

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.O.P.Nos.1392 and 1393 of 2012
and
M.P.Nos.1, 1, 2 and 2 of 2012

Mahadevan
S/o.Dr.Narayanan

..Petitioner in both petitions

Vs.

The State represented by
The Labour Enforcement Officer (Central),
Government of India/Ministry of Labour,
No.26, Haddows Road,
Shastri Bhavan,
Chennai - 600 006.

.. Respondent in both petitions

Criminal Original Petition filed under Section 482 of the
Criminal Procedure Code praying to call for the records in
C.C.Nos.3096 and 3095 of 2011 on the file of learned XVI
Metropolitan Magistrate, George Town, Chennai respectively and
quash the same.

For Petitioner : Mr.N.R.Elango, senior counsel
for Mr.P.V.Balasubramaniam

For Respondent : Mr.Su.Srinivasan,
Additional Solicitor General

C O M M O N O R D E R

Petitioner seeks quash of proceedings in C.C.Nos.3095 and
3096 of 2011 on the file of learned XVI Metropolitan Magistrate,
George Town, Chennai.

2. Petitioner is the Managing Director of M/s. Oriental
Cusines Pvt. Ltd. Oriental Cusines Pvt Ltd(hereinafter referred
to as the company) entered into an agreement with the Indian
Railway Catering and Tourism Corporation Ltd (hereinafter
referred to as IRCTC) on 23.12.2002. Under such agreement the
company was granted a license to set up and operate a food Court

at the Chennai Central Railway station through single or multiple outlets with independent or common kitchen. A right to sub license to some of the outlets was reserved to it. The company entered granted a sub license agreement to Hotel Saravana Bhavan, a proprietary concern under agreement dated 15.07.2005. The Labour enforcement Officer (Chennai) inspected the outlet run by sub licensee on 24.08.2011 and pursuant thereto issued a show cause notice alleging breach of Rule 25(2) viii, 81(1)(i), 71, 79, 75r/w Rule 80(1), 78(1)(a)(i) r/w Rule 80(1), 78(1)(a)(ii) r/w Rule 80(1), 78(1)(a)(ii) r/w Rule 80(1), 78(1)(a)(iii) r/w Rule 80(1), 76, 78(1)(b) and Rule 19 of Contract Labour (Regulation & Abolition) Act, 1970,

3. Pursuant there to complaint was preferred by the respondent in C.C.No.3095 of 2011 in respect of violation of 25(2) viii, 81(1)(i), 71, 79, 75r/w Rule 80(1), 78(1)(a)(i) r/w Rule 80(1), 78(1)(a)(ii) r/w Rule 80(1), 78(1)(a)(ii) r/w Rule 80(1), 78(1)(a)(iii) r/w Rule 80(1), 76, 78(1)(b) and Rule 19 and complaint in C.C.No.3096 of 2011 in respect of violation of u/s.24 of the Contract Labour (Regulation & Abolition) Act, 1970, (hereinafter referred to as the Act) for breach of Rules 25(2)(viii), 81(1)(i), 71, 79, 75 r/w 80(1), 78(1)(a)(i) r/w 80(1), 78(1)(a)(ii) r/w 80(1), 78(1)(a)(iii) r/w Rule 80(1), 76, 78(1)(b) and 19. The complainant arrayed the petitioner, the Managing Director of the company and the proprietor of the Hotel Saravana Bhavan as accused. He informed that accused fulfilled the character of 'contractor' u/s. 2(1)(c) of the Act. Seeking quash of such complaint cases against him, petitioner has moved the present criminal original petitions.

4. Heard learned counsel for petitioner and the learned Additional Solicitor General for respondent.

5. It has been contended on behalf of the petitioner that as a licensee of the IRCTC company, the company would not fall within the definition of the term contractor under the Act. It has also been contended that appropriate Government to enforce the provisions of the Act in the instant case would be the State Government and as the complainant was an official of Central Government, the very inspection, issue of show cause notice and preference of complaint were illfounded. It was further contended that the petitioner was the Managing Director of the company and in circumstances where the company had not been made an accused, the preference of complaint against him without informing his particular role in the violations alleged rendered the complaints against him negatory.

6. It has been contended on behalf of respondent that IRCTC was a Railway company which had obtained a valid certificate of registration under the Act from the Assistant Labour

Commissioner, Chennai in the capacity of Principal employer, that the company was a contractor and hotel Saravana Bhavan was one of the sub contractors and as such the appropriate Government was the Central Government and the inspection, issuance of show cause notice and preference of complaints were well founded.

7. These petitions are to be allowed for the following reasons:

(i) the contention of IRCTC being a Railway company is misplaced. Sec.2(a) of the Industrial Disputes Act informs that the appropriate Government means the Central Government in relation to any industrial dispute concerning any industry carried on by or under the authority of Central Government, or by a Railway company. Though the Central Government is informed to be the appropriate Government in respect of various other industries/ services etc., suffice it to state that where the Central Government specifically is not informed to be the appropriate Government then the appropriate Government would be the State Government. It is only where transport and allied services are rendered directly by or under the authority of the Railway administration that the appropriate Government would be the Central Government. The IRCTC is an independent legal entity. We may inform that the very obtaining of a certificate of registration by the IRCTC from the respondent was unnecessary. IRCTC ought to have caused such registration with the State Government. The company is a licensee of IRCTC and Hotel Saravana Bhavan is a sub licensee. In decision reported in 2001 CrLJ 4163, a Division Bench of High Court of Patna informed thus:

" 11. It was held that the Civil Aviation Department which sells the privilege to do portage in its premises cannot be considered to be the principal employer within the meaning of the Act, for the work done by the contract labour is not part of the work of the establishment. The members of the Union were the employees of the Society and the Society was the contractor on whom the licence or the privilege to enter the premises of the Airport and do portage service for the travelling passengers, cannot be construed to be the rights of the contract labour against their employer and the Society is construed as consisting of its members as the members of the Society and cannot fall within the definition of contract labour. If this analogy is brought in the present case, it is found that the Railways had no liability to provide foods and drinks to its passengers. But to facilitate

proper privilege to the passengers the petitioner was engaged for providing foods and drinks to the passengers putting some restrictions regarding hygiene and health condition and not to ask for any abrupt or exorbitant charges from the passengers. In that way, the premises of the running train if provided under licence fee, it cannot be said that the principal employer is the Railways. The contract of sale of foods and drinks is in between the petitioner and the Railway passengers. Only a premise of the Railways in the running train had been provided on payment of licence fee to facilitate supply of such foods and drinks. It does not come within the definition of contract and establishment as per the Act.""

We are in respectful agreement.

In the light of what is above stated, the issue of the complaints being bereft of particulars as to the role played by the petitioner in the alleged wrong doings does not arise for consideration. We however would state that such submission is not without merit.

These Criminal Original Petitions are allowed. The proceedings in in C.C.Nos.3095 and 3096 of 2011 on the file of learned XVI Metropolitan Magistrate, George Town, Chennai, are quashed. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

gm
To

- 1.The XVI Metropolitan Magistrate,
George Town, Chennai.
- 2.The Labour Enforcement Officer (Central),
Government of India/Ministry of Labour,
No.26, Haddows Road,
Shastri Bhavan,
Chennai - 600 006.

3.The Additional Solicitor General,
High Court, Chennai-104.

Crl.O.P.Nos.1392 and 1393 of 2012

rsv[co]
srg 24/09/2018



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