

(1997) 07 RAJ CK 0024

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 247 of 1996

Father Raymond Coelho

APPELLANT

Vs

Labour Inspector, Office of Regional Joint Labour
Commissioner

RESPONDENT

Date of Decision : 24-07-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
MOTOR TRANSPORT WORKERS ACT, 1961 — Section 2, 31, 32, 38

Citation : (1998) 2 RLW 872 : (1997) 2 WLN 118

Hon'ble Judges : Mohd. Yamin, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohd. Yamin, J.—This is a petition u/s 482 Cr. P.C. for quashing the proceeding drawn in Cr. Complaint No. 515/95, Labour Inspector v. Fr. Raymond Coelho and Anr. pending before the court of Munsif and Judicial Magistrate No. 8, Jaipur City, Jaipur.

2. I have heard the learned Counsel for the petitioner as well as learned PP at length.

3. Brief facts are that the Labour Inspector, Jaipur submitted a complaint before the Magistrate against St. Ansel's Pink City School (Roman Catholic Diocesan Education Society, Ajmer), Malviya Nagar, Jaipur with the allegations that the petitioner was an undertaking to which the provisions of Motor Transport Workers Act, 1961 (in short "the Act of 1961") applied and the petitioner was an employer/Manager of the undertaking. It was further alleged that on 13.3.95 the Inspector made an inspection and found violations of different provisions of the Act of 1961 and the Rules made under it. As a result the petitioner was prosecuted for offence Under Sections 31 and 32 of the said Act. Learned Magistrate vide his order dated 9.6.95 took cognizance and issued process against the petitioner. It is in these circumstances that a question has cropped up

whether the provisions of the Act of 1961 apply to this case ?

4. Learned Counsel for the petitioner submitted that St. Anselm's Pink City School is an educational institution established, administered and controlled by the Roman Catholic Diocesan Education Society, Ajmer and came to be established in the year 1987. The petitioner has been functioning as a Principal of the institution from the very beginning. The said society is registered under the provisions of the Rajasthan Societies Registration Act, 1958. He also submitted that the said institution is an educational institution and is affiliated to the Central Board of Secondary Education, New Delhi and caters to the educational requirements of 1930 boys and girls studying in Class L.K.G. to Xth. There are as many as 70 teachers working in the institution. Apart from the teaching staff, there are 15 persons who are holding different designations in the established institution. In addition 4 Catholic nuns have been assigned to the institution by the society for looking after its day to day affairs. It has been submitted that in the beginning students used to come through their own means of transport but with the expansion of the institution and increase in the number of students who come from different parts of the city, it was felt that the students were finding it difficult or impossible to arrange their own means of transport and the public transport facilities were very poor. Therefore, school bus bearing registration No. RJ-14/P 0361 was purchased in the year 1989. It was being plied in order to bring and leave the students. It has been submitted that the petitioner is not a motor transport undertaking as defined in Section 2-G of the Act, therefore, the provisions of the Act do not apply to the petitioner.

5. On the other hand, learned PP submitted that the Rajasthan Government issued a notification on 11.5.72 to the effect that the State Government after giving two months' notice applied all the provisions of the said Act to every motor transport undertaking employing two or more transport workers in the State of Rajasthan, therefore, according to him when the petitioner was plying two buses and was employing two or more transport workers, it was a motor transport undertaking. He also submitted that according to Section 38 of the Act, the State Government has powers to exempt the following from the provisions of this Act or the Rules made thereunder:

(1) any motor transport workers who, in the opinion of the State Government, hold positions of supervision or management in any motor transport, undertaking;

(ii) any part-time motor transport worker; and

(iii) any class of employers.

He has submitted that since the petitioner has not been exempted, the provisions of Motor Transport Workers Act, 1961 apply to him.

6. I have first to see what is a motor transport undertaking. Section 2(g) of the Act of 1961 defines the motor transport undertaking. It is as following:

2(g) "motor transport undertaking" means a motor transports undertaking engaged in carrying passengers or goods or both by road for hire or reward, and includes a private carrier.

7. Learned Counsel for the petitioner submitted that by no stretch of imagination the petitioner can be regarded as motor transport undertaking because he is not engaged in carrying passengers or goods or both by road for hire or reward. On the other hand, learned PP submits that the institution charges hire from the students as well as from the teachers or the employees who come and go in the vehicles. Therefore, it is a motor transport undertaking.

8. I find from the complaint that there is no such averment. Perhaps the Labour Inspector presumed that the Act was applicable to the society and, therefore, in the complaint the following averment have been made:

;g fd vfHk;qDr ds laLFkku ij mDr vf/kfu;e ykxw gS A

9. The complaint does not disclose as to whether any hire charges were being taken from the students or from teachers as passengers. Learned PP is perhaps presuming the things. There is no enclosure with the complaint which may prima facie show if any charges as hire were being taken from the students or teachers who are carried in the vehicles. Therefore, to say that the vehicles are carrying students as passengers by road for hire is of no help to the prosecution.

10. The prosecution in order to attract the provisions of the Act of 1961 has first to show that the petitioner is a motor transport undertaking within the meaning of Section 2(g) of the said Act. A similar question arose in *Damodar Vally Corporation v. The State of Bihar* and Ors. 1978 LAB. I.C. 203 (Patna). In this citation the corporation established for operation and promotion of the scheme of irrigation, water supply, flood control, generation, transmission and distribution of electrical energy etc. was established which also maintained vehicles for carrying children of its employees to and from schools, it was held that the corporation cannot be considered to be an employer of a motor transport undertaking and as such the provisions of the Act cannot be applied to it. In this citation the definition of undertaking of the as given in Section 2(g) of the Act was considered and it was observed that since the dictionary meaning of the term "undertaking" is business, enterprize or project engaged in, there was no indication in the Act to suggest that the expression has been used in the Act to convey a meaning different than one in which it is understood in the common parlance. The object of the Damodar Valley Corporation was considered which had nothing to do with the business or enterprize or project connected with the motor vehicles and under such circumstances the corporation could not be said to have engaged itself in a business of motor transport.

11. Here in this case the society is concerned with the education and runs an institution which is affiliated to the Central Board of Secondary Education, New Delhi. The petitioner is the principal of the school. The society as well as the Principal cannot be held to be an employer of a transport undertaking by any

stretch of imagination. Therefore, in my view the provisions of the Act of 1961 do not apply to such an institution.

12. I am aware that it is in very rare cases that an order taking cognizance is quashed under the provisions of Section 482 Cr. P.C. but when I am finding that by summoning the accused petitioner, the learned Magistrate has not applied his mind if the Act of 1961 was applicable to the petitioner and when I find that it is an abuse of process of Court which should be prevented in the beginning, I have no alternative but to quash the order of the learned Magistrate.

13. In the result, the petition is allowed and the impugned order of the learned Magistrate dated 9.6.95 and the proceedings in Cr. Case No. 515/95, State v. Fr. Raymond Coelho and another pending before the court of Munsif and Judicial Magistrate No. 8, Jaipur City, Jaipur are hereby quashed.