

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&**

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No. 8343 of 2015 (P)

PETITIONER(S):

**M/S.HEARTS MALABAR CLINICAL
SOLUTIONS PRIVATE LIMITED ,
A COMPANY REGISTERED UNDER THE INDIAN
COMPANIES ACT AND REPRESENTED BY CHAIRMAN
& MANAGING DIRECTOR DR.BYJU, AGED 40 YEARS,
S/O.KELAPPAN, RESIDING AT AMBADI,
B.G.ROAD, WEST HILL, KOZHIKODE - 673 005.**

**BY ADVS.SRI.N.M.MADHU
SMT.C.S.RAJANI**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR, MALAPPURAM DISTRICT,
COLLECTORATE, MALAPPURAM - 676 505.**
- 2. THE SUPERINTENDENT OF POLICE,
MALAPPURAM DISTRICT, MALAPPURAM - 676 505.**
- 3. THE DEPUTY SUPERINTENDENT OF POLICE,
TIRUR, MALAPPURAM DISTRICT - 676 505.**
- 4. THE SUB INSPECTOR OF POLICE,
KOTTAKKAL POLICE STATION,
MALAPPURAM DISTRICT - 676 505.**
- 5. M/S.MIMS KOTTAKKAL, CHENGUVETTY,
KOTTAKKAL, MALAPPURAM DISTRICT,
A UNIT OF M/S.MALABAR INSTITUTE OF
MEDICAL SCIENCES LTD., (MIMS) A COMPANY
REGISTERED UNDER THE COMPANIES ACT 1956
HAVING IT REGISTERED OFFICE AT MINI BYPASS ROAD,
GOVINDAPURAM (PO) 678 507, CALICUT,
REPRESENTED BY EXECUTIVE DIRECTOR U.BASHEER.**

R1 TO R5 BY SRI.P.VIJAYARAGHAVAN, STATE ATTORNEY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE RELEVANT PAGES OF THE AGREEMENT DATED 1.5.2013.

**EXT.P2: TRUE COPY OF THE NOTICE DTD.12.6.2014 ISSUED BY THE
5TH RESPONDENT TO THE PETITIONER.**

EXT.P3: TRUE COPY OF THE REPLY NOTICE DTD.28.7.2014.

**EXT.P4: TRUE COPY OF THE NOTICE DTD.9.1.2015 ISSUED BY THE FIFTH
RESPONDENT TO THE PETITIONER.**

EXT.P5: TRUE COPY OF THE REPLY DATED 19.2.2015 TO EXT.P4.

**EXT.P6: TRUE COPY OF THE E-MAIL DATED 9.3.2015 ISSUED AT THE INSTANCE OF
THE FIFTH RESPONDENT.**

**EXT.P7: TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER TO THE FIRST
RESPONDENT.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msv/

**ASHOK BHUSHAN, Ag.CJ
& A.M.SHAFFIQUE, J.**

*** * * * ***

W.P.C.No.8343 of 2015

Dated this the 17th day of March 2015

J U D G M E N T

Shaffique,J

Petitioner has approached this Court seeking police protection inter alia contending that the petitioner has entered into a joint venture agreement with the 5th respondent for conducting cardiac unit in two floors of the hospital complex being managed by the 5th respondent. According to the petitioner, as per the terms of the agreement dated 01/05/2013, the joint venture agreement has to remain in force for a period of five years. However, the 5th respondent terminated the agreement effective from 02/06/2014 by issuing notice dated 12/06/2014 invoking Clause 22 of the agreement. Petitioner submitted a reply disputing the aforesaid factual situation and raising dispute regarding the right of the 5th respondent to terminate the agreement. Accordingly, the dispute between the parties had been referred to Arbitration in terms of Ext.P4 notice dated 09/01/2015. The Arbitrator has not entered reference

so far. In the meantime, the petitioner has also approached the District Court seeking interim measures to restrain the 5th respondent from taking any action pursuant to the notice of termination, which is pending orders.

2. Petitioner further submits that after the notice period expired, 5th respondent, along with certain other persons, are forcibly preventing the petitioner from functioning the cardiac unit. In view of the fact that the pending dispute is yet to be resolved by the Arbitrator or till the District Court passes appropriate orders in the petition filed by the petitioner under Section 9 of the Arbitration and Conciliation Act 1996, appropriate protection has to be given to the petitioner, their employees and staff. It is also pointed out by the petitioner that there are several in-patients who had to be given treatment and since the 5th respondent and their men are not permitting the Doctors of the petitioner to take care of the patients, appropriate police protection is required. Though request in that regard has been submitted in terms of Ext.P7, no action has been taken by the police, is the complaint.

3. Learned senior counsel appearing for the 5th respondent submits that the agreement Ext.P1 has been terminated in accordance with the terms of the agreement and the petitioner has to wait till appropriate directions are issued by the District Court in the application under Section 9 of the Arbitration and Conciliation Act filed by the petitioner. That apart, it is submitted that the petitioner or their members have no right to continue functioning of the cardiac unit when the notice period has already expired. Further, it is submitted that the 5th respondent has their own doctors and other paramedical staff, equipments etc. and that the 5th respondent is ready and willing to take care of the patients in the cardiac unit. It is also contended that the petitioner has started another hospital and they are free to take their patients to such hospital as well.

4. Having regard to the aforesaid factual situation, we do not think that this is a case in which police can interfere and resolve the dispute between the parties. It is a functioning hospital and especially having a separate cardiac unit, police cannot interfere and make any arrangements as

claimed by the petitioner. Further, this is an instance where the dispute between the parties relates to the terms and conditions of the contract which is required to be adjudicated in appropriate proceedings. We are not expressing any opinion on the merits or demerits of the contentions urged on behalf of either parties. However, we only observe that the petitioner will have to wait till appropriate orders are passed by the civil court or the Arbitrator as the case may be, in this regard.

Hence, we do not think that police protection will render any assistance to the petitioner and accordingly this writ petition is dismissed.

(sd/-)
**(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)**

(sd/-)
(A.M.SHAFFIQUE, JUDGE)

jsr

