

29.8.2022
Court No.35
Sl. No.41
SD

CRR 642 of 2018

In the matter of: Naba Kumar Das

....Petitioner.

Mr. Sandipan Ganguly
Mr. Dipanjan Dutt

... for the Petitioner.

Mr. Lal Mohan Basu

... for the Opposite Party No.1.

Mr. Anwar Hossain
Ms. Sujata Das

... for the State.

This is an application for quashing of the proceeding being Complaint Case No. CR 254 of 2017 (Registration No.268/2017) under Sections 29/30/31/32/33/34 of the Motor Transport Workers Act, 1961 pending before the Court of learned Judicial Magistrate, Balurghat, Dakshin Dinajpur.

The petitioner herein assumed the elected position of the Secretary of a Trust, namely, Balurghat Educational Promotion and Welfare Trust and the said Trust has inter alia established a self-financed teacher training institution namely, Balurghat B.Ed College.

The allegations leveled in the complaint are, inter alia, to the effect that the opposite party visited Balurghat B. Ed College on 01.11.2017 and found that the petitioner is the employer within the meaning of Section 2(e) of the Motor Transport Workers Act, 1961 and Rule 4 of the West Bengal Motor Transport Workers Rules, 1963.

The opposite party thereupon served a notice upon the petitioner on 15.11.2017 with a direction to file show cause but no satisfactory reply was forthcoming and as such, the complaint has

been lodged. Learned Judicial Magistrate, Dakshin Dinajpur at Balurghat upon receipt of the aforesaid complaint was pleased to take cognizance vide order dated 22.11.2017 and was further pleased to transfer the case record to the file of the learned Judicial Magistrate, Balurghat for disposal in accordance with law and learned Judicial Magistrate, Balurghat after receipt of case record was pleased to issue process against the petitioner under Section 204 of the Code of Criminal Procedure.

Mr. Sandipan Ganguly, learned advocate appearing on behalf of the petitioner, submits that from the four corners of the impugned complaint, it does not constitute offence under any of the provisions of the Motor Transport Workers Act, 1961 or Rule made under the West Bengal Motor Transport Workers Rules, 1963 and learned Magistrate was not justified in taking cognizance of the same.

Mr. Ganguly further submits that the expression “motor transport undertaking” has been defined in Section 2(g) of the Act and in the conspectus of the facts of the instant case, there is no mention of any notification in the official gazette applying the provision of the said Act to any motor transport undertaking employing less than five motor transport workers. Thus, as the law stands in the state, the provisions of the said act apply only to a motor transport undertaking employing five or more motor transport workers.

Mr. Ganguly further submits that it is trite law that one of the requisites for drawing a motor transport within the ambit of the said Act is the operation of such motor transport for hire or for

reward. There exists no allegation that the Balurghat B.Ed College has undertaken any motor transport facility for carrying passengers or goods or both by road, for hire or reward. It is apparent that Balurghat B.Ed. College does not operate a “Motor Transport Undertaking” within the meaning of the said term as defined in the said Act and the provision of the said Act is not extended to Balurghat B.Ed. College. That apart, the inspection report of the Inspector under the said Act alleges his engagement of only one worker by Balurghat B.Ed. College but under the said Act, it is required that at least five or more “motor transport workers” should be there to attract the provision of said Act. Thus, the impugned proceeding is wholly bereft of any basis of law and the same is abuse of process of the court and accordingly, he prayed for quashing the entire proceeding.

Mr. Lal Mohan Basu, learned advocate appearing on behalf of the opposite party no.1, leaves the matter to the discretion of the Court.

Considering the submission made by both the parties, it appears from Section 1(4) of the Motor Transport Workers Act, 1961 that the said Act applies to every motor transport undertaking having five or more transport workers. From the prosecution’s own inspection report it appears that only a single workman employed in the said establishment namely Balurghat B.Ed College only one.

Furthermore, in the said inspection Note the nature of industry has been mentioned as “educational institution” but Section 2(g) defines “motor transport undertaking” in respect of which the said Act is applicable, which means a motor transport

undertaking engaged in carrying passengers or goods or both by road for hire or reward and includes a private carrier.

In this context, Mr. Ganguly has also filed one certificate of registration of the vehicle in question which stands in the name of Balurghat B.Ed. College Trust. In the present case, the said Balurghat B.Ed. College Trust has not been impleaded and as such, relying upon *Aneeta Hada vs. Godfather Travels and Tours Private Limited* reported in (2012) 5 SCC 661 Mr. Ganguly submits that the proceeding is not maintainable in the absence of the impleading Balurghat B.Ed. College Trust as a party in this case.

Having considered the aforesaid facts and circumstances of the case and that from the documents relied by the prosecution it is clear that the Motor Transport Workers Act, 1961 has got no application either against the petitioner or against the trust namely Balurghat Educational Promotion and Welfare Trust which was formerly known as Balurghat B.Ed. College, I find that further continuation of the present proceeding would be a mere abuse of process of court.

Accordingly, CRR 642 of 2018 is allowed and all the proceeding being Complaint Case No. CR 254 of 2017 (Registration No.268/2017) under Sections 29/30/31/32/33/34 of the Motor Transport Workers Act, 1961 pending before the Court of learned Judicial Magistrate, Balurghat, Dakshin Dinajpur is hereby quashed.

However, there will be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Ajoy Kumar Mukherjee, J.)