

(2015) 03 JH CK 0090
In the Jharkhand High Court
Case No : Criminal M.P. No. 788 of 2005

Dilip Sen Gupta

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1), 23, 25

Citation : (2015) 03 JH CK 0090

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : V.P. Singh, Senior Advocate, Amit Kr. Das and Rashmi Kumar, for the Appellant; Shekhar Sinha, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J.

1. Heard Mr. V.P. Singh, learned counsel appearing on behalf of the petitioner and Mr. Shekhar Sinha, learned counsel for the opposite parties.

2. In this application, the petitioner has prayed for quashing the entire criminal proceeding in connection with C/2 Case No. 2218 of 2005 including the order dated 8.6.2005 passed by the learned Chief Judicial Magistrate, Jamshedpur, whereby and whereunder, cognizance has been taken against the petitioner for the offences punishable u/s. 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 ("the Act" for short).

3. A written complaint was filed by the opposite party No. 2 in the capacity of Labour Superintendent-cum-Inspector, Jamshedpur in which it was stated that M/s. Tata Motors Ltd., Jamshedpur is a factory registered under the Factories Act, 1948. It has further been stated that in terms of Govt. Notification No. 1721 dated 30.1.1977 contract labour was banned in Telco Limited since renamed as M/s. Tata Motors Ltd. An enquiry was conducted on surprise inspection on 18.12.2004 in the premises of Tata Motors Ltd. and as per the enquiry report it

was found that inspite of prohibition by the Government contract labour work was going on and it was further found that M/s. Mahadev Enterprises was doing the job of moving materials in foundry store section which was prohibited by the Govt. A show cause notice was asked from the management of M/s. Tata Motors Ltd. by the complainant and on the show cause being found to be unsatisfactory by the complainant, the present complaint case was instituted u/s. 10(1) and 23 of the Act.

4. On the complaint being filed, the learned Chief Judicial Magistrate, Jamshedpur vide an order dated 8.6.2005 was pleased to take cognizance for the offences punishable u/s. 10(1) of the Act.

5. The learned senior counsel for the petitioner has assailed the order taking cognizance by submitting that Section 10(1) is not a penal provision, rather the same deals with prohibition of employment of contract labour in any process, operation or other work in any establishment. He submits that taking of cognizance u/s. 10(1) of the Act itself shows total non-application of mind on the part of the learned Chief Judicial Magistrate, Jamshedpur. He has submitted that pursuant to the show cause notice, a reply was given by the management and since the same was found unsatisfactory, as has been indicated in the complaint petition, the said complaint was filed. It has also been submitted that there is no averment in the complaint petition that the petitioner was in charge of and responsible to the company for the conduct of its business at the time of commission of offence and in view of the same Section 25 of the Act comes into play and on that basis also the entire criminal proceeding deserves to be quashed.

6. Learned counsel for the State on the other hand while making reference to the counter affidavit filed by the opposite party No. 2 has submitted that by Notification dated 16.12.1977, the employment of contract labour in any process, operation or other work relating to production and maintenance of machines in M/s. Tata Motors Ltd. was prohibited and in spite of being aware of the said fact contract work was being continuing in the premises of M/s. Tata Motors Ltd. It has further been submitted that inspite of an opportunity to clear its stand with respect to the contract labour being engaged in its premises, no specific reply was given and as such a prosecution was launched against the officers of M/s. Tata Motors Ltd.

7. After hearing the learned counsel for the parties and after going through the records, I find that in the complaint petition it has been mentioned that with respect to violation of the prohibition of engaging contract labours, a show cause notice was issued to the management of M/s. Tata Motors Ltd. and having found the show cause to be unsatisfactory, the complaint was made pursuant to which cognizance was taken by the learned Chief Judicial Magistrate for the offence punishable u/s. 10(1) of the Act. It further appears that in the complaint case specific averment was made that the offences enumerated in the complaint petition makes out a case u/s. 23 of the Act for violation of Section 10(1) of the

Act. Section 10(1) of the Act reads as follows:-

"10. Prohibition of employment of contract labour.-(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment."

8. Sub-section (1) of Section 10 as has been quoted above envisages that the appropriate Govt. may prohibit by notification in the official gazette, employment of contract labour in any process, operation or other work in any establishment. The aforesaid is not a penal provision under the Act, rather it is restricted to prohibition of employment of contract labour notified by the appropriate Govt. Section 23 of the Act reads as follows:-

"23. Contravention of provisions regarding employment of contract labour.--Whoever contravenes any provision of this Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labour, or contravenes any condition of a licence granted under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, and in the 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 for the first such contravention."

9. A conjoint reading of Section 10(1) and Section 23 of the Act would reveal that Section 23 is the penal provisions for violation/contravention of any provisions of the Act or any Rules made thereunder prohibiting restriction or regulating the employment of contract labour. The learned Chief Judicial Magistrate in his order dated 8.6.2005 had taken cognizance u/s. 10(1) of the Act which reveals total non-application of mind. The learned court below should have considered the wordings of the complaint in their proper perspective as it has been clearly mentioned therein that for violation of Section 10(1) of the Act, the same is punishable u/s. 23 of the Act. Thus the cognizance order itself shows non-application of mind on the part of the learned Chief Judicial Magistrate, Jamshedpur. So far as the contention of the learned Senior counsel of the petitioner with respect to Section 25 of the Act it would be necessary to quote Section 25 which reads thus:-

"25. Offences by companies.-(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of

such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

10. A perusal of Section 25 of the Act would thus mean that every person in charge of and responsible to the company for the conduct of its business at the time of commission of the offence shall be deemed to be guilty of the offence. The complaint petition nowhere states that the petitioner was in charge of and responsible to the company for conducting its affairs so as to implicate him in a criminal case under the Act. The complaint petition only reveals the alleged violation under the Act and in absence of any specific averment that it was the petitioner who was in charge and responsible to the company for the conduct of its business in which the alleged commission of the offence is said to have taken place, he cannot be held liable for being prosecuted.

11. In view of what has been discussed above in the context of the facts and circumstances of the case, I do find merit in this application, which is accordingly allowed and the entire criminal proceeding in connection with C/2 Case No. 2218 of 2005 including the order dated 8.6.2005 passed by the learned Chief Judicial Magistrate, Jamshedpur, whereby and whereunder, cognizance has been taken against the petitioner for the offences punishable u/s. 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 is quashed and set aside.