

(1994) 10 GUJ CK 0009

In the Gujarat High Court

Case No : Special Criminal Application No. 855 of 1993

State of Gujarat and Another

APPELLANT

Vs

Shri Sankeshwar Jain Agam Mandir

RESPONDENT

Date of Decision : 10-10-1994

Acts Referred:

Minimum Wages Act, 1948 — Section 13, 20, 22, 22A, 22B

Citation : (1996) 1 GLR 287

Hon'ble Judges : C.V. Rane, J

Bench : Single Bench

Judgement

C.V. Jani, J.—This petition by the State of Gujarat and the Government Labour Inspector under Art. 227 of the Constitution of India, is directed against the common judgment and order of the learned Sessions Judge, Mehsana, in Criminal Revision Application Nos. 115 of 1992 and 116 of 1992 whereby the learned Judge was pleased to hold that the complaint filed by the Labour Inspector u/s 22-A of the Minimum Wages Act, 1948, was barred by limitation, and as a consequence to set aside the order passed by the learned J.M.F.C., Harij, below application Exh. 18 in Criminal Case No. 177 of 1991.

2. The Government Labour Inspector, the petitioner No. 2 herein, filed a complaint against Shri Sankeshwar Jain Agam Mandir which is a Public Trust, and its Chairman Kanubhai Chimanlal Shah, u/s 22-A of the Minimum Wages Act, 1948, hereinafter referred to as the "Act", for violation of Rules 26A, 21(4) and 26-D of the Gujarat Minimum Wages Rules, 1961, made u/s 39 of the Minimum Wages Act, 1948. This complaint was registered as Criminal Case No. 177 of 1991. It was alleged that when the Minimum Wages Inspector visited the institution on 5-12-1990 it was found that inspector's visit book prescribed under the Minimum Wages Act was not maintained, as per Rule 26A; that the Annual return prescribed in Form No. 3 was not maintained as per Rule 21(4), and the Wages Register, Master Roll and Overtime Register subsequent to April, 1990 were not produced even though called upon, under rule 26-D of the

aforesaid Rules. The competent officer, namely, the Assistant Commissioner sanctioned prosecution on 5-4-1991. The complaint came to be filed on 27-5-1991.

3. The Advocate for the respondent-accused submitted an application Exh. 18 on 12-3-1992 for dismissing the complaint and discharging the accused on two grounds :

(i) That the complaint was not filed within six months as provided u/s 22-B(2)(b) of the Act; and

(ii) The complaint was not filed within one month after the grant of sanction as required u/s 22-B(2)(a) of the Act.

4. The learned Magistrate dismissed the application by holding that the complaint had been filed clearly within six months after the offence was committed, as provided in clause (b) of Section 22-B(2).

5. As two Criminal Case Nos. 176 of 1991 and 177 of 1991 had been filed against the respondent Institution under the Minimum Wages Act, the respondent Institution challenged the order of the learned Magistrate by filing Criminal Revision Application Nos. 115 of 1992 and 116 of 1992. The learned Sessions Judge, Mehsana, allowed the revision applications by holding that the complaint was barred by limitation, provided u/s 22-B, as in the view of the learned Judge the complaint was required to be filed within one month of the grant of sanction, either under clause (a) or clause (b) of Section 22 of the Act.

6. I have gone through the revisional order of the learned Sessions Judge as well as the relevant provisions of the Act, and I find that the learned Sessions Judge had committed an error in holding that the complaint was barred by limitation.

7. A close look at the relevant provisions of the Minimum Wages Act, is necessary for apprehending this error. Sections 22, 22A, and 22B of the Act, read as Under :

"22. Penalties for certain offence :- Any employer who -

(a) pays to any employee less than the minimum rates of wage fixed for employee's class of work, or less than the amount due to him under the provisions of this Act, or

(b) contravenes any rule or order made u/s 13, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both : Provided that in imposing any fine for an offence under this section, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceeding taken u/s 20.

22A. General provision for punishment of other offences :- Any employer who contravenes any provision of this Act or of any rule or order made thereunder shall, if no other penalty is provided for such contravention by this Act, be

punishable with fine which may extend to five hundred rupees.

22-B. Cognizance of offences :- (1) No Court shall take cognizance of a complaint against any person for an offence -

(a) under Clause (a) of Section 22 unless an application in respect of the facts constituting such offence has been presented u/s 20 and has been granted wholly or in part, and the appropriate Government or an officer authorised by it in this behalf has sanctioned the making of the complaint;

(b) under Clause (b) of Section 22 or u/s 22-A, except on a complaint made by or with the sanction of an Inspector.

(2) No Court shall take cognizance of an offence :-

(a) under Clause (a) or Clause (b) of Section 22 unless complaint thereof is made within one month of the grant of sanction under this section;

(b) u/s 22-A, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed".

By Gujarat Act XXII of 1961, Clause (b) of sub-section (2) in Section 22-B has been substituted as under :

"(b) u/s 22-A, unless the complaint thereof is made within six months of the date on which the offence becomes known to the Inspector".

8. Clause(a) of Section 22-B(2) would apply if the complaint is made under clause (a) or clause (b) of Section 22 and such a complaint is required to be filed within one month of the grant of sanction.

9. Clause (a) of Section 22 refers to the offence of paying to an employee less than the minimum rate of wages or less than the amount due to him under the provisions of the Act. No such allegation is made in the complaint filed against the respondent-Institution. Clause (b) of Section 22 refers to contravention of any Rule or order made u/s 13 empowers an appropriate Government to fix the number of hours of work to provide for a lay off rest and to provide for overtime rate for working on a day of rest. Obviously, the allegations made in the complaint against the respondent-Institution are not relating to violation of any such Rules prescribed by the Government.

On the other hand, the complaint has been filed against the respondent-Institution for non-compliance with certain provisions of Rule 26-A, Rule 21(4) and Rule 26-D of the Gujarat Minimum Wages Rules, 1961 framed u/s 30 of the Act. The learned Judge seems to have made a confusion about the provisions of law under which the relevant Rules were framed. It may be again emphasised and repeated that the complaint was in respect of violation of certain rules framed u/s 30 of the Act, and not u/s 13 thereof. So even Clause (b) of Section 22 would not apply in the present case. Thus, the learned Sessions judge clearly committed an error in bringing the case under clause (a) of sub-section (2) of

Section 22-B.

10. Sub-section (2) of Section 22-B provides for six months limitation for filing the complaint under general provision of Section 22-A which has been reproduced hereinabove. It provides for punishment for contravening any provision of the Act or any rule or order made thereunder. As the Minimum Wages Inspector who visited the institution on 5-12-1990 came to know about the alleged offence on that day, the complaint filed by him on 27-5-1991 was clearly within the period of limitation. Thus, there was no substance in the objections taken on behalf of the respondent-Institution either before the learned Magistrate or before the learned Sessions Judge.

11. This being a clear error of law apparent on the face of the record, which goes to the root and touched the jurisdiction of the learned Magistrate to try the offence under the Minimum Wages Act, 1948, this Court has no other alternative but to allow the petition and to confirm the order of the learned J.M.F.C., Harij, below application Exh. 18, in Criminal Case No. 177 of 1991 and to set aside the revisional order of the learned Sessions judge, Mehsana, which is rendered by him in Criminal Revision Application No. 116 of 1992 along with Criminal Revision Application No. 115 of 1992.

12. Rule is made absolute accordingly. The learned J.M.F.C., Harij, is directed to expedite the hearing of Criminal Case No. 177 of 1991, and also the connected cases, in accordance with law.