

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. No. 2608/2010 & CrI. M.A. 13711/2010(Stay)

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Reserved on: 21<sup>st</sup> March, 2012

Decided on: 11<sup>th</sup> April, 2012

MANTEC CONSULTANT PVT. LTD.

..... Appellant

Through: Mr. O. N. Sharma, Advocate

versus

STATE & ANR.

..... Respondents

Through: Mr. Mukesh Gupta, APP for the State.  
Ms. Nandita Rao, Ms. Veronica  
Mohan, Adv. for R-2.

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

1. By the present petition, the Petitioner seeks setting aside of the order dated 28<sup>th</sup> July, 2010 passed by learned Metropolitan Magistrate summoning the Petitioner company for offence under Section 22 (A) of Minimum Wages Act (hereinafter referred to as 'M.W. Act') and quashing of the criminal complaint No. 15/10/MW titled as MW vs. Mantec Consultant Pvt. Ltd. filed before the learned Metropolitan Magistrate.

2. Learned counsel for the Petitioner contends that the impugned order summoning the Petitioner company is bad in law. It is contended that provisions of Minimum Wages Act are not applicable to the Petitioner Company. The Petitioner Company is neither a scheduled employment nor governed by Delhi Shops & Establishment Act. The company is incorporated under the companies Act and governed by the provisions of the

Companies Act, 1956. Furthermore the Petitioner is a consultancy company having no factory but a call centre registered under STPI. Learned counsel further stated that present complaint is filed with malafide intentions to harass the Petitioner. Before the Dy. Labour Commissioner (South) the Petitioner was present but Sachin Sharma (Workman) absented himself all the time. Thus, the proceedings before the Dy. Labour Commissioner due to workman being not present could not be proceeded further and the same were closed with liberty to workman to reopen the same. Despite the attitude of the workman, Respondent No. 2 filed a false and illegal criminal complaint against the Petitioner based on the complaint filed by the workman Sachin Sharma. Summons issued to the Petitioner are in contravention to the provisions of Section 204(3) Cr.P.C. as the summons issued were not accompanied by the copy of the complaint.

3. Per contra, learned counsel for the Respondent No.2 states that the present petition is an abuse of process of law. Respondent No.2 after verifying the facts of the complaint and giving ample opportunity to the Petitioner has filed the criminal complaint before the learned Metropolitan Magistrate. The Petitioner Company falls within the ambit of Delhi Shops and establishment Act to which the new minimum rates of wages in Delhi is applicable. Merely its incorporation under the Companies Act does not take it out of the ambit of the Delhi Shops and Establishment Act. Thus the present Petition has no merit and is liable to be dismissed.

4. Heard learned counsel for the parties.

5. Briefly, the facts of the case are that on 19<sup>th</sup> March, 2010 one Sachin Sharma employed with the Petitioner M/s Mantec Consultant Pvt. Ltd. filed

a complaint against the Petitioner in the office of Deputy Labour Commissioner, District South. This complaint was marked to Respondent No.2 for investigation. For the purpose of investigation, Respondent No. 2 visited the establishment of the Petitioner at Vishal Bhawan, 95 Nehru Place. The Petitioner could not produce the records demanded by Respondent No.2, therefore, the Petitioner was directed to produce the record in his office. Despite giving ample opportunity granted to the Petitioner Company, no record was produced before Respondent No.2. Thereafter, Respondent No.2 filed a complaint against the Petitioner for violation of Rules 21(4), 25(2), 15, 26(2), 14, 10 and 22 of the M.W. Act punishable under Section 22 of the Act. Learned Metropolitan Magistrate after perusing the record vide order dated 28<sup>th</sup> July, 2010 summoned the Petitioner. This summoning order passed by the learned Metropolitan Magistrate is impugned in the present petition.

6. It is relevant to note that the Minimum Wages Act applies to all the employments mentioned in the Schedule as notified by the State Government. In case where the employment is not notified under the Schedule, then for the purposes of determination of the minimum wages in such employments, the Delhi Shops and Establishment Act comes into play. It is admitted by the Petitioner that the company is a call center. It may be noted that the services of the call centers are governed by the Shops and Establishment Act. In Delhi, the Delhi, Shops and Establishment Act, 1954 (in short the Act) governs the minimum wages of the establishments which are not covered/scheduled under the Minimum Wages Act. Section 2(5) of the Act reads as under:-

2 (5) "commercial establishment" means any premises wherein any trade, business or profession or any work in connection with, or incidental or ancillary thereto, is carried on and includes a society registered under the Societies registration Act 1860 (XXI of 1860) and charitable or other trust, whether registered or not, which carries on any business, trade or profession or work in connection with or incidental or ancillary thereto, journalistic and printing establishments, contractors and auditors establishments quarries, and mines not governed by the Mines Act, 1952 (XXXV of 1952), educational or other institution run for private gain and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on, but does not include a shop or a factory registered under the Factories Act, 1948 (LXIII of 1948), or theatres, cinemas, restaurants, eating houses, residential hotels, clubs or other places of public amusement or entertainment;

7. Thus the Section applies to all the premises where trade, business or profession or any work in connection with or incidental or ancillary thereto is carried on. The section specifically excludes a shop or a factory registered under the Factories Act. Had the legislature intended to exclude the companies registered under the Companies Act from the purview of the Section, it would have specified the same as done for a factory registered under the Factories Act. It is, therefore, clear that where any company carries on any work which is ancillary or incidental to any business, it will be covered/governed by the Delhi Shops and Establishment Act. Hence the contention of the learned counsel for the Petitioner that being a call centre company it is not governed by the Delhi Shops and Establishment Act holds no ground. Vide notification dated 26<sup>th</sup> July, 2011, the minimum wages of the Employment in all Shops and Other Establishment are covered by the Delhi Shops and Establishment Act, 1954 and not covered by any other scheduled employment were revised. Thus the Petitioner Company being

governed by the Delhi Shops and Establishment Act, the new minimum wages applicable to Delhi as revised by the notification will be applicable to the employees of the Petitioner Company. The violation of the rules of the Delhi Shops and Establishment Act will make the Petitioner liable to be prosecuted under the Act. I find no force in the contention of learned counsel for the Petitioner that the summons issued to the petitioner are bad in law. It is well settled that the provisions under Section 204(3) Cr.P.C. are merely directory and failure to attach copy of the complaint petition to the summons would not vitiate the trial.

8. Keeping in view the facts and circumstances of the case, I find no reason to quash the complaint or set aside the summoning order. The summoning order suffers from no illegality warranting interference of this Court. The petition and application are accordingly dismissed being devoid of any merit.

**(MUKTA GUPTA)**  
**JUDGE**

**APRIL 11, 2012**  
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