
(2015) 05 CAL CK 0086
In the Calcutta High Court
Case No : C.R.R. 1162 of 2015

M.A.V. Raju

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 1(4), 23

Citation : (2015) 146 FLR 271

Hon'ble Judges : R.K. Bag, J

Bench : Single Bench

Advocate : Anirban Dutta, for the Appellant; Imran Ali, Advocates for the Respondent

Final Decision : Disposed off

Judgement

R.K. Bag, J—Affidavit of service filed on behalf of the petitioner is kept on record. Supplementary affidavit filed by the petitioner annexing the certified copy of petition of complaint filed by the Inspector of Minimum Wages before the Court of the learned Magistrate is also kept on record. The petitioner has filed this criminal revision for quashing the proceeding being Complaint Case No. 2060 of 2012 pending before the Court of the learned Chief Judicial Magistrate, Alipore, South 24 Parganas.

2. It appears from the record that the Inspector of Minimum Wages made an inspection of the site of the construction of the petitioner on March 7, 2012. The Inspector of Minimum Wages issued one show-cause notice to the petitioner for initiation of criminal proceedings if compliance mentioned in the said show-cause notice is not done by the petitioner within the stipulated period of time. The petitioner submitted the show cause on March 13, 2012 disclosing the fact that twenty workmen were not employed by the petitioner and as such the provisions of Contract Labour (Regulation and Abolition) Act, 1970 will not be applicable to the petitioner.

3. On consideration of the said show-cause notice, the Inspector of Minimum Wages filed the petition of complaint before the Court of the learned Magistrate in order to prosecute the petitioner under section 23 of the Contract Labour (Regulation and Abolition) Act, 1970. The process was issued by the learned Magistrate. In compliance with the process issued by the learned Magistrate, the petitioner appeared before the Court of the learned Magistrate and filed an application for his discharge on the ground that the provisions of Contract Labour (Regulation and Abolition) Act, 1970 is not attracted to the petitioner. By passing the impugned order on January 21, 2015 the learned Magistrate held that twenty workmen were not employed by the petitioner as reflected in the note of inspection, but the learned Magistrate has no jurisdiction to review or revise the order of issuing the process against the petitioner.

4. This order of learned Magistrate is under challenge in this criminal revision.

Mr. Anirban Dutta, learned Counsel appearing on behalf of the petitioner, submits that the inspection note prepared by the Inspector of Minimum Wages does not disclose the number of workers employed by the petitioner on the date of inspection. By referring section 1(4) of the Contract Labour (Regulation and Abolition) Act, 1970, Mr. Dutta submits that the provisions of the said Act will not be applicable to the petitioner who did not employ more than twenty workmen on any day preceding twelve months as contract labour.

5. It is relevant to quote the provision of section 1(4) of the Contract Labour (Regulation and Abolition) Act, 1970, which is as follows:

1. Short, title, extent, commencement and application.

(4) "It applies--

(a) to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour;

(b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen;

Provided that the appropriate Government may, after giving not less than two months" notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification."

6. Mr. Imran Ali, learned Counsel appearing on behalf of the opposite party/State fully agrees on the point of law that the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 cannot be attracted to an establishment where twenty workmen are not employed on any day preceding twelve months as contract labour.

7. In the instant case, the inspection note prepared by the Inspector of Minimum Wages in the inspection of work site of the petitioner on March 7, 2012 does not

disclose the number of workmen employed by the petitioner as contract labour. On perusal of the impugned order under challenge in this revision, I do not find that the learned Magistrate has come to the conclusion that the petitioner employed twenty or more workmen as contract labour on any day preceding twelve months. Accordingly, the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 cannot be attracted to the petitioner. The logical inference is that the petition of complaint filed by the Inspector of Minimum Wages before the Court of the learned Magistrate is not maintainable in law and as such the impugned order passed by the learned Magistrate is liable to be set aside.

8. In view of my above findings, the criminal proceeding being Complaint Case No. 2060 of 2012 pending before the Court of the learned Chief Judicial Magistrate, Alipore, South 24 Parganas is quashed. The criminal revision is, thus, disposed of.

The department is directed to send down a copy of this order to the learned Court below for favour of information and necessary action.

Urgent photostat certified copies of this order, if applied for, be given to the learned Counsel for the parties, upon compliance of all formalities.