
(2010) 03 MAD CK 0129
In the Madras High Court
Case No : Writ Petition No. 14239 of 2001

M. Venkatachalam

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Bonded Labour System Abolition Act, 1976 — Section 10, 12, 13, 14, 4
Constitution of India, 1950 — Article 23

Citation : (2010) 03 MAD CK 0129

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Balasubramanian, for the Appellant; P. Subramanian, Additional Govt. Pleader for Respondents 1 and 2 and R. Srinivasan, for 3rd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner is the owner of a Power Loom Factory situated at Vedarasampalayam, Mampalayam Road, Tiruchengode. A habeas corpus petition was filed before this Court in H.C.P. No. 581 of 2001. The said petition was filed by one V. Kumaravel, in which the present writ petitioner was cited as fourth respondent. A complaint was made that several persons have been kept as bonder labourers in the factory owned by the fourth respondent therein. After notice to parties, a Division Bench of this Court vide judgment dated 6.7.2001 held that the object of the habeas corpus petition was to enquire into the legality of detention of the person said to be illegally detained and they were of the opinion that there was no illegal detention of any bonded labourers and therefore, they closed the habeas corpus petition. However, with reference to the second prayer of the said petition to give a direction to the District Collector to take appropriate action under the provisions of the Bonder Labour System (Abolition) Act, 1976 (for brevity "the Act") for rehabilitating the families of the erstwhile bonded labourers, the Division Bench gave liberty to the persons who have escaped from bonded labour system to approach the authorities concerned

for appropriate relief. With this direction, the habeas corpus petition was closed.

2. Pursuant to the said direction, proceedings were initiated by the Sub Divisional Magistrate and Revenue Divisional Officer, Thiruchengode to release and retrieve bonded labourers said to be engaged by the petitioner. The petitioner, on coming to know that such proceedings are being initiated, gave a representation to the District Collector, Namakkal stating that he was running a factory for over 20 years and the workers in the factory were well taken care of and certain persons with ulterior motive have filed the habeas corpus petition before this Court and in that the District Collector gave a report, after conducting an enquiry, that there were no bonded labourers. He also questioned the jurisdiction of the Revenue Divisional Officer by stating that he is not the appropriate authority for providing economic and social rehabilitation and it is only the District Vigilance Committee constituted under the Act which can take suitable rehabilitation measures. Therefore, he appealed to the District Collector to cancel the order of release passed by the second respondent dated 11.7.2001.

3. In the order dated 11.7.2001, the second respondent found that there were as many as 17 workers who were kept under bondage by the petitioner and therefore, he directed their release in terms of the provisions of the Act. It is as against this release order dated 11.7.2001, the present writ petition has been filed.

4. Even though the order sets at liberty 17 individuals with proper addresses shown in the order, the petitioner has not cared to implead anyone of them in this writ petition. This writ petition was admitted on 8.8.2001 and notice was ordered to the parties.

5. On notice from this Court, the first respondent/District Collector has filed a counter affidavit dated 21.6.2002. In that counter affidavit, he had also enclosed the order dated 11.7.2001 passed by the second respondent containing the reasons. That order was not challenged by the petitioner. On the contrary, the order itself states that an information was received by the Revenue Divisional Officer that 53 families were kept as bonded labourers inside the premises of a power loom factory owned by the petitioner and, on inspection, those persons gave statements that they are kept under bondage and were not allowed to leave the factory to seek employment elsewhere, they were not paid the required minimum wages, they were put to irregular and long hours of work, they were also not allowed to meet their relatives and that they were not given leave of any kind. On enquiry, he found that the workers also received certain amounts as advance towards rendering labour services and therefore, the provisions of the Act were attracted and hence, it was held that those 17 persons are eligible for release.

6. In the counter affidavit, these facts were once again reiterated by the District Collector. He also stated that the certificate issued by the Revenue Divisional Officer is valid and he is also an implementing authority under the Act. Merely

because Vigilance Committees are constituted that will not denude the power of the revenue officials from implementing the provisions of the Act.

7. With reference to the contention that there were no bonded labourers and that the District Collector in response to the habeas corpus petition gave a report that there were no bonded labourers was also denied. On the contrary, in paragraph (3) it was stated that a detailed enquiry was conducted by the District Adi Dravidar Welfare Officer, Namakkal on 13.4.2001, 14.4.2001 and 17.4.2001 and all the available persons from the 46 families gave statements and a comprehensive report was filed before this Court. It is on the basis of the said report, the Court gave liberty to the persons to approach the officers individually. Though the District Collector stated that, on enquiry, the workers gave a statement that there was no illegal detention by the owner of the factory and the same was reported to the Court, but yet the second respondent is entitled to pass appropriate orders of release.

8. The District Collector also referred to the fact that the 17 persons covered by the impugned order escaped from the factory and were given shelter in Karur by a N.G.O. operating in that area and the enquiries from those escaped persons showed that the amounts were advanced to the workers by the petitioner and using that as a bondage they were made to work for the factory. The District Collector also raised a fundamental question that by release of these workers, the petitioner was nowhere put to any hardship.

9. At the time of admission, this Court by an order dated 8.8.2001 granted interim injunction restraining the authorities from launching criminal prosecution against the writ petitioner. The said order came to be vacated by a subsequent order dated 25.8.2003. This Court recorded that the Division Bench did not render a finding that there were no bonded labourers, but, on the contrary, the order if read carefully leads to the conclusion that the petitioner has employed certain persons as bonded labourers and they were rescued and released by the revenue officials.

10. It is also seen that the third respondent which is a N.G.O. got itself impleaded by filing W.P.M.P. No. 56883 of 2002 and the same was ordered by this Court on 7.3.2003. In the affidavit filed in support of the impleadment, the Executive Director of the organization stated that they had sent a fact finding team which submitted a report confirming the prevalence of the bonded labour and when the second respondent was attempting to rescue 20 of the families of bonded labour, about 300 henchmen of the petitioner obstructed the van in which the workers were taken away by the Revenue Divisional Officer and when they were attempting to rescue the bonded labour, one of the officers of the third respondent/Organization by name Kadir was assaulted. They were dragging the bonded labour back into the premises, but one of the bonded labourer Kumaravel managed to escape and he himself filed the habeas corpus petition before this Court. In fact, when this affidavit was filed along with the petition to implead, the said petition was not even opposed by the petitioner and no attempt was made

to controvert any of the allegations made in the affidavit.

11. Subsequent to the third respondent impleading itself, the rescued workers have also filed another impleadment petition in W.P.M.P. No. 28426 of 2005 for impleading themselves. The said petition was ordered on 4.8.2009 and those workmen have also been impleaded. One L. Kandasamy, who has got himself impleaded as 10th respondent, has sworn to the affidavit. In the affidavit, he has stated that respondents 4 to 17 were bonded labourers and they were kept at bondage by the petitioner. After the rescue by the third respondent, they were paid Rs. 1000/- as interim relief and release certificate was also given to them. Despite the release certificate, no amounts were paid from the rehabilitation fund and that is only because of the interim order passed by this Court. Therefore, they prayed that the writ petition should be dismissed and the rehabilitation measures should be taken.

12. In the light of the rival contention, the question to be determined is whether the impugned release order is valid?

13. Under Act 19 of 1976, namely the Bonded Labour System (Abolition) Act, 1976, by virtue of Section 4, the bonded labour system stood abolished and every bonded labour, on the commencement of the Act, stood freed and discharged from any obligation to render any bonded labour.

14. u/s 10 of the Act, the authorities have been notified for implementing the order. Though Vigilance Committees have been constituted u/s 13 of the Act and their functions are delineated u/s 14 of the Act, the work of the Vigilance Committee will not come in the way of the officers who are notified as implementing authorities, which comprises of the District Magistrate and other persons empowered to deal with the Act. Therefore, there is no jurisdictional error in the second respondent issuing a release certificate. On the other hand, the power of the second respondent has been forfeited by the counter affidavit filed by the first respondent.

15. The Supreme Court vide judgment in Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, has held that whenever it is shown that a labourer is made to provide forced labour, the Court will presume that he is doing so in consideration of an advance or other economic consideration received by him and therefore, he is a bonded labourer. Though this presumption can be rebutted, it can be done only by satisfactory materials and until such time, the Court will have to presume that he is a bonded labourer. Even the State Government cannot be permitted to repudiate its obligation to identify, release and rehabilitate the bonded labourer on the plea that they must show in an appropriate proceeding conducted or adversary system of justice that they are bonded labourers.

16. Apart from the traditional notion of concept of bonded labour, it must also be noted that Article 23 of the Constitution of India provides right against exploitation. By the aforesaid Article, which is part of the Fundamental Rights

guaranteed, it is stated that all similar forms of forced labour are prohibited and contravention of the provision shall be an offence punishable in accordance with law.

17. The Supreme Court vide judgments in Labourers Working on Salal Hydro-electric Project Vs. State of Jammu and Kashmir, and Sanjit Roy Vs. State of Rajasthan, has held that non payment of minimum wages will also amount to forced labour prohibited by Article 23 of the Constitution of India.

18. Therefore, the attempt made by the petitioner that respondents 4 to 17 were not kept as bonded labourers cannot be accepted and the materials produced before the authorities, including before this Court, stood uncontroverted except by a self-serving statement of the petitioner. In the absence of any clear rebuttal, it is open to the Sub Divisional Magistrate to presume that respondents 4 to 17 are clearly kept under bondage and he, being an officer entrusted u/s 12 of the Act, is entitled to release the persons from bondage and by virtue of the provisions of the Act, they are also entitled to receive rehabilitation from the State Government.

For the reasons aforesaid, the writ petition stands dismissed. In view of the dismissal of the writ petition, respondents 4 to 17 are entitled to claim relief from the authorities on the strength of the certificate issued by the second respondent. An order to this effect shall be passed by respondents 1 and 2 within a period of eight weeks and the amounts shall be paid to respondents 4 to 17. This Court also places on record the role played by the third respondent in bringing the pernicious system of bonded labour to public notice and also getting respondents 4 to 17 released from bondage. No costs.