
(2009) 04 AHC CK 0200
In the Allahabad High Court

Narendra Kumar Singh

APPELLANT

Vs

State of U.P.and others.

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0200

Hon'ble Judges : Abhinava Upadhya, J

Final Decision : Disposed Of

Judgement

Abhinava Upadhya, J.

The petitioner is the owner/proprietor of M/s Narendra Sweets (Rahul Sweets) Chai Evum Namkin ki Dukan, Nehru Nagar Chahuraha, Rae Bareli.

On 26.11.2007 an inspection was made on the aforesaid premises and a child labour was found to be employed by the petitioner whose age is said to below 14 years. A show cause notice was issued to the petitioner on 10.04.2008 to give reply within a week. The petitioner received the said notice on 21.04.2008 and filed his reply/objection on 22.04.2008 which according to respondent No. 2 was not satisfactory. Thereafter a recovery certificate was issued on 05.08.2008. It is noteworthy that in the inspection memo the petitioner was granted a week's time to explain why proceedings should not be initiated against the petitioner for engaging child labour. Learned counsel for the petitioner states that the said inspection was made in absence of the owner of the firm and in his absence the age of the labour has been incorrectly mentioned and, therefore, the petitioner has no knowledge of the inspection in the said premises.

Learned counsel for the petitioner has urged that on coming to know of the aforesaid proceeding he raised a dispute before the concerned authority that the age of the alleged child labour is more than 14 years and, therefore, the provisions of the Child Labour (Prohibition and Regulation) Act, 1986 cannot be invoked except as provided under Section 10 of the said Act. Therefore, the concerned authority ought to have got the age of the alleged child labour

medically examined by the Chief Medical Officer of the concerned area and then only could have proceeded against the petitioner. That having not been done, the recovery pursuant to the order impugned is in violation of the provisions of the Act as well as the judgment of this Court rendered in the matter of *Rahul Kumar Proprietor of M/s Sheetal Hotel Vs. State of U.P. and others* reported in (2008) FLR 7961.

In my opinion no fruitful purpose will be served in keeping the writ petition pending. Therefore, under the aforesaid circumstances, it is provided that the petitioner shall produce the alleged child labour before the concerned Deputy Labour Commissioner, who will first get the age of the alleged child labour medically examined by the Chief Medical Officer of the area concerned before proceeding with recovery of the aforesaid amount. Therefore, until the aforesaid exercise of determination of age of the alleged child labour is undertaken, the recovery shall be kept in abeyance

It is made clear that in case the age of the alleged child is within the prohibited category i.e. below 14 years of age, the authority concerned will be at liberty to move against the petitioners in accordance with law and if it is found that the age is above the prohibited category, then the proceedings against the petitioners shall be dropped.

With the aforesaid observation, the writ petition is finally disposed of.