

(2012) 05 JH CK 0097

In the Jharkhand High Court

Case No : Writ Petition (CR.) No. 122 of 2002

Bishop Dr. Samuel R. Thomas and Dr. Stephen Murmu

APPELLANT

Vs

State of Jharkhand and The Labour Enforcement Officer,
Maheshpur, Pakur

RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:

Factories Act, 1948 — Section 7

Minimum Wages Act, 1948 — Section 2(e), 22, 22(c), 23, 26

Citation : (2012) 3 JCR 582 : (2012) 3 JLJR 125 : (2012) LLR 1090

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : Nilesh Kumar, for the Appellant; Rajesh Kumar, SC, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar

1. In this writ application petitioners pray for quashing the entire criminal proceeding arising out of OCR Case no. 119/2002 and order dated 25.10.2000 by which learned A.C.J.M. Pakur took cognizance of the offence u/s 22 of Minimum Wages Act (herein after refer as the Act). Petitioners further pray for quashing of the order dated 25.01.2002 passed by Sessions Judge, "Pakur in Criminal Revision No. 65/2001. It appears that Labour Enforcement Officer, Maheshpur (respondent no. 2) filed complaint alleging there in that he inspected Theodori Christian Hospital, Maheshpur on 02.5.2000 and found that in contravention of the provisions as contained in section 12A of the Act the employer has paid to its employees less than the minimum wages fixed.

2. It appears that respondent no. 2 gave notice to the petitioners asking them to pay wages and to show cause as to why not prosecution be initiated but petitioners did not give any heed to the said notice. Accordingly, after obtaining sanction from the competent authority, present complaint filed in the court of

A.C.J.M., Pakur alleging there in that petitioners committed offence u/s 22 of the Act. It appears that learned A.C.J.M. Pakur vide his order dated 25.10.2000 took cognizance of the offence and issued summon to the petitioners. It further appears that petitioner no. 1 has filed a Criminal Revision against the order taking cognizance vide Criminal Revision No. 65/2001 in the Court of Session Judge, Pakur. Said Criminal Revision dismissed by Sessions Judge Pakur vide order dated 25.01.2002.

3. Sri Krishna Shankar, learned counsel for the petitioners submits that Theodori Christian Hospital is a charitable hospital thus, same cannot be equated with any other private profit making hospital or Nursing Home. He submits that the Act has no application on charitable hospital. It is further submitted that petitioners are not connected with the day to day affairs of the hospital, hence, as per section 22(c) of the Act they can not be punished. Accordingly, it is submitted that entire criminal proceeding initiated against the petitioners in connection with OCR case no. 119/2002 is liable to be quashed.

4. On the other hand, Mr. Rajesh Kumar, learned Standing Counsel appearing for the State submits that as per Schedule of Minimum Wages Act, private hospitals, nursing homes and clinics come within the purview of the Act. He submits that Minimum Wages Act enacted for the benefit of employees working under Schedule employment which includes private hospitals. The object of the Act is to ensure minimum wages to the employees working in Schedule employment He further submits that Labour Enforcement Officer, in course of inspection found that employees working in Theodori Christian Hospital were not getting minimum wages. Therefore, he concluded that petitioners committed contraventions under various provisions of the Act and Rules, which are punishable u/s 22 of the Act. It is submitted that AC.J.M. rightly took cognizance of the offence u/s 22 of the Act. He further submits that petitioners come within the purview of "Employer" as defined under Minimum Wages Act. The question as to whether petitioners are incharge of the affairs of hospital or not is a question of fact which required to be proved by adducing evidence. He submits that u/s 23 of the Act, petitioners can file an application before the Court disclosing the name of the person who is incharge of the affairs of Hospital and if they will be able to prove it they can be exempted from punishment. Accordingly, it is submitted that second ground raised by the petitioners can be agitated in court below at the appropriate stage.

5. Having heard then submissions, I have gone through the records of the case.

6. It appears that Theodori Christian Hospital Chandrapura is managed by Methodist Church in India, a society registered under Society Registration Act It is stated that petitioner no. 1 is Bishop of aforesaid church and at the relevant time he was residing at Lucknow. He has got no concern with the management of aforesaid hospital, thus he will not come within the purview of "Employer" as defined under Minimum Wages Act. Thus, he cannot be prosecuted. The word "Employer" has been defined u/s 2(e) of the Minimum Wages Act, which runs as follows:

"employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of section 26,-

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person named under [clause (f) of sub-section (1) of section 7 of the Factories Act 1948 (63 of 1948)] as manager of the factory;

(ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is appointed the head of the department

(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

(iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person responsible to the owner for the supervision and control of the employees or for the payment of wages".

7. From perusal of order of learned Sessions Judge, Pakur, it appears that while considering aforesaid contention, he considered the By-laws of the hospital in which petitioner no. 1 was shown as a member of the Committee and the said committee has power to fix scale of salary, allowance, wages of the staff of the hospital thus the hospital, as per Clause (iv) of Section, 2 (e) of the Act, in my view, petitioners come within the purview of Employer. The question as to whether petitioners are Incharge and/or responsible to the conduct of business of hospital or not is a question of fact, which require to be proved by adducing evidence. In this respect, it is worth mentioning that Section 23 of the Act provides sufficient safeguard to such employer who themselves not violated any of the provisions of the Act and Rules. According to aforesaid provision when an employer charged with an offence under the Act, he is entitled to file an application at the time of hearing of the charge and to prove that infact some other persons committed offence under the Act Aforesaid section further provides that if aforesaid employer satisfy the Court by cogent evidence then he can not be convicted for the offence under the Act Under the aforesaid circumstance, I find that learned Sessions Judge, Pakur rightly come to the conclusion that at the stage of cognizance this question raised by the petitioner cannot be decided.

8. Now coming to the second contention raised by learned counsel for the petitioners, it is worth mentioning that the State of Bihar by issuance of standing

order i.e. S.O. No. 1588 dated 15.10.1976 added employment in private hospitals, nursing homes and clinics in the schedule of the Act. The various provisions of the Act deals with rates of wages payable to employees working in Schedule employment. It makes no distinction as to whether the concern schedule employment is a profit making employment or charitable employment. Admittedly, Theodori Christian Hospital is a private hospital. Under the said circumstance, employees working in it are entitled to get minimum wages according to the provisions of the Act. It is immaterial whether society is running the said hospital for charitable purpose or for the purpose of graft. In my view, even if any person running an organization for charitable purpose and same comes within the purview of schedule employment, then said organization is liable to pay minimum wages to its employees. Thus, if it is found that employees of said organization are not getting minimum wages, then the employer is liable to be punished. Thus, I find no merit in the aforesaid submission of learned counsel for the petitioners. In view of discussions made above, I find no merit in this writ application, accordingly same is dismissed.