IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51373 of 2013

Arising Out of PS.Case No. -467 Year- 2010 Thana -PATNA COMPLAINT CASE District-PATNA

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1. IDBI Bank Ltd. having Its Corporate Office at Cufe-Prade, WTC Complex, Mumbai- 400005 through its authorized Representative, Mr. Rizwan Khan, At Present Posted as Deputy General Manager/Regional Head, Bihar in IDBI Bank Limited at 3rd Floor, Kashi Place, Dak Bungalow Crossing, Patna- 800001
2. Mr. M.R.Gupta, at Present Posted as Assistant General Manager, Raipur, Chhattisgarh, Earlier Posted as Branch Head, IDBI Bank Ltd., Main Branch, at Uma Complex, Fraser Road, Patna- 800001

.... Petitioner/s

Versus

1. The Union of India through Labour Secretary, Govt. of India.
2. The Chief Labour Commissioner (Central), Government of India, Shram-Shakti Bhawan, Rafi Marge, New Delhi- 100001
3. The Regional Labour Commissioner (Central), Maurya Lok Complex 2nd Floor, A-Block, Patna
4. Labour Enforcement Officer (Central), Maurya Lok Complex 2nd Floor, A-Block, Patna

.... Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Chitrangan Sinha, Sr. Advocate.
		Mr. Kumar Manish, Advocate.
For the Union of India	:	Mr. Awadhesh Kumar Pandey, SCGC.
		Mr. Ravindra Kumar Sharma, CGC.

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
Date: 22-08-2017

Heard, Mr. Chitrangan Sinha, learned senior counsel for the petitioners and Mr. Awadhesh Kuamr Pandey, the learned counsel for the Union of India.

2. This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 15.04.2010 passed in Complaint Case No. 467(C) of 2010, whereby the learned

Chief Judicial Magistrate, Patna, took the cognizance for the offence under Sections 28(A) and Section 29 read with Section 30 of the Payment of Bonus Act, 1965, against the accused-petitioners.

3. The facts leading to this application are that one Niranjan Kumar, Labour Enforcement Officer (C), Patna-II, filed the Complaint Case No. 467(C) of 2010 against the I.D.B.I. Bank Ltd. and its Official Chairman-cum- Managing Director and branch head of Main Branch, Uma Complex, Fraser Road, Patna, to the effect the I.D.B.I. Bank Ltd. was engaged in banking and 40 employees were engaged in the said bank at Main Branch, Uma Complex, Fraser Road, Patna, which is a banking company**,** within the meaning of Section 5(C) of the banking Regulation Act, 1949 with effect from 01.10.2004 and is notified as a Scheduled Bank by the Reserve Bank of India under RBI Act, 1934 with effect from 30.09.2004 and also recognized as "Other Public Sector Bank". As such, in terms of Section 1 of the Payment of Bonus Act 1965 and Central Rules made thereunder, the Act is applicable to the establishment of the IDBI Bank Ltd., Patna. The complainant being the Inspector, inspected the establishment of IDBI Bank Ltd., Main Branch, Uma Complex, Fraser Road, Patna, on 16.04.2009 and observed two following irregularities:-

I. Eligible employees have not been paid bonus, though the statutory time limit under Section 19(b) has expired.

II. Form 'C' registers have not been maintained under the provisions of the payment of Bonus Act, 1965 and thus there is breach of Rule 4(C) read with Section 26.

In spite of giving notice and show cause to remove the defects, the defect was not removed. Later on, the Regional Labour Commissioner (Central) also given opportunity to the IDBI Bank Ltd., Main Main Branch, Uma Complex, Fraser Road, Patna, to remove the defect and submit the report in this regard but in spite of that the defects were not rectified. As such, the IDBI Bank Ltd., Main Branch, Uma Complex, Fraser Road, Patna, committed the breach of provision of Section 28(A) and Section 29 read with Section 30 of the Payment of Bonus Act, 1965 and accused-petitioners are liable for punishment.

The learned Chief Judicial Magistrate, Patna, on perusal of the complaint petition took the cognizance for the offence under Sections 28(A) and Section 29 read with Section 30 of the Payment of Bonus Act, 1965, against the accused-petitioners through the impugned order dated 15.04.2010.

4. Learned counsel for the petitioners submits that under the provision of Section 32(ix)(F) of the Payment of Bonus Act, 1965, the Industrial Development Bank of India was exempted to the operation Payment of Bonus Act, 1965. Later on though the enactment of Industrial of Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003 (53 of 2003), the Industrial Development Bank was transferred and vested in the company, i.e., Industrial Development Bank of India Limited and registered under the Company Act. The provision of Section 6 of the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003, speaks that with effect from the appointed day, all fiscal and other concessions, licences, benefits, privileges and exemptions granted to the Development Bank, in connection with the affairs and business of the Development Bank under any law for the time being in force shall be deemed to have been granted to the company. As such, provision of Section 32(IX)(h) of the Payment of Bonus Act is still not applicable to the Industrial Development Bank Ltd. Therefore, no question arise about committing the breach in following the provisions of Payment of Bonus Act, 1965 and impugned order is bad in law.

5. Learned counsel for the opposite parties submits that there is no illegality in the impugned order taking cognizance of the offence under Section 28(A) and Section 29 read with Section 30 of the Payment of Bonus Act, 1965, against the accused-petitioners, but fairly submitted that under Section 32(ix)(f) of the Payment of

Bonus Act, 1965, the Industrial Development Bank of India was exempted for application of Payment of Bonus Act and its Rules and later on, the Industrial Development Bank of India was vested in the company formed as Industrial Development Bank of India Limited on enactment of the Industrial Development Bank (Transfer of undertaking and Repeal) Act, 2003 (53 of 2003) and according to Section 6 of the aforesaid Act, all fiscal and other concessions, licences, benefits, privileges and exemptions granted to the Development Bank, in connection with the affairs and business of the Development Bank under any law for the time being in force shall be deemed to have been granted to the company.

6. On going through the provision of Section 32(ix)(f) of the Payment of Bonus Act, 1965, it is apparent that payment of Bonus Act, 1965 was not applicable to the Industrial Development Bank of India, which was later on transferred and vested in company in the name of in Industrial Development Bank of India Limited on enactment of the Industrial Development Bank (transfer of undertaking and repeal) Act, 2003 (53 of 2003). According to Section 6 of the Act No. 53 of 2003, exemption granted to the Industrial Development Bank of India is still continue to Industrial Development Bank of India Ltd. As such, the impugned order dated 15.04.2010 passed in Complaint Case No. 467(C) of 2010 taking cognizance for the offence under Section under Sections 28(A) and Section 29 read with Section 30 of the Payment of Bonus Act, 1965 appears to be illegal and amounts to abuse of the process of the court.

7. In the result, the cognizance order dated 15.04.2010 passed in Complaint Case No. 467(C) of 2010 and entire criminal proceeding against the accused-petitioners is hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	26.08.2017
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