

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&**

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

WP(C).No. 20294 of 2015 (J)

PETITIONER(S):

**FATHER ANTO KALATHIL, AGED 36 YEARS,
DIRECTOR, RAJAGIRI SEASHORE CMI SCHOOL, RAJAGIRI ROAD,
SOUTH MALIPURAM, AZHEEKAL P.O., VYPIN,
ERNAKULAM DISTRICT, PINCODE-682 508.**

**BY ADVS.SRI.C.P.WILSON
SRI.V.TEKCHAND**

RESPONDENT(S):

- 1. CIRCLE INSPECTOR OF POLICE,
OFFICE OF CIRCLE INSPECTOR OF POLICE, NJARAKKAL,
ERNAKULAM - 682 505.**
- 2. THE CONSTRUCTION WORKERS UNION (CITU),
CANAL SHED ROAD, BOAT JETTY, ERNAKULAM
PINCODE-682 011.**
- 3. THE DISTRICT CONSTRUCTION WORKERS (INTUC),
KALABHAVAN ROAD, ERNAKULAM, PINCODE - 682 018.**
- 4. ERNAKULAM JILLA NIRMANA THOZHILALI SANGH (BMS),
I.S. PRESS ROAD, ERNAKULAM - 682 018.**
- 5. ERNAKULAM DISTRICT CONSTRUCTION AND GENERAL WORKERS UNION
(AFFILIATED TO AITUC AND WFTU), C.S.PRESS ROAD,
T.U. HOUSE, KOCHI, PINCODE-682 011.**
- 6. SWATHANTHRA THOZHILALI UNION,
C.H.MOHAMMED KOYA SMARAKA SOUDAM, ERNAKULAM-682 011.**

PJ

....2/-

WP(C).No. 20294 of 2015 (J)

* ADDL.R7 IMPEADED

7. M/S HYARCH PROJECTS,
REPRESENTED BY ITS MANAGING PARTNER,
K.P PAUL KAMAMPUZHA HOUSE, MECKADU, NEDUMBASSERY
ANKAMALY, PIN - 683 585.

ADDL.R7 IS IMPEADED AS PER ORDER DATED 31.07.2015 IN IA 10995/15.

R1 BY SENIOR GOVERNMENT PLEADER C.R.SYAMKUMAR.

R2 BY ADV. SRI.M.A.ASIF

R3 BY ADVS. SRI.C.S.AJITH PRAKASH
SRI.P.S.SYAMKUTTAN

R4 BY ADVS. SRI.K.SHRIHARI RAO
SMT.N.SHOBHA

R4 BY ADV. SRI.A.S.SREEKANTH

R5 BY ADV. SRI.MAJNU KOMATH

R6 BY ADV. SRI.JOSY ANTONY

RADDL 7 BY ADV. SRI.BINOY VASUDEVAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 20294 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 - TRUE COPY OF THE JUDGMENT IN WPC NO.28310/2014 DATED 19.11.2014

P2 - TRUE COPY OF THE REPRESENTATION FILED BEFORE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS

**R4(A): TRUE COPY OF THE JUDGMENT DATED 27/8/14 IN WPC.21405/15 OF THIS
HONOURABLE COURT.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.P.C.No.20294 of 2015

Dated this the 12th day of August 2015

J U D G M E N T

Shaffique, J

Petitioner has approached this Court seeking police protection inter alia contending that obstruction is being created by respondents 2 to 6 in the matter relating to work being undertaken by the petitioner for construction of a School. It is stated that the work has been entrusted to the additional 7th respondent, who, being a Contractor, has its own resources for carrying out the work, which is being prevented by respondents 2 to 6 and their men. Petitioner therefore submitted complaint to the police seeking adequate protection and since no action has been taken in the matter, this writ petition is filed.

2. Counter affidavit has been filed by the 2nd respondent inter alia stating that they have not created any obstruction whereas they have entered into an agreement with the Builders Association of India and their members have been employed by the additional 7th respondent. According to them, they have no

objection in the petitioner carrying out the aforesaid work through the additional 7th respondent and they are not creating any obstruction.

3. Counter affidavit is filed by the 4th respondent inter alia stating that they are workers in the neighbouring locality and they have only demanded the work as the petitioner is constructing a building through the additional 7th respondent. They have approached the 7th respondent based on the judgment of a Division Bench of this Court in W.P.C.No.21405/2014 by which this Court had observed that the employers should have freedom to employ 50% of the workmen on its own choice and the remaining 50% will be distributed in equal proportion to the members of the trade unions, who are parties in the said case.

4. Counter affidavit is filed by the 5th respondent also taking similar contentions inter alia relying upon the judgment of the Division Bench of this Court in W.P.C.No.21405/2014. It is stated that most of the workers are residing in and around the locality and there is no reason why the additional 7th respondent should not employ them also. According to them, even if 50% of the work alone is given to the workers of the locality, it will be sufficient to fulfill their needs as they are also entitled to work in

the neighbouring area. It is submitted by the learned counsel for the 5th respondent that their workers are well qualified and experienced in the nature of work being undertaken by the additional 7th respondent.

5. Counter affidavit is filed by the additional 7th respondent stating that on 01/06/2015, when they were about to commence the work, respondents 2 to 6 entered the work site and demanded that they should also be allowed to work. According to the learned counsel for the additional 7th respondent, they had already mobilised the work force and it is not possible to include all of them over and above the required strength for completion of the project.

6. Having regard to the aforesaid factual situation, we do not think that respondents 2 to 6 can, as a matter of right, demand that portion of the work should be allotted to them. Of course, another Division Bench of this Court in W.P.C.No.21405/2015 had made such an observation; but that observation was made on its own facts and cannot be taken as a precedent in all cases. As far as the Contractor is concerned, he is entitled to carry out the work through the persons employed by him and unless respondents 2 to 6 are in a position to state that

they got legal right to demand work, we do not think that they can insist that some of their members should be employed for carrying out the work. If at all they have other disputes relating to non-employment, their remedy is to approach the competent District Labour Officer of the area and seek for intervention.

7. As matters stand now, since the petitioner as well as the additional 7th respondent submits that they cannot abide by the demands made by respondents 2 to 6, we are of the view that if any obstruction is created in the work being carried out by the petitioner through the additional 7th respondent, police is bound to interfere and provide adequate protection.

In the result, this writ petition is disposed of directing the 1st respondent to ensure that law and order is maintained in the matter relating to work undertaken by the petitioner through the additional 7th respondent and that no obstruction is being created by the members of respondents 2 to 6.

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)
(A.M.SHAFFIQUE, JUDGE)

jsr

