

Agarwal H.C. Vs. State

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Court : Chennai

Decided On : Jun-22-2001

Reported in : (2002)IILLJ650Mad

Judge : M. Karpagavinayagam, J.

Acts : Contract Labour (Regulation and Abolition) Act, 1970 - Sections 10(1) and 23

Appeal No. : CrI. O.P. No. 16564/1997

Appellant : Agarwal H.C.

Respondent : State

Advocate for Def. : K. Sridhar, Standing Counsel and ;M.T. Arunan, Adv.

Advocate for Pet/Ap. : Ashokan, Standing Counsel

Disposition : Petition dismissed

Judgement :

ORDER

M. Karagavinayagam, J.

1. H. C. Agarwal, Deputy General Manager (E&T;), Oil and Natural Gas Corporation Ltd. Chennai, is the Petitioner herein. Seeking to quash the

proceedings in S.T.C. No. 1493 of 1997 on the file of the Judicial First Class Magistrate, Karaikkal. Initiated by the Labour Enforcement Officer, the Respondent herein, for the offence under Section 23 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to] as 'The Act'), he has filed this Petition under Section 482 Cr. P.C.

2. The Labour Enforcement Officer, Trichy, the Respondent herein inspected the establishment of the accused Petitioner on October 15, 1996 and found that there was a violation of the provisions of Section 10(1) of the Act as by the Notification dated September 8, 1994, the Government of India, Ministry of, Labour, prohibited employment of contract labourers as Radio Operators on the establishment. Contravening the said notification, issued under Section 10(1) of the Act, the Petitioner Agarwal, who was the, principal employer of the establishment. Oil and Natural Gas Corporation Limited, Karaikkal, entered into a contract with the abettor R.M.V. Raman through whom 15 contract labourers were engaged as Radio, Operators. After inspection, the Respondent sent a show cause notice addressed to both the Petitioner-establishment and the abettor-contractor along with the inspection report requesting to rectify the irregularities asking them to show cause as to why they should not be prosecuted under the Act. Having received the same, both the Petitioner establishment and the abettor-contractor had not chosen to send any reply. Hence, the complaint dated January 10, 1997 was filed against both of them for the offence under' Section 23 of the Act. The same was taken onfile in S.T.C. No. 1493 of 1996 by the Judicial First Class Magistrate, Karaikkal.

3. The said proceeding is being challenged in this Petition on the following grounds:-

(i) The contract labourers were engaged through the contractor in the year 1991. Since the said contract labourers filed Writ Petition in W.P. No. 15211 of 1991 seeking the relief of restraining the management from terminating their services and obtained an order of interim injunction, the management could not rescind the contract, even though the Government of India issued notification prohibiting employment of such contract labour.

(ii) The prosecution is mala fide and without application of mind, since the Petitioner has been personally implicated.

(iii) The prosecution before the Judicial First Class Magistrate, Karaikkal is without jurisdiction, since the project site, where the contract labourers were employed, is at Neravy which is in Tamil Nadu.

4. These submissions have been resisted by the learned counsel for the Respondent through a counter.

5. It is argued by the learned counsel for the Respondent that the notification was issued on September 8, 1994 and the inspection was done on October 15, 1996. Though the Writ Petition was filed in the year 1991, the interim injunction originally granted was vacated on April 16, 1996. The Petitioner being the principal employer representing the establishment is liable to be proceeded with for the offence under Section 23 of the Act.

6. On the above aspects, Mr. Asokan, the learned senior counsel appearing for the Petitioner, and Mr. K. Sridhar, the learned senior counsel, representing Mr. Arunan, appearing for the Respondent, were heard at length.

7. On going through the Petition, the typed-set of papers and the counter, I am of the opinion that none of the grounds would help the Petitioner so as to enable this Court to quash the proceedings.

8. Under Section 10(1) of the Act, the notification was issued on September 8, 1994 prohibiting the establishment from employment of contract labour in the category of Radio Operator. It is seen from the counter-affidavit that the contract labourers filed writ petition in the year 1991 not to terminate their services and obtained an order of interim injunction. On the strength of the said order, the petitioner-establishment allowed extension of the contract from year to year. Ultimately, the notification was brought to the notice of the High Court and the interim injunction that was granted earlier was vacated on April 16, 1996. However, this Court observed that the workers should not be terminated from service until further orders. By virtue of the said order, the Petitioner-

establishment, instead of taking steps to rescind the contract and absorb or regularise the service of the said contract labourers, the petitioner-establishment continued the employment of the said contract labourers violating the notification which was issued under Section 10(1) of the Act.

9. As a matter of fact, this fact had been admitted by the petitioner-establishment itself in their reply dated December 13, 1996 sent to the respondent, as mentioned in the counter affidavit. Therefore, the pendency of the Writ Petition filed in the year 1991, when the injunction was vacated on April 16, 1996, would not disentitle the respondent/ complainant to make an inspection and thereafter, on the basis of the inspection report, to file a complaint after service of show cause notice on the Petitioner.

10. It is now submitted by the learned counsel for the Petitioner that subsequently, the Writ Petition was dismissed and thereafter, the writ appeal filed was also dismissed and in S.L.P., direction was given to regularise the employees and accordingly, they have been now regularised.

11. However, this would not be a ground to hold that the offence detected by the Respondent on October 15, 1996, when the Petitioner-establishment continued the employment of the said contract labourers in violation of Section 10(1) of the Act is not established. Therefore, the first ground would fail.

12. It is argued, while elaborating the second ground, that the prosecution is mala fide and the Petitioner cannot be implicated in personal capacity.

13. This submission also would not deserve acceptance. In the complaint, it is mentioned that the Petitioner as principal employer of the establishment had employed Radio Operators through the abettor-contractor in violation of Section 10(1) of the Act. Furthermore, it is noticed in the cause title that the Petitioner is the Deputy General Manager (E & T) of the establishment. It is also specifically averred in para 3 of the complaint that the Petitioner is the principal employer as per Section 2(2)(g) of the Act and he is responsible for awarding of contract to the abettor-contractor. Hence, the second ground also would fail.

14. Thirdly, it is submitted that the project site is situated in Tamil Nadu. Therefore, the Court at Karaikkal has no jurisdiction.

15. But, in the complaint, it is specifically mentioned that the petitioner-establishment and the abettor-contractor had contravened the provisions of the Act by engaging the contract labourers in the area within the jurisdiction of the Court at Karaikkal.

16. It is also mentioned in the counter that the Project Office of Oil and Natural Gas Corporation is situated at Karaikkal and the contract labourers had been employed in the work carried on by that Project Office. Therefore, the point of jurisdiction also would not succeed.

17. Incidentally, the learned senior counsel for the Petitioner would submit that in the show cause notice, it is mentioned that only 14 contract labourers were working and if it is less than 20, the said establishment cannot be construed to be an establishment as per the Act. He would also submit that the penal Section 23 of the Act provides punishment for violation of Section or Rules only and not notification. These submissions also, in my opinion, cannot be accepted.

18. Section 1(4)(a) of the Act regarding the applicability of the same to establishments where more than 20 workmen are employed as labourers or to every contractor who employed more than 20 workmen is not a definition clause. The definition of establishment is in Sub-clause (e) of Section 2 of the Act and the definition of 'contractor' is given in Sub-clause (c) of Section 2 of the Act. Both these definitions do not relate to the number of contract labourers employed by them.

19. Furthermore, Section 10(1) of the Act is a non obstante clause beginning with the words 'notwithstanding anything contained in the Act'. This Section, therefore, overrides other provisions of the Act and once the order prohibiting employment of contract labourers is duly issued under a notification, it operates as a total bar for that class of contract labourers irrespective of the number of workers employed.

20. In the same way, it cannot be contended that this is only a mere contravention of the notification and not the violation of the provisions or rules as mentioned in Section 23 of the Act. This submission has no basis. The notification in question is not a mere circular issued under the executive power. On the contrary, the notification has been issued by the Government on the strength of the power conferred under Section 10(1) of the Act. Therefore, the contravention of the notification would certainly amount to violation of the provisions of Section 10(1) of the Act, which would attract the penal Section 23 of the Act.

21. The above view of mine is supported by the decision of the Bombay High Court in S.B. Deshmukh v. Labour Enforcement Officer .

22. In view of what is stated above, the prosecution against the Petitioner is perfectly Justified and valid.

23. Therefore, there is no merit in this petition and accordingly, the same is dismissed.