
(2010) 05 AP CK 0015

In the Andhra Pradesh High Court

Case No : Criminal P. No. 3527 of 2010

Chittivalasa Jute Mills Ltd.

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 31-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 200, 482
Payment of Bonus Act, 1965 — Section 19B, 26, 27(2), 27(4), 30
Payment of Bonus Rules, 1965 — Rule 4

Citation : (2011) 1 ALD(Cri) 381

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : Radha Krishna Murthy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Samudrala Govindarajulu, J.—The Petitioner/A-1 seeks quashing of proceedings in STC No. 18 of 2010 on the file of IV Metropolitan Magistrate, Bheemunipatnam, Visakhapatnam District u/s 482 Code of Criminal Procedure on the ground that complaint filed by the Deputy Commissioner of Labour, Visakhapatnam in the lower Court under the provisions of payment of Bonus Act (in short, the Act) is not maintainable as the Deputy Commissioner of Labour is not competent to file the same as per Section 30 of the Act. Even though another ground was raised in the petition to the effect that Anudeep Bajoria who is impleaded as another accused in his capacity as Chief Executive of the Petitioner company had ceased to be the Chief Executive with effect from 31.3.2009, the said ground was not urged by the Petitioner's Counsel before this Court. In any event, whether Anudeep Bajoria ceased to be Chief Executive of the Petitioner company or not, is a question of fact which has to be gone into and decided by the trial Court after recording evidence to be let in by both the parties. This Court cannot go into the said factual aspect in this petition u/s 482 Code of Criminal Procedure In any event, the contraventions alleged in the complaint relate to the accounting year 2008-09 during which time admittedly "Anudeep

Bajoria"" was Chief Executive of the Petitioner company till 31.3.2009.

2. It is contended by the Petitioner's Counsel that in view of Section 30 of the Act, the lower Court should not have taken cognizance of the complaint when it is not presented by the prescribed authority or officer named therein. Section 30(1) of the Act reads as follows:

(1) No Court shall take cognizance of any offence punishable under this Act, save on complaint made by or under the authority of the appropriate Government, or an officer of that Government not below the rank of Regional Labour Commissioner in the case of an officer of the Central Government and not below the rank of a Labour Commissioner in case of an officer of the State Government specially authorised in this behalf by that Government.

3. The Petitioner's Counsel heavily placed reliance on Mysore Cements Ltd. v. Assistant Labour Commissioner 2003 (I) LLJ 296 (Kar.) , of the Karnataka High Court and Ballabhdas Agarwala Vs. J.C. Chakravarty, of the Supreme Court in support of his contention. Mysore Cements Limited's case (supra), is a direct decision u/s 30 of the Act and it was rendered by the Karnataka High Court on the basis of Ballabhadas Agarwala's case (supra) and other decisions of the Supreme Court and the Privy Council. In Ballabhadas Agarwala's case (supra), the Supreme Court based its ratio on decision of AIR 1936 253 (Privy Council) wherein the Privy Council while considering overaction of the Magistrate acting u/s 164 Code of Criminal Procedure observed:

that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all.

In that case, the Magistrate purporting to act u/s 164 Code of Criminal Procedure went along with the accused to scene of the offence and observed the same while scribbling notes of what the accused was stating and thereafter prepared a memorandum and destroyed the spot notes; and the said activity of the Magistrate was sought to be proved by the prosecution by examining the Magistrate and contending that memorandum prepared by the Magistrate basing on spot notes which was later destroyed by the Magistrate, amounts to confessional statement of the accused u/s 164 Code of Criminal Procedure It was noticed by the Privy Council that recording of proceedings/ memorandum by the Magistrate was not in accordance with procedure prescribed by Section 164" Sub-sections (1), (2), (3) and explanation of the Code of Criminal Procedure, 1898. The above quoted ratio was rendered by the Privy Council in that context.

4. The question which arose in Ballabhadas Agarwala's case (supra), before the Supreme Court was competency of Health Officer to file complaint before the Magistrate for adulteration of food under the Calcutta Municipal Act, 1923. While interpreting Sections 537 and 12 of the Calcutta Municipal Act, 1923, the Supreme Court after taking note of above ratio of the Privy Council in Nazir Ahmed's case (supra) held that the complaint filed by Health Officer is invalid as he had no legal competency to file the same. Relevant portion of Section 537 of

Calcutta Municipal Act, 1923 reads as follows:

The Commissioners may-

(a) Institute, defend, or withdraw from legal proceedings under the Calcutta Municipal Act, 1923, as in force in the Municipality of Howrah or under any rule or by law made thereunder

Whereas Section 12(1) of the Calcutta Municipal Act, 1923 provided for delegation of powers, duties and functions under that enactment by the Commissioners to the Chairman by a resolution passed at a special meeting. Further u/s 12(2) of the Calcutta Municipal Act, 1923, there is provision for delegation of powers, duties and functions which have been delegated to the Chairman by the Commissioners, by the Chairman to the Vice-Chairman or any other Municipal Officer. Basing on the delegation and further delegation by the Commissioner and by the Chairman, the Health Officer claimed competency to file complaint before the Magistrate. At this stage, it may be noted that Section 537 of the Calcutta Municipal Act, 1923 did not contain any such provision for delegation of power to institute a legal proceeding by the Commissioner. In those circumstances, the Supreme Court came to the conclusion that complaint filed by the Health Officer was not valid in view of Section 537 of the Calcutta Municipal Act, 1923. The same analogy was followed by the Karnataka High Court in Mysore Cements Limited's case (supra). With due respect, I do not agree with reasoning of the Karnataka High Court and applying ratio of the Supreme Court in Ballabhadas Agarwala 's case (supra) to a case u/s 30 of the Act, having due regard to language employed in that section.

5. u/s 30 of the Act, the complaint has to be made (a) by or (b) under the authority of (i) the appropriate Government or (ii) an officer not below the rank of Regional Labour Commissioner in the case of an officer of the Central Government or (iii) an officer not below the rank of a Labour Commissioner in case of an officer of the State Government, and such officer being specifically authorised in this behalf by that Government.

6. While exercising powers u/s 30(1) of the Act, the Government of Andhra Pradesh issued G.O. Ms. No. 392 of Labour, Employment Nutrition and Technical Education (Lab-IV) Department dated 30.9.1986 which reads as follows:

In exercise of the powers conferred by Sub-section (1) of Section 30 of the Payment of Bonus Act, 1965 (Central Act 21 of 1965), the Governor of Andhra Pradesh hereby authorises the Commissioner of Labour, Andhra Pradesh, (1) of Section 30 of the said Act

7. The Commissioner of Labour, Andhra Pradesh, Hyderabad in turn issued proceedings No. L1/6510/2009 dated 19.1.2010 which read as follows:

In exercise of the powers conferred under Sub-section (1) of the Section 30 of the Payment of Bonus Act, 1965 (Central Act 21 of 1965) read with G.O.3rd cited I, the Commissioner of Labour, A.P. Hyderabad do hereby sanction prosecution

against the Management of M/s. Chittivalasah Jute Mills, Visakhapatnam District for contravention of:

1. Section 19-B,
2. Section 26 read with Section 27(2) and (4) and Rule 4(a)
3. Section 26 read with Section 27(2) and (4) and Rule 4(b)
4. Section 26 read with Section 27(2) and (4) and Rule 4(c) of Payment of Bonus Act of the said Act and Rules and do hereby authorised the Deputy Commissioner of Labour, Commissioner of Labour, Visakhapatnam, to file complaint for the above offences in the appropriate Court having jurisdiction within (10) days.

8. It is only in pursuance of the" proceedings dated 10.1.2010 of the Commissioner of Labour, the Deputy Commissioner of Labour, Visakhapatnam filed the complaint in the lower Court with his signatures against the accused. In the] complaint, the Deputy Commissioner of Labour, Visakhapatnam stated that the Assistant Labour Officer, Bheemunipatnam is authorised to file (present) the complaint in the Court and represent the Deputy Commissioner Labour, Visakhapatnam in the Court. As per proviso (a) to Section 200 Code of Criminal Procedure when the complaint is made in writing, the Magistrate need not examine the complainant and witnesses, if a public servant acting or purporting to act in discharge of his official duties made the complaint. Thus, presence of the Deputy Commissioner of Labour, Visakhapatnam either at the time of presenting the complaint before the Court or on every date of adjournment of the case is necessary and day to day proceedings in the Court will be looked after by the Assistant Labour Officer as the officer representing the Deputy Commissioner of Labour, Visakhapatnam.

9. When Section 30(1) of the Act itself provides for making the complaint either "by" the Labour Commissioner of the State Government or "under the authority of the Labour Commissioner of the State Government, it cannot be said that the complaint made by the Deputy Commissioner, Visakhapatnam who is authorised by the Commissioner of Labour, is not a competent one before the Magistrate. In my considered opinion, the Clause "by or under the authority of occurring any Section 30(1) of the Act applies not only to the appropriate Government but also to Regional Labour Commissioner of the Central Government as well as Labour Commissioner of the State Government. In Mysore Cements Limited's case (supra), the Karnataka High Court totally ignored or did not notice the phrase "by or under the authority of occurring in Section 30 of the Act.

10. Thus, in this case, the complaint was made in accordance with language employed in Section 30(1) of the Act by the Competent Officer to whom power is given to do a certain thing in a certain way and the said thing was done in that way only and not otherwise, as observed by the Privy Council in Nazir Ahmad's case (supra) and by the Supreme Court in Ballabhadas Agarwala's case (supra).

11. In the result, the criminal petition is dismissed.