

29.8.2022
Court No.35
Sl. No.42
SD

CRR 643 of 2018
With
CRAN 6 of 2022

In the matter of: Naba Kumar Das

....Petitioner.

Mr. Sandipan Ganguly
Mr. Arkadeb Bhattachary

... for the Petitioner.

Mr. Lal Mohan Basu

... for the Opposite Party No.1.

Mr. Anwar Hossain
Ms. Sujata Das

... for the State.

This revisional application has been preferred for quashing of the proceedings of Complaint Case No. CR 255 of 2017 (Registration No.269/2017) under Sections 22/22A read with Section 22C of the Minimum Wages Act, 1948 pending before the Court of learned Judicial Magistrate, Balurghat, Dakshin Dinajpur.

The allegation made in the said petition of complaint, inter alia to the effect that the petitioner is an employer within the meaning of Section 2(e) of the Minimum Wages Act, 1948 of the establishment under the name and style of Balurghat B.Ed College. That the petitioner, being the employer has violated the provisions of minimum wages Act 1948 by not paying the rate of wages fixed by the Government to the employees and further allegation leveled regarding engagement of employees beyond the working hours and not providing employees a day rest for every period of seven days and also violated provision of said act for not paying overtime on a normal working day and also for not displaying notice in Form XIII and by not maintaining any register of wages and by not taking thumb impression of every employee etc.

The opposite party visited the establishment namely Balurghat B.Ed. College on 01.11.2017 when he found the aforesaid contravention and/or irregularities. On 15.11.2017 the opposite party served a notice upon the petitioner to show cause as to why legal proceedings should not be initiated against the petitioner and as petitioner did not give any reply, so the instant proceeding has been initiated.

It is submitted on behalf of the petitioner that the petitioner is completely innocent and no way connected with the alleged offence. The petitioner is the nominated President of the Governing Body of the Balurghat B.Ed. College as well as the Secretary of Balurghat Educational Promotion and Welfare Trust. The said Balurghat B.Ed. College is a self-financed private teacher training institution which runs as per the rules and regulations framed under National Council for Teacher Education (NCTE) Act, 1993 and its Regulations 2014 and is recognized by the University Grants Commission and also accredited by National Assessment & Accreditation Council (NAAC). The affiliation of Balurghat B.Ed. College was transferred to the newly established West Bengal University of Teacher's Training Education Planning and Administration from the University of Gour Banga. Formerly it was affiliated to University of North Bengal.

Mr. Sandipan Ganguly, learned advocate appearing on behalf of the petitioner, submits that by no stretch of imagination the petitioner can be termed as "employer" as contemplated under Section 2(e) of the Minimum Wages Act, 1948. Since the employment of the staff of Balurghat B.Ed. College does not come under the purview of either Part I or Part II of the Schedule of the

Minimum Wages Act, 1948. Part I and Part II of the Schedule of the said Act lays down the List of Scheduled Employment which is covered under the Minimum Wages Act, 1948 and as defined under Section 2(g) thereof. The said institution is a non-government aided institution and the governing body of the self-financed institution is bestowed with the responsibility of recruiting and/or appointing the employees and the employees are appointed after being duly interviewed and selected by the affiliating University. The salaries or fees are paid to the employees by the governing body of the institution as per the norms and regulations of the affiliating university namely West Bengal University of Teacher's Training Education Planning and Administration. Therefore, the Minimum Wages Act, 1948 as well as West Bengal Minimum Wages Rules, 1951 have no manner of application in the instant case since the staff employed in the Balurghat B.Ed. College cannot be construed as employee as envisaged under Section 2(i) of the Minimum Wages Act, 1948.

Mr. Ganguly further submits that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The order of the learned Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The learned Magistrate also has to examine the nature of the allegations made in the complaint and the evidence in support thereof and determine as to whether the same would be sufficient for the complainant to succeed in bringing home the charge of the accused. The learned Magistrate also has to carefully scrutinize the evidence brought on record and then examine if any offence had

been committed by any of the accused. It is apparent in the present case that the allegations made by the opposite party do not make out any contravention of the provisions as alleged and as such, the learned Magistrate by holding that a prima facie case has been made out against the petitioner regarding commission of the offence punishable under Section 22/22A read with Section 22C of the Minimum Wages Act, 1948 has exposed non-application of judicial mind to the facts as disclosed in the complaint. 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.

Considered the submissions made by both the parties.

The term employer has been defined in Section 2(e) of the Minimum Wages Act 1948 which clearly stipulates that employer means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under the Act.

Section 2(g) of the said Act defines “scheduled employment” means an employment specified in the Schedule, or any process or branch of work forming part of such employment. The Schedule of the said Act divided into two parts. In the Part I & II there are list of schedule employments which is covered under the Act.

On perusal of both the schedule of the Act it does not appear that aforesaid establishment comes within the purview of “scheduled employment”. Moreover, it appears that concerned

establishment is a society under the name and style Balurghat B.Ed. College Trust wherein the petitioner is a Secretary. Accordingly, without adding the society as a party, the present proceeding cannot be continued. In this context, reliance has been placed in *Aneeta Hada vs. Godfather Travels and Tours Private Limited* reported in (2012) 5 SCC 661.

Having considered the aforesaid facts and circumstances of the case, it appears that the cognizance taken by the Magistrate is bad in law and it has been taken without applying judicial mind and as such, the entire proceeding is liable to be quashed.

Accordingly, CRR 643 of 2018 is allowed and all the proceeding being Complaint Case No. CR 255 of 2017 (Registration No.269/2017) under Sections 22/22A read with Section 22C of the Minimum Wages Act, 1948 pending before the Court of learned Judicial Magistrate, Balurghat, Dakshin Dinajpur is hereby quashed. CRAN 6/2022 accordingly disposed of.

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.)