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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 4th October, 2018

+ CRL. M.C. 1381/2016 & CrI.M.A. 5983/2016

VAIDEHI THAKAR

..... Petitioner

Through: Mr. N.B. Joshi, Advocate with
Mr. Abhijeet Negi, Advocate

Versus

GOVT. OF NCT OF DELHI & ANR.

.... Respondents

Through: Ms. Meenakshi Dahiya, APP
and Mr. Mukesh Kumar, APP
for the State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the criminal complaint (CC No.55/1/15) of the second respondent (the complainant), the petitioner was summoned by the Metropolitan Magistrate, by order dated 09.09.2015, on the accusation of offence punishable under Section 18 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short, "the Act of 1955").

2. Feeling aggrieved, the present petition was filed invoking the inherent power and jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) primarily on the submission that the complainant (a functionary of Govt. of National

Capital Territory of Delhi) has wrongly invoked its jurisdiction, the petitioner's establishment having shifted to Noida, (Uttar Pradesh) to the knowledge of the complainant, *inter alia*, by communication sent in answer to various notices (including for show-cause) and having subjected itself to the jurisdiction of corresponding authorities of the Government of Uttar Pradesh and consequently the proceedings in the criminal case being in the nature of abuse of the process of law.

3. The Indian Express Private Limited (the company) of which the petitioner is the Director is described as a private limited company incorporated under the Companies Act, 1956, its registered office being at Express Towers, 2nd Floor, Nariman Point, Mumbai-400021 and the corporate office at Express Building, B1/B, Sector 10, Noida-201301. It is engaged in the business of printing and publication of newspaper and periodicals and is popularly known as "*the Indian Express Group*". Having regard to the averments of the parties, it emerges as an indisputable fact that the petitioner company was earlier operating from premises described as M/s. Indian Express, 9 & 10, Express Building Bahadurshah Zafar Marg, Express Building, New Delhi-110 002 from where it shifted to the aforesaid address of Noida in U.P. over the period.

4. Having regard to the allegations in the criminal complaint, it appears that the inquiries leading to the prosecution for offence under Section 18 of the Act of 1955, had commenced in the wake of directions of the Supreme Court on the subject of implementation of the recommendations of Wage Board which was constituted by the

Central Government for Working Journalists and Non-Journalist Newspaper and News Agency Employees headed by Justice Majithia (for short, “*Majithia Wage Board*”). A batch of writ petitions led by Writ Petition (Civil) No.246/2011, titled *ABP Pvt. Ltd. & Anr. vs. Union of India & Ors.* had come to be filed which were decided by a common judgment dated 07.02.2014, the directions wherein were that the wages as revised or determined in terms of *Majithia Wage Board* shall be payable *w.e.f.* 11.11.2011, which is the date on which such recommendations had been notified, all the arrears upto March, 2014 to be paid to all eligible persons in four equal instalments within a period of one year from the date of the said judgment and the revised wages from April, 2014 onwards continued to be paid thereafter.

5. It appears there were certain grievances about timely compliance with the directions, and this led to a number of contempt petitions being brought before the Supreme Court. By a common order dated 28.04.2015 passed on the said batch of contempt petitions, led by Contempt Petition (Civil) No.411/2014 in Writ Petition (Civil) No.246/2011, titled *Avishek Raja & Ors. vs. Sanjay Gupta*, the Supreme Court while keeping the contempt matters pending issued certain further directions that read thus:-

“All the State Governments acting through their respective Chief Secretaries shall, within four weeks from today, appoint Inspectors under Section 17(b) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 to determine as to whether the dues and entitlements of all categories of Newspaper Employees including Journalists under the Majithia Wage Board

award has been implemented in accordance with the terms thereof. The inspectors appointed by the State Government will naturally exercise their powers as provided under the Act and shall submit their report to this Court through the Labour Commissioners of each State indicating the precise findings on the issue indicated above. This will be done within a period of three months from the date of appointment under Section 17(b) of the Act.”

6. The Act of 1955 was brought on the statute book with the objective of regulating conditions of service of working journalists and other persons employed in newspaper establishments. The expression “newspaper” is defined by Section 2(b) of the Act of 1955 to mean, “*any printed periodical work containing public news or comments on public news, etc.*” The expression “newspaper employee” means, per Section 2(c), “*any working journalist, and includes any other person employed to do any work in, or in relation to any newspaper establishment*”. The expression “newspaper establishment” means, as per Section 2(d), “*an establishment under the control of any person or body of persons, whether incorporated or not, for the production or publication of one or more newspapers or for conducting any news agency or syndicate*”, while, the expression “working journalist” means, per Section 2(f), “*a person whose principal avocation is that of a journalist and includes an editor, a leader-writer, news editor, sub-editor, etc.*”. The expression, “non-journalist newspaper employee” is defined by Section 2(dd) to mean, “*a person employed to do any work in, or in relation to, any newspaper establishment, but not including working journalist, or*

those employed in managerial, administrative or supervisory capacity, etc.”

7. Section 2 (g) of the Act of 1955 adopted the meaning of all the words and expressions as given in the Industrial Disputes Act, 1947 for purposes of this law. It is in this context that the petitioner relies on the meaning of the expression “*Industrial Establishment or Undertaking*” as given by Section 2(ka) of the Industrial Disputes Act, 1947, which reads, thus:-

“(ka) "Industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,-

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking.”

8. The Industrial Disputes Act, 1947 also defines the expression “appropriate government” by Section 2(a) which, to the extent relevant, reads thus:-

“(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government:

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment.”

9. There is no dispute as to the fact that clause (i) which prescribes the Central Government to be the appropriate government concerns entities which have no correlation with the dispute at hand, and, therefore, is inapplicable.

10. The following further two provisions of the Act of 1955 are relevant:-

“17A. Maintenance of registers, records, and muster-rolls.- Every employer in relation to a newspaper establishment shall prepare and maintain such registers, records and muster- rolls and in such manner as may be prescribed.”

“17B. Inspectors.-

(1) The State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act and may define

the local limits within which they shall exercise their functions.

(2) Any Inspector appointed under sub- section (1) may for the purpose of ascertaining whether any of the provisions of this Act or of the Working Journalists (Fixation of Rates of Wages) Act, 1958 (29 of 1958), have been complied with in respect of a newspaper establishment--

(a) require an employer to furnish such information as he may consider necessary;

(b) at any reasonable time enter any newspaper establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the establishment;

(c) examine with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the newspaper establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be or to have been an employee in the establishment;

(d) make copies of or take extracts from any book, register or other documents maintained in relation to the newspaper establishment;

(e) exercise such other powers as may be prescribed.

(3) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code.

(4) Any person required to produce any document or thing or to give information by an Inspector under sub-section (2) shall be legally bound to do so."

11. It appears that in terms of the rules framed with reference to the aforementioned provision contained in Section 17A, there are requirements for certain records to be maintained in respect of the employees of newspaper establishments, they including register of employees, service register in respect of all working journalists, leave register in respect of working journalists and maintenance of muster-roll in the prescribed format. As can be seen from the provision contained in Section 17B quoted above, an inspector appointed by the State Government may for the purpose of ascertaining whether provisions of this law or of the Working Journalist (Fixation of Rates of Wages) Act, 1958 have been complied with in respect of newspaper establishment, call for requisite information that may include balance sheet, list of employees, payments made including on account of arrears, such information may be with reference to the specified financial years or part(s) thereof.

12. It appears that the complainant had issued a communication dated 27.04.2015 to the petitioner calling for certain information vis-à-vis its establishment regarding compliance of the recommendation of *Majithia Wage Board*. There is no clarity as to whether the said communication ever reached the petitioner or not, the case of the latter being that the same was not served. Be that as it may, another communication dated 06.05.2015 followed, calling for the information with reference to order dated 07.02.2014 of the Supreme Court in the aforementioned writ petitions. The petitioner submitted reply dated 14.05.2015 pointing out that the company had shifted its corporate office from Delhi to Noida (to the aforesaid address) and it having

made certain compliances with the requirements of the Government of Uttar Pradesh (U.P.) including by securing the entrepreneurs memorandum number, no objection certificate in respect of environmental pollution, no dues certificate in respect of water dues and factory licence under Section 6 of the Factories Act, 1948, respecting the press activities which were undertaken from property at A-8, Sector 7, Noida, U.P.. The petitioner informed the complainant by the said communication that the Govt. of NCT of Delhi had no jurisdiction in its respect since Government of Uttar Pradesh was the appropriate government, the recommendations of *Majithia Wage Board* having been implemented and compliances also having been reported to the Inspector appointed by the Government of U.P.

13. The complainant, however, issued a memorandum dated 25.05.2015, ignoring the reply dated 14.05.2015 calling for detailed information so as to examine if *Majithia Wage Board* recommendations had been implemented or not. The petitioners responded by detailed reply dated 03.06.2015 with which copy of the earlier reply dated 14.05.2015 was re-submitted. It was brought to the notice of the complainant that the entire newspaper establishment had shifted to the Noida office, there having been left only two employees of the company at its New Delhi address, they being neither working journalists nor non-working journalist. By another communication dated 04.06.2015 sent to the complainant, the petitioner again informed that its establishment had moved out of Delhi to Uttar Pradesh on 13.04.2015 and, therefore, it was appropriate that the

Inspector appointed by the State of Uttar Pradesh should examine compliances on its part.

14. The criminal complaint was filed taking note of the position taken by the petitioner that its establishment had moved out of Delhi to Noida, Uttar Pradesh and that it did not have any such staff in Delhi as can be covered by *Majithia Wage Board* award. It, however, alleged that on 25.05.2015 during the visit to the office at New Delhi “workers were found working” and, therefore, notice had been served on its representative but the petitioner had failed to produce the record consequent to which show cause notice dated 24.06.2015 was issued calling for the production of the relevant records alleging that the petitioner had failed to furnish the requisite information or to submit the documents in respect of the afore-quoted records, compulsorily required to be maintained, offence under Section 18 of the Act of 1955 had been committed.

15. As noted earlier, the complainant is not disputing that the petitioner had shifted its newspaper establishment from Delhi to Noida by April, 2015. The directions of the Supreme Court which led to the inquiry culminating in the complaint being filed were issued by order dated 28.04.2015. Concededly, by such time the petitioner had shifted its establishment to Noida in Uttar Pradesh.

16. Against the background facts noted above, it was inappropriate and unfair on the part of the complainant to proceed with the filing of the criminal complaint alleging breach of the compliances in the above nature respecting the establishment, the pre-dominant activities

relevant to the issue whereof were being undertaken within the jurisdiction of another State, it having been specifically informed that such compliances were being made post such shifting and were being reported to the authorities, appointed under the law by such other State Government.

17. Since the directions of the Supreme Court include compliance about the payment of arrears, it is inherent in the scrutiny that would have been undertaken by the appropriate government – here the Government of Uttar Pradesh – to satisfy itself in such regard respecting the date from which *Majithia Wage Board* award became effective. In this view, it was neither just nor proper to split up the scrutiny by the inspectorate of two State Governments in a case of this nature where the newspaper establishment had shifted from Delhi to Noida (Uttar Pradesh) midway the process.

18. In the foregoing factual matrix, filing of the criminal complaint leading to the impugned summoning order being passed is found to be an abuse of the process of law. Consequently, the petition is allowed. The impugned order dated 09.09.2015 passed by the Metropolitan Magistrate on the complaint of the second respondent is hereby set aside and the proceedings against the petitioner arising from the said complaint are hereby quashed.

19. The petition and the pending application stand disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 04, 2018/vk