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**(1997) 02 PAT CK 0033**  
**In the Patna High Court**  
**Case No : Criminal M. No. 3367 of 1990 (R)**

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| D. Sarkar @ Dipak Sarkar and Others | APPELLANT  |
| Vs                                  |            |
| State of Bihar and Another          | RESPONDENT |

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**Date of Decision :** 13-02-1997

**Acts Referred:**

Contract Labour (Regulation and Abolition) Act, 1970 — Section 2(1), 23, 24

**Citation :** (1997) 45 BLJR 868 : (1998) 2 LLJ 848

**Hon'ble Judges :** D.P. Wadhwa, C.J.; S.K. Chattopadhyaya, J

**Bench :** Division Bench

**Advocate :** M.M. Banerjee and R. Mukhopadya, for the Appellant; A.K. Trivedi, Senior S.C. for Central Govt. and S.N. Rajgarhi, Assistant Public Prosecutor, for the Respondent

**Final Decision :** Allowed

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## Judgement

D.P. Wadhwa, C.J.—In this petition u/s 482 of the Code of Criminal Procedure, the petitioners seek to quash the prosecution for offences under Sections 23 and 24 of the Contract Labour (Regulation and Abolition) Act, 1970 (for short "the Act"). The complaint against the petitioners has been filed by the second respondent, Labour Enforcement Officer (Central), Dhanbad who has been appointed u/s 28 of the Act as Inspector by the Central Government. The complaint was filed as far back on October 14, 1981. The petitioners came to this Court on November 14, 1990 on being summoned to appear. One of the contentions raised for quashing of the complaint against them was that the judgment of this Court in M.R.Panja and Others v. State of Bihar (Criminal Misc. No. 880 of 1985-R) decided on April 12, 1989, which was in the case of the present petitioners themselves, a learned single Judge had quashed the prosecution on the ground that appropriate Government in the case of the petitioners was the State Government and not the Central Government and, therefore, the prosecution by the complainant appointed by the Central Government was bad in law.

2. When this matter was heard by a learned single Judge he had some doubts about the correctness of the aforesaid decision. In this connection he referred to certain decisions, one delivered by the Supreme Court and Ors. by Karnataka and Bombay High Courts. He was therefore, of the opinion that the principle laid by a learned single Judge of this Court in M.R. Panja's case (Cr. Mis.No. 880 of 1985-R) required detailed reconsideration by a larger Bench of this Court to settle the matter once for all. That is how this matter has come before us.

3. Of the three petitioners, petitioners 1 and 2, namely, D. Sarkar and K.C. Chatterjee, were at the relevant time Manager Contracts (Mining) and site-in-charge of the company which is the third petitioner. It was stated in the complaint that petitioners 1 and 2 were responsible for the conduct of the business of the third petitioner, the company, which was a "contractor" within the meaning of the Act. The second respondent, the complainant, stated in the complaint that the third petitioner, the company was a contractor of M/s.TISCO Ltd. and u/s 25 of the Act the company as well as the petitioners 1 and 2 would be liable for the offences committed by the company. It was alleged that during the course of inspection of the establishment of the third petitioner on July 29, 1981, it was found that it was not keeping certain records in contravention of the rules framed under the Act and thus contravened the provisions of Sections 23 and 24 of the Act. It was also alleged in the complaint that the second respondent was having jurisdiction over the establishment of the petitioner. However, the complaint was silent as to what was the nature of the establishment of the principal employer, the TISCO. It was not disputed, however, that the principal employer had been granted mining" lease of Bhelatand Colliery in the district of Dhanbad. A certificate of registration under Sub-section (2) of Section 7 of the Act was duly granted to TISCO under the Act being the principal employer. The third petitioner, the company, was also licensed as contractor to undertake the work of sinking shafts in the colliery aforesaid. The definition of "mine" as contained in Clause (j) of Sub-section (1) of Section 2 of the Mines Act, 1952 also includes all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not. At this stage if we refer to the Mines and Minerals (Regulation and Development) Act, 1957 it would be seen that under Sub-section (2) of Section 5, no person can be granted mining lease except with the previous approval of the Central Government. To the minerals to which this provision applies are mentioned in the First Schedule to the Mines and Minerals (Regulation and Development) Act, 1957 and coal is one of such minerals.

4. We may turn now to the meanings of different expressions defined in Section 2(1) of the Act:-

"(a) "appropriate Government" means :-

(1) in relation to -

(i) any establishment pertaining to any industry carried on by or under the

authority of the Central Government, or pertaining to any such controlled industry as may be specified in this behalf by the Central Government, or

(ii) any establishment of any railway, Cantonment Board, major port, mine or oil field, or

(iii) any establishment of a banking or insurance company,

the Central Government,

(2) In relation to any other establishment, the Government of the State in which that other establishment is situated."

""Contractor" in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than merely supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor;"

""Establishment" means -

(i) my office or department of the Government or a local authority; or

(ii) any place where any industry, trade, business, manufacture or occupation is carried on;"

""Principal Employer" means, -

(i) in relation to any office or department of the Government or local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,

(ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so, named,

(iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,

(iv) in any other establishment, any person responsible for the supervision and control of the establishment."

5. We may also set out with some advantage the present definition of "Appropriate Government". Now it means-

"(a) "Appropriate Government" means, -

(i) in relation to an establishment in respect of which the Appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situate;

(b) A workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. "

6. The principal controversy which has been raised in the present case is as to which is the appropriate Government to appoint the investigating staff u/s 28 of the Act which could tile prosecution against the petitioners, Mr. Banerjee, learned counsel for the petitioners also raised other points challenging the validity of the prosecution including the delay in trial all these years. For an offence u/s 23 of the Act, punishment is imprisonment . for a term which may extend to three months or with fine which may extend to Rs. 1000/- or with both and in case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction tor the first such contravention. This latter portion of the sentence would be inapplicable in the present case. u/s 24 of the Act also punishment prescribed is imprisonment which may extend to three months or with fine which may extend to Rs. 1000/- or with both. The submission was that petitioners 1 and 2 had since long left the positions they were holding in the company and any continuance of criminal prosecution would be an abuse of the process of Court.

7. The learned single Judge in M.R.Panja's case (Cr. Misc. No.880 of 1985 R ) observed that no doubt the petitioner company was working on the basis of contract obtained from the Bharat Coking Coal Limited, a public undertaking of the Central Government, but the nature of work performed by the petitioner company was altogether different and was not directly controlled by the Central Government. It was noted that it could not be said that the petitioner company was being run by or on behalf of the Central Government or it could not be an establishment carried on by or under the authority of the Central Government. He further observed that only because the Central undertaking had allotted some work in the mining area to the petitioner company it could not be said that the company had become an establishment of the Central Government or carried on by or under the authority of the Central Government. On that account it was held that appropriate Government for examining the nature of the establishment or finding out contravention of Rules or laws was the State Government and not the Central Government. On this account the learned single Judge held that cognizance of the offences taken against the petitioner company was bad and quashed the criminal prosecution.

8. Various judgments have been cited before us which we may refer to in brief. In Food Corporation of India Workers' Union Vs. Food Corporation of India and Others, , the question that arose for consideration before the Supreme Court was as to which was the "Appropriate Government" within the meaning of the Act in relation to the petitioners, who had been employed as contract labour by the Food Corporation of India through intermediary contractors. The Food Corporation of India had been entrusted with the duty of procuring food grains

and its movement and distribution throughout the country. The Corporation has been constituted by the Food Corporation, Act, 1964. Some other contentions were also raised before the Supreme Court with which we are not concerned in the present proceedings. The Court noticed that for carrying out its purposes it had regional offices and warehouses all over the country in different States. The Court compared the definition of "Appropriate Government" as appearing in the Act (prior to its amendment in 1986) with that in the Industrial Disputes Act, 1947 and came to the conclusion, that the case fell within Sub-clause (ii) of Clause (a) of Section 2(1) of the Act and that it would be State Government which would be the Appropriate Government. The Court noticed that in the Industrial Disputes Act it was the Central Government which was specifically mentioned "as Appropriate Government with reference to Food Corporation of India which was not so in the Act. The Supreme Court also referred to the definition of "establishment" as appearing in the Act and said that various warehouses, godowns and places alike set up by the Corporation would be establishments where the trade of the Corporation was being carried on. While considering the question as to which would be the Appropriate Government, the Court did not refer to the establishment of the contractor as defined in the Act and it would appear that while holding that it would be the State Government which would be the Appropriate Government for the Corporation it held that for the contractor it would also be the State Government.

9. In Gammon India Ltd. and Others Vs. Union of India (UOI) and Others, , there was challenge to the validity of the Act itself and the rules framed thereunder by Rajasthan and Maharashtra. In that case the petitioner carried on business of contract for construction of roads, buildings, weigh bridges and dams. The petitioner had contended that they were not the contractors within the meaning of the Act and in support of their submission, they advanced two reasons:

(i) the work of the petitioners was not any part of the work of the principal employer nor was it the work "in connection with the work of the establishment", namely, principal employer,

(ii) the work of the petitioners was normally not done in the premises of the "establishment" of the principal employer.

The petitioner also gave an illustration that the banking company which was an establishment which carried on its business at Delhi employed the petitioners to construct a building at Allahabad, the building so constructed was not the work of the bank. It was submitted that the only work of the bank was the banking work and, therefore, the work of construction was not the banking work of the establishment and that, therefore, the workmen employed by the petitioners were not the workmen in connection with the work of establishment. The Court examined the definition of "contractor", "establishment", "principal employer" and "workman" and said that the contention raised by the petitioner was unsound and that when a banking company employed the petitioners to construct a building the petitioners were in relation to the establishment of

contractors who undertook to produce a given result for the bank and that the petitioners were also persons who undertook to produce the result through contract labour. The Court pointed out that the error of the petitioners lie in equating the work of the establishment with the actual place where the business, industry or trade was carried on and the actual work of the business, industry or trade. The Court did not agree with the contention raised by the petitioners and dismissed the petition.

10. In *J.R. Jugele, Rly. Contractor Vs. Smt. Sitabai Atamaram and Others*, certain industrial dispute between the workmen and the railway contractor was referred to the Labour Court by the State Government. The contractor resisted the claim and one of the grounds was that the reference was not competent and that the Labour Court had no jurisdiction as the appropriate Government was the Central Government. The Labour Court held the reference to be competent as there was a dispute between the workmen and the contractor, the petitioner, who was the immediate employer. When the matter came to the High Court on a petition filed by the Contractor challenging the award the Court noticed that the workmen were working with the petitioner and the nature of the work was in the railway premises and that the Act was applicable in that case. It was observed that the South Eastern Railway was the principal employer and the petitioner was immediate employer of the workmen. The Court placed reliance on two decisions, namely, (1) *Ambika Prasad and Ors. v. State of Orissa* and Ors. 1974 1 LLJ 65 (Orissa) and (2) *Continental Construction (P) Ltd., Visakapatnam v. The Government of India and Others* 1977 LIC 1199 (A.P.) and came to the conclusion that the Appropriate Government was the Central Government. There is no discussion in the judgment as to how the Bench came to such a conclusion except the basis of the aforesaid two decisions, interpreting the term Appropriate Government as appearing in Section 2(a) of the Industrial Disputes Act, 1947.

11. In *Ambika Prasad's* case (supra) the question before the Orissa High Court was as to who was the "Appropriate Government" to refer the industrial dispute between the workmen employed by the loading contractor and the management for grant of revised rate of wages as recommended by the Central Wage Board for iron and ore mining industry. The Court referred to the definition of "Appropriate Government" in the Industrial Disputes Act and also to a definition of "mine" as contained in Section 2(1)(b) which was with reference to Clause (j) of Sub-section (1) of Section 2 of the Mines Act, 1952 and held that loading of ores would certainly come under the residuary provision in Clause (x) thereof even if the loading of ores did not come under any other clause of the definition of "mine". The Court, therefore, held that since the activity of the management was one connected with mines, the Central Government would be the Appropriate Government.

12. In *Continental Construction (P) Ltd. Visakapatnam's* case (supra), the Andhra Pradesh High Court was of the view that the word "concerning" appearing in Section 2(a)(i) of the Industrial Disputes Act, which defined

"Appropriate Government" must be construed in a reasonable manner. There was an industrial dispute between the contractor engaged by the Visakapatnam Port Trust for the construction of Break-waters and Jattis in connection with the outer harbour at Visakapatnam Port. The Bench said that the dispute was likely to affect the progress of the work and would directly affect the port and that such a dispute was closely connected with the major port and, therefore, the "Appropriate Government" to make a reference was the Central Government. The Court, therefore, held that the definition of "Appropriate Government, omitting the unnecessary words would read "Appropriate Government" " means in relation to any industrial dispute concerning..... a major port, the Central Government".

13. In *Regional Labour Commissioner v. T.K. Verkey & Co.* 1992 1 LLJ 547 a Bench of the Karnataka High Court in an appeal filed against the judgment of the learned single Judge in writ application considered as to which was the appropriate Government within the meaning of Section 2(b) of the Minimum Wages Act, 1948. Under this law "Appropriate Government" means - (i) in relation to any scheduled employment carried on by or under the authority of the Central Government or railway administration, or in relation to a mine, oil field or major port, or any Corporation established by Central Act, the Central Government, and (iii) in relation to any other scheduled employment, the State Government. The petitioner in the writ application sought for quashing of the order passed by the Regional Labour Commissioner under Sub-section (3) of Section 20 of the Minimum Wages Act. The Labour Enforcement Officer under that Act had claimed that the wages paid by the petitioner to its workmen employed for construction of staff quarters for railway administration were not in conformity with the notification issued by the Central Government fixing the minimum Wages. The Labour Enforcement Officer was of the view that the work was being carried on for the purpose of the railway and within the railway establishment and that the appropriate Government was the Central Government, and, therefore, the notification by the Central Government prescribing minimum wages for the employment in the building operations applied to it. The petitioner had principally contended that the scheduled employment was not being carried on by or under the authority of the Central Government and, therefore, the Central Government was not the appropriate Government, and that it was the State Government which was the appropriate Government. "Scheduled employment" u/s 2(g) of the Minimum Wages Act means an employment specified in the Schedule, or any process or branch of work forming part of such employment. It was not disputed that the employment fell under entry 7 of the Schedule inasmuch as it was an employment in building operations. Entry 7 reads "Employment on the construction or maintenance of roads or in building operations". The Bench after referring to various judgments allowed the appeal holding that it was the Central Government which was the appropriate Government. It observed that the place where the Scheduled employment was carried on and for whose benefit the employment was carried

on and under whose control the work connected with the employment was carried on, were the deciding factors and not the fact as to who actually employs the workmen. The Court distinguished the definition of "Appropriate Government" as appearing in the Industrial Disputes Act and said that the said definition in the Minimum Wages Act was not in part materia with that. It observed that inasmuch as the definition of "appropriate Government" under the Industrial Disputes Act was in relation to an industry carried on by or under the authority of the Central Government or railway company etc. Whereas the definition of appropriate Government under the Minimum Wages Act was in relation to any scheduled employment carried on by or under the Central Government or the railways etc., by the Central Government and in relation to any other scheduled employment under the State Government. The Court observed that in the case of Industrial Disputes Act the deciding factor was as to whether the industry was carried on by or under the authority of Central Government or any railway company etc. and that under the Minimum Wages Act it was in relation to scheduled employment carried on under the authority of the Central Government or railways, etc. It, therefore, concluded that the decisions rendered under the Industrial Disputes Act could not be held to cover the point involved in the case on hand as to "Appropriate Government" under the Minimum Wages Act. The Court also noticed that the decision of the Supreme Court in *Food Corporation of India Workers' Union case*, (supra) the Supreme Court had decided the question as to the meaning of the expression "Appropriate Government" occurring in Section 2(1)(a) of the Act and that definition was in relation to an establishment pertaining to any industry carried on by or under the authority of the Central Government and not to any scheduled employment. It was, therefore, of the opinion that it was not possible to hold that the decision in the *Food Corporation of India Workers' Union case* (supra) governed the case before it.

14. We are here concerned with the definition of "Appropriate Government" prior to its amendment in the year 1986. "Appropriate Government" in relation to any establishment of mine would mean the Central Government. Under Clause (g) (iii), employer means in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named. For the purpose of this sub-clause the expression mine has the same meaning as that given in Clause (j) of Sub-section (1) of Section 2 of the Mines Act, 1952. Mine here means any excavation where any operation for the purpose or" searching for or obtaining minerals has been or are being carried on and it includes mining operation mentioned in Sub-clause (ii) of Clause (j). Under Sub-clause (ii), mine includes all shafts, in or adja- " cent to and belonging to a mine, whether in the course of being sunk or not. Under Clause (e) of Section 2 of the Act, establishment, in relevant part, means any place where an industry, trade, business, manufacture or occupation is carried on. Then under Clause (c) of Section 2, contractor, in relation to an establishment, means a person who undertakes to produce a given result for the establishment. Here the

establishment would mean establishment of the principal employer which means establishment of mine. The definition of establishment has no relation to the establishment of the contractor. As the contractor in the present case has been engaged to sink shaft in the mine of the principal employer and the contractor is, therefore, in relation to the establishment of the principal employer, has undertaken to produce a given result in the establishment, i.e., sinking of the shaft. u/s 7 of the Act a principal employer has to get his establishment registered otherwise u/s 9, the principal employer is debarred to employ contract labour. This registration is to be granted by the Registering Officer who is to be appointed by the appropriate Government. It is beyond any controversy that in the present case the appropriate Government, for the purpose of registration of the principal employer is the Central, Government. Then u/s 11, the appropriate Government is to appoint the Licensing Officer who u/s 12 is to issue licence to a contractor, otherwise no contractor to whom the Act applies shall undertake or execute any work through contract labour. From the documents which have been brought on the record during the course of hearing, the contractor in the present case has been granted licence by the Licensing Officer appointed by the Central Government. It is now that the petitioners are contending that the Appropriate Government would be the State Government and the Licensing Officer appointed by the State Government could grant the licence u/s 12 of the Act.

15. u/s 28 of the Act, the Appropriate Government is to appoint inspecting staff for the purpose of the Act. The persons so appointed are to be called Inspectors and powers have been conferred upon them to inspect any premises, examine any person or the records and to exercise such powers as may be conferred on them. It is on the complaint filed by the Inspector that a Court can take cognizance of an offence under the Act against the petitioners.

16. From the examination of various judgments, quoted above, and the provisions of the Act, to us it appears that the expression "establishment" under the Act has to be with reference to the principal employer. Since in respect of the principal employer it is the Central Government which is the appropriate authority for the contractor also, therefore, it has to be the Central Government. Section 7 of the Act provides registration of establishments. It says that every principal employer of an establishment to which this Act applies shall have to get its establishment registered on an application made to the Registering Officer. Any establishment of contractor does not require registration and, as noted above, u/s 12 of the Act, it is the contractor who has only to get licence to undertake and execute any work through contract labour which has to be for the establishment of the principal employer. In the present case, the principal employer is engaged in the mining operations having colliery for extraction of coal. The establishment of principal employer is registered by the Registering Officer appointed by the Central Government. As a matter of fact, the contractor, ie., petitioner No. 3 has also been granted licence by the Licensing Officer appointed by the Central Government. It is now that a dispute is sought to be raised that the appropriate Government for the contractor would be the State

Government and that the licence should have been granted by the Licensing Officer appointed by the State Government. The contractor here is also engaged by the principal employer to execute the work of sinking of shaft in the mine of the principal employer. Such an operation is also a mine as we have seen above. Moreover, if we see the object of the Act, it is to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. A clear indication is there that establishment would be that of the principal employer. We cannot possibly have two agencies one under the Central Government and the other under the State Government in one establishment. It is certainly in fitness of things that the appropriate Government should be the same in relation to an establishment both for principal employer and the contractor. In social legislation multiple authorities are to be avoided. There need not be two agencies of two Governments operating at one establishment unless the law specifically requires so which is not the case here. We are, therefore, of the opinion that M.R. Panja "s case(supra) does not lay down a good law. Accordingly, the contention of the petitioners that the appropriate Government would be the State Government is rejected.

17. That, however, does not conclude the matter, we have yet to examine the submission that any continuance of the prosecution would, be an abuse of the process of the Court. As noted above, the complaint was filed as far back as in 1981 and the petitioners were served with processes for their appearance in the Court of the Magistrate in 1990. The maximum punishment for the offences which are subject matter of complaint is fine of Rs. 1000/- and/or imprisonment for three months. Petitioner Nos. 1 and 2 have either left the employment of the third petitioner or at least they are not working at the site. After 16 years it is certainly stale prosecution and any continuance of proceeding at such a late stage would certainly be an abuse of the process of the Court and would not be in the interest of justice. It is not that the petitioners are to be blamed for coming to this Court against the prosecution inasmuch as the law that existed at the time was that the appropriate Government was the State Government and therefore, the complaint filed by the Inspector appointed by the Central Government was incompetent it is now that we have taken a different view.

18. We would, therefore, quash the prosecution and dismiss the complaint.