

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29257 of 2013

Arising Out of P.S.Case No.11 Year- 2010 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

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Bharti Airtel Ltd. Having Its Registered Office At Aravali Crescent, 1 Nelson Mandela Road, Vasant Kunj, Phase-II, New Delhi-110070, India Through Its Authorized Signatory Santosh Kumar Son Of Sri Bhudeo Jha, Resident Of Mohalla & P.S.- Rajeev Nagar, Town & District- Patna

.... Petitioner

Versus

1. The State of Bihar
2. The Labour Superintendent Office of The Deputy Labour Commissioner, Bhagalpur

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Chittranjan Sinha, Sr.Advocate.
: Mr. Rajesh Ranjan, Advocate
For the Opposite Parties : Mr. A.L.Pandit, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 10-10-2017

The present criminal miscellaneous under Section 482 of the Cr.P.C. has been filed to quash the order dated 04.01.2010 passed by CJM, Bhagalpur in Complaint P.S.Case No.11 of 2010 whereby and whereunder the learned Magistrate took cognizance for the offences under Sections 32 and 34 of the Bihar Shops and Establishment Act, 1953 and issued process against the petitioner and other co-accused.

2. Heard learned counsel for the petitioner and learned APP for the State.

3. The facts in brief is that the Opposite Party No.2 being Labour Superintendent, Bhagalpur inspected the premises of the petitioner along with other officials. In course of inspection, it was



found that the office of the petitioner was not registered under Section 6 and rule 3(1) of the Act. At the time of inspection, nine employees were found working but they were not provided with service card under Section 12(b) and rule 12(a) of Bihar Shops & Establishments Act. The company did not produce attendance/payment and other registers as required under the Act. The learned CJM as per impugned order took cognizance against the petitioner and other co-accused on the basis of complaint of Labour Superintendent.

4. After hearing both sides and perusing the material on record, I find that the petitioner is a company registered under the Company Act, 1946 having its registered head office at New Delhi. The company was granted licence by the department of Telecommunication, Govt. of India, New Delhi on 10.02.2004 under the provision of Indian Telegraph Act, 1885, Indian Wireless Telegraphy Act, 1933 and Telecom Regulatory Authority Act, 1977. The learned counsel for the petitioner has challenged the applicability of the Bihar Shops & Establishments Act in relation to their business establishment in Bhagalpur on the basis of Section 4 (2) of the Act and schedule 1 provided thereunder. Section 4 reads thus:-

Exceptions.—(1) The provisions of this Act shall not apply to any precinct or premises of a mine as defined in clause (i) of Section 2 of the Mines Act, 1952 (XXV of 1952).

(2) Notwithstanding anything contained in this Act, the provisions thereof specified in the third column of the Schedule shall



not apply to the establishment, employees and other persons referred to in the corresponding entry in the second column:

Provided that the State Government may, by notification, add to, omit or alter any of the entries in the Schedule in respect of one or more areas of the State and on the publication of such notification, the entries in either column of the Schedule shall be deemed to be amended accordingly.”

The relevant Schedule is Schedule-1 and the relevant entry is Entry No.4 which reads thus:--

“Sl.No.	Establishments, employees or other persons	Provisions of the Act.
4.	<i>Any Railway service, Postal Telegraph or Telephone service, any system of public conservancy or sanitation, and any such establishment as the State Government may by notification exempt.”</i>	All provisions

5. On behalf of the petitioner, Mr. Chitranjan Sinha, Sr. Advocate has submitted that the legislature has used the expressions in entry-4 of the Schedule-1 with care and it does not warrant reading down or any addition so as to restrict the entry in Column-2 only with respect to Railway services; postal telegraph or telephone services run by the Government Departments to the exclusion of such services provided by private companies under valid license or permission. In this regard, the learned counsel cited ruling reported in 2010(4)PLJR 858 whereunder similar nature of criminal prosecution has been quashed by this Court.



6. On the other hand, the Stand of the State and O.P. No. 2 is otherwise. Their stand is that in 1953 when the Act was enacted along with Schedule and particularly entry no.4 to the Schedule, such services were not being rendered by private operators and the legislature could not have comprehended that in view of cellular telephone services as being provided by the petitioners a private Company would also claim exemption from the provisions of the Act. According to them, the true spirit of the Act can be preserved only by interpreting entry no.4 so as to restrict it to prescribed services being rendered only by public authorities and departments.

7. On a careful consideration of the rival submissions, it is manifest that entry no.4 in schedule-1 of the Act does not suffer from any vagueness or does not create any difficulty of implementation so as to warrant any interpretation. On a plain reading of the provisions it has to be held that any of the services mentioned therein whether run by public or private enterprise are entitled to exemption from all provisions of the Act.

8. In view of the aforesaid discussion and finding it has to be held that the petitioner-company, in view of nature of its business and operations in Bihar, is entitled to the benefit of entry no.4 of Schedule-1 of the Act and is exempted from the provisions of the Act by virtue of Section 4(2) of the Act which provides for exceptions. Hence, the case of the petitioners is found to have merit.



9. Hence, following the principle laid in that judgment as well as the matter already adjudicated as regards implementation of this Act in ruling reported in 2010(4) PLJR 858, the entire criminal proceeding and order of cognizance in Complaint P.S.Case No.11 of 2010 are quashed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	07.11.2017
Transmission Date	07.11.2017

