

Sreekumar Vs. State of Kerala

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Court : Kerala

Decided On : Oct-31-1995

Reported in : (1996)ILLJ977Ker

Judge : K. Narayana Kurup, J.

Acts : [Constitution of India](#) - Articles 19(1) and 226; Trade Union Act

Appeal No. : O.P. No. 16174/1988

Appellant : Sreekumar

Respondent : State of Kerala

Advocate for Def. : K. Thankappan, G.P. and; V.N. Achuta Kurup, Adv.

Advocate for Pet/Ap. : K.L. Narasimhan, Adv.

Disposition : O.P. allowed

Judgement :

K. Narayana Kurup, J.

1. Heard counsel for petitioner and 5th respondent. Petitioner is the licensee of a foreign liquor shop V.L.1/16 at Kazhakuttam. He is granted the privilege to vend Indian made foreign liquor for the year 1995-1996. The privilege was conferred on him for an amount of Rs. 24,01,000/-Ext. P1 is the copy of the notice conferring

the privilege on the petitioner. On the basis of Ext. P1, petitioner executed Ext. P2 agreement. Petitioner had employed one Siva Prasad as an employee of the liquor shop and on the said employee committing certain misconduct he was placed under suspension pending domestic enquiry. According to the petitioner, the employee has misappropriated a sum of Rs. 3,59,010/-Ext.P5 is the show cause notice issued to the delinquent employee.

2. Complaint of the petitioner is that since petitioner turned down the request of the delinquent employee to reinstate him in service pending finalisation of disciplinary proceedings the matter has now been taken by the 5th respondent as Secretary of the Kerala Toddy and Abkari Workers Congress and at the instance of the 5th respondent a huge pandal is put up in front of the shop blocking the ingress and egress to and from the shop. As a result of the agitation, customers are not allowed to enter the shop. Exts. P9 and P10 are representations preferred by the petitioner to 2nd and 3rd respondents respectively seeking police protection. Since Exts. P9 and P10 did not elicit any satisfactory response, the present writ petition has been filed praying for issuance of a writ of mandamus directing 2nd, 3rd and 4th respondents to afford meaningful, adequate, sufficient and necessary police protection to the petitioner/his employees, their property/person and for free ingress and egress to and from the FL 1/16 Foreign Liquor shop at Kazhakuttam,

3. When the original petition came up for admission, learned Government Pleader took notice on behalf of respondents 1 to 4 and 6 and notice by special messenger was ordered to 5th respondent. When the matter came up for further hearing today the 5th respondent is represented by learned counsel Sri. V.N. Achutha Kurup. According to learned counsel appearing for 5th respondent, the union has an unfettered right to conduct 'Dharna/demonstration in front of the shop in question and the petitioner is not entitled to approach this court for a direction to police protection. Having considered the submission advanced by the learned counsel for the 5th re-spondent, I am afraid that such contention is not liable to be accepted. No doubt, the workmen have a right to strike and such a right has been recognised by courts also. Even so, it has to be remembered that the said right has to be exercised in such a way as not to interfere with the right of the employer to conduct his business in a peaceful way. The fact that the union has put up a huge

pandal in front of the shop is not disputed. If that be so, one can imagine the plight of the petitioner who is conducting a foreign liquor shop after paying heavy amount towards licence fee to the Government. While recognizing the right of the trade union to carry on peaceful demonstration, it must be noted that the right has to be exercised in such way as not to interfere with the rights of others to carry on their lawful business. The fact that citizens have the right to stage demonstration / satyagraha do not mean that they can do so at the place of their choice. The exercise of the right will stand terminated the moment it interferes with the right of someone else to enjoy property or to carry on business. The right also cannot be exercised in such a way as to intimidate the employer into submission. In the above view, the 5th respondent is not entitled to stage a stayagraha right in front of the petitioner's shop causing obstruction to the smooth conduct of the shop resulting in huge financial loss. The activity of the 5th respondent if allowed to continue will constitute wrongful interference with the business of the petitioner.

4. Accordingly, I direct the respondents 3 and 4 to ensure that the demonstration conducted in front of the shop is removed to a distance of 25 metres from the main gate of the shop and in such a way as not to cause any obstruction to free ingress and egress to and from the shop.

O.P. is allowed as above.

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