

(2016) 06 KAR CK 0097
In the Karnataka High Court
Case No : W.P. Nos. 18927-28 of 2013 (L-RES)

Smt. Rachana Gopinath & Another

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 10-06-2016

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 1(4)
Industrial Disputes Act, 1947 — Section 2(j)

Citation : (2016) 4 AirKarR 225 : (2016) 150 FLR 1053 : (2016) ILRKarnataka 4239 : (2016) 3 KCCR 247 : (2016) LabLR 864

Hon'ble Judges : Mrs. S. Sujntha, J.

Bench : Single Bench

Advocate : Mr. B.C. Prabhakar, Advocate, for the Appellant; Mr. Shivaprabhu S. Hiremath, AGA, for the Respondent

Final Decision : Disposed Off

Judgement

S. Sujatha, J.—The petitioners have assailed the criminal complaint dated 21 07.2012 filed by the respondent before the MMTC-3, Bangalore, [? Magistrate?, for short] in CC No. 1961/2012 vide Annexure-F to the writ petition and the consequential criminal proceedings initiated by the Magistrate.

2. The first petitioner was the Ex-Secretary of The Embassy Apartment Owners' Association, [?Association?, for short], whereas the second petitioner is the Accounts Consultant of the Association. The Association has been entrusted with management and maintenance of common areas and facilities at the Embassy through the Core Committee elected every year amongst its members. The Association has framed Memorandum of Association and Rules and Regulations. The aims and objectives of the Association are as hereunder:

"(a) To organize, conduct and establish social, educational and recreational forums, organisations and activities for the benefit of the members.

(b) To promote and conduct activities of a literary, cultural, social or charitable

nature and conduct research in such fields to acquaint with the cultural heritage.

(c) To establish, maintain and reinforce contacts with and to render help and assistance to all Members in their problems.

(d) To manage, maintain, administer and regulate common area and common facilities to the best advantage and benefit of all the members of the Association. To represent the members in all matters pertaining to their common problems in any premises and settle of compromise with third parties any matter or dispute affecting the common problems in the premises.

(e) To promote close co-operation between Members, render all possible advice and guidance to Members relating to ownership and enjoyment of apartments and to provide such amenities and facilities to Members as the Management Committee may deem fit.

(f) To carry out the above objectives and activities and to facilitate their efficient and effective functioning to liase, collaborate and share experience with individuals and/or other bodies and organisations with similar objectives in the city of Bangalore, organise meetings or participate in them, make representations or carry out other activities as may be considered necessary."

3. The Association has employed five members to carry out its activities. It is alleged by the petitioners that the respondent has visited the petitioners? Association on 22.03.2012 and inspected the records and made notes of inspection alleging certain violations under the Labour enactments and had suggested certain compliances with the direction to submit compliance report. The petitioners clarified that the Association is not engaged in any commercial activities. The main object of the Association is the maintenance of common areas and facilities. The Association is being managed by the Committee Members, elected every year amongst the members, accordingly requested the respondent to drop further proceedings as bereft of the respondent?s jurisdiction. It transpires that the respondent had filed criminal complaint before the Magistrate in CC No.1961/2012 alleging the violation of section 7, Rule 17(1) read with Section 29, Rule 4 of the Contract Labour [Regulation and Abolition] Act, 1970, [the ?Act?, for short]. The complaint filed by the respondent was registered and summons were ordered. This criminal complaint lodged by the respondent before the Magistrate in CC No. 1961/2012 is challenged by the petitioners besides the proceedings initiated by the magistrate.

4. The learned Counsel appearing for the petitioners would contend that the Association is not covered under the provisions of the Act. The respondent had no jurisdiction to file the criminal complaint before the Magistrate for alleged violation of the provisions of the Act. The Magistrate without application of mind has taken cognizance of the complaint for the violations of the provisions of the Act. Thus, he contends that there is no application of mind and the Magistrate summoning the petitioners as Accused in criminal case without scrutinising the complaint is wholly unjustifiable. Accordingly, the learned counsel seeks to allow

the writ petition quashing the criminal complaint and subsequent proceedings before the Magistrate in CC No. 1961/2012.

5. Per contra, learned Additional Government Advocate Sri. Shivaprabhu S. Hiremath, appearing for the respondent, justifying the orders impugned herein, would contend that the Association in question is an establishment and thus covered under the provisions of the Act and other labour enactments. It is mandatory for the Association to register itself under the provisions of the Act and to follow the procedures prescribed under the Act and Rules therein. Despite providing sufficient opportunity to the petitioners, they have failed to comply with the provisions of the Act and Rules which compelled the respondent to file a criminal complaint before the Magistrate. The action of the respondent in filing the criminal complaint and the order passed by the Magistrate pursuant to the complaint are in conformity with the provisions of the Act and does not call for any interference by this court. Accordingly, he seeks for dismissal of the writ petition.

6. Having heard the rival submissions of the parties and perusing the material on record, it is clear that the Association is established for the maintenance of the residents of the Apartments which is nothing but rendering certain services personally to the Apartments Owners/residents themselves. The aims and objectives of the Association establishes that it is established to cater the needs of the residents of the Apartments, in as much as, managing, maintaining, administering, regulating in the area and common facilities to the best advantage and benefit of all the Members of the Association. The Management Committee is elected among the Members of the Association. The Management Committee is effectively functioning to achieve the objectives of the Association. Thus, the entire objectives of the Association is not to venture any commercial activity involving trade and commerce. It is noticed that the respondent has initiated the proceedings for violation of the provisions of the Act for not registering the Association under the provisions of the Act and for not following further procedures stipulated under the Act and Rules. To examine whether the Act is applicable to the Association in question, it is beneficial to refer to the provisions of the Act. Section 1 (4) of the Act contemplates that it applies 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 and to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen.

7. A bare perusal of the said provision would indicate that the conditions to be satisfied for the applicability of the Act are:

- (i) There must be an establishment;
- (ii) Twenty or more workmen should be employed in the preceding twelve months;
- (iii) Employment should be as contract labour.

8. 'Establishment' is contemplated under Section 2(e) of the Act which reads thus:

2[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;?

9. Workman is defined under Section 2(i) of the Act which reads thus:

"[i] 'workman' means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person -

[A] who is employed mainly in a managerial or administrative capacity; or

[B] who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature; or

[C] who is an out-worker, that is to say, a person to whom any articles or materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the outworker or in some other premises, not being premises under the control and management of the principal employer."

10. A conjoint reading of these provisions envisages that for the applicability of the Act, 'establishment' as contemplated under the Act is necessarily to be established. Firstly, if the activities of the petitioners' Association are examined, it is neither an office or Department of the Government or a local authority nor no activities of an industry, trade, business, manufacture or occupation is carried on in any place of the Association. It is obvious that the Association cannot be construed as an 'establishment' as per Section 2(e) of the Act, Secondly, petitioners' Association has employed only five employees as set out by the petitioners and no evidence is placed on record by the respondent that twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour. Thirdly, if it is examined whether the persons employed by the petitioners' Association comes within the definition of 'workman' under Section 2(i) of the Act, the petitioners' Association has employed five persons for maintaining the residential apartments which is nothing but rendering of services to the Apartment residents themselves. As set out in Section 2(i) of the Act, a workman should be employed in or in connection with the work of any establishment. As the Association does not come within the

purview of an 'establishment' under the Act, persons employed by the Association cannot be characterised as workman under the Act.

11. At this juncture, it would be apt to refer to the Judgment of the Apex Court in the case of 'Management of Som Vihar Apartment Owners Housing Maintenance Society Ltd., v. Workmen C/o. Indian Engineering and General Mazdoor,' 2001 (1) LLJ 1413 wherein the Apex Court while considering the applicability of the Industrial Disputes Act, 1947 to the Apartment Owners Housing Society formed by the Apartment Owners, has held that when personal services are rendered to the Members of a Society and that Society is constituted only for the purposes of those Members to engage the services of such employees, its activity should not be treated as an industry nor are they workmen. In that context, it is held that the Apartment Owners Housing Maintenance Society is not an Industry. The Constitution Bench Judgment of the Apex Court in the case of 'Bangalore' Water Supply and Sewerage Board v. R. Rajappa & Others,' AIR 1978 SC 548 was considered while arriving at the said conclusion. It is held that the rationale which applies all along the line to small professions like that of domestic servants would apply to those who are engaged by a group of flat owners for rendering personal services even if that group is not amorphous but crystallized into an Association or a society. The proposition that domestic servants are also to be treated as workmen even when they carry on work in respect of one or many masters is negated by the Apex Court in Management of Som Vihar Apartment Owners Housing Maintenance Society Ltd., case. This judgment is squarely applicable to the facts of the present case. The Apartment Owners Association is an Association created for the benefit of the Members of the Association and the so called workmen employed by the Association are rendering only personal services to the Members of the Association. As aforesaid, to attract the provisions of the Act, the essential ingredients of an 'establishment' as set out in Section 2(e) of the Act which contemplates that the activities must be commercial in nature, carried on by the office or Department of the Government or the Local Authority must be satisfied. In the absence of such satisfaction, respondent insisting for compliance of the procedures prescribed under the Act is wholly unsustainable.

12. The registration obtained by the petitioners on a wrong conception under the Karnataka Shops and Commercial Establishments Act, 1961 and further not renewed would not entitle the respondent to harass the petitioners' Association by filing criminal complaint on some flimsy grounds before the Magistrate.

13. The respondent has acted arbitrarily, without application of mind. The entire action of the respondent is without jurisdiction. Any order passed by the Authorities having no jurisdiction is an order void ab initio and requires to be set aside.

14. The Magistrate, blindly taking cognizance of the complaint filed by the respondent has initiated the proceedings which is perfunctory in nature. It is imperative that the Magistrate shall scrutinise the complaint to get himself

satisfied of the prima facie case before initiating criminal proceedings against the accused. This exercise having not been done by the Magistrate the proceedings initiated by the Magistrate calls for interference of this Court.

15. For the foregoing reasons, writ petitions are allowed. The criminal complaint at Annexure-F dated 21.7.2012 and the consequent proceedings on the file of MMTC-3, Bangalore, in CC No. 1961/2012 are hereby quashed. No costs.