

(1998) 07 PAT CK 0059

In the Patna High Court

Case No : Criminal Miscellaneous No's. 13829 and 16033 of 1995 and 7248 and 7734 of 1989

Sintra Limited and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-07-1998

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 12, 2, 23, 24
Criminal Procedure Code, 1973 (CrPC) — Section 482
Industrial Disputes Act, 1947 — Section 2, 39

Citation : (1998) 3 BLJR 2266

Hon'ble Judges : N. Pandey, J;I.P. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N. Pandey, J.—By means of these petitions u/s 482 of the Code of Criminal Procedure, petitioners have challenged the validity of the impugned orders, taking cognizance under Sections 23 and 24 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short "the Act") and processes against them to face trial.

2. Cr. Misc. No. 13829 of 1995 and 7734 of 1989 are on behalf of petitioner Sintra Limited, a company incorporated under the Indian Companies Act, 1956 and the President and Manager of the said Company, whereas Cr. Misc. Nos. 16033 of 1995 and 7248 of 1989 are on behalf of the subcontractors of M/s. Sintra Limited.

3. The common case of the parties is that the contractors M/s. Sintra Ltd. and its sub-contractors are licensees u/s 12(1) of the Act, duly granted by the State Government. This is also not in dispute that petitioner Sintra Ltd. is engaged in carrying contract work of transportation and acting as handling agent for transshipment of coal, gypsum, slag, lime and other materials under written contracts with M/s. Kalyanpur Cement Ltd. at Dehri-on-Sone and Sone Nagar.

Petitioners Bhim Singh and others are subcontractors of M/s. Sintra Ltd. and had entered into an agreement with the main contractor (Sintra Ltd.) to execute the work of the establishment of Kalyanpur Cement Company by loading and unloading necessary inputs like coal, gypsum, granulated slags, etc. within the factory premises and outside.

4. Since petitioners had obtained licence u/s 12(1) of the Act from the State Government and not from the Central Government, notices were issued by the Labour Enforcement Officer (Central), Government of India, calling them to show cause why complaints be not filed as they had failed to obtain licence from the "appropriate" Government and, therefore, violated the provisions of the Act and Rules. In compliance of such notices petitioners filed their show cause, stating since they had already obtained licences from the State Government, the Central Government, not being the "appropriate" Government the Labour Enforcement Officer (Central) had no jurisdiction to call upon them to show cause or to take steps for filing complaint. It is alleged that respondent authorities without any endeavour to ascertain as to which Government will be the appropriate Government" for the concerned establishments, filed complaints before the concerned Chief Judicial Magistrates.

5. Keeping in mind the aforesaid controversies and before proceeding to discuss the rival contentions of the parties, it would be apt to notice that under-lying policy of the Act was to abolish contract labour wherever possible and practicable to improve condition of the contract labours and that is why the Act provided for a well-planned and regulated conditions of work and contemplates abolition of contract labour to the extent, it is contemplated u/s 10 of the Act. Thus, in view of the above object and for proper appreciation of the points involved in the present cases, it would be apt to notice some of the relevant provisions of the Act.

Section 2 gives the definitions of various words...Section 2(1)(c) defines "contractor" as under:

"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 of manufacture to such establishment. through contract labour or who supplies contract labour for any work of the establishment and included a sub-contractor.

As per Section 2(1)(d), "controlled industry" means:

controlled industry" means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest.

6. Section 3 deals with the Constitution of Central Advisory Board, whereas Section 4 is for the Constitution of State Advisory Board. Chapter III deals with "registration of establishments employing contract labour" and Chapter IV contemplates "licensing of contractors", meaning thereby a licensing provision of

contractors, employed in such establishments. Section 9 is there to take effect when principal employer is not registered. Section 10 prohibits employment of contract labour. Sub-section (1) of Section 12 states that with effect from such date as the appropriate Government may, by notification in official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer. Section 23 deals with the provisions of contravention regarding employment of contract labour and Sections 24 and 25 are the penal provisions with regard to the offences contemplated under the Act. As per Section 26 no Court shall take cognizance of an offence, except on a complaint made by or with previous sanction of the Inspector. Section 27 prescribes a period of limitation for prosecution. It says no Court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within a period of three months of the alleged commission of the offence came to the knowledge of the Inspector.

7. This is not in dispute that the principal employer M/s. Kalyanpur Cement Ltd. is engaged in manufacture and sale of cement, nor there is any dispute that "Cement Industry" was declared "controlled industry" for the purposes of Sub-clause (1) of Clause (a) of Section 2 of the Industrial Disputes Act, 1947 and certain powers exercisable under the said Act and Rules had been delegated to the respective State Government by the Central Government in exercise of its power u/s 39 read with Section 2(1)(a) of the said Act and. therefore, the State Government became the "appropriate Government" for the said Act.

8. Mr. Singh contended that from the facts noticed above there is no dispute that the establishment of Kalyanpur Cement is a controlled industry u/s 2 of the Industrial Disputes Act read with Sections 2 (d) and (e) of the present Act, nor there is any dispute that M/s. Sintra Ltd. was engaged to undertake contract work of M/s. Kalyanpur Cement under different agreements executed from time to time. But the "establishments" which petitioners are maintaining in order to undertake the job of loading and unloading and having been registered separately as a company under the provisions incorporated under the Companies Act, 1956, are quite different to that of the "establishment" of Kalyanpur Cement, nor this is the case of opposite parties that establishments of the petitioners were ever declared as controlled industry by the Central Government. Therefore, having regard to the provisions of Section 2(1)(a)(ii) of this Act, since petitioners had no other activity, except acting as contractors of the Kalyanpur Cement Company, will fall in the category of an "establishment" of which the "appropriate Government" is the State Government and thus, the State Government was justified while issuing licences to the petitioners under this Act.

9. Undisputedly a reference to the provisions of Section 2(1), Clause (c) of the Act would show that a contractor in relation to an establishment, is to mean "a person" who undertakes to produce given result for the establishment, other than mere supply of goods or articles of manufacture to such establishment,

through contract labour or who supplies contract labour for any work of the establishment and includes a "sub-contractor (emphasis supplied). It is thus, clear that not only a contractor, but also a sub-contractor who comes within the definition of the term "contractor" u/s 2(1), Clause (c) is required to obtain licence u/s 12(1). Reference in this regard can be usefully made to a decision of the Apex Court in the case of Labourers Working on Salal Hydro Project Vs. State of Jammu and Kashmir and Others, .

10. The views expressed above, can also be examined from a different angle. Because what has to be determined in such cases is whether there is a direct nexus between the activity of the "establishment" and the activity of the person with whom the "establishment" has entered into the transaction of contract. In the case of Gammon India Ltd. and Others Vs. Union of India (UOI) and Others, . a question arose whether the work of the contractors, who had undertaken certain construction work of the Banking Company would be called a work, in connection with the work of establishment, namely, principal employer, It was held by the Apex Court, when the Banking Company employed some persons to construct buildings, the later was in relation to the establishment contractors, who undertake to produce a given result for the Bank. They are the persons, who undertake to produce the given result through contract labour. It would be wrong to say that construction work of such a contractor was not the work of the establishment" of the principal employer. The very definitions of contractor, workman, contract labour, establishment, principal employer, as defined under the Act, would indicate that the work of an "establishment" means work of the "principal employer". The contractors are employed to produce the result for the benefit of the principal employer in fulfilment of the undertaking given by such contractors. Therefore, work so done by such contractors are always in connection with the work of the establishment of the principal employer.

11. Now coming to the conflicting stand taken on behalf of the Central Government and State Government, the other relevant question for consideration is as to which Government is the appropriate Government" as required u/s 2(1) (a) of the Act. which defines appropriate Government" as u/s 2(1)(a), "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:

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situate.

12. A plain reading of the provisions of Clause (1) as aforesaid will show that in relation to an establishment of which the Central Government is the "appropriate Government" as defined under the Industrial Disputes Act, will also be the "appropriate Government" for the purpose of the present Act. and in relation to any other establishment, the State Government. But before examining the

further scope and ambit of Clauses (1) and (2) of Section 2(1)(a). in my view, it may also be necessary to refer the definition of establishment" as set out in Section 2(1)(e) of the present Act, which reads as u/s 2(1)(e), "establishment" means,-

(i) any office or department of the Government or a local authority; or

(ii) any place where any industry, trade, business, manufacture or occupation is carried on,

It would appear from these provisions that in these cases" I am only concerned with Sub-clause (ii) of Section 2(1)(e). which says that establishment" means where industry, trade, manufacture or occupation is carried on.

13. But keeping in mind the definition of "appropriate Government" under Sections 2(1)(i) and (ii) of this Act, it would also be essential to notice the definition of "appropriate Government", as defined u/s 2(a)(1) of the Industrial Disputes Act, 1947, which provides that:

(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 controlled industry as may be specified in this behalf by the Central Government of. The Central Government; and

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

14. It would thus, appear that from the width and content of the expression "any industry carried on by or under the authority of the Central Government" used under both the Statutes and the expression "appropriate Government" as contemplated u/s 2(a)(i) would pursuant to the authority of the principal employer or master.

15. Mr. Singh, however, contended that in these cases it has neither been claimed by the Central government or State Government that establishments of the petitioners are either carried out by or under the authority of the Central Government. Therefore, such cases would be covered by the provision in Sub-section (ii) of Section 2(1)(a) and the State Government would be the "appropriate Government". In support of such a contention, reliance was also made to a decision of the Apex Court in the case of Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, and yet another decision in the case of Food Corporation of India Workers" Union Vs. Food Corporation of India and Others, .

16. But in my view the propositions, which were examined in the above noted cases were somehow the other different to which we are presently concerned. That apart, recently a Larger Bench of the Apex Court while examining the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], , has somehow the other doubted the correctness of the ratio laid down in the case of Heavy Engineering (supra). Similar views were also

expressed with regard to the case of Food Corporation of India (supra), on the ground that in this case, the Court had not independently laid down any legal proposition, save and except placing reliance on the case of Heavy Engineering (supra).

17. True it is this, is neither the case of the Central Government nor the State Government that establishments of the petitioners are being carried out by or under the authority of the Central Government. But undisputedly as would appear from the facts brought on record that Cement Industry" has already been declared as controlled industry by the Central Government u/s 2(a)(i) of the Industrial Disputes Act and hence the Central Government became the "appropriate Government" for such industries under that Act. As per Section 2(1) (a) of the present Act, "appropriate Government" means in relation to an establishment in respect of which the "appropriate Government" under the Industrial Disputes Act, is the Central Government. In other words, the moment Central Government become the appropriate Government" for "Cement Industry" under the Industrial Disputes Act. natural consequence of which, the same Government will be the appropriate Government" for the present Act, therefore. Kalyanpur Cement Industry Ltd, being the principal employer" the Central Government would naturally be the "appropriate Government" for the establishment of the petitioners, who are "contractors" and "sub-contractors" of the said company. Particularly in the background when undisputedly the work undertaken by the petitioners was in connection with the work of the establishment of principal employer.

18. Mr. Singh then contended that in any view of the matter, since petitioners has already obtained licences from the "State Government" in the terms of Sub-section (i) of Section 12, even it is held that "appropriate Government" with regard to their establishments is the Central Government, no mens rea can be alleged against them, if they had obtained licences from the State Government. Because for all practical purposes while granting licences, the State Government had assumed jurisdiction of the "appropriate Government" on the basis of the delegation of powers by the Central Government u/s 2(a)(1) of the Industrial Disputes Act.

19. In my view, in absence of any specific provision under the present Act, none of the powers of the Central Government can be delegated to the State Government. The delegation of powers u/s 2(a)(i) of the Industrial Disputes Act was accorded by the Central Government in exercise of its power conferred u/s 39 of the said Act. Therefore, such a delegation cannot be treated a delegation under the present Act. It shall only confine to, the provisions of Industrial Disputes Act.

20. But undisputedly as would appear from the facts on record that authorities of the State Government were probably under the impression that delegation of power of the State Government by the Central Government u/s 39 of the Industrial Disputes Act, as required u/s 2(1)(a) of the said Act, would for all

practical purposes be delegation under the present Act as well. Therefore, in these circumstances, if petitioners had obtained licences from the State Government, no mens rea can be alleged for such act particularly when such licences were granted in a good faith.

21. Apart from the aforesaid, with regard to Cr. Misc. No. 16033 of 1995. it was further contended that the impugned order of the Magistrate taking cognizance was also barred by limitation in term of the provisions of Section 27 of the Act. Because from a bare reference to the complaint, it would appear that Labour Enforcement Officer (Central) got knowledge of the alleged violation on 30.9.1994 but the complaint was filed on 20.4.1995. As per Section 77 no Court shall take cognizance of any offence punishable under the Act, unless a complaint is made within three months from the date on which alleged commission of the offence came to the knowledge of the Inspector. In my view, there appears substance in such a submission as well. Because in absence of any other material contrary to what has been alleged above, there appears no dispute that the impugned order of the Magistrate was illegal and without jurisdiction since the complaint itself was barred by limitation, as it was filed after expiry of the statutory period.

22. Taking into consideration all the facts and circumstances, noticed above, I hereby conclude and hold that the Central Government is the "appropriate Government" for the establishment of the petitioners and not the "State Government" as claimed on their behalf. The petitioners, therefore, have no other option but to get licences from the Central Government and to carry out all necessary orders, directions or instructions issued by that Government from time to time. But as the petitioners had already obtained licences u/s 12(1) from the "State Government" under a bona fide belief that the said Government was the "appropriate Government" it may not be proper to hold them liable for criminal prosecution. But they can not escape the other liabilities as contemplated under the present Act. The appropriate authority of the Central Government shall always be at liberty to proceed according to law, if necessary.

23. For the forgoing reasons all the petitions are allowed to the extent indicated above and the impugned orders are hereby quashed.

I.P. Singh.

24. I agree.