



2024/KER/42258

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 18TH DAY OF JUNE 2024 / 28TH JYAISHTA, 1946

OP(C) NO. 2332 OF 2023

AGAINST THE JUDGMENT DATED 16/10/2023 IN CMA NO.25 OF 2021

OF ADDITIONAL DISTRICT COURT NORTH PARAVUR

PETITIONER/RESPONDENT:

THE FEDERAL BANK LTD.REPRESENTED BY SUDHEESHKUMAR
M. DEPUTY VICE PRESIDENT (HR) , HR DEPARTMENT, THE
FEDERAL BANK LTD, HEAD OFFICE, FEDERAL TOWERS,
BANK JUNCTION, ALUVA, ERNAKULAM, PIN - 683101
BY ADVS.LATHA ANAND, M.N.RADHAKRISHNA MENON
SIDHARTH P.S.,K.R.PRAMOTH KUMAR
S.VISHNU (ARIKATTIL)
SRI.VIVEK CHIB (SR) , SRI.ATUL SHANKAR VINDON,
SRI.SIDHARTH P.S. , ADV.MANSI GUPTA

RESPONDENT/APPELLANT:

FEDERAL BANK OFFICERS' ASSOCIATION
FBOA CENTRE, FBOA ROAD, ALUVA, REPRESENTED BY ITS
GENERAL SECRETARY, ANITHA P, SENIOR MANAGER,
INSPECTION AND AUDIT DEPARTMENT, FEDERAL BANK LTD.
(NOW REPRESENTED BY MR. SHIMITH P R, SENIOR
MANAGER, OPERATIONS DEPARTMENT, THE FEDERAL BANK
LTD, ALWAYE, ERNAKULAM) , PIN - 682031
BY ADVS.ABHILASH N,
P.S.SUJETH(KAR/662/1999)
R.ARUN (PALLURUTHY)(K/194/2004.)
M.P.UNNIKRISHNAN(K/293/2015)
K.RAMAKUMAR (SR.) (R-245)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
27.05.2024, THE COURT ON 18.06.2024 DELIVERED THE FOLLOWING:



J U D G M E N T

This original petition has been filed challenging Ext.P7 judgment passed by the Additional District Court, North Paravur (for short, the appellate court) in CMA No.25/2021, dated 16th October 2023.

2. The petitioner, the Federal Bank Ltd., is a banking company incorporated under the Indian Companies Act. The respondent is the Federal Bank Officers' Association, a trade union which comprises officers in the cadre of Scale 1 to III (i.e., Assistant Managers, Managers and Senior Managers) of the petitioner's Bank as its members. The petitioner instituted a suit as OS No.204/2020 before the Munsiff's Court, Aluva (for short, 'the trial court') against the respondent for a permanent prohibitory injunction restraining the respondent, its members and supporters from obstructing the bank officials and customers from dealing with the bank, obstructing the ingress and egress of them, committing any acts of waste or damage to the bank's



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property, holding any meeting or demonstration, dharna, erecting of tents, displaying posters and banners, shouting slogans within a radius of 200 metres from the premises of the head office, annex and nearby branches of the petitioner bank which are specifically described in the properties scheduled in the plaint and also for a mandatory injunction directing the respondent to remove the notice board, hoardings, banners and posters displayed in the plaint schedule properties.

3. Three items of properties are described in the plaint schedule. The plaint A schedule is the property where the head office of the petitioner's bank is situated. The Plaint B schedule property is the property where the training centre of the petitioner's bank functions, and the Plaint C schedule property is the property where the administrative office of the petitioner's bank functions. According to the petitioner, the plaint A and B schedule properties are in its absolute possession and ownership, and the plaint C schedule property is in its possession under the lease agreement. It is alleged that on 3/6/2020, the respondent and a few of its office bearers, without any notice or intimation, held a surprise dharna in front of the head office of the



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petitioner's bank at Aluva situated in the plaint A schedule property, holding posters, banners and placards in protest against the transfers of its employees and displayed a poster containing false and misleading contents in the notice board in the plaint A schedule property. The suit was immediately instituted apprehending further trespass and agitation in an intensified manner.

4. Along with the suit, the petitioner filed Ext.P2 application for temporary injunction under Order XXXIX Rule 1 of CPC. The respondent filed Ext.P3 counter affidavit to the injunction application. After hearing both sides in detail, the trial court allowed Ext.P2 injunction application whereby, the respondent, its members and supporters were restrained from obstructing the bank officials and customers from dealing with the bank, obstructing their ingress and egress, and committing any act of waste or damage to the petitioner bank's property. They were also restrained from holding any meeting, demonstration, dharna, erecting of tents, displaying posters, banners and shouting slogans within a radius of 200 metres from the premises of the head office and nearby branches of the



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petitioner's bank at Aluva till the disposal of the suit. Ext.P5 is the said order. Assailing Ext.P5, the respondent preferred appeal before the appellate court as CMA No.25/2021. After hearing both sides, the appellate court allowed the appeal in part and modified Ext.P5 order as under:

“Restraining the respondent and its members from obstructing the ingress and egress of the officials and customers, from committing any act of waste or damage in the plaint schedule properties and in any manner conducting any protest or demonstration so as to cause obstruction to the peaceful functioning of the Banks and offices situated in the plaint schedule properties till the disposal of the suit.”

Ext.P7 is the said order. It is challenging the said order; this Original Petition has been preferred.

5. I have heard the learned Senior Counsel, Sri. Vivek Chib, instructed by Sri.S.Vishnu, the learned counsel for the petitioner, and Sri. K. Ramakumar, the learned Senior Counsel instructed by Sri.N.Abhilash, the learned counsel appearing for the respondent.

6. The learned Senior Counsel for the petitioner Sri.Vivek Chib submitted that Ext.P7 order modifying Ext.P5 order is unjustifiable, unreasonable, without any basis and is in violation



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of the settled legal principles governing the grant of temporary injunction. The learned counsel further submitted that the appellate court erred in ruling contrary to the ratio laid down in the decisions of the Supreme Court and various other High Courts wherein the dharna/demonstrations have been restricted from 100 metres to 200 metres from the premises of the Bank/company/factory. Reliance was placed on *Orchid Employees' Union and Others v. Orchid Chemicals and Pharmaceuticals Ltd* [(2008) 11 SCC 184], *Standard Chartered Grindlays Bank Ltd. v. Grindlyas Bank Employees' Association and Others* [2002 (2) LLJ 174 Calcutta], *Punjab and Sind Bank v. Punjab and Sind Officers Joint Action Committee* [1998 (1) LLN 271 (Del)], *Wings Pharmaceuticals Pvt. Ltd v. Pargatisheel Mazdoor Sangh, Delhi Pradesh and Others* [CD] 2000 DHC 1057], *Food Corporation of India, Chennai v. Employees of Food Corporation of India, Chennai* [CD] 2000 MHC 495] and *Maruti Udyog Ltd. v. Maruti Udyog Employees' Union and Others* [CD] 2002 DHC 601]. The counsel also submitted that the appellate court has committed an error in diluting Ext.P5 order through Ext.P7 order and hence the latter is liable to be set aside. On the other hand,



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the learned Senior Counsel for the respondent Sri.K.Ramakumar submitted that the acts allegedly done by the respondent association are protected under Article 19(1)(a) and 19(1)(b) of the Constitution of India and any blanket order prohibiting the exercise of the said legitimate right would be violative of the said fundamental rights. The learned Senior Counsel further submitted that the appellate court has appreciated the evidence on record in the correct perspective and found that the respondent association has every right to conduct peaceful gatherings and express their opinions as guaranteed under Article 19 of the Constitution of India in the plain schedule properties and rightly modified the injunction order passed by the trial court in tune with the facts and circumstances of the case. There is no need to interfere with the same in any manner. The counsel also submitted that in a proceedings under Article 227 of the Constitution of India, this Court cannot sit in appeal over the findings recorded by the appellate court, and no interference is called for unless the order impugned is palpably perverse and patently unreasonable. Reliance was placed on *Kakkottakath Puthiyapurayil Muhammad Ali and Others v. Kakkottakath*



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Puthiyarambath Mahamood and Others (2022 KHC 378) and ***Garment Craft (M/s.) v. Prakash Chand Goel*** (2022 KHC 6029).

7. According to the petitioner, on 3/6/2020, the respondent and its office bearers held a surprise dharna in front of its head office building at Aluva situated in the petition A schedule property, holding posters, banners, placards and shouting slogans. It is alleged that the said act of the respondent caused serious damage to the petitioner's bank and would impede its business. It is also alleged that the petitioner apprehends that the respondent would continue to stage similar dharna with the participation of more members, and in such an event, it would severely damage the faith and confidence reposed with the bank by the investors and customers besides causing injury and damage to its reputation and credibility. In the counter affidavit filed by the respondent, they have admitted that, on 3/6/2020, they stood up in front of the head office of the petitioner bank in protest against the illegal transfers made pleading that MD, CEO and other authorized persons of the petitioner bank should hear them. The photographs on record would show that five people were standing in front of the bank



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holding placards. According to the respondent, it was neither a dharna nor a demonstration. They have further contended that, as a trade union, it is their legitimate right to interfere whenever the life and safety of the members are jeopardized due to the arbitrary action of the petitioner bank. The trial court, after perusing the affidavit, counter affidavit, and documents and hearing both parties, found that the petitioner has established essential ingredients for the grant of a temporary injunction under Order XXXIX Rule 1 of CPC, such as (i) *prima facie* case, (ii) balance of convenience and (iii) irreparable loss and injury. The appellate court in appeal concurred with the finding of the trial court that the plaintiff has succeeded in establishing a *prima facie* case, the balance of convenience and irreparable injury in its favour. The appellate court further found that organizing any mode of protest in the petition schedule properties would certainly affect the working of the bank besides causing harm to its reputation and losing the faith of its customers and that the apprehension of the petitioner that the respondent association would intensify their mode of protest and engage in activities preventing the working of the bank is a reasonable one. The



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appellate court also found that granting of injunction order restraining the respondent and its members from obstructing the smooth working of the petitioner's bank would not cause any prejudice or injury to the respondent and at the same time, the refusal of granting such an order would certainly result in great hardship and irreparable injury to the bank in case the respondent association organizes massive blockade or protest in the petition schedule properties. Holding so, the appellate court concluded that the trial court correctly analysed the evidence on record and found that all the three ingredients to grant an injunction exist in this case, and the petitioner has succeeded in establishing it before the trial court. However, the appellate court interfered with the injunction order passed by the trial court and modified the same holding that the blanket injunction granted by the trial court cannot be sustained since the same is violative of the fundamental rights granted to the respondent association under Article 19(1)(a) of the Constitution of India. It was found that by granting a blanket injunction order, the respondent's legitimate right to protest was restricted and it is not permissible for a civil court to restrict the exercise of the fundamental rights



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by any person or body of persons.

8. The respondent association is a recognized trade union of the officers' community of the petitioner bank, affiliated to the All-India Bank Officers' Confederation, which is the apex organization of the Bank Officers of the Commercial Banks in the country. No doubt, the trade union has the right to protest and to carry on peaceful gatherings and demonstrations in the workplace as guaranteed under Article 19 of the Constitution of India. But the said right is not absolute. It must be exercised in such a way as not to interfere with the right of the employer to carry on their lawful business. The exercise of right stands 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 (*Sreekumar v. State of Kerala* 1996 (1) KLT 25). In *Railway Board, New Delhi and another v. Niranjan Singh* (AIR 1969 SC 966), a trade union worker was charged with the misconduct of addressing meetings within the railway premises in contravention of the directions issued by the employer. When he sought protection under clauses (a), (b) and (c) of Article 19(1),



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this Court rejected the same by holding that the exercise of those freedoms would come to an end as soon as the right of someone else to hold his property intervenes. It was held that the fact that the citizens of this country have freedom of speech, freedom to assemble peacefully and freedom to form association or unions does not mean that they can exercise that freedom in whatever place they please. The exercise of that freedom will come to an end as soon as the right of someone else to hold the property intervenes. The Supreme Court went on to state that the validity of that limitation is not to be judged by the test prescribed in sub Articles (2) and (3) of Article 19.

9. It is trite that whenever two fundamental rights compete, the court will balance the two to allow the meaningful exercise of both. In ***Sahara India Real Estate Corporation Limited v. Securities and Exchange Board of India*** [(2012) 10 SCC 603], the Supreme Court struck a balance between the right of the media under Article 19(1)(a) with the right to fair trial under Article 21. The right to free speech was balanced with the right to pollution-free life in ***Noise Pollution (V.), in Re*** [(2005) 5 SCC 733] and the right to fair trial of the accused was balanced with the



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right to fair trial of the victim in *Asha Ranjan v. State of Bihar* [(2017) 4 SCC 397]. In *K.S.Puttaswamy and another v. Union of India and Others* [(2017) 10 SCC 1], it was held that the court should strike a balance whenever a conflict between two sets of fundamental rights is projected. In *Kaushal Kishor v. State of U.P and Others* [(2023) 4 SCC 1], while answering the question whether additional restrictions on the right to free speech can be imposed on grounds not found in Article 19(2) by invoking other fundamental rights, it was held that the Court has to strike a balance whenever it was found that the exercise of fundamental rights by an individual caused inroads into the space available for the exercise of fundamental rights by another individual.

10. As already stated, the relief the petitioner bank sought in the injunction application is that members of the respondent association shall not stage a protest within a radius of 200 metres from the premises of the head office and nearby branches of the petitioner bank at Aluva. The banking business thrives on the trust and confidence reposed by customers in the bank. Even if a peaceful demonstration, dharna or sloganeering is held in front of the bank, it would cause discomfort and obstruction to customers



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coming to the bank. No doubt, as rightly apprehended by the petitioner bank, such a demonstration would undermine the confidence of the customers coming to the bank resulting in adversely affecting its goodwill and business.

11. The Supreme Court, as well as various High Courts, have devised methods to strike the balance between the conflicting and competing interests of the employer and employees by fixing the distance rule whereby restricting the dharna, picketing, holding demonstrations or gherao, shouting slogans, etc. to a certain distance from the employer's premises [See *Orchid Employees' Union* (supra), *Standard Chartered Grindlays Bank Ltd.* (supra), *Punjab and Sind Bank* (supra), *Wings Pharmaceuticals Pvt. Ltd* (supra), *Food Corporation of India, Chennai* (supra) and *Maruti Udyog Ltd.* (supra)]. By relying on these decisions, the trial court, through a well-reasoned order, regulated the activities of the respondent association in the plaint schedule properties by restraining them from holding protests in any form within a radius of 200 metres from the premises of the head office and nearby branches of the petitioner bank at Aluva. It is settled that the appellate court would not interfere with the



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exercise of discretion of the court at the first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. If the discretion has been exercised by the trial court reasonably and in a judicial manner, the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion [*Punjab and Sind Bank v. Frontline Corporation Ltd.* AIR 2023 SC 2786]. If the appellate court interferes without the existence of such grounds, it acts with material irregularity in the exercise of its jurisdiction; no doubt this court, under the exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, can interfere with the order of the appellate court. The appellate court erred in ruling contrary to the ratio laid down in the decisions of the Supreme Court and various High Courts mentioned above wherein dharna/demonstrations have been restricted to certain metres from the premises of the employer. The appellate court failed to recognize that there is no fundamental right to protest at



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any place the agitator pleases, and that reasonable restriction can be imposed upon the exercise of such rights if proved to exist. Hence, the judgment of the appellate court modifying the injunction order passed by the trial court taking away the distance rule restriction imposed by the trial court totally cannot be justified. Striking a balance between the rights of the petitioner bank as well as the rights of the respondent association, I am of the view that the respondent association should be restrained from making protests in any form within a radius of 50 metres from the premises of the head office and nearby branches of the petitioner bank more particularly described in the plaint schedule. By such modification, the constitutional right of the respondent association to protest and to form peaceful gatherings and form associations would not be curtailed.

12. For the reasons stated above, Ext.P5 injunction order passed by the trial court as modified by the appellate court in Ext.P7 is further modified as follows:

“The respondent association and its members are restrained by a temporary prohibitory



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injunction from obstructing the petitioner's bank officials and customers from dealing with the bank, obstructing their ingress and egress, commit any act of waste or damage to the bank's property, holding any protest meeting, dharna, demonstration, erecting tents or shouting slogans within a radius of 50 metres from the premises of the head office, annex and branches of the petitioner bank which are specifically described in the plaint schedule properties till the disposal of the suit”.

OP(C) is disposed of as above.

Sd/-

DR. KAUSER EDAPPAGATH
JUDGE

Rp

APPENDIX OF OP(C) 2332/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE PLAINT DATED 04.06.2020, IN O.S.NO.204 OF 2020, ON THE FILES OF THE HON'BLE MUNSIFF'S COURT, ALUVA, FILED BY THE PETITIONER
- Exhibit 2 TRUE COPY OF THE INJUNCTION APPLICATION DATED 04.06.2020 VIDE I A NO. 1 OF 2020 IN O.S.NO.204 OF 2020, ON THE FILE OF THE HON'BLE MUNSIFF COURT, ALUVA, FILED BY THE PETITIONER
- Exhibit P3 TRUE COPY OF THE COUNTER AFFIDAVIT DATED 06.07.2020, IN I A NO. 1 OF 2020 IN O.S.NO.204 OF 2020, ON THE FILE OF THE HON'BLE COURT OF THE MUNSIFF, ALUVA, FILED BY THE RESPONDENT
- Exhibit P4 TRUE COPY OF THE WRITTEN STATEMENT DATED 19.10.2020, IN O.S.NO.204 OF 2020, ON THE FILE OF THE HON'BLE MUNSIFF COURT, ALUVA, FILED BY THE RESPONDENT
- Exhibit P5 TRUE COPY OF ORDER IN I.A NO. 1 OF 2020 IN O.S.NO.204 OF 2020, DATED 07.01.2021 OF THE MUNSIFF COURT, ALUVA
- Exhibit P6 TRUE COPY OF MEMORANDUM OF CMA.NO.25 OF 2021 DATED 20.07.2021 FILED BY THE RESPONDENT BEFORE THE HON'BLE ADDITIONAL DISTRICT COURT, NORTH PARAVUR
- Exhibit P7 TRUE COPY OF THE ORDER IN CMA NO. 25 OF 2021 DATED 16.10.2023 OF THE ADDITIONAL DISTRICT JUDGE, NORTH PARAVUR
- Exhibit P8 TRUE COPY OF THE COMMISSION REPORT DATED 04.11.2020 FILED IN O.S.NO.204 OF 2020 OF THE MUNSIFF COURT, ALUVA
- Exhibit P9 PHOTOGRAPHS OF THE DHARNA HELD BY THE RESPONDENTS IN THE PREMISES OF THE HEAD OFFICE OF THE PETITIONER BANK