

N.D. Chowda Vs State of Andhra Pradesh

Court: Andhra Pradesh High Court

Date of Decision: Sept. 26, 2002

Acts Referred: Contract Labour (Regulation and Abolition) Act, 1970 " Section 10(1)
Criminal Procedure Code, 1973 (CrPC) " Section 482

Citation: (2002) 2 ALD(Cri) 673 : (2003) 1 ALT(Cri) 143 : (2003) 2 LLJ 814

Hon'ble Judges: S.R.K. Prasad, J

Bench: Single Bench

Advocate: G. Sudha, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

S.R.K. Prasad, J.

The petitioner being accused invokes the inherent powers vested in this Court u/s 482 of the Code of Criminal

Procedure to quash the proceedings in S.T.C. No. 331 of 1999 on the file of the Special Judicial First Class Magistrate (Labour and Factory Act)

North and East, Ranga Reddy District.

A brief resume of background of facts is necessary:

2. The petitioner-accused is the director of Bhagyanagar Metals Limited, a company registered under the Companies Act, established for the

manufacture of jelly filled telephone cables and it is having its registered office at Surya Towers, Secunderabad, and the factory at Uppal Kalan,

Uppal, Hyderabad. For the purpose of carrying out its manufacturing activities, it has engaged some skilled and unskilled persons. The State

Government of Andhra Pradesh, in exercise of the powers conferred by Sub-section (1) of Section 10 of the Contract Labour (Regulation and

Abolition) Act, 1970 (Central Act 37 of 1970), issued G.O. Ms. No. 287, LEN&TE (Lab-II), dated May 7, 1981, published in issue No. 225 of

Parti, Extra. A.P. Gazette, dated May8, 1981, prohibiting the employment of contract labour in the following process of operations in the

establishments in which contract labour is employed in all the factories in the State of Andhra Pradesh:

(1) Watch and Ward personnel, if not hired through specialised agencies provided the employees of such agencies are getting better wages and

conditions of services than the lowest paid employee with the principal employer.

(2) Routine sweeping and scavenging personnel working inside the factory.

(3) Boiler house workers.

(4) Workers employed in the routine maintenance of plant and machinery.

(5) Persons engaged in automobile garages and workshops inside the factory where the work is continuous.

3. The Assistant Labour Officer, Hyderabad, respondent herein, inspected the petitioner's premises on January 5, 1998, at 11.30 a.m. and

noticed the following:

The principal employer has engaged contract labour in prohibited processes and operations. Mr. Sailu is the only contractor as per the records

who is holding a licence to engage maximum 80 contract labourers. All the workers who are not engaged by Mr. Sailu and found working in the

establishment at the time of inspection during general and first shift and some others employed in second and third shift are workers employed by

the principal employer. Thus, the accused violated Section 10 read with G.O. Ms. No. 287, LEN&TE (Lab-II), dated May 7, 1981, Gazette

dated May 8, 1981.

4. Thereupon, the respondent launched a complaint against the petitioner-accused before the Special Judicial First Class Magistrate (Labour and

Factory Act) North and East, Ranga Reddy District. There was a delay of four days in presenting the complaint. Thereupon, the learned magistrate

condoned the delay in the interest of justice and took cognizance of the offence and the same was taken on file as S.T.C. No. 331 of 1999 on

October 1, 1999.

5. Learned counsel for the petitioner, Ms. G. Sudha, assails the proceedings on the following grounds:

(1) Similar notification which has been issued by the Government of Andhra Pradesh, namely, G.O. Ms. No. 287, dated May 7, 1981, has been

issued by the Central Government and the Supreme Court has considered the same in Steel Authority of India Ltd. and Others etc. etc. Vs.

National Union Water Front Workers and Others etc. etc., and it has declared that the notification does not satisfy the aforesaid requirements of

Section 10(1) of the Contract Labour (Regulations and Abolition) Act, 1970, and quashed the same. As the notification issued by the State

Government is almost similar to that of the Central Government, it has also been declared as not valid.

(2) The Government Order prohibits the employment of contract labour for routine sweeping and scavenging personnel working inside the factory.

The company is said to have engaged a licensed contractor by name P. V. Prasad for loading, unloading and cleaning operations. The Government

order covers the routine cleaning and not specialised cleaning. Its cleaning has to be made in various modes in respect of machinery, etc. The

cleaning includes sweeping at the time of loading and unloading operations. It is not covered by the Government Order. Hence, the proceedings

are liable to be quashed.

(3) The petitioner was holding the position of a director responsible for the board as well as to inform the board with regard to the production and

to assist the board and frame policy for production and implement the same in factory and he has nothing to do with the cleaning and maintenance

operation.

(4) It is also contended that there is no charge framed or an allegation made against the petitioner that he was solely responsible for the cleaning

and maintenance operations. In the absence of the same, the complaint is bad and has to be quashed.

(5) No part of cause of action is narrated in the complaint and so the claim that the petitioner was personally liable for the alleged offence to fasten

criminal liability u/s 10 of the Act does not arise.

6. The learned public prosecutor contends that the impugned Government order issued by the State Government has not been challenged and the

Government order issued by the Central Government alone has been challenged and quashed as it is not in accordance with the provisions of

Section 10 of the Act and, therefore, the aforesaid decision of the Supreme Court cannot be made applicable to the Government order issued by

the State Government by analogy. Hence, it cannot be said that the complaint is not maintainable. It is also contended that it is not a fit case where

inherent powers can be exercised to quash the proceedings.

7. Adverting to the said contentions, the Central Government has issued a notification u/s 10 of the Act at the earliest point of time prohibiting the

application of provisions of contract labour in certain industrial concerns. The Government of Andhra Pradesh soon after followed in the footsteps

and issued G.O. Ms. No. 287, dated May 7, 1981. The Supreme Court in Steel Authority of India Ltd (supra) has observed as follows:

The impugned notification issued by the Central Government on December 9, 1976, does not satisfy the aforesaid requirements of Section 10, it

is quashed but we do so prospectively, i.e., from the date of this judgment and subject to the clarification that on the basis of this judgment no

order passes or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any

Tribunal or Court including a High Court if it has otherwise attained finality and/or it has been implemented.

8. Therefore, the Government order issued by the State Government is also not sustainable as being not in accordance with the provisions of

Section 10 of the Act. Unfortunately, the inherent powers of this Court are invoked by the petitioner instead of invoking the writ jurisdiction of the

High Court to quash the said Government order. When the petitioner has not chosen the correct remedy, this Court becomes helpless in granting a

relief. I leave it open for the petitioner to seek appropriate remedy in appropriate forum. This Court while exercising the inherent powers cannot

declare a particular Act as invalid.

9. Coming to the aspect of interpretation of the Government order issued by the State Government, there is much force in the contention

canvassed by learned counsel for the petitioner that it prohibits only engagement of contract labour for routine sweeping and scavenging personnel

working inside the factory and it does not cover the case of specialised contract of labour engaged for loading, unloading and cleaning. I also state

that loading, unloading and cleaning operations is not mentioned in any portion of the said Government order. When such is/the case, the petitioner

cannot be prosecuted for engaging Mr. Sailu, a licensed contractor for loading, unloading and cleaning operations. Moreover, the word "routine

means a "regular course or procedure, an unvarying performance of certain acts" as per the CONCISE OXFORD DICTIONARY OF

CURRENT ENGLISH, 8th edition edited by R.E. ALLEN. It is not in dispute that the company has got regular sweepers. Cleaning may give rise

to the overlapping of the duties of cleaning. But the cleaning is expected in respect of loading and unloading operations and not a routine matter.

The sweepers are always available in the factory for attending to the routine work. In that view of the matter, I am of the considered view that the

engagement of a licensed contractor for loading, unloading and cleaning operations is not prohibited by the aforesaid Government order.

10. Coming to the aspect of limitation, the trial Court has applied its mind, condoned the limitation and took cognizance of the offence. It is not

shown as to how the said proceedings are invalid. Section 473 of the Code of Criminal Procedure gives ample power to the Court to take

cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay

has been properly explained or that it is necessary so to do in the interests of justice. The trial Court rightly applied its mind in condoning the delay

and took cognizance of an offence.

11. The last contention canvassed is that no averments were made in the complaint that the petitioner, who was a director, was authorised to be

incharge of conducting business, or directly responsible for engaging the contract labour under the prohibited process operations. There is some

force in that argument. But one cannot absolve himself from his liability, as the petitioner is a director. His liability is always there for the acts and

omissions of the company. In any case, I accept the contention of learned counsel for the petitioner on ground No. 2 that loading, unloading and

cleaning operations will not fall under the Government order; I find that launching of prosecution is bad in law. As such there is no offence made

out against the petitioner. Therefore, the proceedings in S.T.C. No. 331 of 1999 are liable to be quashed and are accordingly quashed. The

petitioner is at liberty to challenge the validity of G.O. Ms. No. 287, dated May 7, 1981, in appropriate forum or in appropriate proceeding.

12. The criminal petition is accordingly allowed.