

(2001) 07 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 20802 of 2001

Kerala Electricals and A.E. Co. Ltd. W. Congress	APPELLANT
Vs	
District Labour Officer	RESPONDENT

Date of Decision : 31-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 9A

Citation : (2001) 07 KL CK 0023

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : Aysha Youseff, for the Appellant; Government Pleader (Augustine Joseph) and Asok M. Cheriayan, for the Respondent

Judgement

K.A. Abdul Gafoor, J.—At the instance of a union, a notice under S. 9A of the Industrial Disputes Act, 1947, bringing about certain changes in the conditions of service, is issued. This is under challenge in this Original Petition.

2. Normally challenge against a notice would not be entertained in a proceeding under Art. 226. But a notice under S. 9A of the Act is not like a normal notice. That is only an intimation that the changes proposed in the notice will be enforced on completion of 21 days. There is nothing to counter in except to raise a dispute. Therefore a notice under S. 9A is in reality an order to take effect on completion of a period of 21 days. In such circumstance, the legality or otherwise of S. 9A notice issued by a Government Company, which affects the workmen can necessarily be examined under a proceedings under Art. 226.

3. It is submitted by the petitioner that there is no reason for such a change. By reason of the change, more work is being extracted from the workmen concerned whose terms of employment are changed by the impugned notice. That is arbitrary and is an unfair labour practice which cannot be permitted from the hands of a public limited company in the Government sector, like the first respondent, petitioner submits.

4. In the aforesaid circumstance, what is to be examined is that whether Ext. P1 comes within the purview of S. 9A read with 4th Schedule to the Act. The item applicable to Ext. P1 in the 4th schedule is Item No. 4, which reads "Hours of work and rest intervals". Hours of work and rest has to be read together. That means, a change can be brought out, by issuing a notice changing the hours of work and rest interval from one stretch to another, not period of work itself be changed. By reason of a contract of service between the management and the workers, the workers are liable to work only that particular period, i.e., 8 hours. By reason of introducing a charge under S. 9A, the management cannot enhance the working hours to 9 hours or even 8.30 hours. That is not what is intended by Item No. 4. The management can introduce a change reading the hours of service, expected to work from 9 AM to 4.30 PM are compelled to work from 8.30 AM and leave only by 4.30 PM. Therefore Ext. R1(b) does not have any application in the present case. If though so, the management can introduce a change without increasing the working hours.

5. Original Petition is disposed of as above.