
(2012) 06 JH CK 0086

In the Jharkhand High Court

Case No : Contempt Case (Civil) No. 611 of 2010

Mohiuddin Khan

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 27-06-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 21, 23, 24

Citation : (2012) 134 FLR 909 : (2012) 4 JCR 335

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Amit Sinha, for the Appellant;

Judgement

D.N. Patel, J.—Counsel for the petitioner submitted that the respondents have not complied with the order passed by this Court in the earlier writ application whereby direction was given that as the petitioner is working with the respondents since long, his case for regularisation of services be considered as well as payment of wages for the period for which the petitioner has actually worked. Counsel for the respondents has submitted that the respondents has already taken a decision on 04.12.2004 not to regularize the petitioner but the petitioner is entitled to the wages for the period for which the petitioner has actually worked.

2. Counsel for the respondents have submitted that they have filed an affidavit in pursuance of the order passed by this Court dated 17.05.2012 and as per Annexure-A series, the petitioner has actually worked for 956 days for the period running from 17th April, 1998 to 22nd March, 2002 and looking to the minimum wage of Rs. 55.30 per day, at the most the petitioner is entitled to Rs. 52867/-. This fact has been stated in paragraph 8 of the affidavit.

3. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, it appears that the petitioner has worked with the respondents for 956 days and looking to the stand taken in the counter-affidavit

filed by the respondents that a letter has been written by the petitioner that he will work without salary therefore, he was not paid salary till date. Now it ought to have been kept in mind by the State authorities that they are "State" within the meaning of Article 12 of the Constitution of India. They must work as an ideal employer. Petitioner is not a bounded labourer. No citizen of this country can be allowed to waive his fundamental right. Even if the petitioner has waived his right to get livelihood, the minimum wages ought to have been paid by the State. It has already been held by the Hon"ble Supreme Court in *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, . That fundamental right cannot be waived by the citizen. The right to get the minimum wages is cover by right to life. It has been held by the Hon"ble Supreme Court in the case of *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, , especially at Paras-11 and 14, as under :

11. That takes us to a consideration of the other limb of the second preliminary objection. The argument of the respondents under this head of preliminary objection was that a writ petition under Article 32 cannot be maintained unless it complains of a breach of some fundamental right or the-other and since what were alleged in the present writ petition were merely violations of the labour laws enacted for the benefit of the workmen and not breaches of any fundamental rights, the present writ petition was not maintainable and was liable to be dismissed. Now it is true that the present writ petition cannot be maintained by the petitioners unless they can show some violation of a fundamental right, for it is only for enforcement of a fundamental right that a writ petition can be maintained in this Court under Article 32. So far we agree with the contention of the respondents but there our agreement ends. We cannot accept the plea of the respondents that the present writ petition does not complain of any breach of a fundamental right. The complaint of violation of Article 24 based on the averment that children below the age of 14 years are employed in the Construction work of the Asiad projects is clearly a complaint of violation of a fundamental right. So also when the petitioners allege non-observance of the provisions of the Equal Remuneration Act, 1946, it is in effect and substance a complaint of breach of the principle of equality before the law enshrined in Article 14 and it can hardly be disputed that such a complaint can legitimately form the subject-matter of a writ petition under Article 32. Then there is the complaint of non-observance of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and this is also in our opinion a complaint relating to violation of Article 21. This article has acquired a new dimension as a result of the decision of this Court in *Maneka Gandhi v. Union of India* and it has received its most expansive interpretation in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* where it has been held by this Court that the right to live guaranteed under this article is not confined merely to physical existence or to the use of any faculty or limb through which life is enjoyed or the soul communicates with outside world but it also

includes within its scope and ambit the right to live with basic human dignity and the State cannot deprive any one of this precious and invaluable right because no procedure by which such deprivation may be effected can ever be regarded as reasonable, fair and just. Now the rights and benefits conferred on the workmen employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 are clearly intended to ensure basic human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly be a violation of Article 21 by the Union of India, the Delhi Administration and the Delhi Development Authority which, as principal employers, are made statutorily responsible for securing such rights and benefits to the workmen. That leaves for consideration the complaint in regard to non-payment of minimum wage to the workmen under the Minimum Wages Act, 1948. We are of the view that this complaint is also one relating to breach of a fundamental right and for reasons which we shall presently state, it is the fundamental right enshrined in Article 23 which is violated by non-payment of minimum wage to the workmen.

14. Now the next question that arises for consideration is whether there is any breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Article 23 prohibits is "forced labour" that is labour or service which a person is forced to provide and "force" which would make such labour or service "forced labour" may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as "force" and if labour or service is compelled as a result of such "force", it would be "forced labour". Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He

would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly "forced labour". There is no reason why the word "forced" should be read in a narrow and restricted manner so as to be confined only to physical or legal "force" particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio-economic Justice for all and everyone shall have the right to work, to education and to adequate means of livelihood. The Constitution-makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have formed for us has a social purpose and an economic mission and therefore every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is not unoften that in a capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word "force" must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is forced labour because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23. Such a person would be entitled to come to the Court for enforcement of his fundamental right under Article 23 by asking the Court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be "forced labour" and the breach of Article 23 is remedied. It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under Article 23.

(Emphasis Supplied)

4. In view of the aforesaid decision, right to get minimum wages is included in the right to life. Non-payment of minimum wages is a breach of Article 23 of the Constitution of India. The petitioner has worked for a very long period of time. Actually the petitioner has worked more than 900 days. Assuming without

admitting that he worked without regularization, then it is the highest duty of the State to make payment of minimum wages at least. In the State of Jharkhand. much more poverty is prevailed here and such poor person might have agreed to work even without wages, but that does not mean that he is waiving his right to get minimum wages.

5. It is a constitutional duty of the State to make payment of minimum wages. This Court appreciates the affidavit filed by the Civil Surgeon, Koderma that he has written letter to the high ranking officers of the State giving detailed calculation of the amount which is found legally payable to the petitioner on the basis of Rs. 55.30 per day as minimum wages calculated for 956 days. As stated above, the petitioner has already worked for 956 days which fact has also been admitted by the respondents. I hereby direct Principal Secretary, Health, Education and Family Planning, Govt. of Jharkhand, to make payment of Rs. 52.867/- to the petitioner as remuneration for the work already done by the petitioner. This payment shall be paid within a period of four weeks from the date of receipt/production of a copy of this order.

6. Hence, this petition is allowed and disposed of in view of the aforesaid observations.

7. Presence of the Officer, namely Dr. Sunil Oraon, son of late Khudi Oraon. working as Civil Surgeon-cum-Chief Medical Officer, Koderma, is not required In view of the aforesaid orders till further orders. This contempt application is disposed of. Application disposed of.