

Engineering Projects (India) Ltd. Vs. State of Jharkhand and Anr.

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Court : Jharkhand

Decided On : Jul-17-2017

Appellant : Engineering Projects (India) Ltd.

Respondent : State of Jharkhand and Anr.

Advocate for Pet/Ap. : Mr. A.K. Mehta

Judgement :

Cr.M.P. No. 610 of 2005 --- In the matter of an application under section 482 of Cr.P.C. ----- Engineering Projects (India) Limited, a Government of India Enterprise under the Administrative Control of Ministry of Heavy Industry, Government of India, having its registered and Corporate office at Core-3, Scope Complex-7, Institutional Area, Lodhi Road, New Delhi-110003 represented through its Chairman cum Managing Director, Sri Saleem Hamid, Son of late A.M. Abdul Hamid at present residing at C-52, NDSE-II, P.O. Andrews Ganj, New Delhi-110049, P.S. Defence Colony, New Delhi. Petitioner Versus 1. The State of Jharkhand.

2. Sri V.K. Sinha, Assistant Labour Commissioner(Central), Ranchi & Inspector under Contract Labour (Regulation & Abolition) Act, 1970, residing at Qtr No. E-191, Sector-II, HEC Colony, P.O. Dhurwa, P.S. Jagarnathpur, District-Ranchi. .Opposite Parties --- For the Petitioner : Mr. A. K. Mehta, Advocate For the State : Mr. Ram Prakash Singh, APP For O.P. No. 2 : Mr. Laxman Kumar, Advocate ----- PRESENT HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY --- C.A.V. On

29.6.2017 Pronounced on _17/07/2017 ----- Rongon Mukhopadhyay, J Heard Mr. A.K. Mehta, learned counsel for the petitioner and Mr. Laxman Kumar, learned counsel for O.P. No.

2. In this application, the petitioner has prayed for quashing of the entire criminal proceeding in connection with Complaint Case No.347 of 2003 including the order dated 23.12.2003, passed by the learned Chief Judicial Magistrate, Chatra, whereby and whereunder cognizance has been taken for the offence under section 23 of the Contract Labour (Regulation & Abolition) Act, 1970. (Hereinafter referred to as the Act) A complaint was filed before the learned Chief Judicial Magistrate, Chatra wherein it was alleged that the accused nos. 1 and 2 had approved the removal of overburden and loading of coal at Ashoka Project, Piparwar Area of M/s Central Coalfields Limited by engaging contract labours prohibited by the Government of India, Ministry of Labour vide Notification No. S.O.2063 dated 2 nd July, 1988. In the said complaint being Complaint Case No. 347 of 2003, cognizance was taken by the learned Chief Judicial Magistrate, Chatra -2- on 19.12.2003 under section 23 of the said Act. Mr. A.K. Mehta, learned counsel for the petitioner, has assailed the order taking cognizance by submitting that the petitioner company is being represented through the Chairman cum Managing Director and Engineering Projects India Limited is under the administrative control of the Ministry of Heavy Industry, Government of India. It has further been submitted that company is executing several projects all over the country and the petitioner has already sub-delegated the powers to the Incharge of Eastern Regional Office at Kolkatta and the Site Incharge at Ranchi to execute and implement various projects under their jurisdiction. Learned counsel further submits that day to day affairs of the company are managed by the subordinate officers and the Chairman cum Managing Director is not liable to be proceeded for any violation of the rules. Learned counsel further submits that petitioner is not the Principal Employer as defined in Section 2 (g) (iii) of the said Act and therefore the petitioner being not a Principal Employer cannot be prosecuted for the offence under section 23 of the said Act. Learned counsel in support of his contention has referred to the order passed in the case of A.K. Sahay Vs. The State of Jharkhand And Anr. reported in 2011 2 JCR558 Mr. Laxman Kumar, learned counsel for O.P. No. 2, on the other hand, has stated that the prohibited work by engaging contract

labours were being carried out at the behest of the petitioner and other persons named in the complaint petition and therefore they are liable to be prosecuted under section 23 of the Act. It has been stated that delegation of power to the General Manager and Additional General Manager posted at the site was done in the year 1970 and the same is confined to merely execution and implementation of the project. Learned counsel further submits that the petitioner being the Chairman cum Managing Director of the accused company is a Principal Employer as in terms of Section 25(2) of the Act where an offence has been committed by a Company with the consent or in connivance with the Director, Manager, Managing Agent or any other officer of the company, the company shall be deemed to be guilty. Learned counsel submits that there is clear violation of labour laws by the petitioner and therefore present application is liable to be dismissed. -3- The main plank of argument of learned counsel for the petitioner seems to be that the Chairman cum Managing Director of the petitioner company does not come within the purview of definition of a Principal Employer and therefore he cannot be prosecuted for the offence as alleged. Section 2 (g) (iii) of the Act reads as under:-

2(g)(iii) Principal employer means- In a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named. The definition of principal employer in a mine therefore includes the owner or agent of the mine and where a person has been named as a Manager of the Mine, the person so named. The Chairman cum Managing Director is being sought to be prosecuted for committing offence under section 23 of the Act. The allegation made in the complaint petition reveals a vague statement to the effect that the petitioner had approved the removal of overburden and loading of coal by engaging contract labours prohibited by the Government and therefore he is being sought to be prosecuted. The Chairman cum Managing Director may have under him a large number of mines and for supervision and control of the said Mine, persons like Manager, Project Officers and other designated authorities are employed. The petitioner cannot be directly held responsible for any violation of the rules or violation of Notification prohibiting contract labour. The complainant has not been able to make out a case, which would suggest the direct role of the petitioner for engaging contract labours in a prohibited place. Role of the Chairman cum Managing Director therefore is not specific so as to prosecute him in the

criminal case. Even otherwise applying the factual and legal matrix, as mentioned aforesaid, it cannot be said that the petitioner was directly responsible in absence of any allegation to the effect of engaging contract labours in a prohibited place of work. He cannot be held responsible for such violation. In the case of A.K. Sahay (Supra), in similar circumstances, this court had concluded as follows:-

12. Penal provision has to be strictly construed. A person cannot be criminally prosecuted on vague and unspecific allegations. The Managing Director of the BCCL cannot be held directly responsible for the alleged contravention of Act/Rule etc. of a particular colliery if there is no clear allegation of the role of Managing Director of the BCCL constituting penal offence. Even if certain words bring some persons within the fold of the person responsible for the overall superintendence and control, they cannot be prosecuted as the Principal Employer, if there is no direct allegation making out a case of contravention of any provision of the Act, Rule or condition of -4- licence in the capacity of owner, agent or Manager named for the particular mine. Such circumstances, therefore, would not justify continuation of criminal case against the petitioner and accordingly this application is allowed and the entire criminal proceeding in connection with Complaint Case No.347 of 2003 including the order dated 23.12.2003, passed by the learned Chief Judicial Magistrate, Chatra, whereby and whereunder cognizance has been taken for the offence under section 23 of the Contract Labour (Regulation & Abolition) Act, 1970, is hereby quashed and set aside. (Rongon Mukhopadhyay, J) Jharkhand High Court, Ranchi Dated the 17th/July,2017 Rakesh/NAFR

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