

(1999) 11 PAT CK 0046

In the Patna High Court

Case No : Criminal Miscellaneous No. 4648 of 1994

Satyadeo Prakash Sinha, Ajay Kumar Shyam Verma and Deb
Narain Bhandari

APPELLANT

Vs

The State of Bihar and Anil Kumar Ghosh

RESPONDENT

Date of Decision : 22-11-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(1), 39
Industries (Development and Regulation) Act, 1951 — Section 2
Payment of Bonus Act, 1965 — Section 19, 2(5), 30, 30(1), 32

Citation : (2000) 3 PLJR 424

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : Rajendra Kumar, Rajeev Ranjan and Ram Nath Sharan, for the Appellant; D.N. Yadav, for State and S.R.P. Sinha, for O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

S.N. Mishra, J.—In this case the Petitioners have challenged the order dated 18.1.1994 taking cognizance of an offence punishable u/s 19(b) of the Payment of Bonus Act, 1965 (hereinafter called the Act). The Petitioner No. 1 is the Chairman of the Board of Directors of the Company, namely M/s. Kalyanpur Cement Limited, Banjari. The Petitioner No. 2 is the Managing Director and the Petitioner No. 3 is the Technical Director of the said company. The complainant opposite party No. 2 is the Labour Superintendent, Govt. of Bihar, claiming to be Inspector appointed under the Act has filed the complaint petition, inter alia, on the ground that the company did not pay the bonus for the year 1992-93, which is a mistake for the year 1990-91, within the statutory period, i.e., on or before February, 1992 and, as such, the company and its officials have violated the provisions of the Act. On receipt of the complaint petition the learned chief Judicial Magistrate took cognizance of the alleged offence against the Petitioners which is under challenge in this application, as stated above.

2. Learned Counsel appearing on behalf of the Petitioners submits that the opposite party No. 2 being a Labour Superintendent under the State Govt. and/or any such officer of the State Govt. has not been vested with the power to file complaint petition for violation of the provisions of the Act. Learned Counsel has challenged the order taking cognizance of the alleged offence on the grounds firstly, that the Labour Superintendent, in the instant case, is not authorised by the competent authority to file such complaint petition for violation of the provisions of the Act. Secondly, since the company has not been made an accused, the Petitioners cannot be prosecuted, particularly, when there is absolutely no allegation made against Petitioners, inasmuch as, they are neither incharge nor looking after the day-to-day affairs of the company. While developing his argument learned Counsel submits that the company is engaged in manufacture and sale of cement which has already been declared a controlled industry in terms of Section 2 of the Industry (Development and Regulation) Act, 1951, and as such it is the Central Govt. which is the appropriate government to initiate such proceeding and not the State Govt. It is further submitted that the company has suffered huge loss to the extent of more than 10 crores which is the cause of further deterioration of the financial position of the company resulting some delay in payment of Bonus for which the company had requested for extension of the period but the authority has rejected the prayer and, ultimately, the company filed an application in terms of Section 36 of the Act which is still pending.

3. In order to appreciate the contentions of the learned Counsel Section 2(5) of the Act is to be noticed which defines the word "appropriate government" means:

(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.

In this context, Section 30 of the Act is relevant which reads thus:

30. Cognizance of offences. -(1) No court shall take cognizance of any offence punishable under this Act, save on complaint made by or under the Government (not below the rank of a Regional Labour Commissioner in the case of an officer of the Central Government and not below the rank of a Labour Commissioner in the case of an officer of the State Government) specially authorised in this behalf by that Government.

4. From mere perusal of the provision, as quoted above, it appears that in such cases either the Regional Labour Commissioner or the Labour Commissioner specially authorised can file complaint for violations of any provisions of the Act. Admittedly, in the instant case neither the Regional Labour Commissioner nor the Labour Commissioner has filed the complaint petition. As stated above, the cement company has been declared to be a controlled industry and for all

practical purposes the Central Government is the appropriate government in such cases and the officers authorised in terms of Section 30 of the said Act can only initiate the proceeding. As stated above, the Labour Superintendent, who is in service of the State Government, neither authorised nor empowered under the provision of the Act to initiate criminal proceeding against the Petitioners for alleged violations of the provisions of the Act. Despite of the sufficient opportunity given to the State counsel no material has been produced in order to show that the complainant is specially authorised by the Central Government to initiate such proceeding.

5. As stated above, M/s. Kalyanpur Cement Ltd. is a company engaged in manufacture and sale of cement and the cement industry had been declared a controlled industry in terms of Section 2 of the Industry (Development and Regulation Act), the said industry is included in the first schedule at Serial No. 35 which further goes to show that the officers not below the rank as mentioned in Section 30 of the Act, who must be specially authorised can initiate prosecution for violation of any provisions of the Act. In opposition, however, it is submitted that according to Section 30(1) of the Act, cognizance of an offence punishable under the Act can be taken on complaint made by or under the authority of the appropriate government and further refers Section 32 Clause (IV) of the Act which reads thus:

Section 32 - Act not to apply to certain classes of employees.- Nothing in this Act shall apply to-

(iv) Employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State-Govt. or a local authority.

I fail to understand as to how Section 32 Clause (iv) will come to the rescue of the opposite party, on the contrary it supports the case of the Petitioners. The Central Govt., no doubt, is vested with the power under the Industrial Disputes Act to delegate its power to the State Govt. u/s 39 of the I.D. Act but no such power of delegation is available under the Act and, as such, the Central Government is the appropriate government under the Act and only the officers specially authorised in terms of Section 30 by that government are competent to file complaint petition. I am supported by a decision of the Apex Court in the case of Air India Statutory Corporation v. United Labour Union and Ors. reported in 1997 SC 645 wherein it has been held that the "Central Government" is the appropriate government under the Act and not the State Govt. with respect to controlled industry. The Petitioners' company being a cement company engaged in manufacture and sale of the cement, the Central Government is the appropriate government and not the State Govt. or its officer, unless specially authorised by the Central Government to initiate criminal proceeding against the Petitioners. Reference may also be made to a decision in the case of M/s. Sintra Limited and Shri Ajay Chandra Srivastava Bhim Singh Vs. The State of Bihar and Assistant Labour Commissioner (Central), . A similar question was subject matter

of consideration under the Contract Labour (Regulation and Abolition) Act, 1970, wherein it has been held that cement industry being a controlled industry as declared by the Central Government u/s 2(1)(ii) of the I.D. Act, and as such the appropriate government is the Central Govt. The definition of the "appropriate government" under the Act is in pan materia with that of Contract Labour (Regulation and Abolition) Act and accordingly the ratio of the aforesaid decision will equally apply in the instant case as well, particularly, when there is no power of delegation under the Act like Section 39 of the I.D. Act. After having heard learned Counsel for the parties and taking into consideration all aspects of the matter as mentioned above, I hold and conclude that the Central Govt. is the appropriate government in relation to the Petitioners' company and not the State Government. Consequently, instant criminal proceeding initiated against the Petitioners including order taking cognizance of an offence punishable under the Act are quashed. The appropriate authority, namely, the Central Govt., however, will be at liberty to proceed in the matter, if so advised, against the Petitioners in accordance with law.

6. In the result, this application is allowed to the extent indicated above.