
(2014) 12 BOM CK 0039

In the Bombay High Court

Case No : Criminal Writ Petition No. 54 of 2012

Diebold Systems Private Limited

APPELLANT

Vs

The State of Goa

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 — Section 2 2(1)(b) 2(1)(d) 2(1)(e) 2(1)(g)(iv)

Citation : (2014) 12 BOM CK 0039

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : Nitin Sardessai, Senior Advocate, H.D. Naik and L. Raghunandan, Advocate for the Appellant; M. Pinto, Additional Public Prosecutor and Mahesh Amonkar, Central Government Standing Counsel, Advocate for the Respondent

Judgement

U.V. Bakre, J.—Heard Mr. Sardessai, learned Senior Counsel appearing on behalf of the petitioners and Mr. Amonkar, learned Central Government Standing Counsel (Government Counsel, for short) appearing on behalf of respondent no. 2.

2. By this petition, the petitioners have prayed for quashing the complaint bearing Criminal Case No. 12/L/2012/C pending before the Judicial Magistrate, First Class at Vasco-da-Gama, Goa (J.M.F.C., for short).

3. The said Criminal Case arose out of a private complaint filed by respondent no. 2 against the accused (petitioners) for violation of Section 8(1)(b) of the Interstate Migrant Workmen (Regulation of Employment and conditions of service) Act, 1979 (the Act, for short) and rules 49, 51, 52(2)(a), 52(2)(c), 52(2)(d), 54 and 55(1) (i) of Interstate Migrant Workmen (Regulation of Employment and conditions of service (Central Rules, 1980) (the Rules, for short), punishable under Section 26 of the Act. It is alleged that the accused no. 1 is a contractor within the meaning of Section 2(1) (b) of the Act engaged by the Federal Bank of India, Head Office, Aluva, Kerala, the principal employer within the meaning of

Section 2(1)(g)(iv) of the Act for the work of furnishing new branch set up for Federal Bank at Vasco-da-Gama, Goa. Shri K. A. Sebastian, Labour Enforcement Officer, (Central) Vasco, Goa who is an Inspector under the Act had inspected the said contract work of the accused on 24/01/2012 and had observed that the accused had committed various breaches. Interstate Migrant Workmen numbering 8 were employed on 24/01/2012, without obtaining licence, which amounted to violation of Section 8(1)(b) of the Act; register of persons employed was not maintained, which amounted to violation of Rule 49 of the Rules; register of displacement cum outward journey allowance and register of return journey allowance were not maintained, which amounted to violation of Rule 51 of the Rules; muster roll and register of wages were not maintained, which amounted to violation of Rule 52(2)(a) of the Rules; register of deductions, damages or loss, register of fines and register of advances were not maintained which amounted to violation of Rule 52(2)(c) of the Rules; register of overtime was also not maintained, which amounted to violation of Rule 52(2)(d) of the Rules; abstract of interstate migrant workmen was not displayed, which amounted to violation of Rule 54 of the Rules; and lastly notices showing rates of wages, hours of work, wage period, dates of payment of wages, name and address of the Inspectors having jurisdiction and date of payment to unpaid wages in English, Hindi and in any language understood by majority of the workers at work-site were not displayed, which amounted to violation of Rule 55(1)(i) of the Rules. An inspection report-cum-show cause notice bearing No. LV31(1)/2012-15MW dated 24/01/2012 incorporating all the said breaches was prepared and served on the accused through registered post A.D. The accused submitted compliance report dated 20/03/2012. However, the same was not found satisfactory by the Central Authority. Hence, the complaint.

4. The learned J.M.F.C. directed issuance of process (summons) to the accused and notice to the complainant, as a result of which, both the parties appeared before the learned J.M.F.C. However, the petitioner filed the present petition in which further proceedings before the learned J.M.F.C. have been stayed.

5. The petitioner alleges as under :

Petitioner no. 1 is a Company incorporated under the provisions of Companies Act, 1956 and is a leading manufacturer of Automated Teller machines (ATMs) and related solutions and is the primary supplier of the same to Banks, both private and public, in India. It is a common practise in respect of ATM Industry that the Companies often subcontract the sites of each ATM Bank to a sub contractor, with the knowledge of the bank i.e. principal employer and such a contractor is wholly responsible for maintenance of the ATM premises as well as for meeting all or any legal compliances due in respect of such premises as designated contractor for such premises. The petitioner no. 1 was issued with a work order by the Federal Bank for the interior furnishing works of their proposed branch office at Vasco on 05/01/2012. The petitioner no. 1, in turn, issued a work order dated 05/01/2012 to the Contractor "De-Firm" No. 401/16, first floor,

Shri Ramanjaneya Road, Srinagar, Bangalore 560 050 for undertaking the said work as required by Federal Bank. The work order issued by the petitioner no. 1 clearly stated "please undertake the TIS Project for the Bank". Therefore, the project was being carried out and implemented by "De-Firm" and not by the petitioner no. 1. The inspection report dated 24/01/2012 of the respondent no. 2 which was prepared and served on the petitioners mentioned that the petitioner no. 1 was the contractor for carrying out the said work and Mr. Balaji K. B. was the Co-ordinator of the project on behalf of the petitioner no. 1. The work order issued by the petitioner no. 1 to "De-Firm" clearly stated that De-Firm was owned by Mr. Balaji K. B. whereas the inspection report wrongly described said Balaji K. B. as Coordinator of petitioner no. 1. The respondent no. 2 did not mention the details of the sub-contractor i.e. De-Firm, which was actually responsible for carrying out the works at the said premises. The number of migrant workers present on the date on which the inspection was conducted, was only four, whereas the Act required a minimum number of 5 or more migrant workmen to be present at the site in order that the Act is applicable. The said migrant workmen were, in fact, employed by De-Firm and not by the petitioner no. 1.

6. Mr. Sardessai, learned Senior Counsel for the petitioner submitted that the complaint was without any supporting material. He urged that no workmen were employed by the petitioner no. 1 and even otherwise there was absolutely no evidence on record to show that the said migrant workers were interstate migrant workmen as required by the Act. He read out the definition of interstate migrant workmen as given in Section 2(e) of the Act. He further submitted that there was also no evidence to establish, even prima facie, that the petitioners had recruited the said workmen. He also pointed out that for application of the Act, there has to be an establishment. He submitted that the establishment is defined in the Act and in the premises where the work of setting up ATM was going on, no work had started and therefore, there was no establishment at all. He, therefore, urged that there could not be any violation of the Act or Rules since there was no establishment at all. Learned Senior Counsel thus urged that the complaint be quashed.

7. On the other hand, Mr. Amonkar, learned Government Counsel submitted that prima facie the inspection note clearly shows that there were 8 interstate migrant workmen, in the establishment of the petitioner. The inspection was carried out by the duly authorised inspector namely Shri K. A. Sebastian. He submitted that the fact whether the workmen were or were not interstate migrant workmen will be decided only on merits and at this stage, the case set up by the petitioners is only their defence. He also urged that the question whether the business or occupation of the premises had already started or not and, therefore, whether the premises was an establishment or not, will also be decided on merits. He, therefore, submitted that the petition is bound to be dismissed.

8. I have perused the entire material on record. I have considered the submissions made by the learned Counsel for both the parties.

9. It would be advantageous to see the relevant provisions of the Act and Rules before proceeding further.

(a) Section 2(1)(d) of the Act defines "establishment" as under :

"(d) "establishment" means-

(i) any 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;"

(b) Section 2(1)(e) of the Act defines "Interstate Migrant Workmen" as under :

"(e) "inter-State migrant workman" means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment; "

(c) Section 8(1)(b) of the Act provides as under :

"8. Licensing of contractors.(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies shall,-

(b) employ as workmen for the execution of any work in any establishment in any State, persons from another State (whether or not in addition to other workmen) except under and in accordance with a licence issued in that behalf-

(i) if such establishment is an establishment referred to in sub-clause (i) of clause (a) of sub-section (1) of section 2, by the licensing officer appointed by the Central Government who has jurisdiction in relation to the area wherein the establishment is situated;"

(d) Section 26 of the Act provides as under :

"26. Other offences.-If any person contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both."

(e) Rule 49 of the Rules provides as under :

"49.Register of persons employed.-Every principal employer and contractor shall maintain in respect of each establishment, where he employs migrant workman, a register in Form XIII."

(f) Rule 51 of the Rules provides as under :

"51.Displacement-cum-outward journey allowances sheet and return journey allowances register.-

(1) Every contractor shall maintain displacement-cum-outward journey allowance sheet in Form XV and return journey allowance register in Form XVI.]

(2) Entries in the sheet and the register required to be maintained under sub-rule (1) shall be authenticated by the contractor or his duly authorised representative."

(g) Rule 52(2)(a) of the Rules provides as under :

"52. Muster roll, wages register, deductions register and overtime register. -

(2) In respect of establishment not covered by any of the Acts or the Rules referred to in sub-rule (1), the following provisions shall apply, namely: -

(a) Every contractor shall maintain a Muster Roll Register and a Register of Wages in Forms XVII and XVIII respectively."

(h) Rule 52(2)(d) of the Rules provides as under :

"52. Muster roll, wages register, deductions register and overtime register. -

(2) In respect of establishment not covered by any of the Acts or the Rules referred to in sub-rule (1), the following provisions shall apply, namely: -

(d) Every contractor shall maintain register of overtime in Form XXII."

(i) Rule 54 of the Rules provides as under :

"54. Display of an abstract of the Act and the Rules. -Every contractor shall display an abstract of the Act and the rules in English and Hindi and in language spoken by majority of migrant workmen in such form as may be approved by the Deputy Chief Labour Commissioner (Central)."

(j) Rule 55(1)(i) of the Rules provides as under :

"(1) (i) Notices showing the rates or wages, hours of work, wage periods, dates of payment of wages, names and addresses of the Inspectors having jurisdiction, and date of payment of unpaid wages, shall be displayed in English and in Hindi and in the local language understood by the majority of the workers in conspicuous places at the establishment and the work-site by the principal employer or the contractor, as the case may be."

10. The Inspector namely Shri K. S. Sebastian, on 24/01/2012, had inspected the proposed branch of the Federal Bank at Vasco Da Gama and has mentioned in the inspection report that this is the "Establishment" of the petitioner. The alleged irregularities giving rise to various violations of the provisions of the Act and Rules were found by the complainant in respect of this "Establishment". But, in the premises where the work was going on, there was no establishment at all and only the work of setting up of the establishment was going on and

admittedly till 17/03/2012, the establishment had not started its working. The inspection report itself calls the said premises as proposed branch of Federal Bank. Therefore, there was no establishment at all. The petitioners had not recruited any person from one State under any agreement or arrangement for employment in any establishment in another State. In such circumstances, the question of breach of any of the said Sections of the Act or Rules does not arise. As has been rightly contended by Mr. Sardessai, learned Senior Counsel for the accused, there is absolutely nothing on record to establish that the said 8 workmen, who were found employed on 24/01/2012, were interstate migrant workmen as defined under Section 2(1)(e) of the Act. There is also absolutely nothing on record to show that the said migrant workmen were recruited by the petitioners.

11. In the circumstances above, absolutely no prima facie case was at all made out for issuance of process against the petitioners.

12. Therefore, the said Criminal Case No. 12/L/2012/C pending before the learned J.M.F.C., Vasco-da-Gama, Goa is bound to be quashed and set aside as there is absolutely no material to proceed against the petitioners.

13. Hence, the petition is allowed.

(a) Criminal Case no. 12/L/2012/C pending before the learned J.M.F.C., Vasco-da-Gama, Goa is quashed and set aside.

(b) Rule is made absolute in the aforesaid terms.

14. The petition stands disposed of accordingly.