

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17/03/2017

DELIVERED ON 14/11/2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P No.12463 of 2010

and

M.P.No.1 of 2010

The Senior Divisional Manager,
LIC of India,
Having Office at
Divisional Office, Trichy Road,
Coimbatore, Tamil Nadu.

... Petitioner

Vs.

State Represented by the
Labour Enforcement Officer (Central),
Ministry of Labour and Employment,
Government of India,
Room No.3 & 4, Corporation Office Complex,
Raju Street, Tatabad, Sivanandha Colony,
Coimbatore-641 012.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.738 of 2009 pending trial on the file of the Learned Judicial Magistrate No.VII, Coimbatore, and quash the same.

For Petitioner : Mr.Manoj Sreevalsan

For Respondent : Mr.A.Kumara Guru

Senior Standing Counsel, Govt. of India

JUDGMENT

The petitioner in the above Criminal Original Petition was arrived as 1st accused in C.C.No.738 of 2009 on the file of Judicial Magistrate No.VII, Coimbatore and he is facing prosecution in the above case for the alleged offences under

Section 7 of the Contract Labour (Regulation and Abolition) Act 1970 and Rules 74, 81(1)(i), 81(3) and 82(2) of the Contract Labour (Regulation and Abolition) Central Rules 1971 (herein after called as 'Act' and 'Rule').

2. According to the petitioner, on 16.03.2009 the respondent herein inspected the establishment of the petitioner herein as per the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. In the said inspection they have observed the following offences:

1. BREACH OF SECTION 7: Executing works by employing contract Labours through Contractors without valid certificate of Registration.

2. BREACH OF RULE 74: Failed to maintain the register of contractors in Form XII

3. BREACH OF RULES 81(1)(i): Failed to display of notices of wages, hours of work, wage period, date of payment, name and address of the inspector and date of payment of unpaid wages in English, Hindi & Tamil.

4. BREACH OF RULES 81(3): failed to submission of notice of commencement of contract work in form VIB.

5. BREACH OF RULE 82(2): Failed to submission of Annual return in form XXV for the year ending 2008.

3. The respondent also issued show cause notice to the petitioner herein who being the Principal employer within the meaning of Section 2(1)(g) of the Contract Labour (Regulation and Abolition) Act, 1970. On receipt of the show cause notice, the petitioner herein sent a reply to the respondent on 07.05.2009 by registered post with acknowledgement due. In the said reply it is stated that the petitioner's establishment availed out source security services to cover their own building. The petitioner also enclosed a copy of letter of M/s. Stalwart Security Services of India Limited. Without accepting the reply sent by the petitioner, the respondent herein filed the above complaint under Sections 23 and 24 of the Contract Labour (Regulation and Abolition) Act, 1970 before the Judicial Magistrate No. VII, Coimbatore and the same was taken on file in C.C.No.738 of 2009 and the learned Magistrate issued summon to the accused. In the said complaint the Senior Divisional Manager, Life Insurance Corporation of India, the petitioner herein is arrayed as 1st accused and the establishment namely the Divisional Office, Tirchy Road, Coimbatore is arrayed as 2nd accused. On receipt of the summon, the petitioner herein approached this Court to quash the above complaint by invoking the inherent powers of this Court under Section 482 of Cr.P.C.

on the ground that the charge against the petitioner is not at all maintainable in law as the provision of the Contract Labour (Regulation and Abolition) Act 1970 is not applicable to the petitioner. The other ground raised by the petitioner to quash the above complaint is that the above said act does not apply to LIC of India because it cannot be treated as an "establishment" under the Act. Under Section 2(e) of the Act "establishment" means (i) any office or department of the Government or a local authority or (ii) any place where any industry, trade, business, manufacture or occupation is carried on. At the Divisional Office of LIC of India no industry, trade, business, manufacture or occupation is carried on. Further having been created under the Life Insurance Corporation of India Act, 1956 the LIC of India is a body corporate established under a statute. Hence it is not an office or Department of the Government or Local Authority.

4. Per contra, the respondent herein contended that at the time of inspection of the petitioner's establishment on 16.03.2009 as per the above said Act it was found that the petitioner establishment engaged contract laborers without having valid registration certificate. Further there are 21 contract laborers through 2 contractors were employed in the petitioner's establishment. After noticing the above said violations, the respondent herein sent show cause notice to the petitioner establishment and for that they submitted a reply dated 07.05.2009 and the same did not contain any details as alleged in the quash petition. For the breach of Section 7, Rule 74, 81(1)(i), 81(3) and 82(2) of the above said Act and Rule, the petitioner is liable to be punished under Section 24 of the said Act. For the said offence the accused shall be punishable with fine which may extend to Rs.1,000/- or imprisonment for 3 months or with both. Without conducting trial relating to the above C.C., it cannot be quashed at the threshold itself. Whether the petitioner has committed the offence under the Contract Labour (Regulation and Abolition) Act, 1970 and Rules, 1971 or not could be decided after adducing oral and documentary evidence by having full-fledged trial. Hence, the respondent prays to dismiss the above quash petition.

5. I heard Mr. Manoj Sreevalsan, learned counsel appearing for the petitioner and Mr. A. Kumara Guru, learned Senior Standing Counsel, Government of India, appearing for the respondent and perused the entire records.

6. It is contended by the learned counsel for the petitioner that the petitioner herein who is arrayed as 1st accused in C.C.No.738 of 2009. It is further contended that their

establishment has engaged only 19 contract laborers and they were engaged by way of out sourced job security services namely M/s.Stalwart Security Services of India Limited. Therefore Section 1(4)(a) of the said Act will have no application for the establishment of the petitioner, since as per the said Section if 20 or more workmen are engaged in contract labour work, it is a violation of the said Act. Here the petitioner has employed only 19 workmen and hence the question of applicability of this Act does not arise.

7.Whereas it is contended by the learned counsel for the respondent that during the course of inspection by the respondent herein at the petitioner's establishment namely LIC of India, Divisional Office, Coimbatore, the respondent found that 21 contract laborers are engaged by the petitioner establishment which according to Section 7, Rule 74, 81(1)(i), 81(3) and 82(2) of the Contract Labour (Regulation and Abolition) Act 1970 and Rules 1971 is an offence and therefore the petitioner is liable for punishment under Section 24 of said Act.

8.It is seen from the records that the petitioner has engaged contract labour from M/s.Stalwart Security Services of India Ltd for the purpose of security services and they are having valid license to provide private security vide license No.65 of 2009 which is valid upto 07.12.2014 under the Tamil Nadu Private Security (Regulation) Act, 2005 and Tamil Nadu Private Security Agency, 2008.

9.That apart, this Court also considered the other submission of the learned counsel for the petitioner that the above said Act does not apply to the LIC of India because it cannot be treated as an "establishment" under the Act. In this regard the learned counsel for the respondent placed reliance of the Judgment of this Court in the case of Andrew Stern, Gurgaon V. Labour Enforcement Officer (Central), Ministry of Labour, Chennai reported in 2009 (1) MLJ (CrL.) 650 it is held that:

"13.A reading of the above said provisions under the Act makes it is crystal clear that (i) the Act applies to every establishment and every contractor who employs or who employed twenty or more workmen on any day of the preceding twelve months as contract labour; (ii) the workmen shall be deemed to be employed as "contract labour" when he was hired by the establishment or through a contractor with or without knowledge of the principal employer; and (iii) "principal employer" means "a person responsible for the supervision and control of the establishment".

14. In view of the above provisions it is incumbent on the complainant to make specific averments in the complaints to make out a prima facie case to the effect that the provisions of the Act and the Rules are applicable to the petitioner herein and thereafter to proceed to make allegations constituting the offence under the Act on the ground of breach of the provisions of the Act.

15. At the outset, this Court is constrained to state that the impugned complaints in both the matters are not only bereft of fundamental details to make out a prima facie case of the applicability of the Act and Rules against the petitioner but also lacks specific averments and allegations constituting the breach of the provision of the Act and the Rules.

16. It is pertinent to be noted that the impugned complaints contain only vague and bald allegations by merely quoting the breach of the specific provisions of the Act and the Rules without specifying as to how and in what manner the petitioner company would come within the purview of the Act and the Rules. It is seen from the impugned complaints that it is stated at paragraph 3 as follows:

"3. That the above named accused is the Principal Employer within the meaning of Section 2(2)(c) of the Contract Labour (Regulation and Abolition) Act, 1970, who was engaged in the work of ENGAGED WITH CARGO HANDLING WORK AT AIRPORT AUTHORITY OF INDIA, CHENNAI."

17. It is curious to note that there is no such provision under the Act as 2(2)(c) and this averment contained in the impugned complaints discloses that there is total non-application of mind on the part of the respondent/complainant and the complaints have been filed arbitrarily and mechanically. As already pointed out, the definition of "principal employer" comes under Section 2(1)(g) of the Act and as per the said provision any person responsible for the supervision and control of the establishment is a "principal employer". But there is no averment in the complaints to the effect that the petitioner, as the principal employer, has employed or hired any workmen either by himself or through a contractor for the work of the establishment, viz., M/s. British Airways World Cargo. It is merely alleged in the complaint that the petitioner was engaged in the work of cargo handling at AAI, Chennai and at the risk of repetition, it is to be re-iterated that there is no whisper to the effect that the petitioner has engaged workmen numbering twenty or more either by himself or through any contractor for the work of the establishment, viz., M/s. British Airways World Cargo and as such the complainant has not made out any

prima facie case of the breach of the alleged provisions under the Act against the petitioner and therefore, the proceedings are liable to be quashed".

10. This Court also considered the other Judgment of the Hon'ble Apex Court reported in (2008) 12 SCC 498 in the case of Reserve Bank of India V. State Represented by M.R.Bhavsar, Bombay it is held that:

"The appellants in Criminal Appeal No.61/2002 took the stand before the High Court that the Act does not apply to the RBI and/or the college because neither can be treated to be an establishment under the act. The High Court did not accept the stand and held that there was no scope of exercising power in terms of Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Code') or Article 226 of the Constitution of India, 1950 (in short 'the Constitution'). The High Court found that the appellants are not prosecuted as an industry but as a government department/office and, therefore, can be treated to be an establishment under the Act. Accordingly, the petitions were dismissed.

RBI is constituted under the Reserve Bank of India Act, 1934 (in short 'RBI Act'). In the introduction of RBI Act it is stated as follows:

"To regulate the issue of Bank notes and for the keeping of reserves with a view to securing monetary stability in British India and generally to operate the currency and credit system of the country to its advantage it was found expedient to constitute a Reserve Bank of India. Accordingly, the Reserve Bank of India Bill was introduced in the Legislature."

11. In view of the discussion above and in the light of the Judgments referred above, this Court has no hesitation to quash the proceedings in C.C.No.738 of 2009 for the reason that there is no whisper in the complaint of the respondent that the petitioner establishment has engaged 20 or more workmen. It is incumbent on the complainant to make a specific averments in the complaint to make out a prima facie case to the effect that the provisions of the Act and the Rules are applicable to the petitioner's establishment. In the absence of a specific averment, the complaint has to be quashed. Therefore, Section 1 (4) (a) of the said Act will have no application for the establishment of the petitioner. Further as per the judgment of the Hon'ble Apex Court mentioned Supra, the Act itself is not applicable to the petitioner establishment which is not coming under the definition of "establishment" as defined under Section

2(e) of Contract Labour (Regulation and Abolition) Act 1970. When the Act itself is not applicable to the petitioner establishment, the complaint filed by the respondent by invoking Sections 23, 24 of the said Act is liable to be quashed. The respondent has not made out any prima facie case to proceed with the complaint and so, it is quashed.

12. In the result, this Criminal Original Petition is allowed and the proceeding in C.C.No.738 of 2009, on the file of the learned Judicial Magistrate No.VII, Coimbatore, is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

The Judicial Magistrate No.VII,
Coimbatore.

+1cc to Mr.Manoj Sreevalsan, Advocate in sr.no.81069

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and
M.P.No.1 of 2010

NRI (CO)
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