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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 277 OF 2003
WITH
WRIT PETITION No. 278 OF 2003

1. AIR India Ltd.)
a Company incorporated under the)
Company's Act, 1956, having its)
Head Office at Air India Building,)
Nariman Point, Mumbai 400 021)
2. Shri Deepak Samal, Director (GSD))
Air India Limited, having his office at)
CSIA, Airport, NIPTC, Sahar,)
Mumbai – 400 099 ... Petitioners

Vs.

1. S. Gunahari,)
Labour Enforcement Officer (Central)
1, Shram Raksha Bhavan, Shiv)
Srushti Road, Eastern Express)
Highway, Sion, Mumbai – 400 022)
2. Union of India through,)
Regional Labour Commissioner)
(Central) 1, Shram Raksha Bhavan,)
Shiv Srushti Road, Eastern Express)
Highway, Sion, Mumbai – 400 022 ... Respondents

Mr. Sudhir Talsania, Sr. Counsel a/w Ms. Kavita Anchan a/w Sagar Sheth, for the Petitioners.

None for the Respondents.

CORAM : V. M. KANADE, &
B. P. COLABAWALLA, JJ.

DATE : JUNE 8, 2015

ORAL JUDGMENT [Per : V. M. KANADE, J.]

1. Heard the learned counsel appearing on behalf of the Petitioners. None appears on behalf of the Respondents though they are served. By these petitions, which are filed under Article 226 of the Constitution of India, Petitioners are seeking an appropriate writ, order and direction to declare that provisions of Contract Labour Act are not applicable to the extent of contract of Ground Handling Services entered into between Petitioner No. 1 and various foreign airlines. Petitioners are also seeking appropriate writ, order and direction for quashing of Criminal Case Nos. 42/SLC/02 (in WP No. 277/2003) and 70/SLC/02 (in WP No. 278/2003), filed under Section 23 & 24 of the Contract Labour (Regulation & Abolition) Act, 1970 and Contract Labour (Regulation & Abolition) Central Rules, 1971, both pending before the 22nd Metropolitan Magistrate, Andheri.

2. Brief facts, which are relevant for the purpose of deciding both the petitions are as under:

(i) Petitioner No. 1 is a Government Company incorporated under the Indian Companies Act, 1956. It is engaged in airline industry. It has its operation all over the world and it is a national carrier. It has about 16,000 permanent employees in various categories.

(ii) By virtue of powers conferred by Section 42 of the Airports Authority of India Act, 1994 (55 of 1994) and in supersession of International Airports Authority of India (General Management, Ground Handling of Air Transport Services) Regulations, 1984, and National Airports Authority (General management), entry for Ground Handling of Air Transport Services Regulations, 1989, the Airports Authority of India with the previous approval of the Central Government passed regulations in terms of “Ground Handling” authorising the Petitioners and other two Airline Companies to undertake Ground Handling Services on contract basis. By virtue of Regulation 3 of Airports Authority of India (General Management, Entry for Ground Handling Services), Regulations, 2000, Petitioner

No. 2 herein is also authorised to enter into contract for the purpose of ground handling services at an airport with other foreign airline companies.

(iii) The Respondents filed two criminal complaints against the Petitioners, purportedly on the ground that the contract entered into by Petitioner Nos. 1 and 2 with other foreign airlines in respect of ground handling activities, was contrary to Section 23 & 24 of the Contract Labour (Regulation & Abolition) Act, 1970 and Contract Labour (Regulation & Abolition) Central Rules, 1971.

3. Being aggrieved by the said order of issuance of process passed in both the criminal cases, Petitioners have approached this Court by filing the two Petitions. Mr. Talsania, learned senior counsel appearing for the Petitioners submitted that one of the essential operations of Airline industries is ground handling of the flights. He submitted that there are 14 different ground handling activities like reservation and accommodation, load control, communications and departure control system, Unit Load Device control, Passenger and Baggage handling, cargo and post office mail, etc., which is more particularly mentioned in paragraph 3 of the petition. He submitted

that by virtue of rules and regulations, which are framed pursuant to powers conferred by Section 42 of the Airports Authority of India Act, 1994, Petitioners are authorised to enter into contract with foreign airlines in respect of ground handling of flights. He submitted that the purpose behind passing the said resolution was to authorise the operator to enter into such contract since foreign airlines may not have the necessary infrastructure for the purpose of entering into contract of ground handling activities. He submitted that the Respondents without taking into consideration the powers conferred on the Petitioners by statutory regulations, filed the two criminal complaints for violations of the provisions of Section 23 & 24 of the Contract Labour (Regulation & Abolition) Act, 1970 and Contract Labour (Regulation & Abolition) Central Rules, 1971.

4. He further submitted that so far as ground handling activities are concerned, the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 and Contract Labour (Regulation & Abolition) Central Rules, 1971, are not applicable by virtue of Regulation 1989, under which the Regulations, 2000 in terms of “Ground Handling” were framed on 1.2.2002. He submitted that

therefore, impugned orders of issuance of process and the complaints filed against the Petitioners, are liable to be quashed and set aside.

5. No reply has been filed by the Respondents though the petitions were filed in 2003 and the rule was served on them. Firstly, the averments made in the petition are not controverted by the Respondents.

6. Even otherwise, perusal of the relevant regulations, more particularly Regulation 3 of the Airports Authority of India (General Management, Entry for Ground Handling of Transport Services) Regulations, 2000 (for short “Regulations, 2000”) clearly indicates that the operator or carrier may either carry out ground handling services at an airport by itself or engage the services of any of the following:

- (I) Airports Authority of India;
- (II) The two national carriers Air India & Indian Airlines;
- (III) Any other handling agency licensed by the Airports Authority of India.

The term “Ground Handling” has been defined under Rule 2(e) of the above Regulations, as under:

“2(e) “Ground Handling” means:

- (i) ramp handling and will include activities as specified in Annexure 'A' to the Regulations;
- (ii) traffic handling and will include activities as specified in Annexure 'B' to the Regulations;
- (iii) any other activity designated by the Chairman to any part either of ramp handling or traffic handling.”

7. The settlement contract, which is annexed to the petition indicates that foreign airlines have entered into a contract in respect of ground handling services, with Air India and Indian Airlines; and they were authorised under the Regulations, 2000 to enter into such a contract.

8. Apart from that, the said contract is on principal to principal basis, and therefore, the question of violation of the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 and the Contract Labour (Regulation & Abolition) Central Rules, 1971, does not arise at all, since the provisions of Regulations, 2000 clearly authorise the Petitioners to enter into contract of ground handling activities, which are more specifically enumerated in paragraph 3 of the petition. In our view, therefore, there is clear non application of mind in issuing the process. The Apex Court in the case

of - *R. P. Kapur, Appellant Vs. State of Punjab, Respondent [AIR 1960 SC 866]* has given some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised, which are as under:

- (i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.
- (ii) Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not.
- (iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is

evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S. 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.”

Ratio of this judgment has been followed in the subsequent judgment by the Apex Court in the case of *State of Haryana Vs. Bhajanlal* [AIR 1992 Supreme Court 604].

9. In the present case, therefore, ratio of both the above judgments squarely apply to the facts of the present case, since there is a specific legal sanction given to the Petitioners to enter into contract and therefore, they are clearly excluded, even otherwise, from the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 the Contract Labour (Regulation & Abolition) Central Rules, 1971. The Respondents, therefore, could not have prosecuted the Petitioners

for carrying out the activities of ground handling activities, which are legally permitted under the Regulations.

10. Impugned complaints filed by the Respondents are, therefore, quashed and set aside. Both the petitions are allowed and disposed of in terms of prayer clauses (a) and (c). Rule is made absolute in the aforesaid terms, in both the petitions.

Sd/-

[B. P. COLABAWALLA, J.]

Sd/-

[V. M. KANADE, J.]

Vinayak Halemath