



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.[MD]No.708 of 2021

and

C.M.P.[MD]No.3091 of 2021

- 1.Kanyakumari Mavatta Bharathiya Sumaithookum Thozilalar Sangam
Represented by its President,
R.Palvernann
Thadikkarankonam Branch,
Thadikkarankonam
Kanyakumari District.
- 2.Thovazhai Ondriya Sumai Thookum Tozhilalar Munnetra Sangam
Represented by its secretary,
M.Muthukutty,
Kuttipothai.
Thadikkarankonam
Kanyakumari District.
- 3.Kumari Mavatta Annai Sonia Raghul Gandhi General Workers Union
Represented by its President,
C.Mani,
Lazar Palammal Palace Campus,
Thadikkarankonam
Kanyakumari District.
- 4.Kumari Mavatta Bharathiya Podhu Thozhilalar Sangam,
Represented by its President,
S.Sasikumar,
Palkulam Branch,
Thadikkarankonam,
Kanyakumari District.
- 5.Kumari Mavatta Hindu Masthoor Magasaba Pothu Thozhilalar Sangam
Represented by its Secretary,
S.Reji
Thadikkarankonam Branch,
Thadikkarankonam
Kanyakumari District. ... Proposed Appellants / Third Parties
Vs.
- 1.The Superintendent of Police
Kanyakumari District,
Kanyakumari.

2.The Inspector of Police

<https://hcservices.tn.gov.in/hcservices/Reports.do> Police Station,



Keeripari,
Kanyakumari District.

3.The Sub Inspector of Police
Keeripari Police Station,
Keeripari,
Kanyakumari District.

... Respondent 1 to 3 / Respondents

4.M.Alagarasan

... 4th Respondent / Writ Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 02.12.2020 in W.P.(MD)No.17301 of 2020 on the file of this Court.

PRAYER IN WP(MD) . 17301 OF 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus or any other, writ order or a direction in the nature of writ directing the respondent police authorities to provide adequate police protection to the petitioner in the course of his lawful loading and unloading of timber from the private estates in Kanyakumari District in the light of his representation dated 13-11-2020.

For Appellants : Mrs.D.Geetha

For Respondents 1 to 3 : Mr.A.K.Manickam

Standing Counsel for Government

For 4th Respondent : Mr.N.Dilip Kumar

JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

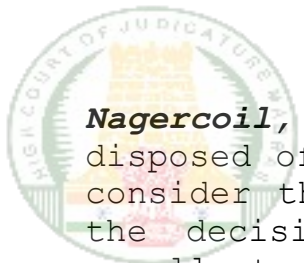
We have heard Mrs.D.Geetha, learned counsel appearing for the appellants and Mr.A.K.Manickam, learned Standing Counsel for Government appearing for the respondents 1 to 3 and Mr.N.Dilip Kumar, learned counsel appearing for the fourth respondent.

2.This writ appeal by third parties is directed against the order, dated 02.12.2020, passed in W.P.(MD) No. 17301 of 2020.

3.The said writ petition was filed by the fourth respondent herein praying for issuance of a writ of Mandamus to direct the respondent Police to provide adequate police protection to the petitioner in the course of his lawful loading and unloading of timber from the private estates in Kanyakumari District, in the light of the representation, dated 13.11.2020.

4.The writ petitioner's case is that no person can compel him to engage one set of workman and his right to engage the workman cannot be interfered with at the behest of any workers union.

5.The learned writ Court after taking note of in the case of **S.Mani Proprietor S.Mani & Co., Vs. The Superintendent of Police,**



Nagercoil, Kanyakumari District, reported in **1992 (2) LW - 547**, disposed of the writ petition by directing the respondent police to consider the representation of the writ petitioner in the light of the decision in the case of **S.Mani**, referred to supra. The appellants, who are all Trade Unions, consisting of workers, who are engaged in loading and unloading of various materials, in particular, timber. The appellants grievance is that they were not impleaded as parties in the writ petition and without hearing them, an order has been passed by directing the police to give police protection to the writ petitioner by considering his representation.

6.Further, it is submitted that already either of the party had given police complaints against each other and the writ petitioner appeared before the police authorities and an amicable settlement was arrived at, which was also reduced into writing and ignoring such settlement and to prevent the members of the appellant Union from being engaged for loading and unloading, the order has been obtained from the learned writ court.

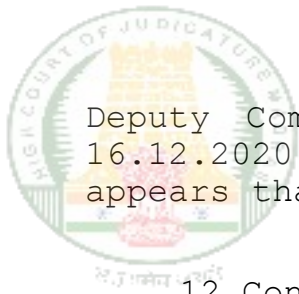
7.Furthermore, it is submitted that the decision in the case of S.Mani, cannot be made applicable, because in the said decision there was a contest between the workers and the management and by considering the facts, the Court held that the management is entitled for protection.

8.The learned counsel for the writ petitioner submitted that the writ petitioner does not know, as to whom he is litigating against because there are several trade unions and the writ petitioner has a right to engage his set of workmen and the appellants cannot compel that their members alone have to be engaged.

9. After elaborately hearing the learned counsel on either side, we are of the view that the writ petitioner ought to have impleaded the employees either in their personal capacity or their respective trade Union, in which, they are members. It may be not be right for the writ petitioner to state that they are unaware, who are workmen, because both the writ petitioner and the workers union appeared before the police and some arrangement was arrived at between the parties.

10.We are not here to comment upon the enforceability of such arrangements. But nevertheless, if such an arrangement had been arrived at and owing to the issues arising pursuant thereto, if the writ petitioner wants to seek for police protection by approaching this Court, in all fairness, the writ petitioner should have impleaded the workmen or their union as parties.

11. The issue as to whether the writ petitioner has right to engage his set of workmen and that he cannot be compelled has to be decided after hearing both parties, namely, the workers union and the management. Much earlier, the employees union have filed an application before the Deputy Commissioner of Labour, Nagercoil, on 7.12.2020 and on the same date, an enquiry notice was sent by the



Deputy Commissioner of Labour, fixing the date of enquiry on 16.12.2020 and notice was sent to the writ petitioner. However, it appears that the writ petitioner did not appear for such an enquiry.

12.Considering all these facts, this Court is of the view that the writ petition requires to be re-heard, so that, not only the official respondents but also the appellants trade union, who are to be impleaded as respondents in the writ petition, should file their counter affidavit and after hearing the parties both factual and legal issues can be decided. However, taking note of the fact that the appellants are trade unions consisting of load men and the writ petitioner is a timber merchant, there would be a circumstance, where the timber merchant will have to depend upon the load man and in turn, the load man will have to depend upon the timber merchant and this will be a general phenomena not with specific reference to the appellants or to the writ petitioner alone.

13.Therefore, in the considered view of this Court, the parties should appear before the Deputy Commissioner of Labour, Nagercoil and present their claims, so that the Deputy Commissioner of Labour, can examine as to whether a successful conciliation can be arrived at. In the event, the appellants and the fourth respondent / writ petitioner are unable to arrive at any conclusion before the Deputy Commissioner of Labour, they can very well come back to the writ court and contest the matter.

14.In the light of the above, the writ appeal is allowed and the order and directions issued in the writ petition is set aside and writ petition is restored to the file of the learned Single Bench and the appellants are impleaded as respondents 4 to 8 in the writ petition. Registry is directed to amend the cause title. Further, there will be a direction to the appellants as well as to the writ petitioner, to participate in the conciliation proceedings before the Deputy Commissioner of Labour, Nagercoil, who shall issue a fresh notice fixing a hearing date convenient to both parties in order to enable the Deputy Commissioner of Labour, Nagercoil, to do so, the parties shall file a copy of this judgment to the said authority, for appropriate action. The parties shall participate in the conciliation proceedings without prejudice to the rights in the writ petition and in the event of failure, they can always come back to the writ Court and take an order of merits.

15.With the above direction, the writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

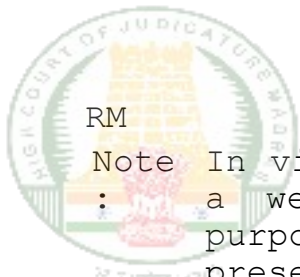
Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



RM

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Superintendent of Police
Kanyakumari District,
Kanyakumari.

2.The Inspector of Police
Keeripari Police Station,
Keeripari,
Kanyakumari District.

3.The Sub-Inspector of Police
Keeripari Police Station,
Keeripari,
Kanyakumari District.

Copy to:

The Section Officer,
Writ Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.GEETHA, Advocate (SR-19567[F] dated 18/06/2021)

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-19570[F] dated
18/06/2021)

+1 CC to M/s.SPL GP (SR-19797[F] dated 21/06/2021)

W.A.[MD]No.708 of 2021

17.06.2021

—
KK(29.06.2021) 5P 8C