

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C) .No. 23749 of 2014 (P)

PETITIONERS :-

1. A.ANEESH, AGED 31 YEARS,
S/O. ABDUL AZEEZE, H.NO. 4/390, PUTHANPARAMBU
CHERALAYI KADAVU, KOCHI-2.
2. SIYAD J. AGED 32 YEARS
S/O. JOWHAR ALI, H.NO. 7/751, JEW TOWN, KOCHI-2.
3. NAUSHAD B.U. AGED 39 YEARS
S/O. UMMAR, H.NO. 17/1596, PERUMPADAPPU PARK ROAD, PALLURUTHY.
4. NAZER M.H. AGED 30 YEARS
S/O. HUSSAIN, H.NO. 12/889, KOOVAPPADAM, KOCHI-682002.
5. MUJEEB C.Z. AGED 32 YEARS
S/O. ZAINUDEEN, H.NO. 13/298, KOCHANGADI, KOCHI-682002.
6. MUHAMMED BASHEER AGED 45 YEARS
S/O.MUHAMMED ALI, H.NO. 1/1629, FORT KOCHI-682001.
7. MANZOOR Y. AGED 44 YEARS
S/O. YOOSUF, H.NO. 13/437, PANAYAPPILLY
KOCHI-682005.

BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.P.V.JEEVESH
SRI.SALIM V.S.

RESPONDENTS :-

1. THE ASST. COMMISSIONER OF POLICE, KOCHI-682006.
2. S.I. OF POLICE, THOPPUMPADY-682005.
3. ADMINISTRATOR
COCHIN FISHERIES HARBOUR, THOPPUMPADY, PIN-682005.

4. PRESIDENT, PN BOAT OWNERS ASSOCIATION, COCHIN FISHERIES HARBOUR THOPPUMPADY, KOCHI, PIN 682005.
5. A.S.SHAJI, S/O. SAIDU, H.NO. 3/253, EERAVELI ROAD EERAVELI, KOCHI-682001.
6. SIDHEEQ A.S., S/O. SAIDU, SALEH MUHAMMED ROAD BEHIND PADINJARE PALLI, KAPPALANDIMUKKU, PIN 682002.
7. HASHIM, TEXTILE AGENCY ROAD, BEHIND KUNNUPURAM JUMA MASJID KUNNUPURAM, PIN 682001.
8. M.H.NOUSHAD, H.NO. 21/1651, EDAPPARAMBIL VEEDU, THANGAL NAGAR PIN-682006.
9. SULAIMAN, ALAYANETHU HOUSE, VAZHAVELI ROAD, POOCHAMURI THANGAL NAGAR, PIN-682006.

Addl.10. DEPUTY LABOUR OFFICER
KALVATHY, FORT KOCHI, ERNAKULAM PIN 682 001.

Addl.11. GENERAL SECRETARY
COCHIN PORT LABOUR UNION, WELLINGTON ISLAND, KOCHI
PIN 682 003.

ADDL.R10 AND R11 ARE IMPEADED AS PER ORDER DATED 23/09/2014 IN
IA 12721/2014.

R5-R9 BY ADV. SRI.P.K.VIJAYAMOHANAN
SRI.ALAN PAPALI
SRI.GILBERT GEORGE CORREYA
SRI.NISHIL.P.S.
SMT.O.V.BINDU
SRI.J.VIMAL

R3 BY ADV. SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS
SRI.NOBY THOMAS CYRIAC
SRI.TOM THOMAS (KAKKUZHIYIL)

R4 BY ADV. SRI.P.RAMAKRISHNAN
SRI.C.ANIL KUMAR

ADDL.R11 BY ADV. SRI.M.K.DAMODARAN (SR.)
R1 BY ADV. SRI.P.C.IYPE, ADDL. ADVOCATE GENERAL
R2 BY SR.GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

APPENDIX

PETITIONER(S) ' EXHIBITS :-

EXHIBIT P1-TRUE COPIES OF THE IDENTITY CARD ISSUED BY COCHIN FISHERIES HARBOUR AUTHORITIES.

EXHIBIT P2- TRUE COPY OF THE FIR IN CRIME 1163/14 WITH ENGLISH TRANSLATION.

EXHIBIT P3- TRUE COPY OF THE FIR IN CRIME 1164/14 WITH ENGLISH TRANSLATION.

EXHIBIT P4- TRUE COPY OF THE REPRESENTATION REQUESTING POLICE PROTECTION WITH ENGLISH TRANSLATION.

EXHIBIT P5- THE PHOTOCOPY OF THE MINUTE OF THE DY.L.O DATED 8.8.14 WITH ENGLISH TRANSLATION.

EXHIBIT P6- THE PHOTOCOPY OF THE MINUTE OF THE DY.L.O DATED 12.8.14 WITH ENGLISH TRANSLATION.

EXHIBIT P7- THE PHOTOCOPY OF THE MINUTE OF THE DY.L.O DATED 14.8.14 WITH ENGLISH TRANSLATION.

EXHIBIT P8- TRUE COPY OF REGISTRATION CERTIFICATE DATED 8.10.2014.

EXHIBIT P9- TRUE COPY OF LIST OF MEMBERS OF THE UNION INCLUDING THE PETITIONERS.

EXHIBIT P9(a)- TRUE COPY OF ENGLISH TRANSLATION OF EXHIBIT P9.

EXHIBIT P10- TRUE COPY OF LETTER DATED 24.10.2011 OF THE SUB INSPECTOR OF POLICE TO THE CHAIRMAN, COCHIN PORT TRUST.

EXHIBIT P10(a)- TRUE COPY OF ENGLISH TRANSLATION OF EXHIBIT P10.

EXHIBIT P11- TRUE COPY OF LETTER DATED 25.11.2011 ISSUED BY THE CHAIRMAN, COCHIN PORT TRUST ADDRESSED TO THE CHIEF ENGINEER.

EXHIBIT P12- TRUE COPY OF LETTER DATED 11.1.2013 ISSUED BY THE CHIEF ENGINEER.

EXHIBIT P13- TRUE COPY OF ORDER ISSUED BY THE CHIEF ENGINEER, COCHIN PORT TRUST.

EXHIBIT P14- TRUE COPY OF REPRESENTATION DATED 1.9.2014 SUBMITTED BY THE PETITIONERS BEFORE THE DISTRICT COLLECTOR.

EXHIBIT P15- TRUE COPY OF REPRESENTATION DATED 25.9.2014 SUBMITTED BY THE PETITIONERS BEFORE THE RDO.

EXHIBIT P15(a)- TRUE COPY OF ENGLISH TRANSLATION OF EXHIBIT P15.

EXHIBIT P16- TRUE COPY OF MINUTES OF THE MEETING HELD ON 27.9.2014 BEFORE THE DEPUTY LABOUR COMMISSIONER.

EXHIBIT P16(a)- TRUE COPY OF ENGLISH TRANSLATION OF EXHIBIT P16.

RESPONDENT(S) ' EXHIBITS :-

EXHIBIT R5(a)- TRUE COPY OF THE REPRESENTATION DATED 23.7.2014 SUBMITTED BY THE GENERAL SECRETARY OF THE COCHIN PORT LABOUR UNION BEFORE THE 3RD RESPONDENT ALONG WITH THE REPRESENTATION DATED 8.7.2014 OF THE WORKERS.

EXHIBIT R5(b)- TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT ON 29.7.2014.

EXHIBIT R11(a)- TRUE COPY OF THE COMPLAINT DATED 8.7.2014 OF THE WORKERS ADDRESSED TO THIS DEPONENT.

EXHIBIT R11(b)- TRUE ENGLISH TRANSLATION OF EXT.R11(a) DATED 8.7.2014.

EXHIBIT R11(c)- TRUE COPY OF THE COMMUNICATION DATED 23.7.2014 OF THIS DEPONENT ADDRESSED TO THE 3RD RESPONDENT.

EXHIBIT R11(d)- TRUE ENGLISH TRANSLATION OF EXT.R11(c) DATED 23.7.2014.

EXHIBIT R11(e)- TRUE COPY OF THE NOTICE DATED 29.7.2014 ISSUED BY THE 2ND RESPONDENT CONVENING THE MEETING ON 30.7.2014.

EXHIBIT R11(f)- TRUE ENGLISH TRANSLATION OF EXT.R11(e) NOTICE DATED 29.7.2014.

EXHIBIT R11(g)- TRUE COPY OF THE MINUTES OF THE MEETING DATED 25.8.2014.

EXHIBIT R11(h)- TRUE ENGLISH TRANSLATION OF EXT.R11(g) DATED 25.8.2014.

EXHIBIT R11(i)- TRUE COPY OF THE F.I.R. DATED 10.10.2014 IN CRIME No.1471/2014 OF THE 2ND RESPONDENT.

//TRUE COPY//

P.A. TO JUDGE

**ASHOK BHUSHAN, Ag. C.J &
A.M. SHAFFIQUE, J.**

W.P.(C) No.23749 of 2014

Dated this the 13th day of February 2015

J U D G M E N T

Shaffique, J.

This writ petition has been filed by the petitioners seeking for a direction to respondent Nos.1 and 2 to provide adequate and effective police protection to carry out the work in Cochin Fisheries Harbour on account of threats from respondents 5 to 9 and their men.

2. The facts involved in the writ petition disclose that the petitioners claim to be workers engaged in different vessels which are operated from Cochin Fisheries Harbour. Their line of duty arises when the vessels are stationed at the Harbour after fishing. They have different duties to be performed including watching the vessels and equipments, cleaning the same, providing necessary ice in the vessels for refrigeration etc. Their complaint is that originally they were in the 11th respondent Union and later they have formed another Union and on account of change in affiliation with another Union, respondent Nos.5 to 9 started

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obstructing them from carrying on their work. It is alleged that since respondent Nos.5 to 9 had indulged in such activities, complaints have been filed against them, stating that they are obstructing the petitioners in carrying on work within the Cochin Harbour premises. The petitioners have submitted Ext.P4 representation to respondent Nos.1 and 2 to provide adequate protection. Since no action has been taken in the matter, they have approached this Court.

3. A counter affidavit has been filed by respondents 5 to 9 inter alia stating that the petitioners have no right to carry on any work in the Cochin Fisheries Harbour since they have never been employed by any of the vessel owners. Though they have relied upon certain cards issued by the CISF, the same cannot be taken into consideration as they were obtained behind the back of the respondents as well as the 11th respondent Union. They have raised complaints regarding "inclusion of petitioners" in the list of workers which was being adjudicated by the competent authority. Though the Additional District Magistrate and the District Labour Officer convened a meeting, the petitioners or their representatives did not appear and therefore, a decision in that regard could not be taken.

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4. A reply affidavit was filed by the petitioners producing Exts.P7 and P9. By Ext.P7, they contend that the Deputy Labour Officer had already convened a meeting and the petitioners were identified by the owners of the vessels, who raised no complaint and on that basis, a list has been prepared as Ext.P9, based on which cards had been issued in favour of the petitioners by the CISF personnel. According to them, unnecessary objections are being raised only to prevent them from carrying on the work in the Fishing Harbour.

5. Learned counsel appearing on behalf of the 3rd respondent submits that the workers to be engaged in the Fishing Harbour have to submit an application in a particular format, countersigned by the owner of the vessel and on that basis an enquiry is conducted, police report is obtained and thereafter, passes are issued by the CISF.

6. Learned Government Pleader on instructions would submit that though there were certain instances of law and order during August 2014 and crimes had been registered, thereafter no untoward incident has been reported. Further it is stated that the entire area is manned by CISF personnel and whenever there is grave law and order situation, the police would be available to take care of the situation.

7. Sri.S.Sreekumar, the learned Senior Counsel appearing for the petitioners contends that despite the fact that the petitioners are having valid cards issued by the competent authority at the instance of the Cochin Port Trust, they are being prevented from doing their daily avocation. None of the vessel owners who had appointed them has any objection regarding any of their work, whereas it is only on account of the rivalry since they have changed their affiliation to the 11th respondent Union that such issues have developed.

8. Refuting the aforesaid submission, the learned Senior Counsel Sri.M.K.Damodaran appearing on behalf of respondent Nos.5 to 9 and 11 submits that the area in question is a critical area which is required to be secured and by Ext.P10, the concerned police officer himself had requested the authorities to make necessary arrangements to provide cards to the workers who are engaged within the premises of the Cochin Fisheries Harbour. It is submitted that several persons among the petitioners are not even the workers engaged by any of the owners and Exts.P7 and P9 had been prepared by misleading the officers. On the basis of a complaint given by the 11th respondent Union and their members, a meeting had been convened by various stake holders but the petitioners' Union did not attend the said meeting

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which was conducted on 27.9.2014. Therefore, it is argued that appropriate decision is yet to be taken regarding the right of the petitioners to work in the Fishing Harbour area and appropriate directions are to be issued to the Additional District Magistrate or the appropriate authority to ensure that only those persons who had valid labour cards issued by the competent authority are permitted to work in the area. However, they deny the fact that they have created any physical obstruction to the petitioners. It is further argued that some of the petitioners claim to be working in several vessels and therefore, it is impossible for the police to give protection as claimed.

9. The factual issues in the above writ petition disclose that there is dispute between the 11th respondent and the petitioners with regard to the right of the petitioners to carry on work in the area. But it is relevant to note that Ext.P1 series identity cards were issued to the petitioners for entry into the Cochin Fishing Harbour. These cards are issued by CISF. As stated by the learned Standing Counsel appearing on behalf of the 3rd respondent, it is after conducting appropriate enquiry that such cards are being issued. Under such circumstances, as matters stand now, it cannot be disputed that those petitioners, who have valid cards issued by CISF can work in the area, which cannot be

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obstructed by the party respondents or their men. However, if they have any dispute regarding inclusion of certain persons who are not actual workers in the area and had obtained passes from CISF, it shall always be open for respondent Nos.5 to 9 and 11 to bring the said matter to the notice of the competent authority, namely, the 3rd respondent and the 3rd respondent can make due enquiries in that regard either through the police or through the labour authorities and take a decision to cancel the card or to sustain the same. Under such circumstances, when such procedures are available it is all the more necessary that the police should ensure that the persons who hold valid cards are permitted to work in the Cochin Fisheries Harbour.

In the light of the aforesaid findings, we dispose of the writ petition with the following directions :-

- (i) The petitioners who are having valid cards (Ext.P1 series) are entitled to work in the Cochin Fisheries Harbour and the 2nd respondent shall ensure that law and order situation is maintained in the area and no obstruction is being created by respondents 5 to 9 and 11 or their men in that regard.
- (ii) If respondents 5 to 9 and 11 have any objection regarding the entitlement of the petitioners holding Ext.P1 series cards, it shall be open for them to file a complaint to the 3rd respondent, who shall, after

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making necessary enquiry either through the police or through the District Labour Officer as the case may be, take appropriate decision in the matter.

Sd/-
ASHOK BHUSHAN
Ag. CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE