

Vijayakumar Vs. State of Kerala

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Court : Kerala

Decided On : Mar-28-2005

Reported in : 2005(2)KLT838

Judge : V. Ramkumar, J.

Acts : Contract Labour (Regulation and Abolition) Act, 1970 - Sections 10(1);
;Contract Labour (Regulation and Abolition) Central Rules, 1971 - Rules 20, 29,
73, 75, 81(3) and 82(1); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Crl. M.C. Nos. 2409 and 2413 of 2002

Appellant : Vijayakumar

Respondent : State of Kerala

Advocate for Def. : K.M. Jamaludheen, Adv. and; K. Ravikumar, Public
Prosecutor

Advocate for Pet/Ap. : P.K. Ramkumar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V. Ramkumar, J.

1. The common petitioners in these petitions filed under Section 482 Cr.P.C. seek to quash Annexure-I complaint in S.T. Case Nos. 8215 and 8213 of 2001 respectively.

2. The facts leading to the filing of these petitions can be summarised as follows:

On 7.3.2001 the 2nd respondent herein who is an inspector functioning under the Contract Labour (Regulation and Abolition), Act, 1970 (hereinafter referred to as 'the CLRA Act' for short) inspected the Calicut Airport under the Airports Authority of India of which the petitioners are the principal employers and observed that more than 20 workers were employed by the contractor and noted the following irregularities:--

i. The principal employer failed to amend the registration certification even though there were changes regarding the contractors working under him and this amounted to breach of Rule 29 of the Contract Labour (Regulation and Abolition) Central Rules, 1971 (hereinafter referred to as 'the Rules' for short).

ii. The principal employer failed to submit a detailed list of contractors along with an annual report as prescribed for the period ending the year 2000 and thereby committed breach of Rule 82(1) of the Rules.

iii. The principal employer failed to maintain Register of Contract in respect of contractors engaged by him at his establishment amounting to infraction of Rule 75 of the Rules.

iv. The principal employer failed to record under his signature a certificate at the end of entries of Wage Register of the Contractor amounting to breach of Rule 73 of the Rules.

v. The Principal employer failed to submit commencement notice about the contract work to the Inspector amounting to violation of Rule 81(3) of the Rules.

The irregularity under item (i) above is the subject matter of S.T. Case No. 8213/01 and the irregularities noted as items (ii) to (v) above are the subject matter of S.T. Case No. 8215/01.

3. Even though in S.T. Case No. 8213/01 what is alleged is infraction of Rule 29 of the Rules, there is no dispute that the rule which is really attached is Rule 20 and not Rule 29 of the Rules.

4. The only contention which was raised by the learned counsel for the petitioners in support of the request to quash the respective complaints is that during the period under question viz., the year 2000, a notification issued under Section 10(1) of the CLRA Act as S.O.No. 779(E) dt. 9.12.1976 prohibiting employment of contract labour on and from 1.3.1977 for sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments in respect of which the appropriate Government under the said Act is the Central Government, was in force till it was struck down with prospective effect by a Constitution Bench of the Supreme Court in the decision dated 30.8.2001 in Steel Authority of India Ltd. & Ors. v. National Union Waterfront Workers and Others reported in (2001) 7 SCC 1 and therefore the prosecution will not lie for the alleged contravention of the aforementioned rules. Elaborating on the said submission, the learned counsel for the petitioners contended that the consequences that follow from the issuance of a notification under Section 10(1) of the CLRA Act have been enumerated in paragraph 68 of the aforementioned decision of the Constitution Bench and during the period when the said notification was in force, there was a total embargo on contract labour and any contract by the principal employer with a contractor with regard to contract labour would come to an end and the contract labour would be deemed to be under the employment of the contractor and not under the principal employer.

5. The question whether any contract labour had been engaged by the petitioners in violation of the notification and whether the factual position in the establishment in question was contrary to the legal fiction obtained on account of the clamping of a notification under Section 10(1) etc. are all matters which have to be gone into only during the trial of the case. All those disputed questions cannot be gone into in petitions filed under Section 482 Cr.P.C. Interference at the threshold by exercise of jurisdiction under Section 482 Cr.P.C. has to be in very rare cases (vide *State of Orissa v. Ganesh Chandra Jew*, AIR 2004 SC 2179 and *Mohanan v. Prabha G. Nair*, (2004) 3 SCC 391). The power has to be exercised sparingly with

circumspection and in the rarest of rare cases (vide State of Haryana v. Bhajan Lal, 1992 SCC (Cri.) 622). Hence without prejudice to the right of the petitioners to raise all defences including the impact of the notification under Section 10(1) of the CLRA Act before the trial Court, these petitions are dismissed.

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