
(2002) 01 PAT CK 0109
In the Patna High Court
Case No : CWJC No. 11273 of 2000

Balmukund Concast Ltd. and Another	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 30-01-2002

Acts Referred:

Citation : (2002) 01 PAT CK 0109

Final Decision : Allowed

Judgement

S.K. Katriar, J.—Heard learned Counsel for the parties. This writ petition has been preferred with the prayer to quash the communication dt. 14.12.98 (Annexure 2) by the appropriate authority (the Sub-Divisional Officer, Danapur), under the Child Labour (Prohibition and Regulation) Act, 1986 (hereinafter referred to as "the Act"), whereby the Petitioners have been directed to deposit a. total sum of Rs. 80,000/-, i.e. @ Rs. 20,000/- per child for the four children working in its factory in violation of the provisions of the Act and the direction in the judgment of the Supreme Court in the case of M.C. Mehta Vs. State of Tamil Nadu and others,

2. Petitioner No. 1 is a private limited company engaged in the manufacture and production of steel items at Bihta, district Patna, and Petitioner No. 2 is its General Manager. Section 2(ii) of the Act defines "child" to mean a person who has not completed his fourteenth years of age. Section 10 is set out hereinbelow:

10. Disputes as to age.—If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.

The Act in substance prohibits employment of children below the age of fourteen years in factories. The Supreme Court in its judgment in M.C. Mehta (supra) noticed that the provisions of the Act were not being enforced in a satisfactory

manner in the country. Therefore, it formulated a scheme, inter alia, for creation of a child labour rehabilitation-cum-welfare fund which would be utilized in the manner indicated in the judgment and the employer employing a child in the provisions of the Act shall have to contribute a sum of Rs. 20,000/- per child.

3. In implementation of the terms of the judgment and the provisions of the Act, the Labour Inspector visited the factory premises of the Petitioner at Bihta on 12.12.98 and found the following children of the age mentioned against their names being employed there:

1. Md. Mozahir, 13-14 years (approx)
2. Md. Irfan, 12-13 years (approx)
3. Arun Kumar, 12-13 years (approx)
4. Ranjeet Kumar, 13 years (approx)

Accordingly, the appropriate authority issued the impugned letter dt. 14.12.98 (Annexure 2), cabling upon the Petitioners to deposit a total sum of Rs. 80,000/- to the aforesaid fund. Instead of depositing the amount, the Petitioners addressed their communication dt. 26.12.98 (Annexure-4), objecting to the validity of the said order dt. 14.12.98 (Annexure 2). It was stated in this letter that the children were of fifteen years or more therefore requested that the order may be withdrawn. It appears that the Respondent authorities refused to uphold the objection of the Petitioners and initiated certificate proceeding under the Bihar Public Demand Recovery Act, which has been registered as Certificate Case No. 1 of 1999-2000 pending before the Certificate Officer, Danapur. That prompted the Petitioners to prefer the present writ petition.

4. This writ petition was earlier taken up by this Court on 10.11.2000 on which date the Respondent authorities were directed to have the four children examined by the Medical Board and place the same on record. Three out of the four children have since been examined by the Medical Board whose reports are on record which I shall deal with hereinafter. According to the Petitioners, they could not locate Arun Kumar and were unable to forward him to the Respondent authorities for examination by the Medical Board.

5. While assailing the validity of the impugned action, learned Counsel for the Petitioners submits that it is manifest from a plain reading of the provisions of Section 10 of the Act the question as to the age of the four children had to be referred to the prescribed medical authority. The Respondent authorities failed to resort to the provisions which situation has, however, been remedied by this Court by order dated 10.11.2000. He submits that even according to the findings of the Medical Board, the three children were more than fourteen years of age on the date of inspection of the factory premises. He further submits that the fourth child (Arun Kumar) could not be examined for circumstances beyond the control of the Petitioners.

6. Mr. V.N. Sinha, learned GP IX, submits that the Petitioners should not take the matter in the spirit of adversarial litigation. The spirit of the judgment of the Supreme Court has to be taken in the right spirit, namely, the contribution is practically entirely by way of donation for the welfare of the children of this country who are the future of the nation. He further submits that the certificates relating to the three children create an impression that they were of tender age, were and (sic) fourteen or so at the time of inspection and were in employment from before. He lastly submits that in view of the nature and spirit of the judgment of the Supreme Court and the cause that it seeks to sub serve, the Court should lean in favour of the beneficiaries children in case of doubt or difficulty.

7. I have carefully considered the submission of the learned Counsel for the parties and appreciate the spirit of their submission. I would like to deal with the case of four children one by one. In so far as Md. Irfan is concerned, the report of the Medical Board dt. 9.12.2000 (Annexure D) is that he was aged 19-20 years as on the date of the report. This means that he was more than 14 years of age on the date of inspection. In view of the finding of the Board, I would prefer to take the view that Mr. Irfan was beyond the age of 14 years on the date of inspection on 12.12.90. Insofar as Ranjeet Kumar is concerned, the Medical Board is of the view that he was 15-16 years on the date of the report dt. 16.12.2000. It further thus appears that he was less than 14 years on the date of inspection. It appears that he was working from before also. Insofar as Md. Mozahir is concerned, the Medical Board is of the opinion that he was 16-17 years on the date of the report dt. 16.12.2000. In view of this finding read with the position that he was working from before, one can safely reach the conclusion that he was below 14 years of age on the date of inspection. Insofar as Arun Kumar is concerned, it appears to me from the records that the Petitioners could not locate him inspite of sincere efforts and, therefore, could not forward him for medical examination. He was perhaps lost in the anonymity of the crowd. In that view of the matter, I drop the matter in relation to Arun Kumar and Md. Irfan, and conclude that Ranjeet Kumar and Md. Muzahir were below 14 years of age on the date of inspection.

8. In the result, this writ petition is allowed, in part. The impugned order dt. 14.12.98 (Annexure 2) is quashed in so far as Md. Irfan and Arun Kumar are concerned. The Petitioners are directed to deposit a sum of Rs. 40,000/- in relation to Ranjit Kumar and Md. Mozahir with the Authority who had issued the impugned order dated 14.12.98 (Annexure 2) without the necessity of depositing the same with the Certificate Officer and the impugned order is modified to the aforesaid extent. In view of the undertaking given by the learned Counsel for the Petitioners arid in view of the position that the deposit is practically in the nature of a donation the amount of Rs. 40,000/- shall be deposited with the appropriate Authority who has issued the impugned order dt. 14.12.98 (Annexure 2) within a period of four weeks from today. In view of the undertaking Certificate case No. 1 of 1999-2000 (State of Bihar v. General Manager, Balmukund Concast Ltd.)

pending before the Certificate Officer, Danapur, is hereby quashed.