

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 31.07.2015

DATED : 13.08.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.23220 of 2015

and

M.P.No.1 of 2015

M/s.Keld Ellentoft India Private Limited,
Represented by its Joint Managing Director,
Ketnamalee Village,
Satyavedu Road,
Sirupuzhalpet (Po),
Gummidipoondi

...Petitioner

Vs.

1.The Secretary,
Labour and Employees Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009.

2.The Deputy Superintendent of Police,
Thiruvallur District,
Jaya Nagar, Tiruvallur,
Tamil Nadu-602 001.

3.The Inspector of Police,
F4.Kaverapettai Police Station,
Tiruvallur District.

4.M.Anand

5.M.Soundararajan

6.E.Deivasigamani

7.S.Hari Prakash

8.P.Vinayagam

9.R.Gopi

10.K.Suresh

11.M.Arul

12.R.Vajramani

WEB COPY

13.S.Gopi
14.A.Murali
15.M.Gunasekaran
16.M.Jagadeesan
17.G.Vinoth Kumar
18.K.Suman
19.K.Naresh
20.D.Magesh
21.T.Magesh
22.M.Ganapathy
23.K.Baskaran

...Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondents 2 and 3 to give protection to the life and property of the petitioner, staff, workers, customers, suppliers, employees by preventing the workmen, respondents 4 to 23, who have resorted to illegal strike from causing any hindrance or interference to the functioning of petitioners factory within a distance of 500 meters from the premises of the factory thus facilitating free ingress and egress.

For Petitioner : Mr.S.R.Rajagopal

For Respondents : Mr.M.S.Ramesh (AGP)

O R D E R

The petitioner submits that the petitioner is a company incorporated under the provisions of the Companies Act, 1956, in the year of 1987. The petitioner is engaged in the business of manufacturing and selling expansion joints, compensations, dampers, diverters and related products and services. The petitioner has established a factory in Ketnamallee Village, Satyavedu Road, Sirupuzhalpet (PO) Gummidipoondi - 601 201. The petitioner had originally a very glorious business. However, due to severe market recession for the past two years, the petitioner has suffered an accumulating financial loss. The petitioner has suffered a financial loss of more than Rs.2,00,00,000/- (Rupees Two Crores only) during the Financial year 2013-2014 and further suffered a loss of amount Rs.2,20,00,000/- (Rupees Two Crores Twenty Lakhs only) for the financial year 2014-2015.

2. The petitioner has decided to curtail its production activities and with an intent to over come its accumulated loss,

which would otherwise have a cascading effect resulting in complete closure of the company. Hence, keeping in mind strict labour laws, the petitioner was compelled to issue a Notice of Retrenchment to the respondents 4 to 23 and other 2 workmen strictly adhering to the policy of last come first go as provided under the labour laws. Accordingly, the petitioner has followed due process of law, in issuing notices to the respondents 4 to 23 and also intimating the first respondent, Secretary, Labour and Employment Department, Government of Tamil Nadu vide his letter dated 25.07.2015. The employees belonging to the Damper section have been retrenched by following due procedure prescribed under the Act and the employees have been put on notice that their services would no longer be required from 1st August 2015. The petitioner had also put the respondents 4 to 23 and other two workmen to go on compulsory paid leave with effect from 26.07.2015. As required under the Act, the salary and retrenchment compensation in respect of the 22 workmen retrenched namely the respondents 4 to 23 herein and two other workmen, were credited to their savings Bank Account with the Bank of Baroda, Mount Road Branch, Chennai. Out of the 22 retrenched workmen, 20 workmen came to the factory gates on 27.07.2015 and threatened to beat up the employees, other employees who are serving the petitioner, watchman and forcibly entered the premises. Subsequently, on 28.07.2015 they once again came to the factory gate and prevented the serving employees and workmen from entering the premises or carrying on any business activities of the petitioner.

3. The petitioner has followed the law in retrenching the workmen and was constrained to take this action as an extreme measure to arrest his financial loss due to reduction of production capacity and the respondents 4 to 23 do not have any right whatsoever to engage in violence or prevent the other workmen from entering in to the factory as well as stage demonstration right in front of the gate. He is advised to state that though the workmen have right to express their grievance, the same has to be done in the manner known to law without affecting the ingress and egress of the other workmen to the factory and particularly not within 500 meters of the factory gate of the petitioner herein. The respondents 4 to 23 have threatened to engage in violence, hence the other workers are apprehending their safety and security. The petitioner is not permitted to carry on its lawful activity right guaranteed under Article 19(1) (g) & 21 of the Constitution of India. Hence, the petitioner, left with no other alternative was constrained to give a complaint to the second respondent on 27.07.2015 and a receipt was given by the second respondent in Petition No.155 of 2015.

4. The petitioner further submits that the second respondent is only acting as a mute spectator without taking any steps to prevent the respondents 4 to 23. The respondents 4 to 23 are threatening to use violence which would endanger the life and liberty of the other workmen as well as the property of the petitioner. The respondents 3 to 22 are deliberately with the help of other trade unions want to create a Law and Order problem and completely shut down the petitioner's factory, if the petitioner does not heed to their demands the respondents 4 to 23 have been duly paid whatever amount due to them under Law as retrenchment compensation and their retrenchment has been done in accordance with the law after following procedure prescribed therein. Hence, left with no other alternative, as the petitioner's fundamental right is being affected, the petitioner is constrained to approach this Court with this writ petition.

5. The respondents 4 to 23 are causing threat to the management, staff and other workmen in service from having ingress and egress to the petitioner's factory. The 3rd respondent with whom the complaint has been filed has a statutory duty to provide police protection. The respondents 4 to 23 have taken Law into their hands and resorted gherao in front of the factory gate and threatening willing workers and management with dire consequences. The Act of the respondents 4 to 23 lacks legal sanction. Since, the respondents 4 to 23 are workers and have backing of few trade unions the 3rd respondent succumbing to their pressure has turned a deaf ear to the petitioners complaint. The right to carry on business, a fundamental right guaranteed to the petitioner is infringed. Right to strike is not a fundamental right. As it is the petitioner to tide over its financial situation is striving hard. Cessation of work in the factory would cause untold hardship and loss to the petitioner. The 2nd and 3rd respondent are duty bound to grant protection to citizens and particularly against obstruction and when there is a threat to law and order situation. The petitioner has commercial commitment and their failure to honor the same would have a cascading effect. The Act of the respondents 4 to 23 can under no stretch of imagination be constituted as a lawful act. The petitioner has a right to seek for protection so as to enable smooth functioning of its factory. In the light of these facts and urgency, the petitioner is constructed having no other alternative remedy in approaching this Court for issuance of command unless a command is issued the 2nd and 3rd respondents would not perform their statutory duty. It is therefore, in the interest of justice, necessary and prayed to this Court may be pleased to, restrain the respondents 4 to 23 pending disposal of the writ petition from causing any hindrance or

interference to the functioning of petitioners factory within a distance of 500 meters from the factory premises of the petitioner thus facilitating free ingress and egress.

6. The highly competent counsel Mr.S.R.Rajagopal, appearing for the petitioner submits that the petitioner's company has been registered under the Company's Act and engaged in the business of manufacturing and marketing, expansion joints and related products. Now, the petitioner's company has been suffering a financial loss for the past two years, hence the management has decided to curtail the production activities, hence the Company was forced to issue a notice of retrenchment to the respondents 4 to 23 after following the policy of "last come will be the last to go".

7.The very competent counsel further submits that 20 workmen came to the factory on 27.07.2015 and threatened the other employees. Subsequently, on 28.07.2015 they came to the factory premises and confronted the serving employees, besides the said respondents are prevailing on the other employees from entering into the factory. Hence, the petitioner had leveled a complaint on 27.07.2015 before the 2nd respondent. The learned counsel further submits that the workforce continuously threatened the management and the workforce in service from having ingress and egress to the petitioner's factory and as such the said workforce is taking the law in their hands and violating law and order, hence the very competent counsel entreats the Court to provide adequate police protection to the life and property of the petitioner and workers by preventing the respondents 4 to 23.

8. The highly competent Additional Government Pleader M.S.Ramesh, appearing for the respondent 1 to 3 submit that the petitioner had filed a complaint before the 3rd respondent against the respondents 4 to 23 stating that they are violating law and order at the factory premises, since they have been served with notice of redundancy. However, the law and order is under control. The 2nd and 3rd respondent are dutiful officers controlling and commanding elements from the disputed area.

9. Per contra the learned counsel mentioned in the open Court on 10.08.2015, stating that the respondents 4 to 23 are continuously threatening the employers of the factory and preventing them from having ingress and egress at the factory. Hence, the police protection is absolutely of paramount importance to maintain the peace at the factory premises.

10. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side, this Court directs the 3rd respondent herein to conduct an enquiry on the complaints of the petitioner dated 27.07.2015 and 28.07.2015 and take follow up decisions. Further, this Court directs to depute two constables for a period of one week from 20.08.2015 to 28.08.2015 after collecting necessary mandatory charges from the petitioner as per the Government Rule. This Court directs the 3rd respondent to handle the matter in an amicable manner, since the dispute is between the workforce and management regarding redundancy. Hence, the above writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Labour and Employees Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.

2.The Deputy Superintendent of Police,
Thiruvallur District,
Jaya Nagar, Tiruvallur,
Tamil Nadu-602 001.

3.The Inspector of Police,
F4.Kaverapettai Police Station,
Tiruvallur District.

1 CC to M/s. S.R. Rajagopal, Advocate SR.No. 42856

W.P.No.23220 of 2015
and M.P.No.1 of 2015

NM (CO)
PSI (20.08.2015)