

(1996) 12 KL CK 0009
In the High Court Of Kerala
Case No : W.A. No. 1007 of 1996

Sathyan, S.

APPELLANT

Vs

Sunila Sudhakaran and Others

RESPONDENT

Date of Decision : 18-12-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Kerala Headload Workers Act, 1978 — Section 21, 21(4), 21(5), 21(6), 21(7)

Citation : (1996) 12 KL CK 0009

Hon'ble Judges : U.P. Singh, C.J.; S. Sankarasubban, J

Bench : Division Bench

Advocate : Vadakara V.V.N. Menon, for the Appellant; R. Anil Kumar, for 1st Respondent and Government Pleader for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

U.P. Singh, C. J.

1. Heard the Counsel for the Appellant, Mr. R. Anil Kumar for the first Respondent and the Government Pleader for Respondents 2 and 3. By the impugned judgment, the learned Single Judge was of the view that the dispute under the Kerala Head load Workers Act between the Petitioner and the third Respondent, being the Union, shall be settled by labour authorities concerned and the parties can approach the labour authorities.

2. The third Respondent, Secretary, INTUC Union, Varkala, is the Appellant and the Petitioner is the first Respondent. The Original Petition was filed by the first Respondent, who is the proprietrix of the firm "Kottakkal Arya Vaidya Sala" at Maidanam, Varkala. The first Respondent is mainly distributing Ayurvedic medicines produced by the said Arya Vaidya Sala. The medicines to the firm are delivered through lorry services. The medicines are stored in the shop room surrounded by separate compound walls and the lorry can get inside the compound wall to deliver the medicines. Till recently, close relatives and two

employees of the first Respondent were delivering the goods from the lorry service to the shop room. But, on 20th December 1995, when the lorry carrying medicines arrived from the Head Office, the Appellant, viz. the Union, objected the employees and the first Respondent from delivering the medicines from the lorry and they demanded a huge amount by way of delivery charge. When the first Respondent and other employees resisted their attempt to deliver the goods, the first Respondent and her employees were threatened. The first Respondent was forced to pay heavy amount by way of delivery charge as demanded by the Appellant union, as such the first Respondent was not in a position to conduct her business smoothly due to the interference and threatening given by the Appellant Union. On 15th January 1996, when the lorry carrying medicines arrived in front of the shop then the Appellant Union interfered and objected in delivering the medicines by the employees of the first Respondent. Nearly 50 members of the said Union assembled there, calling filthy words to the first Respondent and her employees. They publicly declared that they would not permit anybody other than the Appellant Union members to deliver the medicines. Thus, the lorry returned without delivering the medicines. Certain damages were also caused to the medicines due to the interference of the Appellant Union. The first Respondent could not run the business profitably by giving heavy delivery charges to the Appellant Union. It was alleged that the provisions of the Head load Workers' Act was not applicable in this transaction as the lorry could be brought inside the compound walls of the shop. Apart from that it requires certain experience and care in delivering the goods. The first Respondent therefore approached this Court by filing the Writ Petition for a writ of mandamus and direction to the Police authorities to afford adequate police protection permitting the first Respondent's employees to deliver the medicines as and when arrived at the business premises.

3. The Appellant is the General Secretary of the Varkala Maithanam Unit of INTUC Union in which 19 workers are doing loading and unloading works in a number of institutions and business centers at Varkala. Among such dozens of business centres for Kottakkal Arya Vaidyasala, Maidanam, Varkala also the aforesaid workers are loading and unloading Ayurveda medicines for the last more than 15 years. The said Vaidyasala was running in two different buildings at Varkala. The present building in which the same is housed belonged to the father of the first Respondent. It was claimed by the Appellant that even during 1995, the bonus was paid to the Appellant Union by the first Respondent in the name of Kottakkal Arya Vaidyasala. The medicines which were coming from the head office of Kottakkal Arya Vaidyasala in lorry even before and after filing of the Writ Petition were delivered and fully unloaded and stored by the members of the Appellant Union and the allegation that the same was used to be done by the staff members and the relatives of the first Respondent were utterly false. In fact, the lorry could not get inside the compound wall to deliver the medicines. The lorry could only be stationed at Varkala Railway Station road and the medicines were to be taken from there to the store room by headload. The goods

were always unloaded at night. It is not the full lorry load, but a lorry load will be coming with medicine cases for so many branches and the maximum of 40 to 50 cases will be unloaded to the Maidanam Vaidyasala and the lorry will be moving from there with the remaining load of medicines to various other similar Vaidyasalas. At no point of time, the workers raised any objection with regard to the wages which was modified always by slight increment by the management of the Vaidyasala. Initially, it was 25 paise per case before 15 years which was slowly increased to 80 paise per case.

4. Considering the nature of disputes in the facts and circumstances of this case, we are of the view that such disputes are to be taken u/s 21 of the Kerala Headload Workers Act, which provides for settlement of such disputes by the Assistant Labour Officer who may hold conciliation conferences for the purpose of bringing about a settlement of the dispute and if such settlement is not arrived at, then to send a report of the dispute to the Conciliation Officer. The other provisions under the said Act are relating to the settlement of the disputes during the course of the conciliation proceedings. Sub-section (5) thereof provides that the decision of the Conciliation Officer under Sub-section (4) shall bind all the parties to the dispute, subject to the decision of the appellate authority under Sub-section (7). Sub-section (6) thereof provides that any aggrieved person, against the decision of the Conciliation Officer, may appeal to the appellate authority within the prescribed time. Section 34 of Chapter XI of the said Act creates a bar of jurisdiction of the Civil Courts. According to Section 4, the Government may, by notification in the Gazette, appoint an Officer of the Labour Department not below the rank of District Labour Officer to be appellate authority for the purpose of performing the functions of the appellate authority under the Act and shall appoint such officers for the areas specified therein. In accordance with Sub-section (7) of Section 21, on receipt of such appeal under Sub-section (6), the appellate authority shall make such inquiries after giving the parties opportunity of being heard, and decide the appeal within a period of two weeks from the date of receipt of the appeal.

5. After examining these various provisions of the Kerala Headload Workers Act, we are of the view that such disputes under the Kerala Headload Workers Act should not normally be entertained in a Writ Petition filed under Articles 226 and 227 of the Constitution of India. As seen above, a complete machinery has been provided for settling such disputes which will require the evidence to be filed by the parties and oral examination of witnesses may be necessary in order to find out the alleged obstruction put by such persons in lawful exercise of the right of the other party. From the facts of the case presented above, it is obvious that it was a dispute between the Appellant Union and its workers as against workers employed by the first Respondent. If such are the disputes relating to the unlawful activities of the Appellant Union and the other employees not belonging to their Union, we see no reason how such a dispute will be legitimately settled by Police interference. A Writ Petition under Article 226 cannot be entertained as a matter of course merely because a Police protection is asked for to settle such

a dispute.

6. This Court would not be justified in giving such a Police protection when it has no machinery to settle such a dispute arising between two labour unions or two sets of labourers or a dispute arising between the employer and its workmen who might not have been paid their legitimate wages. If by a writ of mandamus, such Police protection is given without there being any effective machinery in the hands of this Court to settle such a score between these parties, then it would result in causing injustice to the other who will have to succumb to the pressure of the Police without his legitimate right being settled under the Act. In such cases, even the first information reports are not lodged by those who suffer at the hands of the unlawful elements. If the first information reports would be lodged then the criminal action would be set into motion and the Police will have to proceed with the investigation. In case of their failure, the parties would go to the Court of the Magistrate of competent jurisdiction for appropriate action. In a case, if an injunction order is required, the parties would go to the civil Court of competent jurisdiction and get an appropriate order where parties concerned would prove their claim by leading such evidence as may be required in a given case. Besides all these measures, a complete remedy is provided and the machinery is set out in the Act itself to settle such disputes. Ignoring all these, the parties hasten to file such writ petitions for a writ of mandamus as a matter of course which, we find, is not a proper remedy when full and complete machinery has been set out in the Kerala Headload Workers Act itself.

The Writ Appeal is accordingly dismissed.