

(1988) 2 LLJ 43

High Court Of Kerala

Case No: None

Chemosyn (P) Ltd. and
Others

APPELLANT

Vs

Kerala Medical and
Sales Representatives"
Association

RESPONDENT

Date of Decision: Sept. 3, 1987

Acts Referred:

Constitution of India, 1950 " Article 12, 21, 226#Trade Unions Act, 1926 " Section 2

Citation: (1988) 2 LLJ 43

Hon'ble Judges: Fathima Beevi, J

Bench: Single Bench

Judgement

Fathima Beevi, J.

The question whether a Trade Union registered under the Indian Trade Unions Act, 1926 is amenable to the writ

jurisdiction of the Court falls for decision in this writ petition. The first petitioner is a Private Limited Company carrying on business of

manufacturing and marketing Pharmaceuticals. The second petitioner is a citizen of India having substantive interest in the first petitioner. The third

petitioner is the Manager of field operations of the regional office of the Company.

2. The first respondent, Kerala Medical and Sales Representatives" Association, is a Trade Union registered under the Indian Trade Unions Act,

1926. Respondents 4 and 5, the medical representatives employed by the first petitioner, are members of the Union. Respondents 4 and 5 who

had been deputed for training have in defiance of the instructions entered on leave. Their case has been taken up by the first respondent and thus

Respondents 1, 4 and 5 had been indulging in acts preventing the third petitioner as well as the Area Field Manager from discharging their function

and threatening them with dire consequences if they work. It is, therefore, necessary to direct first respondent to desist from indulging in illegal

activities and further direct Respondents 2 and 3 to seek police protection to the petitioner's representatives.

3. Petitioners, on the above allegations, have prayed for issuing a writ of mandamus directing (i) the first respondent to forbear from preventing the

petitioners and their men from carrying out their field operations (2) directing respondents 2 and 3 to give adequate police protection to the

petitioners and their men for carrying out the business (3) directing the Registrar of Trade Unions to cancel the registration under the Indian Trade

Unions Act given to the first respondent Association and (4) also for injunction against the first respondent.

4. Shri K.A. Nair, learned Counsel for the petitioners and the Advocate General who took notice on behalf of respondents 2 to 4 have been

heard. The submission on behalf of the petitioners can be summarised thus:

The petitioners have the fundamental right to carry on any trade or business. The first respondent has no authority to interfere with the management

functions. The first respondent Association registered under the Indian Trade Unions Act, 1926 enjoys privileges and immunities under that Act. It

is an organisation commanding vast power. The Union has public duties and obligations read in the light of the dynamics of legal control. If a

Company registered under the Companies Act and a Society registered under the Societies Registration Act are amenable to writ jurisdiction,

there is no reason why Trade Union registered under the Indian Trade Unions Act is not amenable to writ jurisdiction.

Article 226 of the Constitution has been couched in the widest amplitude in that the High Court is empowered to issue appropriate writ against any

person. The expression ""any person"" is capable of embracing not only the persons wielding authority or power in the Government or local bodies,

but any other person incorporate like the first respondent or its members. The Trade Union now-a-days is a new leviathan wielding high powers

and can be equated as State or other authority.

The third petitioner as a citizen of India has a right to free movement anywhere in India and also to earn livelihood. If he is prevented from doing

business on behalf of the first petitioner and his personal liberty is threatened by the members of the first respondent it will be violation of Article 21

of the Constitution of India.

5. The learned Advocate General submitted that the fundamental rights are against State action only. The constitutional safeguards directed against

the State and its organs could be enforced under Article 226 while protection against violation of rights by individual has to be dealt with under the

ordinary law. It is a misconception to think that constitutional safeguards are directed against individuals. The Trade Unions created for the

industrial relations and safeguarding interest of the labourers have no public duty. They do not discharge any Governmental or quasi-governmental

function. Even if they wield power in the society, they have no public duty in the administration. The Trade Union cannot by any stretch of

imagination be equated to an authority answering the definition of State under Article 12 of the Constitution.

6. The jurisdiction of the High Court under Article 226 of the Constitution is a supervisory jurisdiction, a jurisdiction meant to supervise the work

of the Tribunals and public authorities and to see that they act within the limits of their respective jurisdiction. Article 226 empowers the High Court

to issue to any person or authority directions, orders or writs in the nature of mandamus for the enforcement of any of the rights conferred by Part

III and for any other purposes. Where there has been infringement of fundamental right the power to issue appropriate writ for the enforcement of

such right could be invoked. The constitutional safeguards are as a rule directed against the State and its organs. The State for purposes of Part III

of the Constitution includes the Government and all local or other authorities within the territory of India as defined in Article 12.

7. It is settled law that a constitutional or statutory authority would be within the meaning of the expression "'other authorities'" in Article 12, if it has

been invested with statutory power to issue binding directions to third parties, the disobedience of which would entail penal consequence, or it has

the sovereign power to make rules and regulations having the force of law. The broader test would be whether the authority claimed to fall within

the definition of "State" is an instrumentality or agency of Government. A review of the case law reveals a trend towards broadening the concept of

"other authorities", more so in the context of the expansive role of the State and the increasing corporate phenomenon. The expression has been

interpreted to embrace all authorities under the control of the Government. A number of tests have been evolved and the tendency is to cover

every possible authority within the ambit of Article 12, which in one form or the other is an instrumentality or agency of the Government. The State

has to carry on a multitude of socio-economic operations with a view to secure social, economic and political justice and this involves intense

Governmental activity. If the functions of the authority are of public importance and closely related to Governmental functions, it would be a

relevant factor in classifying the same as an instrumentality or agency of Government. Merely because an activity may be such as may legitimately

be carried on by Government, it does not mean that a body corporate which is otherwise a private entity, would be an instrumentality or agency of

Government by reason of carrying on such activity. But the public nature of the function if impregnated with Governmental character or tied or

entwined with Government or fortified by some other additional factor, may render the body corporate an instrumentality or agency of

Government. Vide Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, ; Rajasthan State Electricity Board, Jaipur

Vs. Mohan Lal and Others, , Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation

Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, ; Ajay Hasia and Others

Vs. Khalid Mujib Sehravardi and Others, and B.S. Minhas Vs. Indian Statistical Institute and Others, .

8. It is well understood that a mandamus lies to secure the performance of a public or statutory duty, in the performance of which one who applies

for it has a sufficient legal interest. The condition precedent for the issue of the mandamus is that there is in one claiming it a legal right to the

performance of a legal duty by one against whom it is sought. The order of mandamus is in form a command, directed to a person, corporation or

an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a

public duty. The mandamus also lies against an authority constituted by a statute for purposes of fulfilling public responsibilities.

9. Petitioners herein can succeed only if the first respondent Union would fall within the meaning of ""other authorities"" having a public duty or public

responsibility. Applying the tests which are well established it can be seen that a Trade Union registered under the Trade Unions Act is neither an

instrumentality nor an agency of the State discharging public functions or public duties.

10. The Trade Union as defined in Section 2(h) of Trade Unions Act means any combination, whether temporary or permanent, formed primarily

for the purpose of regulating the relations between workmen and employer or between workmen and workmen, or between employers and

employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade

Unions.

11. Any person who has attained the age of fifteen years may be a member of a registered Trade Union subject to any rules of the Trade Union to

the contrary.

12. The State has no deep or pervasive control or domination in the composition or function of the Union. There need not be any substantial

financial assistance by the Government. A Trade Union, a body corporate, is not a statutory body. It is not created by statute or incorporated in

accordance with the provisions of a statute.

13. The activities of the Union are not closely related to governmental functions and are not of public importance. The privileges conferred or the

immunities enjoyed by the Union do not impose any public duty on the part of the Union. There is no scope for expanding the content of the

expression ""authority"" to cover a Trade Union. In this view it has to be held that the first respondent is not amenable to the jurisdiction of this Court

under Article 226 of the Constitution of India. There is no scope for issuing any writ of mandamus as prayed for. The allegations in the Original

Petition do not disclose any valid ground for issuing any writ compelling respondents 2 and 3 who are public officers.

In the result, the Original Petition is dismissed. There shall be no order as to costs.