

(2010) 11 BOM CK 0041

In the Bombay High Court

Case No : Criminal Revision Application No. 143 of 2001

A.K. Jhingron, Chief Commercial Manager (Catering), Central Railway APPELLANT

Vs

State of Maharashtra and Another and P.S. Karmase, Labour Enforcement Officer RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 2, 7

Contract Labour (Regulation and Abolition) Central Rules, 1971 — Rule 81(3), 82(2)

Citation : (2010) 11 BOM CK 0041

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : A.N. Samant, for the Appellant; A.S. Shitole, APP for the State, for the Respondent

Final Decision : Allowed

Judgement

V.M. Kanade, J.—Heard the learned Counsel appearing on behalf of the Petitioner.

2 Petitioner is challenging the order of issuance of process dated 18/02/2000 passed by the learned Metropolitan Magistrate, 13th Court, Dadar in a complaint filed by Respondent No. 2 bearing SLC No. 201/SLC/200 in which it has been alleged that the Petitioner has violated Rules 81(3) and 82(2) of the Contract Labour (Regulation & Abolition) Act, 1970 read with the Contract Labour (Regulation & Abolition) Central Rules 1971.

3. Shri Samant, the learned Counsel appearing on behalf of the Petitioner submitted that the Petitioner, being railway authority, did not fall within the definition of "Principal Employer" and, as such, it was not necessary for the Petitioner to get the establishment registered u/s 7. He submitted that pursuant to the decision taken by the Central Government, it was decided to hand over catering services on the said trains to private parties and, accordingly, tenders were invited and, finally, a catering/vending license was awarded to M/s. A.A.

Catering Company. It is, therefore, submitted that the Assistant Labour Commissioner could not have issued show cause notice. He submitted that even the caterer to whom the license was awarded viz. M/s A.A. Catering Company had filed Writ Petition being Writ Petition No. 867 of 2001, challenging the same show-cause notice. He submitted that Division Bench of this Court, after relying on the judgment of Patna High Court in M/s R.R. Catering Co. v. State of Bihar decided in Criminal Application No. 12667 of 1996 dated 16/01/2001, directed the Assistant Labour Commissioner to take appropriate decision regarding show-cause notice in accordance with law.

4. In the present case, show cause notice has been issued in breach of provisions of Section 7 of the said Act and, as such, criminal complaint has been filed. It is an admitted position that catering license has been given to M/s A.A. Catering & Co. The Petitioner who is a Chief Commercial Manager (Catering) Central Railway, Mumbai Division cannot be said to be the principal employer as defined under the said Act.

5. Pursuant to the complaint filed in the Court of 13th Metropolitan Magistrate at Bhoiwada, Dadar, the learned Magistrate was pleased to issue process against the present Petitioner. In view of the admitted position that the catering contract has been given to M/s A.A. Catering & Co., Petitioner cannot be said to be the principal employer. In the said Act, "principal employer" has been defined in Sub-clause (g)(i) of Section 2, which reads as under:

(g) "principal employer" means,

(i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,

6. In the present case, since the license has been given to the third party, the Railway Administration is not responsible for maintenance of law in respect of the labour engaged by the licensee and, therefore, the Railway Administration or its Officers would not fall within the provisions of Sub-clause (g) (i) of Section 2. Though the Respondent No. 2 has been served, no reply has been filed by Respondent No. 2. Hence, the submissions made by the learned Counsel for the Petitioner are not controverted by Respondent No. 2. This Criminal Revision Application, therefore, will have to be allowed.

7. Accordingly, Criminal Revision Application is allowed in terms of prayer Clause (c).

8. Criminal Revision Application is accordingly disposed off.