

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

WP(C).No. 36633 of 2015 (D)

PETITIONER(S) :-

THE CHANGANASSERY MERCHANTS ASSOCIATION
REPRESENTED BY ITS PRESIDENT (JOHNSON JOSEPH,
AGED 50 YEARS, S/O.P.J.JOHN, PLAMTHOTTAM, PERUNNA
CHENGANASSERY) ALLEN J.MATHEW, VYAPARA BHAVAN
MARKET ROAD, CHANGANASSERY - 686 101.

BY ADVS.SRI.A.JAYASANKAR
SRI.C.V.MANUVILSAN
SRI.MANU GOVIND
SRI.ASHWIN SETHUMADHAVAN

RESPONDENT(S) :-

1. THE HEADLOAD WORKERS UNION (INTUC)
REG.NO.93/59, MARKET ROAD, CHANGANASSERY - 686 101
REPRESENTED BY ITS PRESIDENT, K.J.JAMES
2. THE HEADLOAD AND GENERAL WORKERS FEDERATION (CITU)
REG.NO.104/73, MARKET ROAD, CHANGANASSERY - 686 101
REPRESENTED BY ITS SECRETARY, T.S.NISTHAR.
3. THE DISTRICT POLICE CHIEF
COLLECTORATE P.O., KOTTAYAM - 686 002
4. THE DY. SUPERINTENDENT OF POLICE
OFFICE OF THE DEPUTY SUPERINTENDENT OF POLICE,
NEAR CHANTHA ROAD, CHANGANASSERY - 686 101.
5. THE CIRCLE INSPECTOR OF POLICE
OFFICE OF THE CIRCLE INSPECTOR OF POLICE
CHANGANASSERY - 686 531.
6. THE SUB INSPECTOR OF POLICE
OFFICE OF THE SUB INSPECTOR OF POLICE
CHANGANASSERY - 686 531.

7. THE HEAD LOAD WORKERS UNION (INTUC)
MARKET ROAD, CHANGANASSERY - 686 101
REPRESENTED BY ITS PRESIDENT, SIBI SCARIA
 8. THE DISTRICT LABOUR OFFICER
COLLECTORATE BUILDING, 3RD FLOOR
KOTTAYAM COLLECTORATE, KOTTAYAM - 686 002.
 9. THE KERALA HEAD LOAD WORKERS WELFARE BOARD
KOTTAYAM DISTRICT COMMITTEE
REPRESENTED BY ITS CHAIRMAN, KUCB JUBILEE BUILDING
THIRUNAKKARA, KOTTAYAM - 686 001.
 10. THE KERALA HEAD LOAD WORKERS WELFARE BOARD
S.R.M. ROAD, ERNAKULAM, COCHIN - 682 018
REPRESENTED BY TS CHIEF EXECUTIVE
- R3-R6 BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS
R1-R2 BY ADV. SRI.LIJI.J.VADAKEDOM
R10 BY ADV. SRI.C.S. AJITH PRAKASH, SC, KHWWB
R7 BY ADV. SRI.JOHN VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

APPENDIX

PETITIONER(S) ' EXHIBITS :-

EXT.P1: A TRUE PHOTOCOPY OF ORDER NUMBER C/2492/14 DATED 15/5/2014 OF DISTRICT LABOUR OFFICER (WITH ENGLISH TRANSLATION) .

EXT.P2: TRUE PHOTOCOPY OF ORDER DATED 5/8/2014 BY WHICH POOL NOS.1, 2, 3, 4A, 4B, 5A, 5B, 6A, 6B, 7A AND 7B OF CHANGANASSERY MARKET AREA WERE SUSPENDED (WITH ENGLISH TRANSLATION) .

EXT.P3: A TRUE PHOTOCOPY OF ORDER DATED 5/8/2014 BY WHICH PERMISSION WAS GRANTED TO ENGAGE ANY WORKER FOR UNLOADING ARTICLES WEIGHING MORE THAN 50 KGS (WITH ENGLISH TRANSLATION) .

EXT.P4:A TRUE PHOTOCOPY OF ORDER DATED 8/8/2014 BY WHICH EXHIBIT P2 AND P3 WERE WITHDRAWN BY RESPONDENT BOARD (WITH ENGLISH TRANSLATION) .

EXT.P5: A TRUE PHOTOCOPY OF THE LETTER E105/14 FROM THE KREALA HEADLOADED WORKERS WELFARE FUND BOARD, CHANGANASSERY LOCAL COMMITTEE DATED 27/11/2015 TO STRIKING WORKERS (WITH ENGLISH TRANSLATION) .

EXT.P6: A TRUE PHOTOCOPY OF COMPLAINT DATED 30/11/2015 FROM PETITIONER TO THE 4TH RESPONDENT (WITH ENGLISH TRANSLATION) .

EXT.P7: A TRUE PHOTCOPY OF REQUEST DATED 30/11/2015 TO DEPUTY SUPERINTENDENT OF POLICE WITH COPIES TO POLICE CHIEF AND RESPONDENTS 5 & 6 (WITH ENGLISH TRANSLATION) .

EXT.P7(a) : A TRUE COPY OF RECEIPT ACKNOWLEDGING EXHIBIT P7.

EXT.P8 : A TRUE COPY OF ORDER No.E.105/14 DATED 8.12.2015 ISSUED BY THE 9TH RESPONDENT BOARD (WITH ENGLISH TRANSLATION) .

EXT.P9 : TRUE COPY OF ORDER DATED 10.12.2015 ISSUED BY THE 9TH RESPONDENT (WITH ENGLISH TRANSLATION) .

RESPONDENT(S) ' EXHIBITS :-

EXT.R2(a) : THE COPY OF THE MINUTES OF THE MEETING DATED 8.8.2014 (ALONG WITH THE DECISIONS TAKEN THEREIN) HELD IN BETWEEN THE PETITIONER AND THE HEAD LOAD WORKERS (ALONG WITH ENGLISH TRANSLATION) .

EXT.R2(b) : THE RELEVANT EXTRACT OF THE G.O. (P)No.134/2015/LBR DATED 16.9.2015

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EXT.R7(a) : TRUE COPY OF THE MINUTES OF THE MEETING HELD ON
8.8.2014 WITH ENGLISH TRANSLATION.

EXT.R7(b) : TRUE COPY OF THE EXTRACT OF G.O.(P)No.134/2015/LBR
DT.16.9.2015.

//TRUE COPY//

P.A. TO JUDGE

**ASHOK BHUSHAN, C.J &
K. RAMAKRISHNAN, J.**

W.P.(C) No.36633 of 2015

Dated this the 15th day of December 2015

J U D G M E N T

Ashok Bhushan, CJ.

Heard the learned counsel for the petitioner, learned Senior Government Pleader, learned Standing Counsel appearing for respondents 9 and 10 and the learned counsel appearing for respondents 1, 2 and 7. Counter affidavits have been filed by respondents 1, 2 and 7. Statement has also been filed by the 9th respondent. With the consent of the parties, we proceed to finally decide the writ petition.

2. This writ petition has been filed by the petitioner, namely; Changanassery Merchants Association, which claims to be an association of 300 merchants. Petitioner's case is that under the bilateral agreement, wages have been enhanced from time to time. Reference has been made to the latest bilateral agreement. The said bilateral agreement was fortified by the order of the District Labour Officer dated 15.5.2014, Ext.P1. The grievance of the petitioner is that the members of the first and second respondent Unions have been demanding that they will not unload articles weighing more than 50 kgs. and on the said basis, a strike

was conducted in the year 2014. Reference has also been made to an order passed on 5.8.2014, by which, the Chairperson of the District Committee of the Kerala Headload Workers Welfare Board has passed an order for suspending different pools in the Changanassery market. It is submitted that the said suspension was withdrawn subsequently on 8.8.2014, but, there had been demands and agitations from the workers belonging to respondents 1 and 2 from time to time. It is submitted that from November 24th onwards, the workers under the first and second respondent Unions have started stoppage of work. By Ext.P5 letter dated 27.11.2015, the Kerala Headload Workers Welfare Board, Changanassery Sub Committee has issued directions, asking the workers of the Changanassery market not to strike or obstruct the work raising a statewide issue, which have neither been recognised or consented by any Trade Union. Subsequently, another order, Ext.P8 was issued on 8.12.2015, by which, the following directions were issued :-

“Apart from that, for regularizing the industrial dead lock occurred due to the refusal to unload/not timely unloading of articles by the Head load workers belonging to Pools 1, 2, 3, 4A & 5A, the registered traders under the scheme are hereby permitted to engage any worker of their choice, who is willing to unload their articles, above 55 KG.”

The petitioner has referred to and relied upon a further order issued on 10.12.2015, by which, Ext.P8 order dated 8.12.2015 was revised by granting permission to the registered merchants of the Changanassery Sub Committee to engage workers of their choice for loading/unloading goods of any denomination, till the suspension of the workers vide order dated 8.12.2015 is revoked. The petitioner submits that in view of the said order, they are clearly entitled for police protection for carrying out the work of loading and unloading of any denomination at any rate by their own workers.

3. Learned counsel appearing for respondents 1, 2 and 7 refuting the submission of the learned counsel for the petitioner, contends that Exts.P8 and P9 orders have not been validly issued since the procedure prescribed in the Statute has not been followed while passing the said orders. It is submitted that the headload workers belonging to their Unions have no objection and are willing to carry out loading and unloading work upto the extend of 55 kgs. and the work for loading and unloading of goods upto the extend of 55 kgs. cannot be denied to the workers of their Unions. It is further submitted that in view of the amendment made in the Schedule of Kerala Shops and

Commercial Establishments Act, 1961 vide notification dated 16.9.2015, in place of '75 kgs.', '55 kgs.' has been substituted.

4. The above submission has been refuted by the State as well as the learned Standing Counsel appearing for the Kerala Headload Workers Welfare Board. It is submitted that there is no amendment in the Statute governing headload workers and the said amendment is with regard to the workers registered under the Kerala Shops and Commercial Establishments Act, 1961 and the same has no application with regard to headload workers.

5. Statement has been filed by the 9th respondent, wherein, Sec.7(1) of the Kerala Head Load Workers Act, 1978 has been referred to.

6. We have considered the submissions of the learned counsel for the parties and perused the records.

7. The submission raised by the learned counsel for the petitioner in view of Exts.P8 and P9 is that they are free to engage their own workers to carry on loading and unloading work of any denomination.

8. The submission raised by the learned counsel for respondents 1, 2 and 7 is that Exts.P8 and P9 orders have not been issued in accordance with the procedure prescribed under the Statute.

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9. In this writ petition, we are not concerned with the correctness or otherwise of Exts.P8 and P9 orders. It is always open for the affected parties to take appropriate steps with regard to challenging the orders, Exts.P8 and P9. For the purpose of this police protection case, till the orders, Exts.P8 and P9 are not suspended or varied, the petitioner is entitled to claim for police protection for carrying out the loading and unloading work by engaging their own workers of any denomination. In view of the above, it is not necessary for us to enter into the various submissions as noted above.

Hence, we dispose of the writ petition directing the 6th respondent to provide protection to the petitioner in view of Exts.P8 and P9 orders. Further, it shall be open for respondents 1, 2 and 7 to take appropriate measures with regard to Exts.P8 and P9. It goes without saying that in any event any modification with regard to Exts.P8 and P9 orders, the police authorities shall act accordingly.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
K. RAMAKRISHNAN
JUDGE