

(1998) 07 PAT CK 0073

In the Patna High Court

Case No : Criminal Miscellaneous No. 7455 of 1993

Baidyanath Ayurved Bhawan Ltd. and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 24-07-1998

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 32, 34, 43

Bihar Shops and Establishments Rules, 1955 — Rule 3(7)

Factories Act, 1948 — Section 2(L)

Citation : (1998) 3 PLJR 80

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Advocate : Birendra Kumar, Sinha, Ratan Pd. Sinha and G.P. Bimal, for the Appellant; Abdus Salam, for the Respondent

Judgement

R.N. Sahay, J.—This quashing application is directed against the order dated 18.7.1990 of the Chief Judicial Magistrate, Patna in complaint case No. 562 (1)/90, whereby on the complaint filed by the Assistant Labour Commissioner-cum-inspecting Officer, Bihar the court has taken cognizance under Sections 32 and 34 of the Bihar Shops and Establishments Act against the Petitioners and issued summons for their appearance.

2. According to the complaint petition filed by the Assistant Labour Commissioner, the premises of Petitioner No. 1 M/s Baidyanath Ayurved Bhawan Ltd. was inspected on 16.5.1990 in the capacity of inspecting authority under the Bihar Shops and Establishments Act. During inspection, 122 workers were found on duty, who were sweepers, drivers, Darwans, Care-takers, Security guards, Excise Inspector. The Inspecting authority demanded certain records, detailed in para-4 of the petition. The General Manager prayed for time to produce the records. By letter dated 18.5.1990 the General Manager prayed for further time for one month and later on he was informed by the Department" that if they do not produce the records, it will be deemed to be disobedience of the order punishable under Sections 32 and 43 of the Bihar Shops and Establishments Act.

The complainant further alleged that by letter dated 9.6.1990 received by them on 13.6.1990 the Petitioners challenged the applicability of Shops and Establishments Act and the authority of the complainant to inspect the factory. The substratum of the allegation is that the Petitioners failed to produce the registers and records and challenged the authority of the complainant which amounted to violation of Section 32 of the Shops and Establishments Act i.e. obstruction in discharge of official duty. Non-production of documents and not maintaining of those documents is infringement of Section 34 of the Act and they were guilty of offence punishable under Sections 32 and 34 of the Act.

3. The stand of the Petitioners is that the prosecution of the Petitioner under penal provision of the Shops and Establishments Act is totally misconceived since the Petitioner-company is already covered and registered under the Factories Act as it manufactures medicines in its premises and for its maintenance workers have been employed. Similar dispute had cropped up in the year 1985 when the Inspecting authority under the Shops Act wanted to cover the factory as establishment, but the Factory Inspector specifically wrote that it is purely a factory and all persons working within the premises are factory workers within the meaning of Section 2(L) of the Factories Act. It was clarified that the factory would be governed by Factories Act and not by Shops and Establishments Act. When the inspection was made this time, the inspecting party was apprised of the correct legal position. However, on the insistence of the complainant, the company submitted return of nil workers and also intimated that Rs. 7.50 had already been paid as desired by him, but it was reiterated that Shops and Establishments Act is not applicable. However, to avoid harassment they are paying this amount (Annexure-2). The complainant did not decide the dispute but filed a complaint. The Petitioner, therefore has prayed for quashing of the complaint and the order of cognizance primarily on the ground that the Petitioners are governed by the Factories Act and were not bound to maintain registers etc. under the Shops and Establishments Act.

4. Mr. Birendra Kumar Sinha, learned senior counsel for the Petitioners submitted that merely challenging the jurisdiction of the authority cannot amount to obstruction in official duty and no case u/s 32 of the Act is made out. It is submitted that when records are already maintained under the Factories Act and when the Shops and Establishments Act is not applicable, non-maintenance of records under the Shops and Establishments Act will not invite punishment u/s 34 of the Act.

5. In *Maya Chandra v. Minimum Wages Officer* 1979 LAB. I.C. 152, learned single Judge of Calcutta High Court had occasion to deal with the question mooted in this application. In that case, the question for consideration was whether when registers are maintained as required by West Bengal Shops and Establishments Act, 1963, can the prosecution be launched for non-maintenance of registers as required by Minimum Wages Act. It was held that since all the essential records were maintained under the Shops and Establishments Act, maintenance of

registers under the Minimum Wages Act is not necessary.

6. In *Amarnath Singh v. Presiding Officer, Industrial Tribunal, Bihar* 1969 P.L.J.R. 486, it was held that Motor Transport undertaking is covered by Motor Transport Workers Act, 1961 and hence it is outside the purview of Shops and Establishments Act, 1953.

7. Mr. Sinha has also placed reliance on *Abu Mohammed v. State of Bihar* 1977 B.B.C.J. 500 (D.B.) : 1977 PLJR 565 and submitted that since the applicability of provisions of Shops and Establishments Act to the Petitioners establishment is disputed by the Petitioner as the Petitioner is governed by the Factories Act, the complaint filed in the instant case is misconceived. Rule 3(7) of the Bihar Shops and Establishments Rules, 1955 provides that in the event of any doubt or difference of opinion between an employer and the Inspecting Officer, as to the liabilities of registration of the establishment and payment of the fees, the Inspecting Officer shall refer the matter to the Chief Inspecting Officer whose decision shall be final. This provision does not apply in the instant case.

8. This application has to be allowed in view of the decision of the Calcutta High Court in *Maya Chandra's case* (supra). The Petitioners are already maintaining registers under the Factories Act and hence it is not necessary to maintain registers under the Shops and Establishments Act. There is no doubt that the Petitioners are covered under the Factories Act and in the facts any circumstances of the case, they cannot be prosecuted under the Shops and Establishment Act. This application is accordingly allowed and the order of cognizance and entire proceeding against the Petitioners is quashed.