
(2014) 02 GAU CK 0040
In the Gauhati High Court
Case No : Crl. Pet. No. 945 of 2013

Arup Kr. Barua

APPELLANT

Vs

G.K. Choudhury

RESPONDENT

Date of Decision : 17-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 482
Factories Act, 1948 — Section 2(k), 2(k)(iii), 2(m), 92, 95

Citation : (2015) 1 GLD 452 : (2014) 4 GLT 301

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : B.D. Das, H.K. Sarma, N. Goswami, D. Nath and S. Dutta, Advocate for the Appellant; N.J. Dutta, Advocate for the Respondent

Judgement

B.D. Agarwal, J.—This application under Section 482 r/w Section 397 of the Criminal Procedure Code, 1973 has been filed by the accused praying for quashing the Complaint Case No. 3260 of 2013 under Sections 92/ 95 of the Factories Act, 1948, pending before the learned JMFC, Kamrup, Guwahati. Heard Mr. B.D. Das, learned Sr. counsel for the petitioner and Mr. N.J. Dutta, learned counsel for the respondents.

2. The petitioner herein is the Asstt. General Manager of Assam Electricity Grid Corporation Ltd. On the other hand, the complainant is the Inspector of Factories, Guwahati. The FIR has been lodged against the petitioner for transforming and transmitting the power without obtaining any license under the Factories Act. There are other accusations as well against the petitioner regarding violation of the provisions of the Factories Act. However, the learned counsel for the petitioner basically argued that his case is about non-application of the Factories Act for the purpose of transformation and transmission of the electricity power.

3. Referring to Section 2(m) of the Factories Act, 1948 Mr. Das contented that when 10 or more workers are engaged in a manufacturing process (emphasis

supplied) with the aid of power and 20 or more without the aid of power only then such manufacturing process would attract the provisions of the Factories Act. According to the learned counsel the petitioner's company is not engaged in any manufacturing process of power and, as such, the company is not liable to obtain license under the said Act. According to the learned counsel the petitioner's company purchases power from the generating companies and transmit it to the substation only. However, during the course of argument Mr. Das fairly conceded that the power is purchased at high voltage of 220 KVA and the same is subsequently transformed and reduced to 131-140 KVA before distribution. The learned counsel also cited the judgment of Workmen of Delhi Electric Supply Undertaking Vs. The Management of Delhi Electric Supply Undertaking, to buttress his argument that in an electric substation there cannot be any manufacturing process.

4. On the other hand, the learned counsel for the respondents argued that the transformation and transmission of electric power would amount to manufacturing process as per the definition given under Section 2(k)(iii) of the Factories Act.

5. The learned counsel for the respondents also referred the judgment of the Apex Court rendered in the case of Uttaranchal Forest Development Corpn. and Another Vs. Jabar Singh and Others, wherein the definition of "manufacturing process" has been discussed. The learned counsel also cited a Division Bench judgment of the Calcutta High Court, rendered in the case of Board of Councillors, Bhatpara Municipality Vs. CESC Ltd. and Others, and contended that the words "generating, transforming or transmitting", employed in Section 2(k)(iii) of the Factories Act are disjunctive. In the aforesaid two cases the judgment of Delhi Electricity Supply Undertaking, cited on behalf of the petitioner has been discussed.

6. The learned counsel for the respondents also submitted that the authorities cited on behalf of the petitioner is a judgment of 1972 whereas the Electricity (Supply) Act, 1948 was amended in the year 1976 to include "sub-station" for the purpose of transforming or converting the electricity for transmission or distribution thereof.

7. In the case of Workmen of Delhi Electricity Supply Undertaking the issue before the Apex Court was granting of overtime allowance to the workers stationed at substations. In that context the Hon'ble Supreme Court held that the nature of work at a manufacturing place is different from that of substation and generating station. Accordingly, it was held that substation and zonal stations do not satisfy the definition of "Factory" under Section 2(m) of the Factories Act. However, in the case before me the issue is as to whether transformation or transmission amounts to manufacturing process.

8. For ready reference, the definition of "manufacturing process" given under Section 2(k) of the Factories Act, 1948 is reproduced below:

"2(K) "manufacturing process" means any process for-

- (i) Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
- (ii) Pumping oil, water, sewage or any other substance, or
- (iii) Generating, transforming or transmitting power; or
- (iv) Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- (v) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- (vi) Preserving or storing any article in cold storage;"

9. According to the learned counsel for the petitioner the process of transformation or transmission of power cannot be combined. In my considered opinion the word "or" is disjunctive. I agree with the view taken by the Calcutta High Court wherein it has been held that "generating, transforming or transmitting of power" employed in Section 2(k)(iii) of the Factories Act for the purpose of defining "manufacturing processes" are disjunctive. Their Lordships of Calcutta High Court have further held that if "or" is read as "and" in this case, it will defeat the legislative intent and the same would lead to absurdity. In other words, if any company is involved in any of the three processes it would be considered as engaged in "manufacturing process".

10. In the case of Uttaranchal Forest Development Corporation (supra) the Hon'ble Supreme Court was examining as to whether cutting of trees by axe and changing the shape of timber into logs by using hand driven saw amounts to manufacturing process. Relying upon the various decisions, more particularly the Constitution Bench judgment of the Apex Court rendered in the case of Ardeshir H. Bhiwandiwalla Vs. The State of Bombay, the Apex Court held that the cutting of trees and transforming its shape into logs amounts to alteration and changing the shape so as to bring the process under the Factories Act.

11. The above apart, I am at the stage of examining the case only to ascertain as to whether a prima-facie case of violation of provisions of Factories Act has been made out. For the reasons set out herein above I hold that it is not a fit case wherein the criminal proceeding can be quashed at the initial stage.

In the result, the criminal petition stands dismissed.