

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 607 OF 2021

The Sub Area Manager,
WCL, Ukni Junad Sub Area,
Uday Anant Kawale, SAM,
Wani North Area,
PO, Ukni, Tq. Wani,
Dist. Yavatmal – 445304.

.... **Petitioner**

- **Versus** -

- (1) State Represented by,
Labour Enforcement Officer (Central),
Kamal Complex, First Floor,
Near Ambedkar College, Ram Nagar,
Chandrapur – 442401
- (2) M/s Kalinga Commercial Corporation Ltd
Through Shri Soumya Rajan Samal,
Managing Director,
C-112, HIG Housing Board Colony, BaraMunda
Bhubaneswar, Odhisa-741003

.... **Respondents**

Mr. S. C. Mehadia, Advocate for the petitioner
Ms. Neerja G. Choubey, Advocate for respondent no. 1
None for respondent no. 2

**CORAM : ROHIT B. DEO, J.
DATED : 1st October, 2021.**

ORAL JUDGMENT

Heard.

2. Rule. Rule made returnable forthwith.

3. Heard finally with consent of learned counsel appearing for the parties.

4. The petitioner is arraigned as accused 1 in Criminal Case 1060/2015 which is pending in the Court of Judicial Magistrate (First Class), Court No. 2, Wani, District Yavatmal. The petitioner is seeking quashment of the complaint, *inter alia* on the ground that even if, every averment in the complaint is taken at face value, no offence is made out, much less under Section 24 of the Contract Labour (Regulation and Abolition) Act, 1970.

5. The substratum of the complaint is that, contravening notification 2063 dated 21-6-1988 issued by the Central Government, the petitioner engaged contract labour through M/s. Kalinga Commercial Corporation Limited to execute the work of removal of overburden or earth cutting and the material of strata.

6. Learned counsel for the petitioner Mr. Mehadia would submit that the said notification is duly considered by this Court in Criminal Writ Petition 315 of 2006 decided by the learned Single Judge vide judgment dated 15-1-2015. Perusal of paragraph 4 of the

said decision shows that this Court has observed that what is prohibited by the notification in question is employing contract labour for actually executing the work as mentioned in the schedule. The learned Single Judge further observed that what is prohibited by the notification is engaging contract labour to carry out the work manually. The relevant observations in the said decision reads thus :

“4. A plain reading of the above referred notification will show that what has been prohibited is employing contract labour for actually executing the work as mentioned in the schedule including the work of “Overburden removal and earth cutting”. It means that the contract labour which has been engaged to carry out the same manually is only in law prohibited by this notification. The notification has been issued with a view to carry out the objects of the said Act and intends to serve as a protection contract labourers from undue exploitation. The object of the Act is to regulate contract labour employment and to prohibit it in certain circumstances and for matters connected therewith. Therefore, the only interpretation that can be given to the expression “employment of contract labour” in the notification dated 21.6.1988 is that only that contract labour which is employed or engaged to carry out the prohibited works manually is covered by this notification.”

7. In all fairness, the learned counsel for respondent, who is appearing for the Labour Enforcement Officer (Central), Ms. Neerja Chaubey does not join issue with the submission canvassed by

Mr. Mehadia. It does not appear to be in dispute, that the said decision squarely covers the issue involved.

8. The criminal prosecution would be an abuse of process of law and this petition is allowed in terms of prayer clause (a) which reads thus :

- a. Quash and set aside the proceeding in Criminal Case No. 1060/2015 pending on the file of Judicial Magistrate (F.C.) (Court no. 2), Wani, Dist. Yavatmal).

JUDGE

wasnik