

Karnataka High Court

Subhash Bheendra vs State Of Karnataka on 19 September, 2019

Author: John Michael Cunha

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF SEPTEMBER 2019

BEFORE

THE HON'BLE MR.JUSTICE JOHN MICHAEL CUNHA

CRIMINAL PETITION NO.7982/2016

BETWEEN:

1. SUBHASH BHEENDRA
(SUBHAASHIS BHANDRA)
PRESIDENT,
2. SRI SURESH TAMMANNA
(SURESH KANNAN)
VICE PRESIDENT-1
3. SRI AMARAESH SIMHADRI
(AMARESH SIMHADRI)
VICE PRESIDENT-2
4. SRI VIJAYANTHA KUMAR JHA
(VIJAYANT KUMAR JHA)
SECRETARY,
5. SRI AJAYA ARIGE
JOINT SECRETARY,
6. SRI PAVAN KUMAR AGARVAL
(PAVAN AGARWAL)
TREASURER
7. SRI PUTHEESHA P K
(PRATHEESH P K)
ASSISTANT TREASURER
ALL ARE EXECUTIVE MEMBERS OF
M/S SMONDO VILLE APARTMENT

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OWNERS ASSOCIATION, AND R/AT

SY.NO.55/8, 276/1, 275,
HULIMANGALA VILLAGE,
NEW TOWN, ELECTRONIC CITY,
PHASE-1, BENGALURU - 560 100

...PETITIONERS

(BY SRI MITHUN G. A., ADV.)

AND:

1. STATE OF KARNATAKA
ELECTRONIC CITY POLICE STATION,
BENGALURU - 560 028
2. THE SENIOR LABOUR INSPECTOR
18TH CIRCLE, KARMIKA BHAVANA
DAIRY CIRCLE,
BENGALURU - 560 036

... RESPONDENTS

(BY SRI VIJAYAKUMAR MAJAGE, ADDL. S.P.P., FOR R1
R2- SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION
482 CR.P.C. BY THE ADVOCATE FOR THE PETITIONERS
PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO
QUASH THE ORDER DATED 23.07.2016 OF TAKING
COGNIZANCE IN C.C.NO.8598/2016 PENDING ON THE FILE
OF V MMTC, BENGALURU (ANNEXURE-A) AND THE
COMPLAINT DATED 14.06.2016 (ANNEXURE-B) LODGED BY
THE RESPONDENT NO.2 ETC.

THIS CRIMINAL PETITION COMING ON FOR
ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

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ORDER

Prosecution is launched against the petitioners for the alleged violation of Section 8 of Equal Remuneration Act, 1976 and Rule 6 of the Equal Remuneration Rules, 1976 (hereinafter referred to as 'the Act and Rules' 1976).

2. The petitioners' are the members of Smondoville Apartment Owners' Association. The complainant-Senior Labour Inspector held a surprise inspection of the apartment of the petitioners' and found certain violations and hence, he filed a complaint petition under Section 200 of Cr.P.C.

seeking prosecution of the petitioners for the alleged violations of Section 8 and Rule 6 of the Act and Rules, 1976.

3. Learned counsel for the petitioners submits that the provisions of the Act and Rules, 1976 are not applicable to the petitioners' Association. The petitioners are neither 'employer' as defined in Section 2(c) of the Act and Rules, 1976 nor an 'establishment' as defined in Section 2(i) of the Karnataka Shops and Commercial Establishments Act, 1961 and hence, initiation of the criminal proceedings against the petitioners is wholly illegal and abuse of the process of Court.

4. Learned Additional S.P.P.-II, however justified the impugned prosecution contending that the petitioners having entered into a contract with M/s.V.R.Facilities Services and having employed more than 32 employees, they fall within the ambit of the said Act and Rules, 1976.

5. I have considered the submissions and perused the records.

6. The Equal Remuneration Act and Rules, 1976 is enacted to provide payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.

7. Section 4 of the Equal Remuneration Act, 1976 prescribes that:

"i) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favorable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.

ii) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker.

iii) Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in cases where there are more than two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement to such men and women workers:

Provided that nothing in this sub-section shall be deemed to entitle a worker to the revision of the rate of remuneration payable to him or her with reference to the service rendered by him or her before the commencement of this Act."

The Act, 1976 also prohibits discrimination against recruitment of men and women workers and makes provision for constitution of Advisory Committees

8. A reading of Section 4 of the Act, 1976 makes it clear that the Act and Rules, 1976 is applicable to an employer who is engaged in providing employment to any person/s in the establishment run by him.

9. The term 'employer' has been defined under Section 2 (c) of Equal Remuneration Act, 1976 as under:-

"2(c) "Employer" has the meaning assigned to it in clause (f) of section 2 of the Payment of Gratuity Act, 1972."

10. Section 2(f) of the Payment of Gratuity Act, 1972 defines as under:-

"Employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop:-

(i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority.

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, or managing director or by any other name, such person"

11. It is not the case of the complainant that petitioners herein are a factory, mines, oilfield, plantation, port, railway company or shop. Proceedings are initiated on the premise that the petitioners are an establishment.

12. The word 'establishment' is defined in Section 2(i) of the Karnataka Shops and Commercial Establishments Act, 1961 as 'a shop or commercial establishment'. It is not the case of the complainant that petitioners are running any "establishment" in the apartment or that it deals with any commercial activities. 'Commercial Establishment' is defined in Section 2(e) of Karnataka Shops and Commercial Establishments Act, 1961 as under:-

"2(e) Commercial establishment means a commercial or trading or banking or insurance establishment, an establishment or administrative service in which persons employed are mainly engaged in office work, a hotel, restaurant, boarding or eating house, a café or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes such establishments as the State Government may by notification declare to be a commercial establishment for the purposes of this Act."

13. It is not in dispute that petitioners' Association is registered under the Karnataka Societies Registration Act.

14. I have perused the Memorandum of Association of the Smondoville Apartment Owners' Association. The objectives of the Association as declared therein, are:

"a. To promote close co-operation between the members and to render all possible advice and guidance to members in any matter relating to ownership and enjoyment of living in the apartment and to provide such amenities and facilities to members as the Managing Committee may deem fit.

b.To render required civic service to the residents.

c. To promote welfare programmes of residents / owners and civic amenities.

d. To promote and encourage oneness amongst the members and to build the spirit of co- operation.

e. All the members of the Association are prohibited to undertake illegal Activities including child labour within the premises of the Association.

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f. To promote upkeep of all common areas and facilities.

g. To open and operate bank accounts in the name of the said Association and to draw and accept cheques, and to make execute or issue cheques or other negotiable instruments for and on behalf of the Association in all matters of financial transactions.

h. The surplus funds of the Association which may not be required by it the time being to be set aside in a fixed deposit in the bank in which the Association accounts are maintained.

i. To appoint any person(s) and other staff members to look after the affairs of the Association and to remunerate any such person in case or otherwise for the services rendered.

j. To pay all costs and expenses incurred or sustained in or about the promotion and establishment of the Society or which the Association shall consider being preliminary, out of its funds.

k. To represent the Association before the Government and other authorities for any common purpose which may impact the

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members monetarily or otherwise and take all such steps as may be necessary in this regard.

l. To take up and represent grievance of members of the Association in all matters of their common problems relating to the upkeep of the common area and facilities pursuant to the provisions contained in various legislative enactments as also the burden of payment of unjustifiable taxes, charges, revenues, duties and other out-going as and when levied before any forum, institution, government body or authority and to obtain passing of any Act or Ordinance of the Legislature or other law making body and to enter into such obligations or take such proceedings as may be calculated to advance the objects of the Association.

m. To constitute Reserve Fund and Sinking Fund as may be deemed necessary for the major repairs and rehabilitation of the building by way of collection or contribution from the members of the Association.

n. To engage the services of any professional like contractors, architects, structural engineers, chartered accounts, advocates and such other

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person/s to take up any necessary civil or structural work or to take the services of any professional initiating any action or defending the same generally.

o. In carrying out the above objectives and activities and to conduct the affairs of the Association effectively to liaise, collaborate and share experience with individuals and / or other bodies and organizations with similar objectives in the City of Bangalore. p. To frame rules and regulations with the approval of the General Body Meeting and any amendments thereof as the exigencies may require for effective and efficient management of the affairs of the Association.

q. The Association shall not act beyond the scope of its "Objects" without duly amending the provisions of the Bye-laws for the purpose. r. The income of the Association shall be utilized for the objects of Association and shall not be distributed among its members.

s. To do such other things as may be considered to be incidental or conducive to the fulfillment of the aforesaid objectives or any of them.

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t. The President shall be the correspondent of the Association with the Registrar of Societies, Bangalore Urban District, at Bangalore."

15. None of the above objectives fall within the definition of Section 2(e) of the Karnataka Shops and Commercial Establishments Act.

16. As a result, I hold that the provisions of the Act and Rules, 1976 do not apply to the Association run by the petitioners.

17. Accordingly, the petition is allowed. The prosecution instituted against the petitioners for the alleged violations of Section 8 of the Act, 1976 and Rule 6 of the Rules, 1976 are hereby quashed.

Sd/-

JUDGE nvj