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Court : Kolkata

Decided On : Apr-01-1993

Reported in : (1999)IIILLJ346Cal

Judge : Asok Kumar Chakravarty, J.

Acts : [Minimum Wages Act, 1948](#) - Sections 18(2) and 19(2); ;Minimum Wages Rules, 1951 - Rule 22(1)

Appeal No. : Cr.R. Nos. 672-673/1989Minimum Wages Act, 1948 read with Rule 22(1) of the Minimum Wages Rules, 1951 passed by the learned Additional Sessions Judge of Midnapore in Criminal Motions Nos.253/1988 and 21/1989 which arose out of the orders of quashing of the connected proceedings by the Learned S.D.J.M. Midnapore.

2. Mr. Das learned Advocate appearing on behalf of the petitioners, challenged the impugned orders in these revisional applications on two grounds, namely, that it has not been staled in the petition of complaints how the partners of the firm are responsible to the company for the conduct of the business of the firm and in what way they are responsible to it. The other point was that the provisions of Sub-rule (2) of Rule 26-B of the Minimum Wages (Central) Rules, 1950 was not followed in both the cases and on both the above grounds, the complaints are liable to be quashed.

3. It appears from the petition of complaint that summons were issued upon the partners of the firm and there is no whisper in the said complaint as to how these

partners are responsible to the company for the conduct of the business of the company or in what way they are responsible to it. Mr. Das referred to a Division Bench decision of this Court reported in 1979 LAB I.C. 152 (Maya Chandra and Ors. v. Inspector, Minimum Wages Officer and Ors.) where it has been held that it is necessary against any partner or Director of a firm or a company to state that they are responsible to the company for the conduct of the business of the company or in what way they are responsible to it and failure to do so is fatal to the prosecution. In the present case too, I find that the proceedings suffer from the same infirmities. Mr. Ghosh appearing on behalf of the O.P. contended that the definition 'employer' as appearing in Section 2(e) of the [Minimum Wages Act, 1948](#) shall be enough for the purpose but I am not in a position to agree with that submission of the learned Advocate for the O.P. in view of the decision referred to above and that too being based on a Division Bench decision of this Court reported in 1977 Cal. H.C.N. 374 at page 378.

4. The other point taken by Mr. Das, Learned Advocate appearing for the petitioner, is that the provision of Sub-rule (2) of Rule 26-B has not been complied with' in both the cases, has also sufficient force. Mr. Ghosh, appearing on behalf of the opposite party, contended that the Minimum Wages (Central) Rules do not apply in these cases and West Bengal Minimum Wages Rules, 1951 shall be applicable. The West Bengal Minimum Wages Rules, 1951 was framed under Section 30 of the [Minimum Wages Act, 1948](#). There is nothing in the Section indicating how notices are to be served and accordingly Sub-rule (2) of Rule 26-B of the Minimum Wages (Central) Rules, 1950 have got to be complied with. Sub-rule (2) of Rule 26-B provides that any infringement of the Act or the Rule noticed by the Inspector during the course of his inspection or otherwise shall be communicated to the employer requiring him to rectify the defects within a certain time. Instead of doing that the Inspector served a show-cause notice upon the employer why legal proceeding should not be taken against him. There is clear mandate regarding communication of the infringement of the provisions of the Act to the offending employer and when no rectification is made by the employer within the specified time in spite of such communication, in that case alone he can be prosecuted. In the decision reported in Bhubaneswar Mukherjee and Anr. v. State and Anr. 1987 C.Cr.L.R. (Cal) 274 a Single Bench of this Court also took the

same view. There was thus clear violation of the provisions of Sub-rule (2) of Rule 26-B of the Minimum Wages (Central) Rules in both the cases.

5. For the reasons mentioned above cognizance was wrongly taken in both the cases and the proceedings are accordingly liable to be quashed.

6. The revisional applications are accordingly allowed and the impugned proceedings pending before the learned Sub-Divisional Judicial Magistrate, Midnapore hereby stand quashed.

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