

(2005) 06 JH CK 0009

In the Jharkhand High Court

Case No : Criminal M.P. No's. 1159, 1174 and 1185 of 2003

A.P. Arya and Others and R.T. Singh and Another	APPELLANT
Vs	
State of Jharkhand and Another	RESPONDENT

Date of Decision : 28-06-2005

Acts Referred:

Minimum Wages (Central) Rules, 1950 — Rule 21(4), 22, 25(2), 26(1), 26(2)
Minimum Wages Act, 1948 — Section 19 , 22B(1)

Citation : (2005) TLJhar 2005 : (2006) 1 JCR 382 : (2006) 109 FLR 214 :
(2006) 2 LLJ 1089

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : R.P. Singh and V.P. Singh, A.K. Singh and A.K. Sinha, for the
Appellant; Vijay Goel, APP, for the Respondent

Final Decision : Allowed

Judgement

Hari Shankar Prasad, J.—Since mater involved in all the three cases are of same nature, they are being disposed of by this common order.

2. The case of the petitioners of Cr. M.P. No. 1159 of 2003 is that it is alleged in the prosecution report that in course of inspection of M/s Pariwar Sansthan Plaza Dispensary Complex, Telco Town, Jamshedpur, the petitioners are said to have violated the provisions of Sections 12(1) and 18 as well as Rule 1950 and following violations were found which are given herein-below :

(1) As per requirement of Rule 21(4) no register in forms 1 and 2 was kept showing deduction from payment to the labourers on account of penalty and compensation.

(2) As per requirement of Rule 22 required information and rates of wages were not displayed at the work site.

(3) As per requirement of Rule 25(2) register for overtime was not kept.

- (4) As per requirement of Rule 26(1) register of wages was not kept.
- (5) As per requirement of Rule 26(2) no wage slip was given to the labourer.
- (6) As per requirement of Rule 26(5) no muster roll was kept.

2. It is also submitted that Pariwar Kalyan Sansthan Plaza Dispensary, Complex (PKS) is a society under the Society Registration Act, 1860 having registration No. 498/83-84 of Society Registration Act and it was submitted on their behalf that liability and responsibility of maintaining records/registers of various nature for various purposes, as alleged in the prosecution report (Annexure-1) is neither of these petitioners No. 1, 2 and 3 nor of M/s Telco, but they have been falsely named as accused in the prosecution report/complaint. It was further pointed out that Section 19 of Minimum Wages Act provides that an Inspector under the Act can be appointed by the State Government by duty publication in Gazette Notification. The Inspector will be appointed for a specific area and there is no specific statement or averment in the prosecution report as to when and by which notification and for which area the opposite party has been appointed as Inspector under the Act. It is also pointed out that u/s 22-B(1)(a) of Minimum Wages Act provides that there must be sanction for prosecution by appropriate Government or an officer authorized by it in this behalf. Section 22-B(1)(b) also provides that the complaint can be made by Inspector or with the sanction of an Inspector. In the instant case, there is no specific averment in this regard against the petitioners.

4. The case of the petitioners of Cr. M.P. No. 1174 of 2003 is that there is no specific statement in the prosecution report that the inspecting team or the complainant-O.P. No. 2 found any labourers working there during or before the inspection and this point is very relevant for constituting alleged offence. It is also submitted that the allegation in the prosecution report/complaint do not constitute offence alleged because allegations are vague and there is no allegation that the petitioners are employers and they have engaged labourers in schedule employment. Further, there is no allegation that O.P. No. 2 found persons working there in schedule employment and were engaged by the petitioners. It was further submitted that there is no allegation there is no allegation that the petitioners were required to maintain register as alleged in Annexure-1 which they have failed to maintain and there is no specific averment in Annexure-1 by the O.P. No. 2 that show-cause letter contained in Memo No. 2383 dated 28.7.2002 were issued and served on the petitioners and the prosecution report does not contain copy of the memo No. 2383 dated 28.7.2002 and receipt showing services on the petitioners. It is also submitted that cognizance has been taken in mechanical way.

5. The case of the petitioners of Cr. M.P. No. 1185 of 2003 is that the petitioners are senior officers of M/s Telco and they have no concern with Bharat Special Security, Jamshedpur including maintenance of various registers by the aforesaid firm and it is the responsibility and liability of the officials of Bharat Special

Security, Jamshedpur to maintain register of different nature as alleged in the prosecution report and not of these petitioners. It was also submitted that O.P. No. 2 has failed to connect the petitioners with the maintenance and control of personnel of M/s Bharat Special Security, Jamshedpur or other their other associates.

6. From perusal of complaint petition also, no specific allegation as to how they are connected with Bharat Special Security. The only allegation is that M/s Bharat Special Security is run in the premises of Pariwar Kalyan Sansthan, Telco Jamshedpur. Besides that there is no allegation against the petitioners as to how they will be responsible for the maintenance of all those registers as detailed in paragraphs 3, 4 and 5 of the complaint petition. The learned Counsel for the petitioners placed reliance on 1996 SCC 343 and 2004 (3) ECC 345.

7. On perusal of the counter-affidavit filed by opposite party Nos. 1 and 2, it also appears that in the counter-affidavit the opposite parties have not been able to establish the relationship between these petitioners and M/s Bharat Special Security, Telco.

8. So far as petitioners of other criminal miscellaneous petitions are concerned, there is no specific allegation against them as to how they are responsible for the lapses, if any, committed by the contractor or other officials and these has not been explained in the counter-affidavit filed against the petitioners. They do not appear to be any way connected with the lapses so alleged in the prosecution report and, therefore, they should not be held responsible for the lapses committed by other officials and for which other officials are responsible.

9. In that view of the matter and relying on both the rulings, these application are allowed and the entire criminal prosecution as well as order dated 29.7.2002 passed in connection with C/2 Case No. 1750 of 2002, order dated 13.8.2002 passed in C/2 case No. 1904 of 2002 and order dated 26.8.2002 passed in C/2 case No. 2011 of 2002 are hereby quashed.