

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

WP(C).No. 19091 of 2015 (J)

PETITIONER(S) :

N.SHEELA AGED 43 YEARS
W/O.SREEKUMAR, PROPRIETRIX
SWATHY EXPORTSMARANADU P.O., KOLLAM
RESIDING AT PULARI, MUNDAKKAL, KOLLAM.

BY ADVS.SRI.K.SHAJ
SRI.SAJJU.S
SRI.S.SUNIL NARAYANAN
SRI.RENJIT GEORGE
SMT.ANJU MOHAN
SRI.S.K.SUJITH KRISHNA
SRI.S.VISHNU (ARIKKATTIL)

RESPONDENT(S) /RESPONDENTS:-:

1. THE SUPERINTENDENT OF POLICE
KOLLAM RURAL, KOTTARAKARA, KOLLAM - 691 506.

2. THE CIRCLE INSPECTOR OF POLICE
EZHUKONE POLICE STATION, KOTTARAKKARA
KOLLAM - 691 505.

3. THE SUB INSPECTOR OF POLICE
EZHUKONE POLICE STATION, KOTTARAKKARA
KOLLAM - 691 505.

4. GENERAL SECRETARY
KOTTARAKKARA TALUK CASHEW WORKERS UNION(CTU)
KOTTARAKKARA - 691 505.

5. D.K.RADHAKRISHNAN
SECRETARY, CITU UNION, MARANADU
KOLLAM - 691 505.

6. T.R.BIJU,
SECRETARY, INTUC UNION, RESIDING AT AMBILYBHAVAN
IRIMPANANGADU P.O., KOLLAM - 691 505.

7. SATYAKUMAR
UNION SECRETARY, AITUC, RESIDING AT AIRAKKUZHY
MARANADU P.O., KOLLAM - 691 505.

8. RETNAVALLY
UNION CONVENER, CITU, RESIDING AT ROADVILA VEEDU
MARANADU, KOLLAM - 691 505.

9. SUJATHA
UNION CONVENER, AITUC, RESIDING AT SUJITH MANDIRAM
MARANADU P.O. - 691 505.

10. PATHISHA
UNION CONVENER, INTUC, RESIDING AT SREEKRISHNAVILASAM
EDAVATTOM, KARUVELIL - 691 505.

Addl.11. STATE POLICE CHIEF AND DIRECTOR GENERAL OF POLICE
KERALA POLICE HEADQUARTERS
THIRUVANANTHAPURAM - 695 010.

Addl.12. DISTRICT POLICE CHIEF AND CITY POLICE COMMISSIONER
KOLLAM DISTRICT - 691 001.

Addl.13. DISTRICT LABOUR OFFICER
DISTRICT LABOUR OFFICE, CIVIL STATION
KOLLAM - 691 013.

ADDL.R11 TO R13 ARE IMPEADED AS PER ORDER
DATED 17.08.2015 IN IA 11874/15.

Addl.14. SUJATHA THANKAPPAN
D/O THANKAPPAN, KUZHAKKADU CHARUVILA VEEDU
IRUMBANANGADU PO., EZHUKONE, KOLLAM
PIN - 691 505.

Addl.15. LAKSHMIKUTTY AMMA K
SANTHOSH BHAVAN, IRUMBANANGADU, IRUMBANANGADU PO.
EZHUKONE, KOLLAM, PIN - 691 505.

Addl.16. USHA KUMARI R
VISHNU BHAVAN, IRUMBANANGADU PO., EZHUKONE
KOLLAM, PIN - 691 505.

Addl.17. THULASI BHAI R
W/O SUNIL KUMAR, VADAKKE POIKAYIL VEEDU
ANAKOTTOOR PO., NEDUVATHOOR, KOLLAM
PIN - 691 505.

Addl.18. RATHNAMMA K
AJITH BHAVANAM, IRUMBANANGADU PO, EZHUKONE
KOLLAM, PIN - 691 505.

Addl.19. ELIKUTTY
THENGUVILA KIZHAKKATHIL, PERUTHUMPARA, EZHUKONE
KOLLAM - 691 001.

Addl.20. USHA KUMARI B
USHA BHAVANAM, IRUMBANANGADU, IRUMBANANGADU PO.
EZHUKONE, KOLLAM, PIN - 691 505.

Addl.21. SHEEJA S
D/O SADANANDAN NAIR, AMBADI VILASAM, IRUMBANANGADU
IRUMBANANGADU PO., EZHUKONE, KOLLAM
PIN - 691 505.

Addl.22. SUDHA DEVI
SUBI VILASAM, ANAKKOTTOOR, NEAR VANMANNOOR
NEDUVATHOOR, EZHUKONE, KOLLAM
PIN - 691 505.

Addl.23. SASIKALA C
W/O HARIDASAN K, SARANAYALAM, IRUMBANANGADU
IRUMBANANGADU PO., EZHUKONE, KOLLAM
PIN - 691 505.

Addl.24. LALITHA
W/O SURENDRAN, MUKALUVILA VEEDU, MARANADU PO.
PAVITHRESWARAM, KOLLAM, PIN - 691 505.

Addl.25. PRASANNA
MAILATTUKONNATHUCHARUVILAVEEDU, VALAKOM, UMMANNOOR
KOLLAM.

Addl.26. SUDHA T
SHYNEE BHAVANAM, IRUMBABANANGADU, IRUMBANANGADU PO.
EZHUKONE, KOLLAM, PIN - 691 505.

Addl.27. GIRIJA
THENGIL VEEDU, MARANADUKIZHAK, PAVITHRESWARAM
KOLLAM.

Addl.28. GIRIJAMANI K
D/O KUNJAN PILLAI, GEETHU BHAVAN, IRUMBANANGADU
IRUMBANANGADU PO., EZHUKONE, KOLLAM
PIN - 691 505.

Addl.29. SHEEJA
SHEEBA SADANAM, PARUTHUMPARA, EZHUKONE
KOLLAM, PIN - 691 505.

Addl.30. SOMALATHA
THEKKADATHU, MUKOODU PO., KARPPURAM
KOLLAM, PIN - 691 503.

ADDL.R14 TO R30 ARE IMPEADED AS PER ORDER
DATED 20.08.2015 IN IA 12248/15.

R6 & 10 BY ADV. SRI.V.G.ARUN
R6 & 10 BY ADV. SRI.T.R.HARIKUMAR
R4,R5,R7-R9 BY ADV. SRI.M.K.CHANDRA MOHANDAS
RADDL R14 to R30 BY ADV. SRI.O.D.SIVADAS
R1 TO R3 BY SR.GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1. THE TRUE COPY OF THE LICENCE NO.A6-82/2038/15 DATED 09.06.2015 ISSUED BY THE PAVITHRESWARM GRAMA PANCHAYAT.

EXHIBIT P2. THE TRUE COPY OF ENGLISH TRANSLATION OF EXHIBIT P1.

EXHIBIT P3. THE TRUE COPY OF THE LICENSE ISSUED BY THE DEPARTMENT OF FACTORIES AND BOILERS, GOVERNMENT OF KERALA TO SWATHY EXPORTS FOR PROCESSING OF RAW CASHEW.

EXHIBIT P4. THE TRUE COPY OF THE AGREEMENT DATED 09.10.2014 ENTERED BETWEEN NATARAJAN AND THE PETITIONER.

EXHIBIT P5. THE TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P4.

EXHIBIT P6. THE TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE FOURTH RESPONDENT.

EXHIBIT P7. THE TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P6 DEMAND NOTICE.

EXHIBIT P8. THE TRUE COPY OF THE REMITTANCE DETAILS TO THE KERALA CASHEW WORKER'S RELIEF & WELFARE FUND ACCOUNT.

EXHIBIT P9. THE TRUE COPY OF THE E PAYMENT DETAILS MADE ON 20.06.2015 TO THE EMPLOYEES STATE INSURANCE CORPORATION.

EXHIBIT P10. THE TRUE COPY OF HTE E PAYMENT CHALLAN DATED 20.06.2015 TO THE EMPLOOYEES STATE INSURANCE CORPORATION.

EXHIBIT P11. THE TRUE COPY OF THE COMPLAINT PREFERRED BEFORE THE FIRST RESPONDENT.

EXHIBIT P12. THE TRUE COPY OF THE COMPLAINT PREFERRED BEFORE THE SECOND RESPONDENT.

EXHIBIT P13. THE TRUE COPY OF THE COMPLAINT PREFERRED BEFORE THE SECOND RESPONDENT.

EXHIBIT P14. THE TRUE COPY OF THE ACKNOWLEDGMENT OF THE PETITION ISSUED FROM THE THIRD RESPONDENTS OFFICE.

EXHIBIT P15: PHOTOGRAPHS OF THE TRAPPED INFECTED CASHEW KERNELS INSIDE THE FACTORY.

EXHIBIT P16: COPYOF NEWS REPORTS IN THE HINDU NEWSPAPER DATED 15.7.2015.

EXHIBIT P17: COPY OF REPRESENTATION DATED 23.7.2015 FILED BEFORE THE KERALA POLICE CHIEF.

EXHIBIT P18: COPY OF REPRESENTATIO DATED 23.7.2015 FILED BEFORE THE 1ST RESPONDENT.

EXHIBIT P19: COPY OF CERTIFICATE BY THE SYNERGY SYSTEMS THE AUTHORIZED AGENTS ASSESSING THE DAMAGED KERNELS.

EXHIBIT P20: COPY OF PHOTOS OF THE ORIGINAL DAMAGED CASHEW KERNELS.

EXHIBIT P21: COPY OF REQUEST AND ITS ENGLISH TRANSLATION SUBMITTED BY THE WILLING WORKERS BEFORE THE FIRST RESPONDENT.

EXHIBIT P22: COPY OF REPRESENTATION DATED 4.8.2015 PREFERRED BEFORE THE STATE POLICE CHIEF, THIRUVANANTHAPURAM.

EXHIBIT P23: COPY OF REPRESENTATION DATED 4.8.2015 PREFERRED BEOFRE THE CITY POLICE COMMISSIONER, KOLLAM.

EXHIBIT P24: COPY OF STATEMENT DATED 10.7.2015 FILED BEFORE THE DISTRICT LABOUR OFFICER, KOLLAM AND ITS TRANSLATION.

EXHIBIT P25: COPY OF REPRESENTATION DATED 4.8.2015 FILED BEFORE THE DISTRICT LABOUR OFFICER, KOLLAM AND ITS TRANSLATION.

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RESPONDENT(S) ' EXHIBITS

EXHIBIT R4/1: COPY OF GO DATED 9.7.2015.
EXHIBIT R4/2: ENGLISH TRANSLATION OF GO DATED 9.7.2015.
EXHIBIT R4/3: COPY OF MINIMUM WAGE NOTIFICATION DATED 21.2.2015.
EXHIBIT R4/4: COPY OF ATTENDANCE CARD FOR PEELING WORKER NO.232.
EXHIBIT R4/5: COPY OF WAGES CARD OF PEELING WORKER NO.232.
EXHIBIT R4/6: COPY OF NOTICE OF DISTRICT LABOUR OFFICER DATED
14.7.2015.
EXHIBIT R4/7: ENGLISH TRANSLATION OF NOTICE OF DISTRICT LABOUR
OFFICER DATED 14.7.2015.

/TRUE COPY/

PS TO JUDGE

**ASHOK BHUSHAN, CJ
&
A.M.SHAFFIQUE, J**

W.P.(C).No. 19091 of 2015

Dated this the 31st August, 2015

JUDGMENT

Shaffique, J.

Petitioner has approached this Court seeking Police protection in the matter relating to functioning of the petitioner's factory, which is involved in the business of processing of cashew under the name and style "Swathy Exports" at Maranadu, Kollam. It is stated that certain group of workers under the leadership of respondents 4 to 10 has created obstruction to the functioning of the factory raising certain labour issues. They have also approached the District Labour Officer for resolving the dispute and in the meantime, if the functioning of the factory is obstructed, the petitioner will be put to serious loss and hardship. It is also stated that there are several workers, who are willing to carry on their employment and

who have no dispute with the management. Further, they are also being prevented by the workers, who are conducting obstruction in front of the factory premises. Though the petitioner had approached the Police for appropriate Police protection, no action has been taken in that regard and therefore, the petitioner has approached this Court.

2. In fact interim orders have been passed by this Court directing the Police to ensure maintenance of law and order, permitting the petitioner to remove the finished products from the factory and also to provide adequate protection to the willing workers to enter into the factory premises and carry on the operations.

3. Counter affidavit has been filed by the fourth respondent inter alia stating that in the Month of June, 2015, the petitioner introduced a machine for peeling work in the factory. There are four sections in the factory, namely, shelling, cutting, peeling and grading works. Out of the 207 registered workers, there are 111 peeling workers working in the factory. The peeling work was

originally carried out manually and on account of introducing the peeling machine, the peeling workers are kept idle and they are not being paid daily wages. This, according to the respondents, had resulted in the agitation being conducted by majority of the workers. According to them, this is a case where there is denial of employment and they have already taken up the matter before the Labour authorities, which is pending consideration.

4. Learned counsel appearing for respondents 6 and 10 also submits that though the labour issues, which had been projected by the Unions representing the workers did not yield any result, the intention of the petitioner is to bring in workers from outside to carry on the work and this is a clear case of denial of employment. Being purely a labour issue, it is the right of the Unions to demand work as long as they are neither retrenched nor relieved as per law. The factory has to be functioned by engaging all the workers and the petitioner cannot do the work by engaging only a few of the workers.

5. Learned counsel appearing for additional respondents 14 to 30 submits that they have no dispute with the management and they were always ready and willing to carry out the work entrusted to them. However, on account of the obstruction created by the agitating workers, they are not in a position to enter the factory premises and carry out the work. According to them, the management is ready and willing to employ them, but it is only on account of the obstruction created by the agitating workers that they are losing their right to work and thereby their livelihood.

6. The learned Government Pleader, on instructions, would submit that necessary protection as directed by this Court by way of interim orders has already been given. Presently, the intention of the petitioner is to remove the raw materials from the premises and the finished goods have already been removed.

7. Learned counsel for the petitioner submits that despite the interim orders passed by this Court, the Police is not providing any protection to the willing workers to

enter the factory premises. The cashew kernels, which is the raw material, has to be processed and the materials are to be transported to the customers after the manufacturing process.

8. The learned Government Pleader further submits that as far as the conciliation measures that are undertaken by the District Labour Officer is concerned, since no settlement could be arrived at between the Unions and the Management, the matter was referred to the Joint Labour Commissioner and thereafter to the Labour Commissioner. However, the conciliation failed and the report has already been sent to the Government.

9. The facts being so, the issue apparently is with reference to denial of employment to majority of the workers. Learned counsel for the petitioner submits that there is no denial of employment and they are ready and willing to employ all the persons. They have entered into an agreement with the Unions in which it was stated that none of the employees will lose their employment and they have no intention to retrench any person. This fact is

however disputed by learned counsel appearing for the fourth respondent. It is stated that due to the introduction of the peeling machine in the factory, the peeling workers lost peeling work and they are compelled to do a kind of grading work for one or two days per week. The fact remains that no employment is offered, as a result of which no wages are paid, which has lead to the agitation being conducted by the Unions aforesaid.

9. It might be true that the workers, who are denied employment or who claim employment have a right to conduct any demonstration or agitation in relation to their claims. However, that shall not be at the risk of stoppage of the functioning of the factory. If there is any willing registered workers, who are ready to carry on the work in the factory and if the petitioner is in a position to carry out the work with the said willing workers, who are already engaged, the respondent Unions cannot obstruct their entry into the factory or the factory premises.

Under such circumstances, we dispose of the Writ Petition as under:

i) If the petitioner is able to carry on the functioning of the factory with their registered willing workers, the Police shall render necessary protection for their ingress and egress to the factory premises.

ii) If there is any obstruction created in the functioning of the factory, the Police shall ensure maintenance of law and order and also ensure that no obstruction is being created to the functioning of the factory.

iii) The Police shall also provide necessary protection for movement of the finished products from the factory of the petitioner as and when required by the Management.

**ASHOK BHUSHAN
CHIEF JUSTICE**

**A.M.SHAFFIQUE
JUDGE**

vgs31/8/15