

(2005) 07 KL CK 0035

In the High Court Of Kerala

Case No : Writ Petition No's. 13846 and 14365 of 2005

Suresh Kumar

APPELLANT

Vs

Ranjan

RESPONDENT

Date of Decision : 04-07-2005

Acts Referred:

Kerala Motor Vehicles Rules, 1989 — Rule 194, 194(2)

Citation : (2005) 3 ACC 906 : (2005) 3 KLT 531

Hon'ble Judges : S. Siri Jagan, J;M. Ramachandran, J

Bench : Division Bench

Advocate : M.P. Madhavankutty, Tomy Sebastian and Santhan V. Nair, for the Appellant; D. Kishore, Liji J. Vadakedom and Augustine Joseph, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M. Ramachandran, J.—Taking notice of the common nature of the contentions that had been urged by the parties, the two Writ Petitions, as above, were heard together and could be disposed of by a common judgment, although facts which have been narrated in the petitions, are to be adverted to separately.

W.P.(C) No. 13846 of 2005

2. Petitioners are respectively the President and Secretary of an Association, functioning at Kottayam District, representing a class of persons known as Transporting Agents. Originally, there were five private respondents. 6th and 7th respondents respectively are the Superintendent of Police, Kottayam and the Circle Inspector of Police, West Police Station, Kottayam. Additional 8th respondent - Regional Transport Officer, Kottayam-- had been impleaded. An impleading petition as I.A.No. 7362 of 2005 had been filed by the Lorry Owners Federation, Kottayam, as they would have been affected by the orders passed, indirectly.

3. According to the petitioners, intervention of the Police was required for

facilitating the normal business that their members were carrying on, since the private respondents have been obstructing them incessantly. Such respondents claimed to be members of the Lorry Owners Association of the district. They were insisting that goods from various business establishments were to be loaded to lorries on the basis of a newly introduced turn system and business therefore should be processed through them alone. The petitioners, over a considerable period of time, were engaged in the business of "canvassing goods transport". They allege that while the work was independently being carried on, the said respondents were coming in between and insisted for a change of pattern. By muscle power, they were attempting to enforce a rule that without their consent no lorry was to be engaged by a private individual. It is alleged that there was use of force when lorries were booked by private parties by themselves. It is asserted that such a group had no right to impose their conditions as the petitioners were engaged in a lawful business. Any turn system should only be voluntary. Without authority of law, when such business was interrupted, according to them, the Police had a duty to come to their help. The helpless lorry transporters from outside States, who heavily depended on the petitioners for loads for their return trips were special targets, and reign of terror was being introduced. Though on a few occasions, crimes were registered, the police did not make their effective presence when occasion demanded.

4. A counter affidavit has been filed by the 4th and 5th respondents. According to them, the petitioners have no locus standi to be present in the industry, or even to file a Writ Petition. Under Rule 194(2)(a) of the Kerala Motor Vehicles Rules, no person shall act as an agent unless he holds a valid licence in Form "LAGT" granted by the licensing authority to carry on such business. According to the said respondents, petitioners were using muscle power and were demanding commission for every load from the lorry owners, even though they were unlicensed. A restrictive practice was thereby developed by them, namely that an under cutting of the rates were sought to be introduced in the industry. As an example, it was pointed out that when lorries came from out stations with loads to destinations in Kerala, although normally the industrial practice was to levy charges, taking into account the empty return trip, some drivers clandestinely canvassed business to pocket the benefit for themselves. Since load on such return trip was an extra income, they could give rebates and discounts, partnering with the petitioners, who in turn could gain commission from such out station lorries. They were looked after well by the benefitted consignors as well. According to the respondents, this at least on occasions were underhand dealings and one to be discouraged. As a matter of fact, the labour authorities had found the above as an unhealthy practice and had arranged for a conference to be held, but it is being circumvented by the Writ Petition. The petitioners were not to be recognised as agents, but were only functioning as self motivated intermediaries, and their plea ought not be countenanced. A turn system automatically ensured that there was assured engagement for lorries at least once in a while, since transporters for lack of opportunities, were placed in a difficult situation.

Underutilisation of its potential had been felt by one and all. Therefore, no reliefs were liable to be granted, so as to upset a system which had already set in.

5. The Lorry Owners Federation also had placed almost similar arguments, and had produced Annexure-A2, the terms and conditions of the "turn system". It was successfully implemented in certain other places; was introduced for the health of the industry, and it avoided exploitation. As there were no official fares fixed by the State Government, persons situated like the petitioners were canvassing the "return lorries" for carrying the load of consignors, who normally would have engaged Kerala vehicles for the transportation work. They were functioning like parasites, when they attracted the customers with a lure of lesser prices. They had nothing to lose, but only gains, but ruined the industry in the process. Such activity was directly affecting the truck operators and the workmen who depended on them. Therefore with the help of authorities, the turn system was introduced. There was no use of force or threat. By and far, the industry had accepted the practice.

6. In the statement of the Regional Transport Officer, it has been indicated that Rule 194 of the Kerala Motor Vehicles Rules did not envisage a licence to be possessed by persons situated like the petitioners. Rules were intended to lay guidelines for transporting operators alone. As far as the petitioners were concerned, there was no necessity for possession of a licence. They operated as meeting points between a transporter and consignor. The officer had not gone to any other details.

7. Even if it is attempted to show that the petitioners' conduct was not digestible to the lorry owners, and they termed it as unethical, the question is whether they are engaged in any illegal activities. The further issue is as to whether the business carried out by the petitioners could have been forcibly stopped by any private agency, on the plea that as a direct result of their presence, Truck operators were likely to suffer.

8. If the answer is in the affirmative alone, we find, the plea for police protection could have been turned down.

W.P.(C) No. 14365 of 2005:

9. The facts, as narrated in this Writ Petition, throw further light to the intricate business patterns in the industry of transporting. The first petitioner is an Association of Saw Mill Owners and rest of the petitioners are its members. Their units are situated in Kottayam district. Their business include purchase of raw materials, sawing of logs into planks, as per the specifications received by them, and sale. The products are used for making packing cases. Their consumers are mostly from outside Kerala, namely Karnataka, Maharashtra and Tamil Nadu. In case of requirement of transport facility, they get lorries arranged directly or through transporting contractors. Evidently, in most of the cases of requirement, they seek assistance of agents (who are the petitioners in the connected Writ Petition). Initially the Lorry Owners Association was making available transport

facilities on reasonable rates, but of late they were demanding lorry charges much higher than what was prevailing in the neighbouring localities. Unilaterally they were attempting to gain a bargaining power. Possible unilateral hikes in the rates were foreseeable and it would have come to operate as a strangle hold. Therefore, the petitioners were constrained to look for transporters from outside the district directly or through the help of agents, and also avail of services offered by interstate lorries. Vehicles from outside Kerala could have well catered their needs, of transport, from economical point. Payment of return fair as well always was a burden. But the Lorry Owners Association had come down heavily on them, and had even went to the extent of preventing engagement of lorries independently hired by them, on the plea that petitioners were obliged to fall in line with the turn system introduced. Lorries from their pool, as nominated by them, and at rates prescribed by them, alone could have been engaged for transportation. Effectively thereby petitioners' direction for engaging transporters of their choice was to be lost. As an entrepreneur, right for bargaining for competitive rates was fundamental and they did not want the protection of a big brother. They had been therefore requesting the police to intervene. Their delivery commitments were affected, especially because of forcible obstructions practised. Restrictions, were illegitimate, unauthorised and they had a right to opt for freedom of enterprise.

10. The Lorry Owners Federation is impleaded as respondents 13 and 14. The rest of the respondents are the officers of the Police Department. The first respondent is the State of Kerala. In short, the plea of petitioners is that they have a fundamental right to carry on the business without interference from outsiders. What is attempted to be enforced on them by the 13th respondent is a restrictive practice, detrimental to the interests of the petitioners, but only advantageous to the Lorry Owners. For the last about one month, there is constant harassment and obstruction and a few instances of assault was there and by the above practice their livelihood is threatened. Since the police had shown reluctance to interfere in the matter, it has been found necessary for them to seek for orders now, so that it may be possible for them to carry on business, in their discretion and on their terms without being dictated as to the manner in which they are to arrange their affairs.

11. A counter affidavit has been filed by the 13th respondent pointing out that the claim as presented in the Writ Petition was not maintainable. As lorry fares are not fixed, there was exploitation of the situation by a few persons, who had no stakes in the industry. So as to curb the sinister practice, on a pattern that was in existence in some other parts of the State, by mutual agreement as between the persons who had direct involvement in the industry, a scheme was being brought into operation at Kottayam also, and the alarm presented was out of place. The benefit was that everybody was getting work and there would not be any exploitation by middlemen, since the charges are also prefixed. So as to give a legal aura, intervention of the District Labour Officer has been requested for. They point out that the brokers were unlicensed and it would have been

therefore illegal to involve them or obtain their services. In other words, the submission made by the counsel is that a protective measure was being employed, which was least objectionable, nobody lost in the bargain except certain middlemen, who were making cash out of the prevailing situation, and the Writ Petition was motivated.

12. The Regional Transport Officer, in his statement dt. 6.6.2005, has practically reiterated the stand he had adopted in O.P.No. 13846 of 2005. LAGT licence was not expected to be possessed by the lorry brokers. They were applicable to persons who were engaged in the business of collecting, forwarding and distributing goods transported by goods carriage.

13. On a comparison of the respective versions, as gatherable from the two Writ Petitions, it could be possible to find out that the Lorry Owners Federation and Association have been primarily attempting to safeguard the interest of their community. Underutilisation of the available resources, according to them, have led them to conceive a method, and thereby the industrial units are not subjected to any disadvantage. The lorry owners and staff employed, according to them, are the principal players. They have evolved a code of conduct, whereby a vehicle can opt to get a business only in a turn system, so that at one point or other, everyone of the members get an opportunity of being engaged. The tariffs are fixed based on economic aspects, and in a most reasonable manner. Ultimately, therefore the consumer is the beneficiary and by removing the hassles of searching for a transporter, and bargaining with him, the system is streamlined and is orderly and transparent.

14. This stand of course is understandable, but the difficulty arises only when they insist that third parties are also to parade themselves on the lines suggested by them. It is not even claimed that the petitioners' views or that of any of the customers have been ascertained at any time before introducing such stipulations. The primarily offending situation appears to be that by this practice third party's rights for arrangement of work and their effective privilege to negotiate terms are totally taken away. This impact is real and the 13th respondent is oblivious about the reality. An agreed practice might be acceptable, but the principle always is that the restrictions imposed thereby could bind the members to the treaty alone. The lorry owners and persons supporting them have adorned on themselves the cloak of legislative and executive powers combined, but this cannot have any legal sanction. As suggested by the petitioners, respondents have usurped functions which are usually available only to a sovereign authority. It may not be possible to recognise any extra constitutional power centres, who might not be answerable to anyone.

15. The packing case manufacturers could be taken as a typical representative of a section of the society, and a representative of a common man. At most times, they are unorganised. They will have to depend on service providers, and in this case a transporter. The petitioners in W.P.(C) No. 13846 of 2005 constitute another well defined group, as they are agents, who could have acted as a link

between a transport operator and a customer. In a free society, a person has a right to negotiate on every one of his daily requirements. He can bargain for the quality of the product. In the present case, the petitioners have a right to satisfy himself about the vehicle, he can enquire about the credentials of the driver, and is entitled to satisfy himself of the service history of the transporter, and the like. A third party cannot impose himself or his nominee on him. The rates are also extremely relevant. A consignor engaged in a commercial venture can invite quotations, as the industry is profit oriented. But, we find that all these basic rights are attempted to be curbed without authority of law, by a power group.

16. Persons like the petitioners cannot be disabled by the conduct of the lorry owners, when they insist that transportation could be arranged only on rigid prescribed terms and rates, when their ultimate aim is for safeguarding their own business interest. The underutilisation of resources pleaded by them, in another form, is the anxiety of the consignor also. When persons in other districts or when vehicles coming from other States, after off loading, are prepared to take a load on lesser rates than that are quoted by the Lorry Owners Federation, the principal has a right to opt and choose. The lorry owners cannot impose their terms on the principal. There is always an economic factor in private enterprise. Normally, it may not be possible for any restriction to be introduced on the right of principal to adopt patterns, which are convenient and suitable to him. If we look at the issue from this angle, it could plainly be seen that the stand of the lorry owners is difficult to be appreciated.

17. The turn system or a scheme on such lines may operate to safeguard the interest of the lorry owners and persons, who might be attached to them. But third party rights have not been taken into account, if we critically examine the system suggested. On the other hand, the tenor is that they should streamline their operations in consonance with the pattern, which had been formulated for them and an outsider has no choice.

18. We are aware that when we uphold the rights of the petitioners, it is likely to create inconvenience to the lorry owners. But that is a risk attached to any industry and they have to think in-house remedy. What perturbs us is the attempt of organised sectors to make inroads into the rights of third parties. To insist that consignor or an agent should adopt a code of conduct, even if it hurts him so as to protect lorry owners' business interests, is too bitter a medicine, and tastes undemocratic. There is also no authority of law behind it.

17. We hold that the petitioners in both the Writ Petitions have right to get themselves engaged in the business and enter into contract for transportation of goods without hindrance or obstruction from the additional respondent in W.P.(C) No. 13846 of 2005 and respondents 13 and 14 in W.P.(C) No. 14365 of 2005. The turn system cannot bind a third party to the agreement. In case there is any obstruction forthcoming, the police should see to it that appropriate interference is made, so as to ward off such obstructions, as the circumstances may warrant.

The Writ Petitions stand allowed.