

(2008) 02 AHC CK 0187
In the Allahabad High Court

Anjani Kumar Verma

APPELLANT

Vs

Additional Labour Commissioner and Another

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Child Labour (Prohibition and Regulation) Act, 1986 — Section 14, 2, 3
Constitution of India, 1950 — Article 45

Citation : (2008) 118 FLR 599

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Heard learned Counsel for the petitioner and learned Standing Counsel, who has accepted notice on behalf of opposite parties.

2. With the consent of the learned Counsel for the parties, writ petition is finally disposed of at the admission stage.

3. The petitioner in the writ petition has questioned the validity and correctness of the notice/orders dated 16.12.2006 and 20.9.2007 issued by Assistant Labour Commissioner requiring the petitioner to deposit Rs. 20,000/- as penalty on the ground that on the date of inspection by the opposite party No. 1 of the shop of the petitioner, a child labour, aged about 12 years was working which is in violation of the provision of the Child Labour (prohibition and Regulation) Act, 1986.

4. It is submitted by the petitioner that he was wrongly challaned in so far as the age of the child determined by the Chief Medical Officer child as more than 15 years. The report of the Chief Medical Officer dated 29.10.2007 has been annexed as Annexure-3 to the writ petition.

5. In the backdrop of the aforesaid facts, learned Counsel for the petitioner has contended that the impugned notice/order is nonest and perse illegal. He has also contended that the impugned order has been passed in blatant disregard of

the principles of natural justice as no opportunity has been given to the petitioner to present his version or to defend himself and straightaway the petitioner has been required to pay the penalty/compensation.

6. The Child Labour (Prohibition And Regulation) Act, 1986 [hereinafter referred to as the Act] has been enacted with the object to prohibit the engagement children in certain employments and to regulate the conditions of work of children in certain other employments. The word "Child" has been defined in Section 2(ii) of Child Labour (Prohibition and Regulation) Act, 1986, and it means a person who has not completed his fourteenth year of age. Section 3 of the Act puts an embargo on employment of any child labour in any of the occupations set forth in Part of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on.

7. Section 14 of the Act deals with penalties and provides as under:

14. Penalties-(1) Whoever employs any child or permits any child to work in contravention of the provisions of Section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may be extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

(2) ...

(3) ...

8. A perusal of the aforesaid provisions clearly establish that a penalty can only be imposed if a child below 14 years of age is found working or in employment or permitted to work in any of the occupation.

9. It is important to add that the Apex Court in M.C. Mehta Vs. State of Tamil Nadu and others, has laid down that children aged about 14 years cannot be employed in any factory or mine or other hazardous work and they must be given education as mandated by Article 45 of the Constitution of India.

10. However, sine qua non is that child should be below age of 14 years for applicability of the aforesaid directions. Child has been defined in Section 2(ii) of the Act, reproduced hereinabove, to be a person who has not completed his fourteenth year of age. In the instant case, the medical report reveals the age of the child to be more than 15 years and as such initiation of proceedings and imposition of penalty would be bad and illegal. It may be added that the Standing Counsel has not disputed the legal proposition. Thus it is apparent that that Santosh Yadav son of Devi Lal Yadav is not found to be below 14 years to attract the provisions of the Act.

11. For the reasons aforesaid, writ petition is allowed and the impugned orders/ notices dated 16.12.2006 and 20.9.2007 issued by Assistant Labour Commissioner is hereby quashed.

12. Costs easy.