

K. Chandrasekar Vs. Labour Enforcement Officer (Central), Ati Compound Vidyanagar, Hyderabad, Represented by Standing Counsel, Central Government

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Court : Andhra Pradesh

Decided On : Jun-24-1994

Reported in : 1994(2)ALT151; 1994(2)ALT(Cri)151; 1995CriLJ3402

Judge : D.J. Jagannadha Raju, J.

Acts : Contract Labour (Regulation and Abolition) Act, 1970 - Sections 2 and 10(1)

Appeal No. : Criminal Petition Nos. 1461 and 1462 of 1993

Appellant : K. Chandrasekar

Respondent : Labour Enforcement Officer (Central), Ati Compound Vidyanagar, Hyderabad, Represented by Standing Co

Advocate for Def. : A. Chaya Devi Standing Counsel for Central Govt.

Advocate for Pet/Ap. : A. Gopal Reddy, Adv.

Judgement :

ORDER

1. These two criminal petitions are filed under Section 482 Cr.P.C., for quashing the prosecution against the petitioners in S.T.C. Nos. 141 of 1993 and 142 of 1993 on the file of the XXI Metropolitan Magistrate, Hyderabad.

2. Sri. A. Gopal Reddy, learned counsel appearing for the petitioners, who accused 1 and 2 in the two cases, contends that the prosecution of the present petitioners (A-1 and A-2) is misconceived and it is not maintainable in view of the specific provision of the Contract Labour (Regulation and Abolition) Act, 1970. The Labour Enforcement Officer inspected the staff quarters of the Canara Bank and initiated action on the basis of his inspection conducted on 19-9-1992. He found that security guards were employed in the staff quarters through a contractor and thus it violates Notification No. 779 (2), dated 9-12-1976 and hence it amounts to violation of Section 10(1) of the Act. In S.T.C. 142 of 1993 the allegation is to the effect that 31 contract labourers were engaged in construction of quarters at Barkatpura without obtaining registration certificate by the principal employer. Some other violations are also mentioned in the show-cause notice.

3. The crucial question that will have to be considered in these two matters is whether the staff quarters for which watchmen were employed would come within the definition of an 'establishment' and whether the Notification No. 779 (E), dated 9-12-1976 goes beyond the ambit and scope of the definition given to the establishment under S. 2(e) of the Act. The other question that will have to be considered is whether the Notification No. 779 (E), dated 9-12-1976 would bring within its ambit the activity of construction of quarters for the bank employees.

4. Section 2(e) of the Act defines an 'establishment' as follows :-

'establishment means -

- i) any office or department of the Government or a local authority, or
- ii) any place where any industry, trade, business, manufacture or occupation is carried on;'

As can be seen from this definition, the first clause of the definition covers any office or department of the Government or a local authority. Non-governmental

activity is sought to be brought within the ambit of clause (ii). Clause (ii) contemplates any place where any industry, trade, business, manufacture or occupation is carried on by no stretch of imagination can residential quarters provided by a bank for its employees be brought within the ambit of any place where any industry, trade, business, manufacture or occupation is carried on. Section 10(1) of the Act prohibits employment of contract labour. This section also contemplates the Central Government after consultation with Central Board issuing notification to prohibit employment of contract labour in any process, operation or other work in the establishment. Notification No. S.C. 779(E), dated 9-12-1976 is issued under the statutory power conferred under Section 10(1). By this notification, employment of contract labour for sweeping cleaning, dusting and watching of building owned or occupied by establishment is prohibited. If we are to read Section 10(1), the notification and the definition in Section 2(e) is harmonious way, we find that unless it satisfies the ingredients of an 'establishment' defined under Section 2(e), the Government cannot by exercise of the power of subordinate legislation, issue a notification to cover things which are not within the ambit of the definition of the establishment. The important ingredient of Section 2(e) is 'any place where any industry, trade, business, manufacture or occupation is carried on' in such back-ground the residential quarters belong-ing to a bank do not come within the ambit of an 'establishment'. By virtue of this notification, the Government can only prohibit employment of contract labour for sweeping, cleaning dusting and watching of buildings, which are occupied by an 'establishment' for its purpose. But, under no circumstances can the notification enlarge the scope and bring within the ambit of the definition of 'establishment' the staff quarters owned by the bank.

5. Identical question, has come up for consideration before the Kerala High Court in Ponar v. Labour Enforcement Officer (C) 1992 II CLR 593. Justice Pareed Pillay, 'dealing with the question of employees employed in the residential quarters of the Reserve Bank of India and the prosecution launched with regard to employment of contract labour in the residential quarters of the Reserve Bank, clearly held that a notification cannot go beyond what Section 10(1) of the Act has envisaged. The, learned Judge rejected the contention that by virtue of the notification No. 779 (E), dated 9-12-1976, the residential buildings owned by the

Reserve Bank would come within the purview of the Act, and held that the prosecution is not maintainable. Employment of contract labour at the residential quarters of the office of the Reserve Bank cannot be construed as work in any 'establishment' in view of the particular definition given for an 'establishment' under Section 2(e). I fully agree with the learned Judge and hold that the prosecution in S.T.C. No. 141 of 1993 is liable to be quashed.

6. In this connection the learned standing counsel for the Central Government relied upon certain observation made in M/s. Gammon India Ltd. v. Union of India, : (1974)ILLJ489SC , popularly known as Gammon India Ltd. case, which was one of the earliest decisions under this Act. As can be seen from a reading of the judgment, the building that was being constructed is a building for the bank. The Court held that the work site is an establishment and belongs to the principal employer, who has a right of supervision and control and hence it is an activity connected with the operation or other work in the 'establishment'. Residential quarters provided for the bank employees do not come within the ambit of an 'establishment'. The principle laid down in Gammon India Ltd. case has no application to the facts of the present case. It should be remembered that in that decision the court pointed out the difference between the work of an 'establishment' and work in connection with the 'establishment'. We need go into the various other remarks in the decision as far as the present prosecution is concerned.

7. In S.T.C. No. 142 of 1993, the main irregularity pointed out is the employment of contract labour of 31 persons for construction of quarters at Barkatpura. The record reveals that subsequent to the notice all the irregularities pointed out were rectified and the department acted in time as per the show-cause notice. The prosecution relies upon the notification to indicate that construction of the staff quarter also comes within the ambit of an 'establishment'. A careful reading of the notification clearly shows that only the processes of sweeping cleaning, dusting and watching are brought within the ambit of the notification and the activity of constructing residential quarters for the staff members is not mentioned in the notification. It can safely be said that the notification has no application and that the prosecution launched in S.T.C. No. 142 of 1993 is misconceived.

8. In the result, both the Criminal Petitions are allowed. The prosecution in S.T.C. No. 141 of 1993 and 142 of 1993 on the file of the XXI Metropolitan Magistrate, Hyderabad are hereby quashed so far as they relate to the two petitioners (A1 and A2) principal employers.

9. Petitions allowed.

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