

(2005) 11 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 20439 of 2005

Hayath Khan

APPELLANT

Vs

The Deputy Labour Commissioner and Others

RESPONDENT

Date of Decision : 11-11-2005

Acts Referred:

Child Labour (Prohibition and Regulation) Act, 1986 — Section 14, 16, 17, 3
Factories Act, 1948 — Section 67
Merchant Shipping Act, 1951 — Section 109
Plantation Labour Act, 1951 — Section 24

Citation : (2006) 108 FLR 632 : (2005) ILR (Kar) 6001 : (2006) 1 KarLJ 365 :
(2006) 1 KCCR 26 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : V.M. Sheelvant, for the Appellant; SZA Khureshi, AGA, K. Subba Rao
and Amicus Curaie, for the Respondent

Judgement

R. Gururajan, J.—My heart bleeds for the Child Labour in terms of the facts of this case.

Petitioner is running a motor cycle shop in the name and style of Best Service Centre. Second respondent visited the shop of the petitioner and inspected the same on 18-7-2003. He reported that petitioner has employed child labour. He registered a case alleging contravention of Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986 alleging that petitioner has employed Child Labour called Khaza-m-Shekh aged about 11 years. A show cause notice was issued to the petitioner" as to why compensation should not be recovered as arrears of Land Revenue. Thereafter a criminal case was registered against the petitioner. Petitioner filed an application seeking for permission to cross-examine with regard to the report, which was allowed. Petitioner filed his written arguments. First respondent thereafter has chosen to pass the an order imposing Rs. 20,000/ as compensation to be deposited to the District Child labour Rehabilitation and Welfare Fund in terms of Annexure-G dated 31-3-2005. A

recovery notice was also issued in terms of Annexure-H dated 30-7-2005. Petitioner in these circumstances is before me.

2. I made a specific request to Sri Subba Rao, Learned Senior Counsel to assist the Court in the case on hand, in the absence of the Child Labour being a party to the proceedings. Sri SZA Khureshi, Learned AGA appears for respondents.

3. Sri Sheelvant, Learned Counsel would basically argue that no compensation can be awarded in a matter like this in the absence of any order at the hands of a Magistrate, in terms of the provisions of the Act. He would also say that even otherwise, the material on record would reveal of no violation by the petitioner on the facts of this case.

4. Per contra, Sri Subba Rao, Learned Senior Counsel would say that the present proceedings are initiated pursuant to the proceedings of the Supreme Court in the case of M.C. Mehta v. State of Tamilnadu. He would also invite my attention to several judgments to say that this Court has to take note of constitutional goal in the matter of meaningful life in terms of Article 21 of the Constitution of India. He would say that Child Labour is prevalent and engagement of Child Labour is to be arrested strictly, as otherwise, the laudable object in terms of the Constitution cannot be achieved. He wants the petition to be dismissed.

5. Sri SZA Khureshi, Learned AGA would strongly rely on the judgment of the Supreme Court in 1998 All.L.J. 2502.

6. After hearing, I have carefully perused the material on record.

International Labour Organisation has felt that there should be international guidelines by which the employment of children under a certain age could be regulated in industrial undertakings. It suggested that the minimum age of work be 12 years. International Labour Organisation has been playing an important role in the process of gradual elimination of Child Labour and to protect Child from industrial exploitation. It has focused on the following issues;

- 1 Prohibition of Child Labour
2. Protecting Child Labour at work
3. Attacking the basic cause of Child Labour
4. Helping children to adopt to future work
5. Protecting the Children of working parents.

Various Legislations have been brought into force to arrest Child exploitation.

7. Section 67 of the Factories Act, 1948 prohibits employment of young children. Section 24 of the Plantation Labour Act, 1951 provides that no child who has not completed his twelfth year shall be required or allowed to work in any plantation. Section 109 of the Merchant Shipping Act, 1951 prohibits employment of person under fifteen years of age. Section 45 of the Mines Act provides that no Child

shall be employed in any mine, nor shall any Child be allowed to be present in any part of a mine which below ground or in any (open cast working) in which any mining operation is being carried on. Section 21 of the Motor Transport Workers Act, 1961 provides that no Child shall be required or allowed to work in any capacity in any motor transport undertaking. Sections of the Apprentices Act also prohibits employment of fourteen years of age. Section 24 of the Beedi and Cigar Workers (conditions of employment) Act 1966 provides that no child shall be required or allowed to work in any industrial premises (See 1997 SC 679).

8. The Child Labour (Prohibition and Regulation) Act 1986 was brought into force with the laudable object of prohibiting Child Labour. It provides for various contingencies. The Apex Court considered the Child Labour problem in a detailed judgment in AIR 1997 SC 679. A Learned Judge of this Court in *A. Srirama Babu Vs. The Chief Secretary to the Government of Karnataka, Bangalore and Others*, has ruled that while prohibition of Child Labour in Article 24 is part of fundamental right, provision for free and compulsory education for children under directive principles has also been declared judicially as fundamental right. The Court has further noticed that though providing facilities for healthy development of Children and protecting them against exploitation is only directive principle it is incidental to right to life and liberty which is fundamental right under Article 21 of the Constitution of India.

9. In the light of these judgments and in the light of the laudable object of the Child Labour Prohibition Act, let me see as to whether the present order requires my interference.

10. The impugned order is questioned by the petitioner on the ground that no compensation could be fixed by the impugned authority and the compensation if at all could be fixed by the jurisdictional magistrate in the light of Section 14 and Section 16 of the Act. Sri K Subba Rao, Learned Counsel says that the said submission has no legs to stand. It is no doubt true that Section 14 provides for a penalty of Rs. 20,000/- by way of fine. A procedure is also prescribed in terms of Section 16. But what cannot be forgotten by this Court is the law declared by the Supreme Court in the case of *M.C. Mehta v. State of Tamilnadu*(Supra). In the said judgment, the Supreme Court has ruled in para 27 as under;

"... we are of the view 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/- and the Inspectors, whose appointment is visualised by Section 17 to secure compliance with the provisions of the Act, should do this job. The inspectors appointed 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."

11. In these circumstances, I am of the view that the impugned order cannot be found fault with in the light of this judgment of the Supreme Court. The Supreme

Court has ordered compensation in terms of the directions contained in para 27 of the judgment and that cannot be confused with levy of fine by way of penalty u/s 17 of the Act. Penal fine is different from compensation. The said compensation is provided in terms of the direction of the Supreme Court and it is therefore legally acceptable and I do so in the case on hand. The argument in terms of Sections 14 and 16 does not appeal to me since that stands on a different footing. In fact a Learned Judge of the Allahabad High Court in 1998 SC 2502 has chosen to consider this very issue and thereafter has chosen to reject the same in para 8 of the said judgment. The Civil liability to pay compensation arises in terms of the judgment of the Supreme Court in M.C. Mehta v. State of Tamilnadu(Supra) which has created new rights and obligations enforceable by law in terms of directions. In these circumstances, I am of the view that no case is made out for my interference.

12. I would also say that in these matters there cannot be any rigid or strict enquiry as in other cases. There are Social Welfare measures and it is in the larger interest of Child Labour. I cannot but recall what the Supreme Court has stated while deciding the Minimum Wages Act in Ministry of Labour and Rehabilitation v. Tiffin's Barytes Asbestos and Paints Ltd. In the said judgment, the Court has ruled that a notification fixing minimum wages in a country where wages are already minimal should not be interfered with under Article 226 except on the most substantial of grounds. The minimum Wages Act is a Social Welfare Legislation undertaken to further the Directive Principles of State Policy an action taken pursuant to it cannot be struck down on mere technicalities. The said dictum to a certain extend would be applicable to the facts of this case.

13. I cannot but observe that mere prohibition of Child Labour would not solve the problem. A Welfare State has to take further steps to rehabilitate the Child Labour for a meaningful life in terms of Article 21 of the Constitution of India. That has to be done by the Government. It is hoped that Government would look into it.

14. Before concluding, I cannot but once again reproduce what the Supreme Court has stated at the commencement of the judgment in M.C. Mehta Vs. State of Tamil Nadu and others, I would be completing this judgment with those words.

"I am the child.

All the world waits for my coming.

All the earth watches with interest to see what I shall become.

Civilization hangs in the balance.

For what I am, the world of tomorrow will be.

I am the child.

You hold in your hand my destiny.

You determine, largely, whether I shall succeed or fail, Give me, I pray you, these things that make for happiness. Train me, I beg you, that I may be a blessing to the world.

Mamie Gene Cole"

Further, I deem it proper clarify that the finding given in this judgment is only referable to compensation. The criminal liability in the event of any proceedings has to be decided on its merits. This Court places on record its appreciation for the services rendered by Sri K. Subba Rao, Learned Senior Counsel, as a amicus curaie counsel.