
(2012) 11 KL CK 0147

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22162 of 2012

Ranadevan @ Unni and Another

APPELLANT

Vs

A.K. Subramannyan and Others

RESPONDENT

Date of Decision : 27-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10(1)(c), 2(k), 25E(ii), 33, 33A

Citation : (2013) 137 FLR 389 : (2013) 1 KLJ 473 : (2013) 3 SCT 439

Hon'ble Judges : K.M. Joseph, J;K. Harilal, J

Bench : Division Bench

Advocate : S. Sreekumar, Nima Jacob and P. Samsudin, for the Appellant; P. Venugopal and C.R. Shyamkumar (GP), for the Respondent

Final Decision : Dismissed

Judgement

K. Harilal, J.—The case of the petitioner is as follows in brief:

The petitioner is the Manager of a rubber plantation in Amarambalam village in Nilambur Taluk. The plantation is having 3000 trees in 10 blocks and 5 persons are engaged to tap the trees. The provisions of Plantation Labour Act has no application to the estate. The first respondent had been working in the estate as rubber tapper from 2002 onwards. From 2/5/2010, he had been unauthorisedly absenting from work without availing leave or informing the management. So the management is compelled to engage badli worker. But tile first respondent and his henchmen prevented the badli worker from tapping rubber trees and hence the entire block could not be tapped from 2/5/2010. Since the management has not asked the first respondent to stop tapping or denied work in any manner, the abstention of the first respondent from work was a grave misconduct. Hence, he was given a charge memo and a domestic enquiry was contemplated. A full fledged domestic enquiry was conducted and found that delinquent is guilty of serious misconduct: Ext. P1 is the enquiry report. Pursuant to Ext. P1, the first respondent was dismissed from service with effect from 6/1/2012. Ext. P2 is the

dismissal memo.

While Domestic enquiry was going on, respondents 2 to 5 under the leadership of the 6th respondent started agitation and strike against the management demanding withdrawal of all actions against the first respondent, which was unacceptable with the management. From 22/12/2011 onwards, respondents 2 to 5 remained consciously absent from work in spite of the request of the management to do the work. Since the unauthorised abstention from work was illegal and amounts to misconduct, the management has given a charge sheet to respondents 2 to 5 and thereafter, conducted a full fledged enquiry. In the enquiry it was found that the strike carried on by the workers was illegal and amounts to misconduct. Ext. P3 is the enquiry report. Pursuant to Exts. P3, P4 dismissal memo was served dismissing respondents 2 to 5 from service with effect from 11/09/2012.

2. The grievance of the petitioner is that now the tapping season has begun and the petitioner wanted to cut the bushes and clear the estate for work on engaging other workers. On 17/9/2012 when the workers engaged by the petitioner were doing work, respondents 1, 4 and 5 at the instigation of the 6th respondent came to the estate and threatened the petitioner's workers with dire consequences. They openly declared that if dismissed workers are not reinstated and given work, they will not allow the estate to function. They threatened, that they will do away with the petitioner and workers, if the petitioner engages other workers. Thus feeling danger to the life of the petitioner and seeking freedom to engage workers of his own choice, the petitioner submitted Ext. P5 complaint before the 7th respondent. But despite the specific complaint and demand for police protection for life to the petitioner and for engaging workers-for tapping rubber trees, the 7th respondent has not taken any steps to remove the threat. As a consequence of Ext. P5 complaint, on 20/9/2012 respondents 1 to 6 again came to the estate and threatened the petitioner that they will damage the rubber trees and endanger the life of the petitioner, if they are not allowed to do the work. Feeling aggrieved by the inaction of the 7th respondent, this writ petition is filed on various grounds.

3. The 6th respondent filed a counter affidavit for and on behalf of other respondents also contending as follows:

4. The first respondent fell ill due to disc complaints. He was forced to undergo continuous treatment for his ailment for almost 10 months. His inability to do the work was informed the petitioner and applied for leave with medical certificate. During his absence, a badli worker was engaged in the place of the first respondent and he did not raise any objection to the same. After regaining his health, he resumed his duty. Though initially he was permitted to do the work, he was thrown out of the work after two days. The denial of employment was totally illegal and without following any norms or legal procedures. The first respondent has appeared for the enquiry along with his counsel. But it was revealed beyond any shadow of doubt that the enquiry was only a travesty to

satisfy the legal requirements of pre-designed termination of the first respondent. So the first respondent and his counsel were forced to abstain from the enquiry proceedings on account of the flagrant partiality.

5. In the meanwhile, on the complaint of the first respondent, the Deputy Labour Officer, Malappuram has initiated conciliation proceedings. But due to the adamant attitude of the petitioner, the conciliation did not materialise. Pursuant to the failure of the conciliation, the Deputy Labour Officer, Malappuram, has forwarded the dispute to the Labour Commissioner, Thiruvananthapuram for appropriate further action in the matter. As a part of collective bargaining, respondents 2 to 5 have issued strike notice to the management and pursuant to the same, they abstained from their work pressing for a time bound decision in the case of the first respondent. The petitioner has initiated disciplinary actions against respondents 2 to 5 also by issuing charge memo and conducting domestic enquiry against them also. During the pendency of the domestic enquiry against respondent 2 to 5, the matter was also placed before the Deputy Labour Officer, Malappuram for conciliation efforts. But the Management declined to participate in the conciliation meeting on the ground that the domestic enquiry is progressing against respondents 2 to 5. However, the Deputy Labour Officer, Malappuram has forwarded the said dispute also for the consideration of the Labour Commissioner for adjudication. Ext. R1(b) is the copy of the communication No. I.R. 5877/2012 dated 29/9/2012 issued by the Deputy Labour Officer, Malappuram.

6. The denial of employment to respondents 1 to 6 is an Industrial Disputes Act coming under the purview of Section 2(k) of the Industrial Disputes Act, 1947. Now the dispute has been referred to the Labour Court, Kozhikode for adjudication as provided u/s 10(1)(c) of the said Act. The precise question and reference is whether denial of employment to respondents is justifiable or not? Since the matter is under the consideration of the Labour Court, Kozhikode, the petitioner is not entitled to enforce termination order against respondents 1 to 5 and engaged some other workers in their place as such. The prayer in the writ petition is not allowable and unsustainable under law. The allegation that respondents prevented substitute workers and threatened them are false and hence denied. They have no intention to engage themselves in any illegal or unlawful activities. The attempt of the petitioner is to engage some of the workers in the place of respondents ignoring the legal right of respondents. It is impermissible and unjustified.

7. The petitioner filed a reply affidavit denying the contentions raised by respondents 1 to 6. The averments in paragraph 2 of the counter affidavit that the first respondent fell ill due to disc complaint is not known to the petitioner as the first respondent has never intimated neither the petitioner nor the management regarding his illness. He has never applied for leave with medical certificate. He has never approached the management for work and the management has not denied work to him or other workers. The management

had no intention to retrench the workers. The workers are not entitled to get compensation in the light of Section 25E(ii) and (iii) of the Industrial Disputes Act as they did not present for work in spite of the demand to attend the work. The first respondent purposefully stayed away from not participating in the enquiry and the allegations levelled against the enquiry proceedings are totally incorrect. Since the domestic enquiry was being proceeded with, the question of reinstating the workers did not arise till the outcome of the enquiry. Since the Labour authorities have initiated a dispute with regard to the issue, it is for respondents 1 to 6 await the outcome of the same and desist from taking law into their hands and refrain from obstructing the workers from doing their rubber tapping and other works in the estate. The averments that since the dispute is under the consideration of the Labour Court, the petitioner is not entitled to enforce the termination of respondents 1 to 5 and engage some other workers at their place are unsustainable.

8. We heard Sri S. Sreekumar, Senior counsel appearing for the petitioner and Sri P. Venugopal, the learned counsel for respondents 1 to 6. We heard the learned Government Pleader also.

9. Learned counsel for the petitioner advanced arguments highlighting the petitioner's legal right to get protection as prayed for in the writ petition. In addition to this, the petitioner submitted that due to the illegal activities of respondents 1 to 6, the estate is incurring a loss of Rs. 11,000/- per day. If the illegal activities of respondents are not curtailed, the petitioner and the estate will be seriously prejudiced. He submitted that in such situation, the 7th respondent is duty bound to provide police protection for the life and property of citizen and also to protect the right to work: The laches on the part of the 7th respondent in not even looking into the grievance of the petitioner under the guise of the labour dispute is nothing but a negation of justice. Per contra, the learned counsel for respondents 1 to 6 submitted that the dismissal is illegal and unsustainable under law and the writ petitioner is intended to engage other workers and to keep off respondents 1 to 6.

10. The question to be considered is whether the petitioner is entitled to get police protection invoking writ jurisdiction under Article 226 of the Constitution of India?

11. Admittedly respondents 2 to 6 had been working in estate as permanent workers and now they stand dismissed. Accordingly, the 1st respondent was unauthorisedly absent from 02/05/2010 and dismissed by Ext. P2 on 06.01.2012, pursuant to a full fledged enquiry. He was found guilty of serious misconduct by Ext. P1 domestic enquiry. Similarly respondents 2 to 5 in protest of the dismissal of 1st respondent, remained absent continuously from 22.12.2011 and dismissed from service pursuant to Ext. P3 enquiry report. The Enquiry Officer found that the strike carried on by respondents 2 to 5 was illegal, amounts to misconduct.

12. The counter affidavit filed by respondents reveal that, on the complaint regarding denial of employment, the Deputy Labour Officer, Malappuram has initiated conciliation proceedings. But due to the adamant stand of the petitioner, the efforts for settlement did not materialise. However, the District Labour Officer forwarded the dispute to the consideration of the Labour Commissioner, Thiruvananthapuram and pursuant to the same, Government of Kerala invoking powers u/s 10(1)(c) of the Industrial Disputes Act has referred the matter to the Labour Court, Kozhikode for adjudication as to whether denial of employment to party respondents is justifiable. Ext. R1 (b) shows that conciliation process started in the office of the District Labour Officer on 12.07.2012, but failed due to the absence of management of the estate.

13. It is pertinent to note that in the reply affidavit, the petitioner admitted averments as it regard to Exts. R1(a) and R1 (b) orders. Let us analyse the proceedings under Exts. R1(a) & R1(b). The conciliation proceedings started on 12.07.2012 and failure report was sent to the Labour Commissioner by letter dated 24.07.2012. In exercise of the power conferred by Section 10(1)(c) of the Industrial Disputes Act of 1947, the Government has referred the said industrial dispute for adjudication to the Labour Court on 05.09.2012. Admittedly, respondents 2 to 5 were dismissed from service on 11.09.2012.

14. According to Section 33 of the Industrial Disputes Act during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceedings before an Arbitrator or Labour Court or Tribunal or National Tribunal, in respect of any industrial dispute, no employer shall for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save as the express permission in writing of the authority before which the proceedings is pending.

15. In the instant case admittedly, the workers stand dismissed. Whether the conciliation proceedings were pending before the Conciliation Officer or a board or any proceedings were pending before the authorities specified u/s 33 of the Industrial Disputes Act at the time when respondents 2 to 5 have been dismissed? Certainly, if we find that the dismissal of respondents 2 to 5 is per se illegal, this Court will not exercise its discretionary jurisdiction to grant police protection to do the works employing other workers.

16. Let us consider Exts. R1(a) and R1(b), the documents which are produced by the respondents to establish their case that the dismissal is illegal. Ext. R1(a) exclusively relates to the dismissal of the first respondent only. It shows that pursuant to letter dated 24/7/2012 from the Labour Commissioner by order dated 5/9/2012, Government referred the Industrial dispute to Labour Court, Kozhikode for adjudication. But admittedly, the first respondent was dismissed on 6/1/2012, pursuant to domestic enquiry. There is no material on record before us to show that on 6/1/2012, the dispute with respect to the first respondent was pending before any of the forums specified u/s 33 of the Industrial Disputes Act. It is needless to say that there is no material to show that on 6/1/2012, the

dispute with respect to the first respondent has reached before the Conciliation Officer for conciliation.

17. Let us come to Ext. R2(b) which relates to respondents 2 to 5. Ext. R2(b) is art intimation obtained by invoking Right to Information Act. It shows that a conciliation meeting was held on 12/7/2012 in the office of District Labour Officer and has failed due to the absence of the petitioner. It further shows that pursuant to failure of conciliation, the failure report was sent to Labour Commissioner for referring the dispute to the Labour; Court. Admittedly, respondents 2 to 5 were dismissed with effect from 11/9/2012. The question is whether any proceedings were pending before any of the forums specified u/s 33 of the Industrial Disputes Act as on 11/9/2012. Ext. R1(b) does not say that the dispute with respect to respondents 2 to 5 has been referred to Tribunal and pending. No material has been produced to show that the dispute was pending before any of the forums specified u/s 33 as on 11/9/2012. Therefore, in view of the records produced by both parties before us, we are unable to arrive on a conclusion that the dismissal of respondents 2 to 5 are illegal due to the violation of Section 33 of the. Industrial Disputes Act.

18. The counsel for the party respondents further argued that the proceedings shall be deemed to be pending from the date of commencement of conciliation proceedings before the District Labour officer till the termination of the adjudication of the dispute by the Labour Court. We are unable to accept this argument also, when Section 33 specified the conciliation proceedings and adjudication proceedings separately and distinctly with reference to specified forums. The Apex court" B.P.L. Ltd. and Others Vs. R. Sudhakar and Others, held that:

The provisions of Section 33 of the Act are attracted only when an Industrial dispute is pending for adjudication and not merely when an order of reference is made by the Government. In the present case, proceedings were not pending before the Tribunal because of the stay of the order of reference itself. Both sub-section (1) and subsection (2) of Section 33 employ the language "during the pendency of any proceeding" which clearly conveys that obligation on the part of the employer under the said section of seeking "express permission" for the purpose of sub-section (1) or "approval" for the purpose of sub-section (2) arises only when there are proceedings pending on industrial dispute before the Tribunal or other specified statutory adjudicatory authorities under the Act.

The Apex Court further held that:

When the order of reference itself was stayed the Tribunal did not have the " jurisdiction to pass any further order as the Tribunal gets jurisdiction only on reference made by the Government. Dispute could come up for adjudication by the Tribunal pursuant to the order of reference only. It is not the question as to whether the order of reference is wiped out but the question is what is the effect of the staying of the operation of order of reference itself. Once the operation of

the order of reference is stayed, there is no question of dispute pending before the Tribunal so long as the said order remains in operation because reference precedes dispute.

19. In view of the above decision, by no stretch of imagination the expression "during the pendency of any proceedings" can be interpreted to mean a continuous process or proceeding without any interruption starting from the date of filing of complaint before the Labour Officer till the date of pronouncement of the verdict of adjudication by the Industrial Tribunal. Had it been so as argued by the learned counsel for the party respondents, Parliament would not have indicated and specified separately and distinctly the forums in which the proceedings must be pending to invoke power u/s 33 of the Industrial Disputes Act. No authority has been cited before us to take a contrary view. That apart, the party respondents have not filed any complaint u/s 33A complaining as their dismissal, alleging pendency of proceedings during the time of dismissal. Admittedly, no notice has been issued by the Tribunal calling upon the parties to appear before the Tribunal so far. Therefore, at present in the absence of materials on record, we are unable to accept the argument that the dismissal of respondents 2 to 5 is illegal due to the pendency of conciliation or adjudication proceedings at the time of dismissal and thereby the petitioner has no right to employ other workers in this writ petition.

20. Now police protection is sought for, carrying out rubber tapping works. Whatever be the right, respondents 1 to 5 have no right to obstruct the petitioner from enjoying his property especially when their claim is referred to the statutory authority under law for adjudication. It is for respondents 1 to 6 await the out come of the same and desist from taking law into their hands and refrain from obstructing the petitioner's employees from doing their rubber tapping works. Consequently in the above circumstances, we are inclined to grant police protection as prayed for. In the result, the 7th and 8th respondents are directed to provide adequate and effective police protection to the life of the petitioner and labourers for doing rubber tapping in the Brindavan Estate managed by the petitioner which is comprised in Amarambalam village in Nilambur Taluk without any obstruction from respondents 1 to 6 and their men. We make it clear that this judgment will not stand in the way of either having their claims, if any, u/s 33A of the Industrial Disputes Act being adjudicated before the competent forum, or the reference under Ext. R1(a) by the Labour Court Kozhikode and any further reference, if any, made for adjudication, independently untrammelled by this judgment.