that person in fear of any injury to him or to any other person or damage to his goods or property; intimidating such person by threat or violence to

compel him to engage any person or group of persons; intentionally causing damages to the articles or vehicles or machinery or goods, used to carry out loading and unloading; indulging in acts of threat, violence, force, using abusive language; etc. are all illegal and strict legal action should be taken against the culprits immediately under the relevant section.

(04) Demand for ""nokkukooli"" accompanied by either an express or implied threat of criminal use of force or use of force or harm or injury to any person is a clear violation of several laws and attracts the following criminal provisions of law;

1. Section 383 IPC (Extortion)
2. Section 503 IPC (Criminal Intimidation)
3. Section 149 IPC (Unlawful assembly) & other relevant sections.

Where fear of harm caused or the threat of use of force is immediate, then the offence of Robbery can be invoked.

(05) On receipt of information/complaint of use or threat of force while demanding/extorting ""nokkukooli"" the SHO concerned should immediately reach the place of occurrence and give adequate police protection to the employer/owner/contractor. He shall register case under relevant sections of law against the perpetrator/perpetrators. The case shall be investigated and charge sheeted with top priority. The jurisdictional Labour Officer may be consulted with regard to legality as per laws relating to labour, before finalising the case. The details of any licensed head-load workers actually involved in such crimes shall be forwarded to the Labour Officer concerned.

(06) A monthly report on the reported cases on ""nokkukooli"" and progress in investigation shall be sent to the Sub-Divisional officer. The SDPO shall closely monitor the progress of investigation and furnish monthly report to the DPC. The DPC will report the statistics and action taken in the monthly Crime Review meetings. DPC will send a monthly report to PHQ in the name cover of IGP (HQrs.)

(07) It is also instructed that while implementing the above directions care should be taken that the legitimate rights of labours guaranteed by lawful labour contracts, agreement with management, rights of labour according to them under any law are not infringed.

State Police Chief"

24. We direct all the police officers in the State to strictly implement the directions in Circular No.07/2012 issued by the State Police Chief.

25. For the aforesaid reasons, the Writ Petition is allowed.