

**Dr. Bindeshwar Pathak Vs. State (Central) (SIC) State of Gujarat and Another**

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**Court :** Gujarat

**Decided On :** Feb-13-2015

**Judge :** J.B. Pardiwala

**Appeal No. :** Criminal Misc. Application No. 428 of 2007 With Criminal Misc. Application Nos. 430, 12088, 12089, 13179 & 13182 of 2007

**Appellant :** Dr. Bindeshwar Pathak

**Respondent :** State (Central) (SIC) State of Gujarat and Another

**Judgement :**

1. Since the issue involved in all the above captioned four applications is the same, those were heard analogously and are being disposed of by this common judgment and order.
2. The Criminal Miscellaneous Application No.430 of 2007 is treated as the lead matter.
3. By this application under Section 482 of the Code of Criminal Procedure, 1973, the petitioner original accused seeks to invoke the inherent powers of this Court, praying for quashing of the complaint registered as Criminal Case No.3112 of 2014 in the Court of the learned Metropolitan Magistrate, Court No.6 of the offence under Sections 23 and 24 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the Act, 1970).

4. The complaint was filed by the Labour Enforcement Officer under the Act, 1970.

5. It is the case of the complainant that the accused i.e. M/s. Sulabh International Social Service Organization was awarded a contract work of housekeeping at the SAC Bopal Campus, Jodhpur Tekra, Ahmedabad. For the implementation of the said contract, the organization had employed 93 persons as labourers on contract basis. During the inspection of the work site undertaken on 23<sup>rd</sup> December, 2003, it was found that the organization had committed violation of the provisions of the Act and the Rules. According to the complainant, the following violation came to their notice:

a) Breach of Section 12(1) Executing contract work through contract labour numbering 26 which were found employed w.e.f. 1.4.2003 without obtaining a licences.

c) Breach of Rule 81(1)(i) : Notices pertaining to the following were not properly displayed in English, Hindi and local language.

(a) Rates of wages (b) Hours of work (c) Wage period (d) Date of payment (e) Names and Addresses of the Inspectors (f) Date of payment of unpaid wages.

e) Breach of Rule 71 : Notice showing wage period the place and the time of disbursement of wages has not been displayed at the work spot and a copy of the said notice has not been sent to the Principal employer under acknowledgment.

f) Breach of Rule 79 : An abstract of Act and Rules in form approved by the CLC(C) has not been displayed in English/Hindi and in local language.

i) Breach of rule 75 read with Rule 80(l): Register of persons employed in Form XIII has not been maintained at all.

j) Breach of Rule 76(i) : Contractor has not issued employment card in form XIV to each worker within three days of his employment.

l) Breach of Rule 78(l)(a)(i) : Register of Wages in Form XVII or combined register of wages cum Muster Roll in form XVIII have not been maintained in the prescribed form at the work spot or within a radius of 3 kms.

m) Breach of Rule 78(l)(a)(ii) Register of deduction for damage or loss in form XX. Register of fines in form XXI, Register of Advances in Form XXII have not been maintained in the prescribed form at the work spot or within a radius of 3 kms.

n) Breach of Rule 78(l)(a)(iii) : Register of Over Time in form XXIII has not been maintained in the prescribed form at the workspot or with a radius of 3 kms.

o) Breach of Rule 78(l)(b) : Wage slip in form XIX is not been issued to the workmen at least a day prior to disbursement of wages although were period is more than a week.

q) Breach of Section 19 read with rules 58 to 62 : First Aid Facilities have not been provided as per specification laid down under Rules.

The above breaches were incorporated in the inspection report No.LEO/AH/34/95/2003 dated 26.12.2003 and was delivered to the accused by Registered A.D. Post. The compliance report submitted by the accused was not considered satisfactory.

6. Thus, it is alleged in the complaint that the accused persons are liable for being prosecuted and punished under Sections 23 and 34 of the Act, 1970. It appears that the learned Metropolitan Magistrate, Court No.6, Ahmedabad took cognizance upon the complaint and ordered issue of process against the accused persons.

7. It also appears that thereafter, an application was filed by the accused persons for recalling of the summons dated 26th March, 2004 predominantly on the ground that the proceedings under the contract Labour (Regulation and Abolition) Act, 1970, were not maintainable against the Sulabh International Social Service as the same is not an Industry or an Employer and as such the provisions of the Labour laws, including the Act of 1970 were not applicable to the organization. An application filed by the accused persons, however, came to be rejected by the learned Metropolitan Magistrate vide order dated 27th October, 2005. It also appears that an application was filed for deletion of the name of the petitioner herein as an accused, but the same was also rejected vide order dated 16th September, 2006.

8. Being dissatisfied, the petitioner has come up with these applications.

9 Mr. Bhadrish Raju, the learned advocate appearing on behalf of the applicant submitted that the petitioner is only the founder of the organization and does not hold any post in the organization. He submits that his client is no more associated with the organization and only provides guidance and advice to the volunteers. He submits that the Sulabh International Social Service Organization is a nonprofit voluntary social organization of international repute engaged in the social service for more than 35 years. The Central Government and the State Government and various other local bodies have accepted the services of the organization.

10. Mr. Raju submits that even if the allegations, as contained in the application, are accepted to be true, then also no, prima facie, case is made out, as the provisions of the Act, 1970 are not applicable to the organization. According to Mr. Raju, for the purpose of applying the provisions of the Act, 1970, the organization should fall within the ambit of the definitions of the terms Establishment or Contractor. He submits that for the organization to fall within the definition of Contractor, the necessary ingredient of the relationship of employer and employee should be spelt out. The organization, in the present case, consists of voluntary members and it provides opportunities to the downtrodden class of the society for temporary employment, vocational training and better standard of living.

11. In such circumstances referred to above, Mr. Raju prays that there being merit in all the four applications, the same be allowed and the complaints be quashed.

12. None have appeared on behalf of the complainant although served with the notice. These applications have gone unopposed.

13. Having heard the learned counsel appearing for the petitioners and having gone through the materials on record, the only question that falls for my consideration is whether the complaints deserve to be quashed.

14. Section 2(1)(e) of the Act, 1970 defines the term Establishment, which reads as under:

2(1)(e) Establishment

(i) Any office or department of the government or a local authority

(ii) Any place where any industry, trade, business, manufacture or occupation is carried on

15. Section 2(1)(c) of the Act, 1970 defines the term Contractor, which reads as under:

#### 2(1)c Contractor

In relation to an establishment means person who undertakes to produce a given result for establishment other than mere supply of goods or articles of manufacture to such establishment through contract labour or who supplies contract labour for any work of establishment and includes a sub contractor

16. Thus, on plain reading of the two definitions referred to above, it is clear that the relationship of the employer and employee is a sine qua none, which in the present case, is absolutely missing. I find merit in the contention of Mr. Raju that the Sulabh International Social Service Organization would not fall within the definition of the term Establishment or Contractor. The Patna High Court in its judgment dated 09.02.1990 passed in CWJC No.3408/1989 has held that the Sulabh is not an industry within the definition of section 2(j) of the Industrial Disputes Act. The said judgment of the Patna High Court was confirmed by the Supreme Court in Civil Appeal No.2527/1991 vide order dated 17.02.1994 as well as the Review Petition (c) No.491/1996 vide order dated 20.03.1996. The Delhi High Court in Criminal Misc. (Main) Petition No.382/2002 quashed the prosecution against the Sulabh for the offence under the Contract Labour Act, the minimum Wages Act and the Equal Remuneration Act on the ground that there is no relationship of the employer and employee between the Sulabh and its members and therefore the Sulabh would not fall within the definition of Establishment or Industry. The Delhi High Court also relied on the decision of the Patna High Court in taking the view that the provisions of Contract Labour Act are not applicable to Sulabh. The various governments including the Governments of Bihar, Orissa, Karnataka, Andhra Pradesh and Delhi have already issued various notifications and circulars directing their officers not to enforce the Labour Laws against the

Sulabh.

17. In the aforesaid view of the matter, all the four applications are allowed. All the respective complaints and the orders of process are hereby quashed. Rule is made absolute in each of the applications.

In view of the above, Criminal Miscellaneous Applications No.13179 of 2010 and 13182 of 2010 stand disposed of accordingly.

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