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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 4th October, 2018

+ CRL.M.C. 3941/2015 & CRL.M.A. Nos. 13976-13977/2015,
2473/2018

SHOBHANA BHARTIA & ORS. Petitioners

Through: Mr. Mohit Mathur, Senior
Advocate with Mr. Sandeep
Kapur, Mr. Vivek Suri, Mr.
Mayank Datta and Mr. Aashneet
Singh, Advocates.

versus

STATE NCT OF DELHI & ANR. Respondents

Through: Mr. Mukesh Kumar, APP for
the State

+ CRL.M.C. 3947/2015 & CRL.M.A. Nos. 17806-17807/2015,
2472/2018

HINDUSTAN MEDIA VENTURES LTD. & ORS.

.... Petitioners

Through: Mr. Mohit Mathur, Senior
Advocate with Mr. Sandeep
Kapur, Mr. Vivek Suri, Mr.
Mayank Datta and Mr. Aashneet
Singh, Advocates.

versus

STATE NCT OF DELHI & ANR. Respondents

Through: Mr. Mukesh Kumar, APP for
the State

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the criminal complaint (DLC/NDD/IO/2015/2398) dated 14.08.2015 of the second respondent (the complainant), the petitioners were summoned by the Additional Chief Metropolitan Magistrate, by order dated 21.08.2015, on the accusation for 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 by the above said order, the present petitions were 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 petitioners’ 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 Hindustan Media Ventures Limited (the company) of which the second petitioner (in CrI.M.C. 3947/2015) is the Director and with which the other petitioners are associated in various capacities including that of Chairperson, Directors, Chief Executive Officers, *etc.*, is described as a private limited company incorporated under the Companies Act, 1956, its registered office being at 18-20, Kasturba Gandhi Marg, New Delhi-110 001 and the corporate office at Plot No.164, Block-C, Sector 63, Noida, District Gautam Budh Nagar, Uttar Pradesh-201301. It is engaged in the business of printing and distribution of '*Hindustan*' newspapers. 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 18-20, Kasturba Gandhi Marg, New Delhi-110 001 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 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 06.06.2014, to the petitioners calling for certain information *vis-à-vis* its establishment regarding compliance of the recommendation of *Majithia Wage Board*. The petitioner made compliance by submitting requisite information by letter dated 19.06.2014. Noticeably, it was indicated in the said report that all its journalists had been engaged on contract and had opted out of *Majithia Wage Board*. There is no dispute as to the fact that on 7.10.2014 the petitioners submitted quarterly progress report for the period from July to September, 2014 in relation to implementation of *Majithia Wage Board*, this reiterating what had been submitted by earlier communication dated 19.06.2014.

13. On 23.09.2014, the complainant issued the communication addressing it to the petitioners at their New Delhi address requiring quarterly progress report for the period ending with September, 2014 to be submitted in the prescribed format. In reply, the petitioners by communication dated 01.10.2014 informed the complainant that its newspaper establishment had shifted to the new premises described as Plot No.C-104, Sector 63, Noida, District Gautam Budh Nagar, Uttar

Pradesh. It was also indicated that the quarterly progress report was being submitted with the concerned Deputy Labour Commissioner. This was reiterated by e-mail sent on 16.02.2015.

14. A show cause notice thereafter was issued by the complainant on 02.07.2015 taking note of the intimation about shifting of the establishment from New Delhi to Noida w.e.f. 01.08.2014 insisting on the documents and information to be furnished regarding implementation of *Majithia Wage Board* award for the period 01.07.2010 to 31.07.2014. The petitioners, through their authorized signatory, sent a detailed reply on 09.07.2015 reiterating the earlier communication and submitting, *inter alia*, that the *Majithia Wage Board* award was implementable from 11.11.2011 and not from 01.07.2010 and further that the information and quarterly progress reports were being submitted to the authorities exercising jurisdiction in the State of Uttar Pradesh. The complainant then issued an amended show cause notice on 15.07.2015 reiterating the requirement of the petitioners to comply with the information and documents concerning the period from 01.07.2010 to 31.07.2014. The petitioners submitted reply to this amended show cause notice on 22.07.2015, adding thereto the copies of the details submitted to the inspector appointed by the State of Uttar Pradesh.

15. It is against the above backdrop that the complaint on which the impugned order was passed, was submitted seeking prosecution of the petitioners alleging non-compliance due to failure to submit the records in the nature mentioned above.

16. As noted earlier, the complainant is not disputing that the petitioners had shifted its newspaper establishment from Delhi to Noida by 01.08.2014. 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.

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

18. 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. The petitioners have placed on record copy of the affidavit submitted by the Labour Commissioner of the State of Uttar Pradesh in the Supreme Court pursuant to order dated 28.04.2015 in Contempt Petition (Civil) No.411/2014 indicating, *inter alia*, report respecting the petitioners having implemented *Majithia Wage Board* recommendations.

19. 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 wherein the newspaper establishment has shifted from Delhi to Noida (Uttar Pradesh) midway the process.

20. It is pointed out that in response to application under Section 6 of the Right to Information Act, 2005, the complainant has furnished information on 20.07.2016, sharing the copy of the quarterly progress report, prepared by the office, *inter alia*, confirming that the petitioner's is a newspaper establishment which has not been functioning in Delhi, it having fully implemented the *Majithia Wage Board* award in respect of the eligible persons and no journalists or non-journalists employees engaged by it presently being deployed in Delhi office.

21. 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 21.08.2015 passed by the Additional Chief Metropolitan Magistrate on complaint of the second respondent is hereby set aside and the proceedings against the petitioners arising from the said complaint are hereby quashed.

22. The petitions and pending applications stand disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 04, 2018

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