
(2005) 08 AP CK 0078

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 869 of 2005

The State

APPELLANT

Vs

Super Power Contractor and Another

RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 12(1), 23, 35
Criminal Procedure Code, 1973 (CrPC) — Section 245(2)
Industrial Disputes Act, 1947 — Section 2, 2(1)

Citation : (2006) 1 ALD 685 : (2005) 2 ALD(Cri) 394

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : A. Rajasekhar Reddy, for the Appellant; P. Nageswar Sree, for the Respondent

Judgement

G. Yethirajulu, J.—The State represented by Labour Enforcement Officer (Central), Hyderabad preferred this revision case challenging the order of the XXI Metropolitan Magistrate, Hyderabad dated 31-1-2002 in Criminal Miscellaneous Petition No.2090 of 2001 in S.T.C. No.1873 of 2000.

2. The first respondent is a firm undertaking certain contract works under the State and Central Government establishments. S.T.C.No.1873 of 2000 was filed against the first respondent u/s 23 of the Contract Labour (Regulation & Abolition) Act, 1970 (for short "the Act") for breach of Section 12(1) of the Act on the ground that it undertook the contract work of Jet Airways Limited without obtaining licence from the competent authority. The complainant-State alleged that the first respondent undertook the contract work of aircraft cleaning, loading and unloading of Cargo, driving, sweeping and cleaning etc., of Jet Airways Limited, Hyderabad by engaging 104 labour to attend those works without obtaining licence from the competent authority to undertake those works. During the pendency of the case, the first respondent filed Criminal Misc. Petition No.2090 of 2001 u/s 245(2) Cr.P.C. for discharge. The learned Metropolitan Magistrate ordered its discharge observing that the revision petitioner-State has

no authority to initiate the proceedings against the first respondent as the Central Government is not the appropriate Government in respect of the first respondent organization. The revision petitioner being aggrieved by the order of discharge passed by the learned XXI Metropolitan Magistrate has preferred this revision case challenging its validity and legality.

3. The revision petitioner contended that the Central Government is the appropriate Government as per Section 2(a) of the Industrial Disputes Act in respect of the establishment in Air Transport Services. The lower court failed to observe that Jet Airways is the principal employer and the first respondent is the contractor for loading and unloading of the luggage of the passengers at airport, therefore, it has to obtain licence under the Act from the Central Government. Since the first respondent did not obtain licence from the licencing authority of the Central Government, it is a clear violation u/s 12(a) of the Act.

4. In the petition for discharge, the first respondent averred that it is undertaking the work relating to M/s. Jet Airways Limited of loading and unloading of passengers luggage at Begumpet, Hyderabad. The first respondent obtained licence from the Assistant Commissioner of Labour on 2-9-1997. It is being renewed from time to time. The Labour Enforcement Officer (Central) inspected the establishment of Jet Airways Limited and enquired the first respondent to produce the licence issued under the Contract Labour Act. It produced the licence issued by the Assistant Commissioner of Labour, but the Labour Enforcement Officer insisted that the appropriate Government in respect of the first respondent is the Central Government, as such, it failed to comply the provisions of the Act. The first respondent further contended that it sought for clarification from the Assistant Commissioner of Labour, Hyderabad in pursuance of a notice dated 28-7-2000 issued by the Labour Enforcement Officer (Central). The Assistant Commissioner of Labour through the order dated 13-9-2000 informed the first respondent that the State Government is the appropriate Government and the licence issued is in order. The Regional Labour Commissioner (Central) and the Assistant Commissioner of Labour (Central), Hyderabad are claiming that the first respondent falls within their purview, as per Section 2(1)(a) of the Act. There is no consistency in the claims made by both the Governments. In view of the threats given by the Labour Enforcement Officer (Central), the first respondent was forced to obtain licence from the Assistant Commissioner of Labour on 23-11-2000. Despite the same, the Labour Enforcement Officer initiated two summary trial cases.

5. The first respondent contended that for the purpose of undertaking the works in Andhra Pradesh, the State Government is the appropriate Government and not the Central Government, and it rightly obtained licence from the Assistant Commissioner of Labour, Government of Andhra Pradesh, therefore, there is no necessity for it to obtain licence from the Central Government.

6. In the light of the above contentions of the parties, the point for consideration is: Whether the Central Government is the appropriate Government for obtaining

licence by the first respondent, which is undertaking the works relating to a Central Government establishment?

Point:

7. It is an undisputed fact that in the year 1997 the first respondent was entrusted with the contract work of loading and unloading the Cargo at Begumpet, Hyderabad and it is being renewed from time to time. The first respondent contended that it obtained licence from the Assistant Commissioner of Labour (Central), on 23-11-2000, therefore, it is not liable for prosecution u/s 12(1) of the Act. The Contract Labour (Regulation & Abolition) Act, 1970 is the enactment made by the Central Government to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances. The Act came into force with effect from 10-2-1971. In pursuance of the rule making power given to the appropriate Governments u/s 35 of the Act, the Central Government framed Contract Labour (Regulation and Abolition) Central Rules, 1971 and the Government of Andhra Pradesh framed the rules known as the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. Sections 2(1)(a) and 2(1)(g) of the Contract Labour (Regulation and Abolition) Act, 1971 defines "appropriate Government" and "principal employer" and they read as follows:

2. Definitions:-

1) In this Act, unless the context otherwise requires,--

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 establishments the Government of the State in which that other establishment is situate.

g) principal employer means-

i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf.

ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named.

iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine the person so named.

iv) in any other establishment, any person responsible for the supervision and control of the establishment.

8. Section 7 deals with the registration of certain establishments and it reads as

follows:

7. Registration of certain establishments:--

1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment. Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

2) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.

9. Section 12 speaks about the requirement of obtaining a licence by contractors for undertaking the contract works of the establishments of the appropriate Governments and it reads as follows:

12. Licensing of contractors:--

1) With effect from such date as the appropriate Government may, by notification in the 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

2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made u/s 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the performance of the conditions as may be prescribed.

10. Thus, as per the above provisions of the Act, a contractor who undertakes any contract work under the principal employer has to apply for licence in Form No. IV of the Central Rules by enclosing a certificate in Form No. V from the principal employer. The licensing authority would grant licence to the contractor in Form No. VI. Similar provisions are also provided under the State Rules. The scheme of the Act is making the position very clear that a contractor who is undertaking the works of a Central Government establishment has to obtain the licence from the licensing authority of the Central Government. If a contractor undertakes the works of an establishment of the State Government, he has to obtain licence from the State Government. The scheme of the Act is further clear from the relevant provisions regarding the application to be made to the

licensing authority. The enclosure of the certificate from the principal employer is also indicating that there cannot be any confusion regarding the establishments which are registering with the concerned authorities and granting of licenses to the contractors who are undertaking the works under the principal employer.

11. The learned counsel for the first respondent submitted that when he made an application for licence before the Assistant Commissioner of Labour, Government of Andhra Pradesh, the Assistant Commissioner issued licence to it, therefore, there is no necessity to obtain another licence from the licensing authority of the Central Government and it is entitled to continue as a contractor to Jet Airways Limited without obtaining separate licence from the licensing authority of the Central Government in view of the availability of the licence issued by the State Government. The learned counsel further contended that the licence required to be obtained is only for its undertaking and not with reference to the establishment under which it is undertaking the contract works.

12. The lower court observed that in the context of the clear definition u/s 2(1) (a) of the Industrial Disputes Act and under the Contract Labour (Regulation & Abolition) Act, 1971, the appropriate Government is the State Government and not the Central Government. After going through the relevant provisions, it is clear that a contractor who undertakes the work of an establishment of the Central Government has to obtain the licence from the licensing authority of the Central Government and if he undertakes the works of an establishment of the State Government, he has to obtain another licence from the licensing authority of the State Government.

13. The Contract Labour (Regulation & Abolition) Act, 1970 was introduced to regulate the activities of the contractors in extending certain basic amenities for contract labour like drinking water, first-aid facilities, rest rooms, canteens etc., for the welfare of the workmen working under the respective establishments. In order to regulate the activities, certain powers were vested with the respective authorities to monitor the functioning of the establishments and to see that the amenities required to be provided under the respective legislations are provided to the workmen. Since the first respondent undertook the contract work from 1997, the revision petitioner was right in taking penal action against it for non-compliance of Section 12(1) of the Act. It is clarified that the mere obtaining licence from the State Government is not sufficient to undertake works under the establishments of the Central Government. Since Jet Airways Limited is undertaking the Air Transport Services, it clearly comes within the purview of the Central Government. When once the establishment is under the control of the Central Government, the contractors who are undertaking the works under such establishments have to invariably obtain licence from the Central Government and the non-obtaining of the licence attracts a penal liability on the first respondent. In the light of the above rule position, I am inclined to hold that since the first respondent undertook the works of Jet Airways Limited, which is an establishment under the control of the Central Government, the first

respondent is required to obtain licence from the licensing authority of the Central Government. The order of the lower court is therefore liable to be set aside.

14. The first respondent contended that it obtained licence in November 2000 from the licensing authority of the Central Government also, but no such document has been produced before this Court. If it is a fact that the first respondent obtained licence from the licensing authority of the Central Government, the concerned authorities would take a note of it regarding the activities of the first respondent from the date of obtaining such licence from the Central Government. Since the first respondent did not obtain any licence for the period prior to 2000, the complainant was right in moving the Court for appropriate action against it.

15. In the result, the revision case is allowed. The order of the lower court dated 31-1-2002 passed in Criminal Miscellaneous Petition No.2090 of 2001 in S.T.C.No.1873 of 2000 is set aside. Since the first respondent is undertaking the works of the principal employer viz., Jet Airways Limited, which is an establishment within the control of the Central Government, the first respondent is bound to obtain licence from the licensing authority of the Central Government.

16. Since the S.T.C. is still pending before the lower court, the learned Magistrate shall decide the case on merits after noting that the Jet Airways Limited, which is the principal employer of the first respondent, is under the control of the Central Government.