
(2014) 08 KL CK 0020
In the High Court Of Kerala
Case No : WP(C).No. 19836 of 2014 (D)

Vijayakumar

APPELLANT

Vs

Sub Inspector of Police

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Citation : (2014) 08 KL CK 0020

Hon'ble Judges : Ashok Bhushan, Acting C.J.; A.M. Shaffique, J

Bench : Division Bench

Advocate : Rajesh P. Nair, Advocate for the Appellant; Thomas Abraham, Merciamma Mathew, Aswin. P. John, T.S. Prasannakumar Advs., Sujith Mathew Jose, Government Pleader and C.S. Ajith Prakash, SC, Advocate for the Respondent

Judgement

A.M. Shaffique, J.—The petitioner has approached this Court seeking for a direction to respondents 1 and 2 to afford adequate and effective police protection to the life of the petitioner and his employees, who are doing the loading and unloading work of M/s. Karthika Traders.

2. The averments in the Writ Petition would disclose that the petitioner is running a hardware shop in the aforesaid name and style. He has his own permanent workers and respondents 4 to 7 unions are insisting that the loading and unloading work in the business premises of the petitioner should be carried on only by their members. That apart, they are demanding exorbitant charges for the said loading and unloading work. According to the petitioner, he has his own permanent workers and since the area in question is not an area covered by the scheme under the Headload Workers (Regulation of Employment and Welfare) Scheme, 1983, the petitioner is entitled to carry on the loading and unloading work by engaging his own workers or the members of respondent unions, which cannot be prevented by respondents 4 to 7 or their members. When such obstruction has been caused, the petitioner had approached the police, but no action is taken by the police, hence he has approached this Court.

3. Learned counsel for the third respondent would submit that though declaration has been published to notify the area in question as a scheme covered area, the same has not been implemented, which may take some time.

4. Counter affidavit is filed by respondents 4 to 7. Learned counsel for respondents 4 to 7 submits that members of respondents 4 to 7 unions were doing the loading and unloading work in the business premises of the petitioner. There was no issue between them, but recently the petitioner has fell part on account of other reasons. It is submitted that members of respondents 4 to 7 unions are not demanding any exorbitant charges for the loading and unloading work carried on by them. The whole intention of the petitioner is to engage migrant workers without getting registration under the Kerala Headload Workers Act or Rules framed thereunder.

5. Learned counsel for the petitioner relied upon a Full Bench decision of this Court reported in Karunakara Kurup Vs. State of Kerala, to contend that if the scheme is not made applicable, the employer can engage any headload workers of his own choice. He also relied upon a Division Bench judgment of this Court reported in M. Nujumudeen Vs. The City Police Commissioner of Police and Others, to contend that if the scheme has not become functional, it is open for the employer to engage a worker of his choice and even if the worker has no registration under Rule 26A of the Kerala Headload Workers Rules, he can be employed in any area in which the scheme has not been made applicable.

6. Having regard to the above factual situation, the fact remains that the scheme has not been implemented in the area in question. Hence, it is always open for the petitioner to employ his own workmen for carrying on the loading and unloading work. Such an activity cannot be opposed by respondents 4 to 7 or their men. However, the question might be different, if the scheme is implemented in the said area, and in such an event respondents 4 to 7 can stake a claim that the loading and unloading work shall be carried on only by the workers approved by the Board. Therefore, until the scheme is implemented, the petitioner is entitled to employ his own workers for the loading and unloading work, which cannot be prevented by respondents 4 to 7 or their men and if any such prevention occurs, the police are bound to interfere in the matter and ensure maintenance of law and order situation.

7. Having regard to the aforesaid facts, this Writ Petition is disposed of as under:

1. Respondents 1 and 2 shall ensure that no hindrance is caused to the loading and unloading operation in the business premises of the petitioner by respondents 4 to 7 or their men, and shall ensure maintenance of law and order.

2. The right of respondents 4 to 7 is kept open to be decided by the appropriate authorities. When the scheme is implemented in terms of the Headload Workers (Regulation of Employment and Welfare) Scheme, 1983, it shall be open for respondents 4 to 7 to approach the competent authority and stake their claim, which may be considered in accordance with the procedure prescribed.