

(2007) 10 JH CK 0022

Jharkhand High Court

Case No: Criminal M.P. No. 1076 of 2004

Bharat Coking Coal Limited and
Another

APPELLANT

Vs

The State of Jharkhand and
Another

RESPONDENT

Date of Decision: Oct. 31, 2007

Acts Referred:

- Contract Labour (Regulation and Abolition) Act, 1970 - Section 10(1), 23, 24
- Criminal Procedure Code, 1973 (CrPC) - Section 482

Hon'ble Judges: Dilip kumar sinha, J

Bench: Single Bench

Advocate: A.K. Mehta, for the Appellant; Chandra Prabha, Assistant Public Prosecutor and Prabhash Kumar, for the Respondent

Final Decision: Allowed

Judgement

D.K. Sinha, J.

The petitioners have preferred this petition u/s 482 Cr.P.C. for quashment of the order impugned dated 2.4.2004 passed by the C.J.M., Dhanbad in Contract Labour (Regulation & Abolition) Case No. 90 of 2004 whereby the cognizance of the offence was taken under Sections 23 & 24 of the Contract Labour (Regulation & Abolition) Act, 1970 against the petitioners and others, now pending in the Court of Shri K.K. Srivastava, Judicial Magistrate, 1st Class, Dhanbad.

2. The prosecution story in brief is that the Opposite Party No. 2 Labour Enforcement Officer, Dhanbad-I and Incharge of Katrasgarh jurisdiction (Dhanbad) had presented a complaint u/s 23 & 24 of the Act with the allegation that the accused were the contractors carrying out work of transportation of coal from West Mudidih colliery to Coal Handling Plant under Katras Area of B.C.C.L. The complainant Opposite Party No. 2 had inspected the establishment on 3.1.2004 and

observed that the accused Madan Mahto was engaged as Pay Loader Operator loading coal in trucks and wagons at Sijua Siding of Katras Area of B.C.C.L. through M/s Varahi Coal Carriers (P) Ltd., contractor although coal loading and unloading was prohibited by the Central Government u/s 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 vide notification No. S.O. 2063 dated 21.6.1988. Inspection report of the Opposite Party No. 2 Labour Enforcement Officer was served upon the accused persons including the petitioners calling upon to comply the provisions of the Act and report compliance but the accused submitted unsatisfactory reply. Hence the complaint.

3. Learned Counsel for the petitioners submitted that the learned C.J.M., Dhanbad on the receipt of the aforesaid complaint, registering the same on 2.4.2004 took up the cognizance of the offence by filling up the dotted lines in a printed format mechanically and without application of his judicial mind and further without examining as to whether a prima facie case at all was made out against the petitioners and directed summons to be issued against the petitioners for the offence u/s 23/24 of the Act in which cognizance was taken.

4. Advancing his argument Mr. Mehta emphatically submitted that the notice served upon by the Opposite Party No. 2 was duly replied by the petitioners on 23.2.2004 (Annexure-2) by clarifying with reference to notification dated 21.6.1988 vide No. S.O. 2063 that employment of Contract Labour was made in respect to the certain works specified in the schedule. Proviso "C" of the said notification contemplated exception to the provisions in relation to loading of coal as when there was mechanical failure, failure of power or irregular supply of wagons by railways, loading and unloading of coal manually was permissible for limited purpose. The petitioners further clarified that the work order issued to M/s Varahi Coal Carriers (P) Ltd. was not for manual loading or unloading of coal rather, it was a composite work order in relation to hiring of H.E.M.M. which consisted of Excavators, Pay Loaders, Tippers and Dumpers for mechanically handling of coal. There was no element in such work order for manual handling. On the contrary the contractor was required to deploy the components of H.E.M.M. as aforesaid. The liability and responsibility of the contract work was given to the other two accused in the work order who were the principle employers for the employment of any contract labourers if any and only they could be criminally liable u/s 23 & 24 of the Act in case of contravention of any provisions of the Act. As a matter of fact, the contractor did not employ any contract labour rather his own permanent work force was deployed including one Madan Mohan, Pay Loader Operator hence no violation of the notification No. S.O.2063 dated 21.06.1988. It was held by the Ranchi Bench of Patna High Court in Indian Iron and Steel Co. Ltd. and Ors. v. State of Bihar and Ors. reported in 1986 LabIC 2003 that notification prohibiting employment of contract labour in certain cases, did not constitute offence u/s 23 of the Act. It was settled therein that for the prosecution of an accused for the offence u/s 23 of the Act, there must be contravention of the provisions of Act and not of the rules framed. Yet, a notification

issued by the Central Government u/s 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 cannot be treated as a rule made under the Act. On the fact also the prosecution failed to show that the petitioners were the incharge and responsible for loading and unloading of the coal at the relevant time of the occurrence. Learned Counsel emphatically submitted that the man power engaged by M/s Varahi Coal Carriers (P) Ltd. for any purpose in contravention of the provisions of law puts criminal liabilities but as a matter of fact the work was done by their own permanent work force. The petitioners are admittedly not the principal employer and it was held in B.C.C.L. v. Union of India reported in 2002(1) P.L.J.R. 811 that the Director, Manager, Secretary Agent or other officers shall not be deemed to be guilty of such offences. On the other hand, a list was communicated to the Regional Labour Commissioner, Govt. of India, Dhanbad on 4.11.1998 specifying the officers responsible for implementation of award, settlement and compliance of all labour laws and the petitioners do not come in that category.

5. Concluding his argument, learned Counsel Mr. Mehta submitted that even as per the inspection report submitted by the complainant-opposite party No. 2 it did not state anywhere that loading and unloading of coal was carried by contract labour manually rather the same was being carried out by one Madan Mahto, Operator, Pay Loader who was on Roll of the employment under the contractor. In view of that fact cognizance of the offence taken u/s 23 & 24 under the Act against the petitioner No. 1 M/s B.C.C.L. represented through Shri H.R. Surana Director (T) (P.P.) as also against the petitioner No. 2 Chief General Manager, Katras Area, B.C.C.L. was uncalled for and the cognizance order is liable to be set aside.

6. Mr. Prabhash, learned Counsel appearing on behalf of the Opposite Party No. 2 contended that the other co-accused namely Rameshwar Singh and the another Mahendra Singh, Directors of Varahi Coal Carriers (P.) Ltd. confessed their guilt before the Trial Magistrate on 8.7.2004 and pursuant to such confession each of them were sentenced to pay fine of Rs. 1,000/- with default stipulation to serve out simple imprisonment of 30 days each on their conviction u/s 23/24 of the Act and hence the petitioners cannot be exonerated from their criminal liability.

7. Having regard to the facts and circumstances of the case, argument advanced on behalf of the parties I find that the main allegation against the petitioners was that they being principal employer engaged contract labour for manually loading and unloading of coal and carrying out of work of transportation of the coal from west Mudidih Colliery to Coal Handling Plant under Katras Area of B.C.C.L.

8. It was admitted in the complaint that Shri Madan Mahto was found engaged as Pay Loader Operator, loading coal in trucks and wagons at Sijua Siding of Katras Area of B.C.C.L. by M/s Varahi Coal Carriers (P) Ltd. contractor. Such admission on the part of the complainant- opposite Party No. 2 that the work order for mechanized coal handling was given to M/s Varahi Coal Carriers (P) Ltd. a contractor under M/s B.C.C.L. who was taking the work from Shri Madan Mahto, a Pay Loader

Operator indicates that Shri Madan Mahto, Operator was doing the work mechanically with the help of pay loader. It was nowhere alleged that Shri Madan Mahto was manually handling the coal by loading it on the trucks and therefore, the complaint did not constitute offence against the petitioners M/s B.C.C.L. represented by Shri H.R. Surana, Director (T) (P.P.) and Shri D. Roy, Chief General Manager, Katras Area B.C.C.L., Katras on the point as well that they were not the principal employer.

9. I find substance in the argument advanced on behalf of the petitioners that the cognizance order dated 2.04.2004 is not sustainable in the present form as the cognizance of the offence was taken on printed format by filling in the dots which is indicative that without application of judicial mind cognizance of the offence u/s 23/24 of Contract Labour (Regulation and Abolition) Act, 1970 was taken and therefore, for the grounds stated above, the criminal prosecution of the petitioners is unsustainable. Accordingly, it is quashed by setting aside the impugned cognizance order as against than.

10. This petition is allowed.