

(1998) 07 MP CK 0024

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 1014 of 1997 and 31 of 1998

Bhagwandas Harprasad

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 09-07-1998

Acts Referred:

Child Labour (Prohibition and Regulation) Act, 1986 — Section 17
Constitution of India, 1950 — Article 14, 226, 227

Citation : (1999) 1 MPLJ 472

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : K.K. Lahoti, for the Appellant; R.K. Vashistha, A.A.G., for the Respondent

Judgement

S.P. Srivastava, J.

Feeling aggrieved by the order passed by the Inspector, Child Labour (Prohibition and Regulation) Act, 1986, dated 16-6-1997 requiring the petitioner in Writ Petition No. 1014/97 to deposit an amount of Rs. 20,000/- for having employed a child labourer and the order dated 12-6- 1997 passed by the same Authority requiring the petitioner in Writ Petition No. 31 of 1998 to deposit an amount of Rs. 40,000/- for having employed two child labourers in violation of the directions issued by the Hon"ble Apex Court vide its Judgment and order in Writ Petition (C) No. 465 of 1986, decided on 10-12-1996, M.C. Mehta v. State of Tamil Nadu and Ors., they have now approached this Court seeking redress praying for quashing of the aforesaid orders.

The respondent-Authority has filed separate counter- affidavits in opposition to each of the aforesaid writ petitions.

A large number of writ petitions have been filed challenging similar orders passed by the Inspector, appointed under the aforesaid Act. The present petitions and the other writ petitions, being Writ Petition No. 89/1996, 1966/97, 1976/97,

2132/97, 2164/97, 4/98, 97/98, 179/98, 307/98, 551/1998 and 594/1998 had been directed to be listed together and have been heard along with the present writ petitions.

It may be noticed that in the aforesaid writ petitions in spite of repeated opportunities having been provided the respondent-authority has not filed any counter-affidavit. However, learned counsel representing the respondents in his submissions has taken the same stand as has been taken in the present writ petitions.

I have heard the learned counsel for the petitioners as well as learned Additional Advocate General representing the respondents and have also carefully perused the record.

The Hon'ble Apex Court in its decision in the case of M.C. Mehta Vs. State of Tamil Nadu and others, , finding that the problem of child labour in India has spread its fang far and wide and it had by now assumed the shape of an all India evil, holding that the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs. 20,000/-; had issued a direction that the Inspectors, whose appointment is visualised by Section 17 of the Child Labour (Prohibition and Regulation) Act, 1986, (Act No. 61 of 1986), in order to secure compliance of the provisions of the Act, should do this job. It further expressed the view, that the Inspectors appointed u/s 17 would see that for each child employed in violation of the provisions of the Act, the concerned employer pays Rs. 20,000/-, which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund, making it clear that the liability of the employer would not cease even if he would desire to disengage the child presently employed.

The Hon'ble Supreme Court in its decision in the aforesaid case issued various directions requiring the concerned States to follow them. Under one of the directions issued, the State Government was required to make a survey of the offending employers of the child labour, which was to be completed within six months from the date of the judgment. It was directed that it would be the duty of the Inspectors to see that the call of the Constitution, as clarified in the decision, was carried out providing that a district could be the unit of collection so that the executive head of the district keeps a watchful eye on the work of the Inspectors. The Apex Court observed that on the directions given by it being carried out penal provisions contained in the aforesaid Act would be used where employment of a child labour, prohibited by the Act, is found.

The Respondent-State issued a notification dated 28th November 1996, published on 24-1-1997 where-under exercising the powers conferred by Section 17 of the Child Labour (Prohibition and Regulation) Act, 1986, it appointed all the Jila Panchayat constituted under the Panchayat Raj Adhiniyam, 1993 (No. 1 of 1994) within the local limits of their jurisdiction provided under said Act No. 1 of 1994 as Inspectors for the purpose of Section 17 of the said Act No. 61 of 1986.

Later on, the State Government exercising the same jurisdiction appointed vide the Notification dated 19th March 1997 published on 20th March 1997 all the members of survey team constituted by the District Collector as Inspectors within their respective jurisdiction for the purposes of securing compliance of the provisions of the said Act.

Learned counsel for the petitioners besides raising various other submissions in support of the writ petitions have strenuously urged that the impugned order stands vitiated in law as it has been passed in utter disregard of the elementary principles of natural justice without affording any reasonable opportunity of being heard. Although under the impugned order onerous liability has been fastened on them by the respondent authority.

It is urged that before recording a finding that the petitioners had employed a child labourer and they fell within the ambit of an "offending employer" an opportunity ought to have been afforded to them to establish that it was not so and the order saddling the petitioners with the impugned liability could have been based not on the substantive satisfaction of the respondent- authority but on an objective satisfaction after considering the relevant material brought before them giving full opportunity to the petitioners to at least rebut the evidence which was sought to be utilised and relied upon by the respondent-authority against them. This having not been done, it is urged, the impugned order can not be sustained in law and deserves to be quashed.

The contesting respondents in their counter affidavit have asserted that it was in compliance to the directions of the Hon"ble Supreme Court that the Inspectors had surveyed from place to place and where-ever the child labour was found a report was prepared and a notice was issued for deposit of Rs. 20,000/- for each child-labourer. It has been further asserted that in fact it was not necessary for the respondents to hear the respondents or give opportunity to them and in the circumstances a direction was issued for depositing Rs. 20,000/- for each child labourer found working with them. It is claimed that this direction for deposit of Rs. 20,000/- was not as a penalty or fine but it was required to be deposited in compliance to the directions of the Hon"ble Supreme Court. It has further been asserted that after the completion of the survey, the Collector of the concerning district got verification of the same and had submitted an information to the Chief Secretary of the State, who is to submit the information of child labour workers found working before the Hon"ble Supreme Court, and this survey of child labour was completed in accordance with the directions and guide-lines of the State Government issued from time to time.

It seems to me that without going into the other submissions made by the petitioners, these writ petitions can be disposed of on a short ground as to whether the impugned action can be said to be vitiated in law on account of it is being violative of the principles of natural justice.

It must be emphasized that natural justice is a concept which has succeeded in

keeping the arbitrary actions of the authorities within the limits and preserving the rule of law. But, with all the religious rigidity with which it should be observed, since it is ultimately weighed in balancing of fairness, the Courts have been circumspect in expanding it to the situations where it would cause more injustice than justice.

Further, that, which is not fair and just is unreasonable and what is unreasonable is arbitrary. However, there is nothing rigid or mechanical about the rules of natural justice. The principles and procedure relating to them have to be applied which is right, just and fair as natural justice is nothing else but fair play in action.

I am of the clear opinion that for ensuring compliance of the principles of natural justice the first rule is that the person making a finding in the exercise of investigative jurisdiction must have his decision on the evidence that has some probative value in the sense described below. The second rule is that he must consider any relevant evidence conflicting with the finding and any rational argument against the finding that a person represented at the inquiry whose interest may be adversely affected by it may wish to place before him or would have so wished if he had been aware of risk of the finding being made. The technical rules of evidence applicable to civil or criminal litigation form no part of the rules of natural justice. What is required by the first rule indicated hereinabove, is that the decision to make the finding must be based on some material that tends logically to show the existence of facts consistent with the findings and that the reasoning supportive of the finding if it be disclosed is not logically self contradictory. The second rule requires that any person represented at the inquiry who will be adversely affected by the decision to make the finding should not be left in the dark as to the risk of the finding being made and thus deprived of any opportunity to adduce additional materials of probative value which had it been placed before the decision maker might have deterred him from making the finding even though it cannot be predicated that it would inevitably have had that result. But, there is nothing rigid or mechanical about the aforesaid principles. They are to be applied in particular set of circumstances in a right, just and fair manner as in essence it is only fair play in action.

In the present case, the Hon"ble Apex Court had not issued any blanket direction requiring an Inspector to raise the demand identifying a person as an "offending employer" merely on is subjective satisfaction or to come to a conclusion about his having employed a child labour on such a satisfaction.

I am of the clear opinion that before saddling the employer with the liability to pay the amount, the Inspector had to arrive at a finding on an objective satisfaction and ought to have disclosed to the alleged offending employer the material sought to be utilised and relied upon against him.

The respondents have taken up the stand that the finding on the aforesaid relevant questions which had been arrived at before raising the demand were

based on a survey report carried out by the Inspector and further that it was not necessary for the respondent-authority to hear the petitioners or give any opportunity to them as claimed. This, it seems to me, was never intended.

A learned Single Judge of this Court in its decision in the case of Amolk Chand Jain v. State of Madhya Pradesh in Writ Petition No. 927 of 1997, decided on 13-10-1997, had clearly held that it was incumbent upon the respondents to afford an opportunity of hearing before recording a finding in regard to a person being an "offending employer" or the employee being a child labourer. I am in respectful agreement with the aforesaid view.

If the matter is viewed from the aforesaid angle, that being the only view I find absolutely no difficulty in quashing the impugned order.

Taking into consideration the facts and circumstances brought on record and my conclusions, indicated hereinabove, sufficient ground has been made out for interference by this Court.

In the aforesaid view of the matter these writ petitions succeed in part.

The impugned orders dated 16-6-1997 passed by the Inspector, Child Labour (Prohibition and Regulation) Act, 1986, a copy of which has been filed as Annexure P-I in Writ Petition No. 1014/97 and the order dated 12-6-1997 passed by the Inspector, Child Labour (Prohibition and Regulation) Act, 1986, a copy of which has been filed as Annexure P-1 in Writ Petition No. 31 of 1998, are quashed with the direction to the respondent No. 2, Labour Officer, Labour Sub-Division Guna to reconsider the matter in the light of the observations made hereinabove and pass a fresh order in accordance with law.

The petitioners are directed to appear before the respondent No. 2, Labour Officer, Labour Sub-Division, Guna, /Inspector, Child Labour (Prohibition and Regulation) Act, 1986, along with a certified copy of this order within a period of two weeks. The said authority shall decide the matter afresh finally as provided hereinabove within a period not later than six weeks from the date of production of the certified copy of this order before the said authority.

There shall, however, be no order as to costs.