

DEVAN RAMACHANDRAN, J.

W.P.(C).No.17866 of 2021

Dated this the 7th day of October, 2021.

ORDER

I do not propose to dispose of this writ petition finally today because the issues projected in this case certainly travel beyond the specific factual circumstances involving the petitioner alone.

2. It is without doubt that Kerala has had a history of militant trade unionism and the reputation of such continuous even today.

3. The unfortunate result is that it is not often that our State is considered as an investor friendly destination.

4. There have been changes over the years and many deleterious tendencies have been arrested; but still, as already said above, the afore reputation has not been fully erased.

5. A lot of contribution to this has come from violent actions of headload workers, who are registered under the provisions of the Kerala Headload Workers Act. The past experience shows that the headload workers would approach a business concern or an industry

and demand that they be engaged in the loading and unloading works; and should they face any resistance, violence and intimidation could be the result.

6. Obviously, not many would like to face such a situation in life and this, tragically, has led to the blot in the reputation of the State, as one in which militant trade unionism still survives.

7. The irony of the situation is that the Headload Workers Act contains a specific scheme, by which a headload worker can seek employment; but it is not to approach the employer directly and seek it with force. As is conceded by Sri.Siju Kamalasanan, the learned Standing Counsel for the Head Load Workers Welfare Fund Board, if any employer illegally refuses to engage headload works, the latter can approach the Board and seek redressal as per law.

8. However, as is also admitted at the Bar by the learned Government Pleader, this is not the manner in which normally headload workers or Unions ensure that they get employment. As we see from the numerous cases that come before this Court, they use force or

unleash intimidation and thus force the employer to achieve to their demands.

9. This is precisely what is proscribed by the Headload Workers Act.

10. I have begun as above, since there can be little doubt that if the provisions of the Headload Workers Act are implemented properly, then the impression of Kerala having a militant trade unionism would vanish without much of a delay. This is because, in the event of any employer refusing to engage a headload worker, the consequences could not be violence but legal proceedings initiated before the Board, which will then lead to the statutory remedies under the Act.

11. Pertinently, the Government also affirms that they are against the concept of militant trade unionism and that the extortionist demands made euphemistically as “Nokkukooli” (Gawking Wages) are illegal and cannot be tolerated.

12. As is common knowledge, the Government has issued circulars banning the demand of “gawking wages”, but they do not deal

with militant trade unionism, which is sometimes exhibited in cases where an employer rightly or wrongly refuses to engage a headload worker.

13. Axiomatically, while the unions maintain that they have not sought for any Gawking charges - which is to mean demand for money without being employed, obstructionist and violent acts to gain employment is made, ironically justifying their action on the statutory scheme under the Headload Workers Act.

14. As indited above, if any headload worker is denied legitimate engagement or employment, the remedy against the same is not violence but to approach the Board appropriately under the provisions of the Act.

15. To paraphrase, even assuming that an employer is illegally disallowing engagement to a headload worker, the latter or his Union cannot use force or intimidation against the said person or entity to seek employment, but they must approach the Board appropriately and seek redressal. This is inevitable since the Board is vested with

sufficient powers under the Act to resolve such issues, including by proceeding against the employer appropriately.

16. However, instances of highhanded behaviour and even violence from the side of the headload workers and their Unions are ubiquitous before this Court, which is reflected in the facts of this case also, wherein, the allegation is that they obstructed the vehicles of the petitioner - which is not disputed by the police in their statement filed before this Court. To offer a further instance, in another writ petition, namely W.P.(C)No.15192/2021, the Station House Officer of the Police Station involved in that case has filed a report before this Court saying that in spite of the interim orders granted to the petitioner therein, members of a particular pool of headload workers trespassed and assaulted the workers and damaged properties. The said Officer has unambiguously averred in his report that nine such headload workers were identified, arrested and enlarged on bail from the station itself; however, conceding that the interim order of this Court had been violated.

17. It is needless to say that even when such violations are noticed, if the perpetrators are not charged with appropriate non-cognizable offences, no purpose is ever going to come out of the exercise of issuing circulars banning 'gawking charges' by the Government.

18. The continuing belligerence shown by the Trade Unions in situations where they perceive that their members have not been afforded engagement by the employer, can only demonstrate their scant respect for law and lack of belief in the statutory scheme.

19. It is this that Government must try to rectify; by taking the Trade Unions into confidence and convincing them that violence is not the answer to every ill in society, particularly in a civilized nation like ours.

20. I say as afore because, it is in the interest of the workers of the Trade Unions, more than anybody else, that Kerala becomes a truly investor friendly destination, which will then offer larger engagements and employment opportunities.

21. Pertinently, the 9th respondent in this case, who is the Secretary to the Department of Labour And Skills, the Government of Kerala, has filed a statement along with a memo of learned Government Pleader dated 05.10.2021, explaining the action that Government has taken with respect to any complaint of militant action of headload workers or Trade Unions.

22. The relevant portions of the said statement is extracted as under:

“The measures and actions taken with regard to issues related to unlawful demanding of wages by the Head Load Workers are submitted herein;

1. The Labour Department has set up Call Center in the office of the Labour Commissioner in the State to take immediate action on the issues related to unlawful demand of wages by the Head Load Workers including Nokkukooli. The number is 155215 and the toll free number is 18004255214.

2. When complaint is received through the Call Centers, the Assistant Labor Officers will intervene to solve the issue and recover the inappropriate or overcharged loading and unloading wages if any and take strict action against the workers in matters related to over payment. Whenever a complaint of Nokkukooli is received, the Assistant Labour Officers, Deputy Labour Officers and District Labour Officers will intervene and recover the excess wages if claimed.

3. In case of any serious irregularities on the part of the workers, action will be taken including cancellation of the registration card of the Head Load Workers as per Section 26A (4) of the Kerala Headload Workers Act.

4. In addition, complaints of harassment, intimidation or assault by the employer are referred to the police and appropriate legal action is taken. In order to solve the problems related to loading and unloading wages in the Head Load Sector, unified loading and unloading wages for each category in the Head Load sector at the district level has been published in the website of Labour Commissioner (www.lc.kerala.gov.in) and have been implemented in all the 14 districts.

5. Boards displaying the loading and unloading charges have been set up at major intersections in all the districts in association with the Residence Associations to bring the notice of the public regarding the loading and unloading rates and those who require the services of Head Load Workers can avail the services of workers from the Kerala Headload Workers Welfare Board at this rate.

6. As a part of putting an end to the unhealthy practices that prevails in the loading and unloading sector, the State Government have issued order (G.O. (Rt).No.511/2018/LBR dated 30.04.2018) detailing few conditions that are to be implemented in order to generate an improved work culture (True copy of the G.O. (Rt).No.511/2018/LBR dated 30.04.2018 produced herewith and Marked as Annexure R9(a)) in the sector. One of the main points in the order is that the headload workers shouldn't claim wages without doing the work.

7. The State Police Chief has also issued Circular instructions No. S8/5044/2012 dated 26.03.2012 (True copy of the Circular No. S8/5044/2012 dated 26.03.2012

produced herewith and Marked as Annexure R9(b) urging the police personnel to take all possible measures to curb the practice of Nokkukooli and to ensure peace and tranquility.

23. The afore measures certainly deserve to be commended, but unless they are put into effect without reservation, the purpose behind it can never be served, since otherwise, every time there is a violent incident, it will be treated only as a routine law and order issue and would then be consigned to the litigative chapters, as being as one among the many.

24. The real remedy in ensuring that entrepreneurs and industries are not intimidated from coming and operating in Kerala is by ensuring that there is a peaceful atmosphere in the realm of Labour and employment scenario; and to a larger extent, this will be possible only if it is ensured that the headload workers and their Unions act totally within the confines of the Headload Workers Act, Rules and such other applicable Statutes.

25. I do not think that Kerala can afford to wait any further, because otherwise, the inveterate tendencies would become difficult to

be rooted out and the situations will only deteriorate as we go along.

26. Hence, apart from the afore measures taken by the Government – which this Court certainly appreciates – stringent steps and measures are to be now taken to drive home the point that no headload workers or their Unions can take law into their own hands or unleash violence or such other conduct even if they are denied employment by an employer illegally; and that in such event, they must certainly engage the Board and seek redressal by law. If this is ensured constantly, the atmosphere of industries in Kerala will obtain a paradigm shift

27. I want the Government to reflect upon this and to inform this Court, by the next posting date, the measures adopted for the afore purpose

28. As far as Gawking charges (Nokku kooli) are concerned, this Court declares that any such demand by any person, headload worker, Union is illegal and unlawful; and consequentially direct the competent Station House Officers of the area concerned, to take stringent and strict

action - including under the various provisions of the Indian Penal Code, depending upon the nature of the allegations – thus ensuring that the perpetrators are brought to book without any lenience - whatever may be colour of the flag they may be operating under and may hold allegiance to.

29. More particularly, any conduct from any Union or headload worker in violation of the afore observations, even in the event they are illegally denied engagement by an employer, will be treated as an affront to the authority of this Court and necessary action taken under the provisions of the Penal Law, swiftly and quickly without any delay.

30. I conclude this order hoping that Government will understand the spirit of the observations of this Court, which certainly would go a long way in ensuring the name of Kerala as a premier destination, not merely for tourism but also for industry.

31. As far as the specific facts of this case are concerned, keeping the line of the afore views, the petitioner shall not engage any person from outside the pool maintained by the Board for loading and

unloading work since, the area in question is admittedly covered by a Scheme under the Headload Workers Act and should anything to the contrary is noticed, it will be upto any headload worker or Union to bring it to the notice of the Board, who shall thereupon take necessary action in terms of law.

List this matter for further consideration on 01.11.2021 and I, hope that the next Kerala "Piravi" day will also be a "Piravi" of fresh thought.

**DEVAN RAMACHANDRAN
JUDGE**

Raj/08.10.