

(2006) 05 JH CK 0024

Jharkhand High Court

Case No: Criminal M.P. No. 586 of 2003

R.T. Singh and Another

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: May 15, 2006

Acts Referred:

- Minimum Wages (Central) Rules, 1950 - Rule 21(4), 22, 25(2), 26, 26(1)
- Minimum Wages Act, 1948 - Section 12(1), 18, 19, 22A, 22B

Citation: (2006) 3 JCR 360

Hon'ble Judges: D.K. Sinha, J

Bench: Single Bench

Advocate: Rana Pratap Singh, for the Appellant; APP, for the Respondent

Final Decision: Allowed

Judgement

D.K. Sinha, J.

The petitioners have preferred this petition for quashing of their criminal prosecution including the order impugned dated 26.8.2002 whereby and whereunder the CJM Jamshedpur took cognizance of the offence u/s 22-A of the Minimum Wages Act, 1948 (hereinafter referred to as the Act) in C/2 case No. 2007/02 now pending in the Court of Miss Shweta Kumari, Judicial Magistrate, 1st Class, Jamshedpur.

2. The prosecution report/complaint case vide C/2 case No. 2007/02 was filed by the complainant/OP No. 2 herein against the petitioners and Ors. for the alleged violation of Sections 12(1) and 18 of the Minimum Wages Act, 1948 and Rules 21(4), 22, 25(2), 26, 26(1), 26(2) and 26(5) of the Minimum Wages (Central) Rules, 1950 on the backdrop that when the OP No. 2 on 15.7.2002 with the witnesses had inspected Bharat Special Security, Jamshedpur situated in M/s. Dealers Apprentices Hostel, irregularities were found in contravention of the Minimum Wages Act and the Rules as mentioned hereinabove.

3. A notice vide memo No. 2747 dated 26.7.2002 was sent to the employers to show-cause which was replied on 29.7.2002, but upon being dissatisfied with the contents of the causes shown and presuming that the employers were not interested in rectifying the defects, a complaint was filed in the Court of CJM for taking cognizance u/s 22-B of the M.W. Act and to punish them u/s 22-A of the said Act. learned Counsel submitted that the petitioners are the senior officer of M/s. Telco (Tata Motors) and the prosecution report/complaint is silent as to how they are connected with the affairs of Bharat Special Security, Jamshedpur though in the column of accused as contained in SI. No. 2 of the prosecution report Mazor Bansal has been specifically figured as the employer of Bharat Special Security, Jamshedpur situated behind Telco dispensary and similarly, the prosecution report is further silent as to how the petitioners herein are connected with the affairs of M/s. Dealers Apprentices Hostel, Ring Road, Telco, Jamshedpur.

4. From the information gathered by the petitioners it was revealed that the residents of Dealers Apprentices Hostel have constituted Hostel Committee popularly known as Mess Secretary, General Secretary, caretaker etc. to look after the overall supervision of the work of persons employed for the boarders of Hostel for running mess, cleanliness etc. The Committees even managed their security to be paid by the residents of the Hostel from their own funds.

5. learned Counsel further submitted that no minimum rate of wages has been fixed by the Government for domestic servant/ employees and therefore, they do not come within the schedule employment. Similarly the liability and responsibility of maintaining the records/registers of various nature for various purpose as alleged in the prosecution report is neither of these petitioners nor of Tata Motors but the petitioners have been implicated without any basis with arbitrary and mala fide motive. As a matter of fact the petitioners have nothing to do with the payment of salary wages etc. to the staff/employee of Bharat Special Security and/or M/s. Dealers Apprentices Telco, Jamshedpur.

6. There was no allegation that in course of their visit the OP No. 2 as well as other witnesses found persons working in schedule employment and were engaged by the petitioners. The prosecution report was silent that the petitioners were required to maintain registers/records as employers under the Act and Rules, which they failed to maintain. Similarly no specific reason was assigned in the prosecution report on the basis of which the OP No. 2 gathered that the petitioners had been violating the provisions of the Act and the Rules.

7. Advancing his argument, learned Counsel submitted that the prosecution report is silent as to whether during the course of visit by the prosecution team including the OP No. 2 the labourers, if at all working there, -had made any complaint to him regarding his minimum wage. The prosecution report did not disclose the basis upon which the OP No. 2 presumed that the petitioners were not interested in rectifying the records/registers and that they continued violation of the Act and

Rules.

8. learned Counsel finally submitted that the prosecution report/complaint did not contain the propriety of the OP No. 2 as "Inspector" by the appropriate Government, notified in the official Gazette as provided u/s 19 of the Minimum Wages Act. Similarly no sanction has been obtained before prosecuting the petitioner as required u/s 22(B) of the Minimum Wages Act, 1948 and on the said grounds the cognizance of the offence against the petitioners is illegal which was drawn by the CJM Jamshedpur in a mechanical manner without applying his judicial mind.

9. On the other hand, learned Counsel for the opposite party submitted that the premises of Dealers Apprentices Hostel was inspected by the opposite party No. 2 as well as the other witnesses on 15.7.2002 in which 5 workers were found to be working as Security Guards for that the petitioners as well as the Mazor Bansal employer of M/s. Bharat Security Guards were asked to show-cause vide letter No. 2331 dated 26.7.2002 but without response. In course of inspection it was brought to the notice of the OP No. 2 that the petitioners as well as Mazor Bansal were the employer of M/s. Bharat Special Security and that the petitioners were responsible for overall management. learned Counsel for the opposite party further contended that as per notification No. XI/MW-4022/94 L & E-dated 21.12.1995 the Government notified the minimum wages for "Any Shop Establishment other than that covered under any of other entries in the schedule" and therefore contention of the petitioners that such employment in the Hostel does not come within the schedule employment is distortion of fact and is misleading. Similarly the letter No. 2748 dated 26.8.2002 which is the forwarding of the prosecution report and marked Annexure 1 of this petition is sufficient to show that the petitioners is an Inspector under the law. The administrative sanction was obtained vide order No. 160 dated 26.8.2002 as contained in Annexure-B to the counter-affidavit and therefore the prosecution report is maintainable in the eyes of law and in this manner the cognizance taken by the CJM was legal and justified.

10. By way of reply to the counter-affidavit the learned Counsel for the petitioners submitted that the opposite party miserably failed to bring any material or notification on the record to infer that the opposite party No. 2 was an Inspector by way of duly notified in Gazette, appointed by the Government, under the provision of the Minimum Wages Act, for the nature of the employment alleged to be involved in the present case. learned Counsel clarified that the petitioners by their causes shown vide letter No. 2331 dated 26.7.2002 had clearly stated that they had nothing to do with the affairs of the. employment in Dealers Apprentice Hostel or security staffs working therein. The causes shown has been annexed as Annexure-3 the grounds of dissatisfaction has also not been mentioned in the prosecution report and the OP No. 2 had introduced new fact by way of counter-affidavit that 5 Security Guards were found working but it is nowhere mentioned that any one of them by disclosing his name was interrogated by the prosecution party in respect of his

minimum wages.

11. learned Counsel for the petitioners pointed out, controverting the averment made in the counter-affidavit by the opposite party that prior to taking cognizance of the offence no sanction letter was produced with the prosecution report as the Annexure-1 did not contain it in the Court of CJM Jamshedpur. As a matter of fact an information slip was filed in the Court of Shri S.N. Tiwari, Judicial Magistrate, 1st Class, Jamshedpur on 24.8.2004 enquiring as to whether any sanction letter was filed by the complainant in C/2 case No. 2007/ 2002 till 24.8.2004 which was replied in negative till the date of supplying information by the Court concerned on 25.8.2004. Inference can be drawn thereby that false affidavit has been filed on behalf of the opposite party which is indicative that they have not come with clean hands and have misled the Court.

12. The petitioners relied on a decision reported in [State of Haryana Vs. Brij Lal Mittal and Others](#), in which the Apex Court held :

In the present case except the bald statement in the complaint that the respondents were Directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were incharge of the Company and also responsible to the Company for the conduct of its business therefore, the complaint is liable to be quashed.

13. At last the learned Counsel submitted that from perusal of the order impugned dated 26.8.2002 it would be evident that the learned CJM after perusal of the sanction order as required under the law has taken the cognizance of the offence against the petitioners and therefore, for want of sanction order the cognizance of the offence is bad in law and liable to be set aside with the entire criminal prosecution against the petitioners in the present case.

14. Considering the rival contentions of the parties on the facts as well as law, I find that the opposite party failed to connect the petitioners as the employer of the employees working in M/s. Dealers Apprentice Hostel, Ring Road, Telco, Jamshedpur though Mazor Bansal has been clearly mentioned in the prosecution report as the employer of Bharat Special Security, Jamshedpur. The prosecution report was silent as to how many persons were working in the Dealers Apprentice Hostel during the visit of the prosecution party and how many of them were interrogated who, in their view, come within the category of "Schedule Employment".

15. The propriety of the OP No. 2 as the Inspector for launching prosecution has also not been proved by producing any notification of the Government as required u/s 19 of the Minimum Wages Act. Though Annexure-B has been annexed with the counter-affidavit which shown sanction order for launching prosecution against the petitioners vide administrative sanction No. 156 of 26.8.2002 accorded by the Deputy Commissioner of Labour, Jamshedpur but the prosecution report was not supported with that sanction letter as is evident from Annexure-4 filed on behalf of

the petitioners which clearly indicates that no sanction letter was produced in the Court of Shri S.N. Tiwari, Judicial Magistrate, 1st Class, Jamshedpur in C/2 case No. 2007/ 02 till 25.8.2004 whereas the cognizance of the offence was taken by the CJM Jamshedpur on 26.8.2002 without the sanction order which is bad in law u/s 22-B(1)(a) of the Minimum Wages Act, 1948.

16. The prosecution of the petitioners, under the facts and circumstances of the case, is therefore, not maintainable either in law or on facts and that the opposite parties herein failed to connect the petitioners as the employer of the employees, if at all of M/s. Dealers Apprentice Hostel, Ring Road, Telco, Jamshedpur.

17. In the result the order impugned dated 26.8.2002 passed by the CJM in C/2 case No. 2007/2002 with the entire criminal prosecution pending in the Court of Judicial Magistrate, Jamshedpur, arising out of, against the petitioners is quashed.

18. This petition is allowed.