

(2015) 01 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition Nos. 83103-107 of 2013 [KLR-RES]

Murthy and Others

APPELLANT

Vs

The Deputy Commissioner Bellary and Others

RESPONDENT

Date of Decision : 31-01-2015

Acts Referred:

Citation : (2015) 01 KAR CK 0047

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : Anand R. Kolli, Advocate, for the Appellant; Ravi V. Hosamni, AGA, for the Respondent

Final Decision : Allowed

Judgement

Aravind Kumar, J.—Heard Shri Anand R. Kolli, learned counsel for petitioners and Shri Ravi V. Hosamani, learned AGA for respondents.

2. Petitioners are seeking for quashing of notice dated 15.09.2010 issued by respondent No. 1 vide Annexure - C, whereunder petitioners have been called upon to pay a sum of Rs. 20,000/- each on account of alleged employment of child labour in the mines said to be belonging to them.

3. Learned AGA has made available the original records pertaining to the proceedings initiated against petitioners which has culminated in passing the impugned orders. Same has been perused by me.

4. It is the contention of Shri Anand R. Kolli, learned counsel appearing for petitioners that impugned order is in violation of principles of natural justice, since respondent - authorities had not issued notices of hearing and as such, without considering the plea of petitioners in a perfunctory manner, respondent - Authorities have imposed fine and as such, same be quashed.

5. It is also contended that 3rd respondent had initiated criminal proceedings against petitioners for alleged violation of provisions of Child Labour Act and said

proceedings has ended in acquittal and as such, learned counsel for petitioner prays for quashing of impugned order.

6. Per contra, Shri Ravi V. Hosamani, learned AGA would defend the impugned order and submits that notices of hearing had been issued to petitioners under certificate of posting and same having been received by them, they have failed to appear before the Authorities and as such, 3rd respondent - Authorities has proceeded to adjudicate the complainants' case which was to the effect that petitioners employed children in their mines and as per dicta laid down by Hon'ble Apex Court, amount raising from Rs. 20,000/- to Rs. 60,000/- has been levied as fine which is to be deposited by petitioners towards rehabilitation of children for which a separate fund/account has been created, which order is just and proper and as such, he prays for dismissal of the writ petitions.

7. Having heard the learned advocates appearing for parties and on perusal of records made available, it would indicate that initially on 15.03.2009 a show cause notice had been issued to petitioners which was preceded by alleged spot inspection said to have been conducted by 3rd respondent in respect of illegal mines operated by petitioners. Photo copy of mahazar drawn at the spot is available in the file. A perusal of same would indicate that none of petitioners have signed the said mahazar. However, it is the contention of respondent - Authorities that none of the owners of the mines were present at the spot when mahazar was drawn and it was their authorised representation who were present and they have affixed his/her signature to the mahazar and as such, petitioners cannot now contend that they were not aware of mahazar having been drawn. Even otherwise, it is contended that show cause notice dated 15.03.2009 would clearly indicate that Authorities had already arrived at a conclusion that petitioner had engaged children in the mines belonging to them. Contents of show cause notice does not even remotely suggest that same had been issued for conducting proceedings. On the other hand, it would clearly indicate that 3rd respondent - Authority namely Labour Inspector has called upon petitioners to deposit the fine amounts. It is thereafter, notices of hearing are said to have been issued to petitioners for conducting the proceedings.

8. On the short ground that the proceedings conducted are post-decisional hearing and an empty formality, impugned notices issued to petitioners at Annexures - D to D5 are liable to be quashed. At the same time, it requires to be noticed that mere acquittal of petitioners in a criminal case would not absolve their liability to pay fine, if the Authorities are able to prove and demonstrate that such illegal mining activity was carried on by petitioners and they had employed children which is prohibited under the Child Labour Prohibition Act. As such, this Court is of the considered view that if matter is remanded back to respondent - Authorities for adjudication de nova, it would meet ends of justice.

9. It would also be relevant to notice that alleged notices of hearing that is said to have been despatched by 3rd respondent to petitioners in some of the cases like that of 1st petitioner is not by the registered post. As such, even service of

notice of hearing on petitioners cannot be held to be proper and sufficient. That apart, order sheets said to have been maintained by 3rd respondent which is available in the original file made available by learned AGA would clearly indicate that there is no entry subsequent to 25.11.2009 and impugned orders have been passed on 15.09.2010. The grievance of petitioners is that there is no proceedings conducted, no notice is issued and as such, demand notice made under the impugned notification Annexure - C is bad in law. However, original records made available would indicate, as already noticed hereinabove that an order has been passed on 26.08.2010 which was pursuant to the show cause notice dated 25.09.2010 which has been held to be bad in law for want of due service and as such, impugned order cannot be sustained.

10. In that view of the matter, notices issued to petitioners at Annexures - D to D5 cannot be sustained. In the result, I proceed to pass the following:

"(i) Writ petitions are hereby allowed.

(ii) Notification/notice dated 15.09.2010 to be vide Annexure - C is hereby quashed and consequently demand notices Annexures - D to D5 are also hereby quashed. Matter is remanded back to 3rd respondent - authorities for adjudication afresh in the light of observations made herein.

(iii) Since petitioners are represented by their learned counsel, they are hereby directed to appear before 3rd respondent on 23.02.2015 at 03:00 p.m. without waiting for any further notice.

(iv) It is also made clear that 3rd respondent is not required to issue any fresh notice to petitioners. In the event of petitioners failing to appear, respondent - Authorities would be at liberty to proceed with enquiry proceedings."