

(2004) 02 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition Nos. 46,13436 of 1998

Court on its own motion

APPELLANT

Vs

State of Punjab & others

RESPONDENT

Date of Decision : 25-02-2004

Acts Referred:

Citation : (2004) 3 CCR 149 : (2004) 2 RCR(Criminal) 792

Hon'ble Judges : Nirmal Singh, J

Advocate : For the amicus-curiae, Mr. R.S. Cheema, Sr. Advocate with Mr. Pawan Girdhar, Advocate. Mr. Rajiv Malhotra, DAG, Punjab and Mr. K.S. Chauhan, DAG Haryana., Advocates for appearing Parties

Judgement

Nirmal Singh, J.

1. This order shall dispose of Criminal Writ Petition No. 46 of 1998 and Criminal Misc. Petition No. 13436M of 1998. For the disposal of these cases, the facts are being taken from Criminal Writ Petition No. 46 of 1998.

2. R.L. Anand, J. (retired) came across a news item appeared on D.D1 channel on 11.1.1998 in which the media had highlighted the menace of bonded labour, specially in the State of Punjab, which claimed to be most prosperous State of the country. During the course of an interview, the workers of the brickkiln complained that the brickkiln owners/agents had developed a tendency to put the labour under constant restraints and such labour is not even allowed to move from the brickkiln. So much so, their children are made scapegoats, so that the parents of such children may work under forced circumstances on the brickkilns. Even the ladies of the menfold are subjected to cruelty.

3. This note was ordered to be treated as a Criminal Writ Petition and Shri R.S. Cheema, Senior Advocate of this Court, was appointed as amicuscuriae to assist this Court. Further directions were also given to the States of Punjab, Haryana and U.T. Chandigarh to ensure that the problem of bonded labour, specially prevailing in the brickkilns in the States of Punjab, Haryana and U.T. Chandigarh

must be abolished. Further, all the Deputy Commissioners and S.Ps/S.S.Ps of the respective Districts of Punjab, Haryana and U.T. Chandigarh were directed to make a joint survey personally of all the brickkilns situated in their respective districts and to take personal interview of the labour working there and acquaint themselves of their problems. If during the course of interview of the Deputy Commissioners and S.Ps/S.S.Ps formulate an opinion that certain brickkiln owners are treating their labour as bonded labour, they should make every effort for the release of such bonded labour and their family members.

4. In pursuance of the above directions, States of Punjab, Haryana and U.T. Chandigarh filed their respective reports.

5. A perusal of the reports submitted by all the Deputy Commissioners of the Punjab, Haryana and U.T., Chandigarh show that there was no instance of bonded labour on the brickkilns operating in their respective areas. however, the report of Deputy Commissioner, Sirsa, dated 27.3.1998 is a detailed document, which makes an endeavour to report the ground realities fairly and correctly with regard to the question of bonded labour. The relevant portion of his report reads as under :

"It was also noticed that most of the labour is secured by means of a contractor locally known as `Jamadar" (One place in particular Kriri in the city of Jaipur was mentioned many times) whose duty it is to get the labour. Most of the labour brought by the `Jamadar" does not come without taking an advance (ranging from Rs. 1000/ to Rs. 15000/) which is supposed to be adjusted from the wages of the labourer over the period of the season (From December till July/ arrival of Monsoon). From the ethical standpoint, it is not easy for the labourer to leave the kiln till the advance is redeemed, but there is complete freedom to move out after settling one's accounts at any time of the season. Whether the Bonded Labour Act is applicable in this case is a question of debate because the Act defines `bonded labour system" (Section 2g) as the system of forced or partly forced labour under which a debtor enters into an agreement with the creditor to the effect that he renders labour or service for a specified period or unspecified period in consideration of an advance obtained by him/his lineal ascendants/his decedents thereby forfeiting the right of free movement/freedom of employment etc. In the case of brick kilns there is definitely an `advance" taken with the condition of adjustment with wages over the season some degree of constraint does exist, but there is also the freedom to move out after settling the `advance".

6. Further, in the report of Deputy Commissioner, Muktsar, dated 22.4.1998, it is noticed as under ;

"Additional Deputy Commissioner, Muktsar, Shri K.A. Sinha, IAS, was deputed by undersigned to survey 38 Brick Kilns alongwith Shri Balkar Singh, S.P.(D). He has narrated in this survey report that the labourers who are brought from other areas are kept for the entire season and they do not get their remuneration

either on daily basis or on monthly basis. In some brick kilns their accounts are prepared by Munshi and nobody out of them (New Age Brick Industries, Rupana, Muktsar) was allowed to leave the work site with payment in between the season; because their payment was withheld till the end of the season. One Sobha Ram was critical about the way they live and how they get exploited. He narrated how Labour Inspector, who is supposed to be the custodian of the labour interest come and meet the owners and after gossiping with them goes back. They also stated that even in the case of emergency, if somebody wants to leave his work in between, then his half remuneration was cut by the contractor of the owner, means if somebody put labour of Rs. 5000/ till a particular date and he (labourer) wants to leave on that particular date; he will be paid only Rs. 2500/ and Rs. 2500/ will be forfeited/withheld by the contractor and owner. Due to this fear no labourer leaves the Brick Kiln site in between and he only goes after the season is over and at that time he gets his full remuneration. It can be said that though there is no bonded labour but hidden labour system is prevailing."

7. From the above reports of the Deputy Commissioners of Sirsa and Muktsar, it has revealed that there is no bonded labour system prevailing but there is a hidden bonded labour system. To eradicate this evil system, Shri R.S. Cheema, Senior Advocate, who is amicus curiae in this case, was requested to give his suggestions that how those poor labourers, who was working on the brickkilns can be protected and they can live as a normal human being.

8. We got the independence 57 years back but even after this long period, we have not been able to eradicate the evil of bonded labour and hidden labour system, which is prevailing in most parts of the country, despite the fact that there is a penal provision in Section 374 IPC. The said Section reads as under :

"374. Unlawful compulsory labour. Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both."

9. In the Constitution of India, there is a fundamental right against exploitation of labour. Article 23 of the Constitution of India deals with the prohibition of traffic in human beings and forced labour. The said Article reads as under :

23. Prohibition of traffic in human beings and forced labour. (1) Traffic in human beings and begarr and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for service purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

10. Further Article 38 of the Constitution of India deals with the state to secure a social order for the promotion of welfare of the people. Said Article also reads as under :

38. State to secure a social order for the promotion of welfare of the people. (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

11. Articles 43 and 46 of the Constitution of India deals with living wage etc. for workers. The same reads as under :

43. Living wages, etc., for workers. The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas.

46. Promotion of educational and economic interest of Scheduled Castes, Scheduled Tribes and other weaker sections. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Schedule Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

12. The Parliament has passed the Bonded Labour System (Abolition) Act, 1976. This Act was enacted with a view to prevent the economic and physical exploitation of the weaker sections of the people and for matters connected therewith or incidental thereto. The statement and the object and reasons were as under :

"Article 23(1) of the Constitution prohibits "begar", and other similar forms of forced labour and further provides that any contravention of the said prohibition shall be an offence punishable in accordance with law. Article 35(a) (ii) of the Constitution not only confers the power on Parliament to provide for punishment for the contravention of the said provisions of Article 23(1) but expressly takes away the power of the State Legislature to make any legislation with regard to the said matter. Accordingly the Bonded Labour System (Abolition) Ordinance, 1975, was promulgated by the President on the 24th October, 1975. By the said Ordinance, the bonded labourers were freed and discharged from any obligation to render any bonded labour and their bonded debts were also extinguished. The Ordinance further affords protection to the freed bonded labourers from eviction from their homestead. Contravention of the provisions of

the Ordinance have been made, offences punishable in accordance with law. Provisions for the followup measures and economic rehabilitation of the freed bonded labourers have also been made in the Ordinance."

13. The Constitution of India has given the fundamental right against the exploitation of the labourers under Article 23 of the Constitution of India, as reproduced above and even a special Act i.e. The Bonded Labour System (Abolition) Act, 1976 (for short, "the Act") has also been formulated. The constitutional provisions and the Act passed by the Parliament and the State legislature raised the hope amongst the oppressed and depressed classes that they will live a decent life and their rights will be protected. Even the Courts have also give the directions to implement the said Act in its letter and spirit. However, despite the penal provisions in the Indian Penal Code for the protection of labourers, Articles in the Constitution of India and formulation of the abovesaid Act, the right of the labourers have still not been fully protected. Mere enactment of the Act is not sufficient if it is not implemented with its full rigour. Therefore, it is the duty of the respective States to implement the Act in its letter and spirit.

14. In *Bandhua Mukti Morcha v. Union of India and other*, AIR 1984 Supreme Court 802, while issuing number of guidelines to protect the bonded labour, the Hon"ble Apex Court has held as under :

"Moreover, when a complaint is made on behalf of workmen that they are held in bondage and are working and living in miserable conditions without any proper or adequate shelter over their heads, without any protection against sun and rain, without two square meals per day and with only dirty water from a nullah to drink, it is difficult to appreciate how such a complaint can be thrown out on the ground that it is not violative of the fundamental right of the workmen. It is the fundamental right of every one in this country, assured under the interpretation given in Article 21 by this Court in *Frances Mullin's case* (AIR 1980 SC 849) to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State Policy contained in Clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a Court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is

already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State. We have already pointed out in *Asiad Construction Workers case* (1983) 1 SCR 456 : (AIR 1982 SC 1473) that the State is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the weaker sections of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Central Government is therefore bound to ensure observance of various social welfare and labour laws enacted by Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the Directive Principles of State Policy."

15. The *amicuscuriae*, Shri R.S. Cheema, Senior Advocate, has given some valuable suggestion for the protection and welfare of the bonded labour. After taking into consideration, the suggestions of the *amicuscuriae*, the Chief Secretary of the States of Punjab and Haryana and Administrator of Union Territory, Chandigarh are directed to issue the following guidelines for the protection of the labourers :

(a) The State should frame a scheme for extending the benefit of education to the children of labourers.

(b) The labourers being of migrated nature should not be deprived of the benefits of economical prices on which essential commodities are provided through the Public Distribution System. Therefore, the respective State Governments should issue specific directions to issue Ration Cards to the labourers promptly on their joining at any brickkiln.

(c) The respective States may also issue directions to prepare a scheme to take the medical facilities for the labourers at the door steps of every brick kiln. Even this can be done through periodic mandatory visits or through mobile vans.

(d) All the three States i.e. Punjab, Haryana and U.T. Chandigarh are directed to ask the Deputy Commissioners or the officers authorised by them or any officer specified under Section 10 of the Act to pay a periodical visit on the brickkiln in their respective jurisdiction to find out whether the labourers are living peacefully without any boundation and further whether their children are getting the basic necessities of their life including education, medical facility etc. The Deputy Commissioner should also ensure that no child should work on the brickkilns as under the Child Labour (Prohibition and Regulations) Act, 1986, there is a prohibition with regard to the employment of the children below 14 and 15 years

in certain employment. However, there is no procedure laid down in any law for deciding in which employment, occupations or processes, the employment of children should be banned but on the brickkiln no child below the age specified under the Act should be allowed to work.

(e) The Deputy Commissioner should also ensure that the labour should get proper wages also and the wages should be paid in advance by way of cheque.

(f) The employer of the labourers should intimate the Deputy Commissioner concerned as to how much money they have paid in advance and whether they are charging any interest on the advance amount.

(g) The Deputy Commissioner concerned should also ensure that if any labourer leaves the work before the contract period, there should be no forfeiture of his wages. The labourer should get full wages of his labour for the period, he was worked.

(h) It is the duty of the District Magistrate/Deputy Commissioner or any of the officer authorised by him under Section 10 of the Act to enquire whether within the local limits or his jurisdiction, if any person is practising, the system of bonded labour or forced labour, then he shall forthwith take such action as may be necessary to eradicate this evil system and also take penal action against the person who practised the same.

(i) The Deputy Commissioner will also send his periodical report to the Labour Commissioner of the concerned State with regard to the steps taken for the welfare of the bonded labour.

(j) The Deputy Commissioner will also ensure that the employer will get insured every worker employed on the brickkiln or industrial organisation. If any injury is caused to any worker, then the employer will immediately report the matter to the concerned Deputy Commissioner as well as to the Labour Inspector. The Labour Inspector will ensure the full payment of compensation to the labourer.

Lastly, before parting with this order, I appreciate the pain taken by Shri R.S. Cheema, Senior Advocate (*amicuscuriae* in this case) and for the valuable suggestion given by him.

Copy of this order be sent to the Chief Secretaries of Punjab and Haryana and Administrator of U.T. Chandigarh for implementation.

JUDGMENT accordingly.