

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

WEDNESDAY, THE 31ST DAY OF MARCH 2021 / 10TH CHAITHRA, 1943

W.P. (C) No. 8457 of 2021 (F)

PETITIONER:

ALKEM LABORATORIES LIMITED,
REGD. OFF. ALKEM HOUSE, SENAPATI BAPAT MARG,
LOWER PAREL (WEST), MUMBAI 400013
REPRESENTED BY ITS DEPUTY GENERAL MANAGER HR
MR. ATUL C PARAB.

BY ADVS.
BENNY P THOMAS
SRI. THOMAS J. ANAKKALLUNKAL
SHRI. ABEL TOM BENNY
SMT. MARIA PAUL

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY HOME SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 DISTRICT POLICE CHIEF,
ALAPPUZHA, CCSB ROAD, CIVIL STATION WARD,
ALAPPUZHA, KERALA-688 012.
- 3 THE STATION HOUSE OFFICER,
NORTH POLICE STATION, COIR FED LANE,
SEA VIEW WARD, ALAPPUZHA-688 001.
- 4 KERALA MEDICAL AND SALES ,
REPRESENTATIVES ASSOCIATION (KMSRA) ,
BTR BHAWAN, CEMENTERY JUNCTION,
CHITTOOR ROAD, ERNAKULAM 682 018,
REPRESENTED BY ITS GENERAL SECRETARY
MR. MOHAN C NAIR.

SRI. JESTIN MATHEW, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.03.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding respondents 2 and 3 to afford adequate and effective protection for smooth functioning of the business activities of the petitioner Company and to ensure peaceful working atmosphere for the Managers of the petitioner Company; and adequate protection for the property/products of the petitioner Company without any disturbance, hindrance, obstruction or threats from the 4th respondent and its members or any other person/persons on their behalf. The petitioner has also sought for a direction to respondents 2 and 3 to act on the complaints submitted by the petitioner Company and to take appropriate action against the 4th respondent and their members whenever the illegal and unlawful activities committed by them are reported to respondents 2 and 3 and also to ensure that the petitioner carries on its business activities without any disturbance or obstruction by the 4th respondent, its members or any person on their behalf. In the writ petition, it is alleged that seeking withdrawal of the order of transfer of Sri.K.V.Krishna Kumar and others and also withdrawal

of the order of termination of other medical representatives, the 4th respondent association and its members are obstructing the Managers of the petitioner Company from performing their field visits. On various occasions, when the Managers visited hospitals, the members of the 4th respondent association appeared there in large numbers and abused them and threatened them with dire consequences. In such circumstances, the petitioner submitted Ext.P2 complaint dated 08.03.2021 before the 3rd respondent Station House Officer seeking police protection and thereafter, moved this writ petition before this Court seeking the aforesaid reliefs.

2. On 30.03.2020, when this writ petition came up for admission along with W.P.(C) Nos.8267 and 8433 of 2021, the learned Government Pleader took notice on admission for the official respondents. Urgent notice on admission by special messenger was ordered to the party respondent, returnable by 31.03.2021.

3. Heard the learned counsel for the petitioner, the learned Government Pleader appearing for respondents 1 to 3 and also the learned counsel for the 4th respondent.

4. The Kerala Police Act, 2011 is enacted to consolidate and amend the law relating to the establishment, regulation, powers and duties of the Police Force in the State of Kerala and for matters connected therewith and incidental thereto. Chapter II of the Act deals with duties and functions of Police. Section 3 of the Act deals with general duties of Police. As per Section 3, the Police, as a service functioning category among the people as part of the administrative system shall, subject to the Constitution of India and the laws enacted thereunder, strive in accordance with the law, to ensure that all persons enjoy the freedoms and rights available under the law by ensuring peace and order, integrity of the nation, security of the State and protection of human rights. Section 4 of the Act deals with functions of Police. As per Section 4, the Police Officers shall, subject to the provisions of the Act, perform the functions enumerated in clauses (a) to (s) of Section 4. As per clause (a), the Police Officers shall enforce the law impartially; and as per clause (b), the Police Officers shall protect the life, liberty, property, human rights and dignity of all persons in accordance with the law.

5. Lord Denning in 'The Due Process of law' [First Indian

Reprint 1993, Page 102] has described the role of the Police thus;

"In safeguarding our freedoms, the police play vital role. Society for its defence needs a well-led, well-trained and well-disciplined force or police whom it can trust, and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.

The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants."

6. In **Manohar Lal Sharma v. Principal Secretary [(2014) 2 SCC 532]** the Apex Court held that, one of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties the police has to perform. The aim of investigation is ultimately to search for truth and bring the offender to the book. The Apex Court reiterated the said principle in **Ankush Maruti Shinde v. State of Maharashtra [(2019) 15 SCC 470]**.

7. In **Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes Mazdoor Sabha [(1980) 2 SCC 593]** the Apex Court held that, the right to unionise, the right to strike as part of collective

bargaining and subject to the legality and humanity of the situation, the right of the weaker group viz. labour, to pressure the stronger party viz. capital, to negotiate and render justice, are processes recognised by industrial jurisprudence and supported by Social Justice. While society itself, in its basic needs of existence, may not be held to ransom in the name of the right to bargain and strikers must obey civilised norms in the battle and not be vulgar or violent hoodlums industry, represented by intransigent Managements, may well be made to reel into reason by the strike weapon and cannot then sequeal or wail and complain of loss of profits or other ill-effects but must negotiate or get a reference made. The broad basis is that workers are weaker although they are the producers and their struggle to better their lot has the sanction of the rule of law. Unions and strikers are no more conspiracies than professions and political parties, are, and being far weaker, need succour. Part IV of the Constitution, read with Article 19, sows the seed of this burgeoning jurisprudence. The Gandhian quote at the beginning of the judgment [Para.5 @ Page 603 SCC] sets the tone of economic equity in industry. Of course, adventurist, extremist, extraneously inspired and puerile strike,

absurdly insane persistence and violent or scorched earth policies boomerang and are anathema for the law. Within these parameters the right to strike is integral to collective bargaining.

8. The learned counsel for the 4th respondent would point out certain disputes in connection with termination of service of two medical representatives and transfer of three others, who are members of the 4th respondent association. The learned counsel would submit that various other issues are also pending conciliation before the concerned District Labour Officer. The petitioner Management has not chosen to attend the conciliation proceedings. The learned counsel would submit further that the members of the 4th respondent association have absolutely no intention to cause any threat or obstruction to the field visit of the Managers of the petitioner Company and they have no intention to take law into their own hands.

9. The learned counsel for the petitioner would submit that the Management has already submitted written submission before the concerned District Labour Officer, raising appropriate legal and factual contentions and that, the Management shall co-operate with the conciliation proceedings.

10. The learned Government Pleader would submit that, in case there is any threat to law and order, in connection with any protest/agitation made by the members of the 4th respondent association, the 3rd respondent Station House Officer shall render necessary police protection.

Having considered the pleadings and materials on record and also the submissions made by the learned counsel on both sides, this writ petition is disposed of with the following directions;

- i) The 3rd respondent Station House Officer shall take necessary steps to ensure that there is no threat to law and order, in connection with any protest/agitation made by the members of the 4th respondent association.
- ii) In case there is any threat to the life of the Managers, employees, etc. of the petitioner Company or any obstruction whatsoever to the field visits and other activities undertaken by them, from the side of the members of the 4th respondent association, the petitioner shall move the 3rd respondent Station House Officer, with a proper request for police protection.
- iii) In case any such request for Police protection is made by the petitioner, the 3rd respondent shall take necessary action on that request, without any delay, taking note of the statutory provisions referred to hereinbefore and also the law laid down in the decisions referred to supra.
- iv) The above directions are subject to the condition that the petitioner Management shall co-operate with the

conciliation proceedings pending before the concerned District Labour Officer. Any contention raised by the petitioner Management as to maintainability of such proceedings shall be dealt with appropriately by the concerned District Labour Officer.

v) This judgment will not stand in the way of the members of the 4th respondent association staging any protest/agitation, in a democratic manner, without causing any obstruction whatsoever, to the discharge of official duties by the Managers and other employees of the petitioner Company.

The learned Government Pleader shall communicate the outcome of this writ petition to the 3rd respondent Station House Officer today itself.

Sd/-

ANIL K. NARENDRAN
JUDGE

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE ORDER DATED 30.10.2015
IN WPC NO. 32993 OF 2015.

EXHIBIT P2 TRUE COPY OF THE POLICE COMPLAINT DATED
08.03.2021 MAILED TO THE 3RD RESPONDENT.

EXHIBIT P3 TRUE COPY OF THE RECEIPT ACKNOWLEDGING
EXHIBIT P2.

EXHIBIT P4 TRUE COPY OF THE ORDER DATED 15.02.2020
IN WPC NO. 29084 OF 2020.

EXHIBIT P5 TRUE COPY OF THE ORDER DATED 08.12.2020
IN WPC NO. 27186 OF 2020.

EXHIBIT P6 TRUE COPY OF THE ORDER DATED 09.12.2020
IN WPC NO. 27377 OF 2020.

EXHIBIT P7 TRUE COPY OF THE ORDER DATED 15.12.2020
IN WPC NO. 27759 OF 2020.

RESPONDENTS' EXHIBITS: NIL