

(2000) 04 PAT CK 0053

In the Patna High Court

Case No : Criminal Miscellaneous No's. 4522, 4610 and 4611 of 1996

Muva Industries Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-04-2000

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 2(1), 23, 24, 26, 28
Industrial Disputes Act, 1947 — Section 2(1)
Minimum Wages Act, 1948 — Section 19, 2, 22

Citation : (2002) 4 LLJ 619 : (2001) 1 PLJR 325

Hon'ble Judges : Prabhat Kumar Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Sinha, J.—The aforesaid three Criminal Miscellaneous applications are between the same parties, filed by Muva Industries Ltd. against the State of Bihar and Labour Enforcement Officer (Central), Dhanbad, and have been heard together as the law point involved in these cases is the same, and are being disposed of by this judgment with consent of both the parties.

2. In Cr. Misc. No. 4522 of 1996, prayer has been made to quash the entire complaint case being G.O.R. Case No. 260 of 1995, under Sections 23 and 24 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "1970 Act") instituted on the written report of Labour Enforcement Officer (Central), Dhanbad, as also to quash order dated December 19, 1994 by which Sub-divisional Judicial Magistrate, Madhupur at Deoghar, had taken cognizance of the offence.

3. In Cr. Misc. No. 4610 of 1996, the same petitioner has prayed to quash the entire complaint case bearing G.O.C.R. Case No. 920 of 1998 corresponding to TR. No. 893 of 1997/778 of 1995 under Sections 23 and 24 of the 1970 Act which was instituted on the report of the Labour Enforcement Officer (Central), Chirkunda, as also to quash order dated April 24, 1993 recorded by the Sub-

divisional Judicial Magistrate, Madhupur at Deoghar, taking cognizance of the offence.

4. In Cr. Misc. No. 4611 of 1996, the: prayer is to quash the entire complaint case bearing TR, Case No. 1142 of 1995 u/s 22A of the Minimum Wages Act, 1948 (hereinafter referred to as "1948 Act", in short) instituted on the written report of Labour Enforcement Officer (Central), Dhanbad II, as also to quash order dated August 11, 1995 recorded by Sub-divisional Judicial Magistrate, Madhupur at Deoghar, by which the learned Magistrate had taken cognizance of the offence.

5. The only point that was pressed and argued before this Court was whether, for the sake of filing the complaint on which cognizance was taken, the appropriate Government was the Central Government, or the State Government. It has been contended on behalf of the petitioner that the appropriate Government was State Government but cognizance of the offence has been taken on the written report of the designated Inspector, authorised to do so by the Central Government. On the other hand, the learned counsel for the Opposite parties has justified the filing of the written reports as the Central Government was the appropriate Government with regard to the petitioner Muva Industries Ltd.

6. Since the offences are under two different Acts, I will first take up Cr. Misc. No. 4610 of 1996 and Cr. Misc. No. 4522 of 1996, together, in which cognizance of offence has been taken under Sections 23 and 24 of the 1970 Act.

7. In so far as the "1970 Act" is concerned, certain provisions contained therein may be noticed:

(a) Section 2(1)(a) is as follows:

"appropriate Government" means, -

(1) (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) Section 2(1)(c):

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

(c) Section 26:

"Cognizance of offences" - No Court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing

of, the Inspector and no Court inferior to that of a Presidency Magistrate of the first class shall try any offence punishable under this Act.

(d) Section 28:

"Inspecting Staff"-(1) The appropriate Government may, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act."

8. The definition of appropriate Government, as existing presently in the " 1970 Act" u/s 2(1)(a) has been substituted by Act 14 of 1986 which came into effect on January 28, 1986. To find out as to in relation to which establishment the Central Government would be the appropriate Government, the definition under Industrial Disputes Act, 1947 (hereinafter referred to as the "1947 Act") may be looked into. The relevant portion of Section 2(1)(i) of 1947 Act runs as follows:

"(a) "appropriate Government" means - (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a Railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government the Central Government,

(ii) in relation to any other industrial dispute, the State Government."

9. Learned counsel for the petitioner, in both the cases, has submitted that Muva Industries Limited, situated at Jagdishpur in the district of Deoghar, was granted licence by the Government of Bihar in the Department of "Factories Inspection" (Department of Labour and Employment) as per Annexure-3, which is copy of the renewal of the licence for the calendar year 1995, granted under Rules 4 to 10 of the Bihar Factories Rules, 1950 and Section 6(1)(d) of the Factories Act, 1948. This Industry, as per Annexure- 2, was also registered as Small Scale Industrial Unit under certificate granted by the Director of Industries at Deoghar which is dated February 24, 1988. This certificate, as will appear from Annexure-2, was granted only for manufacturing concrete Railway sleepers.

10. Learned counsel also pointed Annexure-4 series in which by a letter issued by the Deputy Labour Commissioner, Dumka dated October 4, 1994, addressed to the President of Yuva Mazdoor Karamchari Sangh, Jagdishpur which, as pointed out, represented the workers in Muva Industries Limited, certain clarifications were called for. Another letter issued from the same source dated October 4, 1994 is also annexed, addressed to the Managing Director of this Industry, asking him to comply with certain directions.

11. The aforesaid annexures were pointed out to show that the petitioner-Company was called upon by the officials of the Industries Department, Government of Bihar to comply with certain directions issued by the Department which showed that the appropriate Government was the State of Bihar which had granted it registration under Factories Act and as a Small Scale Industrial Unit.

12. In this regard Annexure-5 has also been placed which was sent by the petitioner-Company to the Regional Labour Commissioner (Central), Dhanbad, in which it was pointed out that the Company was supplying Railway sleepers to Eastern Railway and were under impression that they were not contractors as defined in the 1970 Act as that excludes the supplier of goods.

13. Another letter by the petitioner-Company dated December 21, 1994, addressed to the Assistant Labour Commissioner (Central), and Licensing Officer at Dhanbad has been pointed out in which those officials of the Central Government were told that since the petitioner-Company was only supplying Railway sleepers, the Company was not a contractor under the Act. By yet another letter issued in January, 1995, the same officials of the Central Government were asked to withdraw their notice as the Central Government was not the appropriate Government in their case.

14. On the other hand, the learned counsel for the Opposite Parties has submitted that it will appear from the written prosecution report filed in these two cases (Annexure-1) that the accused were Railway contractors in the work of manufacturing concrete sleepers for the Railway, by employing certain number of labourers, hence were covered under the provisions of 1970 Act. It was pointed out that since the petitioner-Company was manufacturing Railway sleepers which could be used only by the Railways, appropriate Government would be the Central Government as defined u/s 2(1)(i) of the 1970 Act read with Section 2(1) (a) of 1947 Act, as this Company must be deemed to be running under the authority of the Central Government since the Company was to manufacture the concrete sleepers as per specifications laid down by the Railways to which the petitioner-Company had to conform.

15. The short point to be decided is whether the petitioner-Company is an "Industry carried on by or under the authority of the Central Government or by a Railway Company or concerning any such control industry as may be specified in this behalf by the Central Government."

16. Nothing has been produced before me, nor it has been argued on behalf of the Opposite Parties, that the establishment of the petitioner-Company was concerning any such controlled industry as specified by the Central Government in this behalf.

17. The learned counsel for the petitioner-Company has placed reliance on a decision of the Apex Court in the case of Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, . In that case, a reference was made, relating to an industrial dispute, by the State Government which was challenged before the High Court by the Mazdoor Union in a writ petition disputing the validity of the reference also on the ground that the appropriate Government to make the reference u/s 10 of the 1947 Act was the Central Government and not, the State Government. Ultimately, this question came up for decision of the Supreme Court since this Court had upheld the validity of the reference.

18. In that matter, Heavy Engineering Corporation Limited, Ranchi was a company registered under the Companies Act, 1956, as is the accused Company here, and its entire share capital was contributed by the Central Government which share had been registered in the name of President of India and certain officials of the Central Government. It was observed by the Supreme Court: "It is an undisputed fact that the Company was registered under the Companies Act and it is the Company so registered which carries on the undertaking. The undertaking, therefore, is not one carried directly by the Central Government or to any one of its Departments as in the case of Posts and Telegraphs or the Railways."

19. It was, therefore, argued before this Court that the petitioner-Company registered under the Companies Act, could not be said to be an establishment whose business was carried by or under the authority of the Central Government or by the Railways particularly when the Central Government, or the Railways, had no say in the running of the petitioner-Company.

20. On behalf of the petitioner, the decision of the Supreme Court in the case of Food Corporation of India Workers' Union Vs. Food Corporation of India and Others, was also relied upon in which, also with the help of the decision in the case of Heavy Engineering Mazdoor Union (supra), the State Government was held to be the appropriate Government.

21. The ratio of Heavy Engineering case was followed in the case of Hindustan Aeronautics Ltd. Vs. The Workmen and Others, and the case of Rashtriya Mill Mazdoor Sangh, Nagpur Vs. Model Mills, Nagpur and Another, .

22. However, it will appear that the Supreme Court, in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], which was a case decided by a Bench consisting of three Judges, overruled the decision in the Heavy Engineering case, which was decided by a Bench of two Judges. The decision in the Heavy Engineering case was assailed on the ground that the meaning of the phrase "The appropriate Government" was narrowly construed placing reliance on the common law doctrine of "Principal and Agent", whereas the public law doctrine was the appropriate principle of construction of the phrase "the appropriate Government".

23. In the light of the principles enunciated in the case of Air India (supra), the Supreme Court came to the decision that in respect of Air India Statutory Corporation, the appropriate Government was the Central Government from the inception of the Act.

24. However, in a recent decision in the case of F.C.I., Bombay and Others Vs. Transport and Dock Workers Union and Others, , the difference of opinion in the cases of Hindustan Aeronautics Limited, Food Corporation of India (supra) and in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, all decided by three judges" Bench on one hand, and in the case of Air India Statutory Corporation, on the other, was noticed, and in view of the

obvious conflict of opinion on the question as to which was the appropriate Government, their Lordships of the Supreme Court directed that the case be laid before a larger Bench for hearing.

25. The points which led their Lordships of Supreme Court in the case of *F.C.I. Bombay and Ors. v. Transport and Dock Workers and Ors.* (supra) to refer the question to a larger Bench do not appear to be involved here and none of the parties had argued in that context or deciding a case of the present nature, in order to find out whether the Central Government is the appropriate Government, in my opinion, the point that may be considered would be whether or not the Central Government had such deep and pervasive control over the establishment/industry so that it could have say in taking the policy decisions relating to that establishment/industry as also in the running of its affairs. Such control, would be apart from the control which the Central Government may have by virtue of laws which are equally applicable to an establishment/industry run by or under authority of the Central Government, or run otherwise. If any establishment/industry is creation of statute, that itself would indicate which is the appropriate Government. If the Central Government own controlling shares, in that case also the appropriate Government would be the Central Government. If the aforesaid criteria is satisfied, that would indicate that the industry/establishment is being carried by or under the authority of the Central Government and in that case the appropriate Government would be the Central Government whereas, in other cases, the State Government. I may make it clear that aforesaid observations relate to these cases whereas this matter, in the larger context, would be decided by the Apex Court.

26. Judging the present case under the aforesaid parameters, it will appear that Muva Industries Limited, a Company registered under Companies Act, was granted licence by the Government of Bihar in the Department of Labour and Employment under the Factories Act, 1948 and Bihar Factories Rules, 1950 and it was registered as a Small Scale Industrial Unit by the State Government in the Department of Industries, vide Annexures 3 and 2, respectively, which facts have not been denied by the opposite parties. From the certificate of registration as Small Scale Industrial Unit, it will appear that this certificate was given only for manufacture of concrete Railway sleepers. There cannot be any doubt that the goods manufactured by the accused Company could be used only by the Railways, which was an establishment run by the Central Government.

27. Even if the prosecution report (Annexure-1) is taken at its face value, the only ground that has been mentioned therein and which has been taken help of in course of arguments for showing that the accused Company was working under the authority of the Central Government, is the claim in para-3 that the accused was a contractor of Railway establishment engaged in the contract work of manufacture of sleepers.

28. u/s 2(1)(c) "Contractor" has been defined in the 1970 Act which, in relation to an establishment, means a person who undertakes to produce a given result

for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour, and who supplies contract labour for any work of the establishment.

29. It was argued on behalf of the petitioner Company that it only manufactured the sleepers and supplied it to the establishment of Railway and since the Railways or the Central Government had no authority or control over the petitioner-company, as a mere supplier of goods, the Company could not be said to be a Contractor as defined under 1970 Act. That the petitioner Company was a supplier of sleepers to the Railway has not been controverted by any document, or even in course of argument, This being so, it will not appear that the petitioner-Company can be said to be a contractor within the meaning of Section. 2(1)(c) of the 1970 Act.

30. It has also been pointed out that from Annexure-2 it will appear that the Directors of the Company, were private individuals and the Government, Central or State, had no stake in that. In view of the aforesaid, I find and hold that the State Government is the appropriate Government in respect of the accused-Company as defined u/s 2(1)(ii) of the 1947 Act read with Section 2(1)(a) of the 1970 Act.

31. u/s 26 of the 1970 Act, no Court can take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction, in writing, of the Inspector. u/s 28 of the 1970 Act, the appropriate Government may, by notification in the official Gazette, appoint such persons as it thinks fit to be the Inspector for the purposes of this Act. The appropriate Government in this case being the State Government, it follows that the Court could take cognizance of the offence only on the complaint made by, or with the previous sanction, in writing, of the Inspector who was so notified u/s 28 of the 1970 Act by the State Government.

32. In Annexure-1, which is the complaint petition the complainant has claimed himself to have been appointed as an Inspector u/s 28 of the 1970 Act by the Government of India. Therefore, the complainant was not competent to file complaint or prosecution report in this case and the prosecution report having been filed by him, the cognizance of offence could not have been taken thereupon by the learned lower Court.

33. Now coming to Cr. Misc. No. 4611 of 1996, the appropriate Government has been defined u/s 2(b) of the 1948 Act which runs as follows:

"(b) "appropriate Government" means-

(i) in relation o any scheduled employment carried on by or under the authority of the Central Government, or a Railway administration, or in relation to a mine oilfield or major port, or any corporation established by a Central Act, the Central Government, and

(ii) in relation to any other scheduled employment, the State Government;"

34. The manufacturing of the sleepers for Railways comes under scheduled employment at serial 71 of Part II of the Schedule under the 1948 Act. Here also the only question to be answered is whether the employment in question was being carried on by or under the authority of the Central Government, or a Railway administration.

35. The learned counsel for the opposite parties in this case has relied upon a decision of the High Court of Karnataka in the case between Regional Labour Commissioner, Bangalore and Ors. v. T.K. Varkey and Company and Anr. 1992 I LLJ 547 (Kant-DB). In that case, it was held that the appropriate Government was Central Government when the employment was being carried on at the place belonging to the Railways, for the purpose of construction of Railway quarters for the benefit of the employees of the Railways. In that case, the work was being carried on under the authority of Railways only. It was observed by their Lordships in that case that the definition of "appropriate Government" occurring in the Industrial Disputes Act is not in pari-materia with that of the one contained in the Minimum Wages Act as the definition under Industrial Disputes Act is in relation to industry carried on by or under the authority of the Central Government or by a Railway Company etc. whereas the definition of "appropriate Government" under the Minimum Wages Act is in relation to the scheduled employment carried on by or under the authority of the Central Government or Railways etc.

36. The ratio of the case of Regional Labour Commissioner, Bangalore and others and T.K. Varkey and Anr. (supra) will not apply to the facts of the present case. In that case a contractor was given job of constructing Railway quarters on the land belonging to the Railways which work he was doing under the control of the Railway administration. Construction work simpliciter cannot be equated with the work of manufacture. The quarters in that case were being constructed for Railway employees and day to day working of the contractor was under supervision of the Railways, hence it could be said that the construction work was being done, for the Railways, under control of the Railways, on its land. Here the petitioner Company is a manufacturing industry. Nothing has been shown to substantiate that this manufacturing work was being done on the land or by the capital provided by the Central Government or the establishment of Railways or that the manufacture of sleepers was being done under control of the Central Government or the Railways.

37. In view of the aforesaid, it cannot be said that the scheduled employment relating to manufacture of sleepers was being carried on by or under the authority of the Central Government or the Railway administration. Therefore, in this case also the appropriate Government would be the State Government.

38. Under the 1948 Act also, u/s 22 (b), no Court could take cognizance of the complaint against any person for an offence u/s 22(a) except on a complaint made by, or with the sanction of, an Inspector. u/s 19 of the 1948 Act, the appropriate Government may, by notification in the official Gazette appoint such

persons as it thinks fit to be Inspectors for the purposes of this Act. The complainant, in the prosecution report (Annexure-1) has claimed that he, being the Labour Enforcement Officer (Central), Dhanbad, had been appointed as an Inspector u/s 19 of the 1948 Act by the Government of India. Therefore, cognizance of offence in this case also is bad in law.

39. In the result, all the three applications are allowed and prosecution in these cases, on the basis of prosecution reports, as well related orders of cognizance of offence by the Sub-divisional Judicial Magistrate, Madhupur at Deoghar, are hereby quashed.