

(2012) 03 KL CK 0176

High Court Of Kerala

Case No: Writ Petition (C) No. 4899 of 2012

Basheer K.M. and Others

APPELLANT

Vs

The District Police Chief Office
and Others

RESPONDENT

Date of Decision: March 8, 2012

Acts Referred:

- Headload Workers Act, 1978 - Section 39
- Kerala Protection of River Banks and Regulation of Removal of Sand Rules, 2002 - Rule 17(j), 17(t)

Citation: (2012) 2 KarLJ 245 : (2012) 2 KLJ 245

Hon'ble Judges: V. Chitambaresh, J; Manjula Chellur, J

Bench: Division Bench

Advocate: Shoby K. Francis, for the Appellant; P. Vijayaraghavan and P.C. Sasidharan, for the Respondent

Judgement

Manjula Chellur, Ag. C. J.

1. Heard the learned counsel for the petitioners, party respondents and also State Attorney. According to the petitioners, they are representatives of a registered Trade Union of Varavattoor Unit in Desamangalam Grama Panchayat. The petitioners, claiming to be the representatives of Varavattoor Trade Union in Desamangalam Grama Panchayat, have approached the Court seeking police protection on the ground that the 6th respondent and his supporters are interfering with the work, of them when they were doing the loading and unloading of sand mining at Konavally Kadavu. According to them, when Konavally Kadavu was decided to be opened as per the decision of the Local Panchayat within the area of petitioners, a covered area of headload workers, the 6th respondent and his headload Workers Union members obstructed the loading work of sand from the river and prevented the petitioners and their workers to carry on the headload work.

Therefore, the petitioners approached the concerned police lodging a complaint, but no positive response. Hence they have approached this Court.

2. In response to the notice, the State Attorney and the counsel for the party respondent have entered appearance and even counter affidavit of the 6th respondent is filed. 6th respondent contends that he and the members of his Union are of a special kind of workers coming under the sand mining laws of Kerala, where a special identity card is issued to them by the Panchayat permitting them to remove sand from the rivers as it needs "special skill" to remove the sand from the river.

3. State Attorney has also brought to our notice, Rule 17(j) and (t) of Kerala Protection of River Banks & Regulation of Removal of Sand Rules, 2002, which provides for issuance of identity cards by the concerned Panchayat, where the Kadavus are situated, to remove sand from the rivers.

4. According to the learned counsel for the petitioners, Section 39 of the Headload Workers Act, 1978 provides that irrespective of the provisions of any other laws or Act, Headload Workers Act of 1978 alone is applicable and the Kerala Protection of River Banks & Regulation of Removal of Sand Rules, 2002 have no application so far the present case is concerned, as the petitioners are the registered headload workers in the covered area concerned, where the Kadavu in question is situated.

5. We have gone through the relevant rules of Sand Act as well as the provisions of Headload Workers Act of 1978. Rule 17 of the Sand Rules indicates powers and functions of Local Self Government Institutions. Rule 17(j) refers to publication of list of sand mining labourers working in the Kadavu under the control of Local Self Government Institutions. Rule 17(t) refers to the authority to issue identity cards to such sand removing workers of each Kadavu.

6. The instruction received by the State Attorney indicates that respective Local Authorities are the authority to issue identity cards so far as removing of sand from each Kadavu situated within the jurisdiction of a particular local authority. The question is whether the headload workers of that area, which is a Scheme covered area, can demand such work against the interest of the labourers who were given identity cards under the sand mining rules. Section 39 of the Headload Workers Act reads as under:

39. Effect of Laws and Agreement inconsistent with this Act and Schemes.-(1) The provisions of this Act and the scheme shall have effect notwithstanding anything in consistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the Commencement of this section.

(2) No authority other than the Government or the Board or a committee shall be entitled to make any scheme or do any other act conferring, or purporting to confer,

any benefits on headload workers.

7. No doubt, reading of this provision would indicate, if the provision of the Act or Scheme is in conflict with any other law or Scheme, the Headload Workers provision will hold the field and nothing comes in the way of the application of the Act. Therefore, one has to see whether the establishment in question is a covered establishment under the schedule of Headload Workers Act. Schedule I indicates several establishments to which Headload Workers Act would apply. According to the learned counsel for the petitioners, Serial No. 8 of the first Schedule applies to the case on hand which refers to Bus stands, Boat Jetties, landing places of country crafts. Except a reference is made to boat jetties, it does not refer to other activities connected with river. There is no indication in any manner. It is also learnt from the submissions that boat jetties are used not only for transportation of persons from place to place, but also to bring their goods along with them. Therefore, it would only mean that, if any assistance of headload worker is required while manning boat jetties, such work has to be entrusted to the registered headload workers, if the area falls within the Scheme covered area. So far as sand mining is concerned, though it is a Scheme covered area, as there is no application of the activity in question to the Schedule, especially with reference to serial No. 8, we are of the opinion, Section 39 has no application to the facts of the present case. In that view of the matter, the petitioners cannot complain the work of sand mining being entrusted to identity card holders issued under the sand mining rules. However, the respondent Police have to see no law and order problem occurs on account of the dispute between two groups of labourers, i.e. headload workers and sand mining labourers who are holding identity cards under the special rules. As there is no justification in the claim of the petitioners, we are of the opinion, there cannot be any police protection for them. It is needless to say that 6th respondent cannot take law into their hands and create law and order problem which calls for police interference.

With these observations, the Writ Petition is disposed of.