
(2010) 08 AHC CK 0075
In the Allahabad High Court
Case No : C.M.W.P. No. 13573 of 2010

Nishar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Citation : (2010) 6 AWC 5845

Hon'ble Judges : Devendra Pratap Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Devendra Pratap Singh, J.—Despite time being granted twice no counter-affidavit has been filed by the learned standing counsel. Accordingly, there is no option left except to proceed to dispose of the petition.

2. Heard learned Counsel for the parties.

3. It is claimed that the Petitioner is running a small sweet and tea shop by the name of "Sagar Sweets" in Rampur Maniharan in district Saharanpur. He received a notice dated 19.8.2009 asking him to show cause why he should not be penalized with a penalty of Rs. 20,000 for having employed Meharban, a child labour in view of the order of the Supreme Court dated 10.2.1996 passed in the case of M.C. Mehta Vs. State of Tamil Nadu and others, The Petitioner filed his reply to the notice inter alia stating that the child Meharban was not employed but in fact was a relative and was waiting for someone in the shop. However, by the Impugned order dated 23.10.2009 the Petitioner has been directed to deposit Rs. 20,000.

4. Learned Counsel for the Petitioner has urged that assuming that a child labour was employed but neither his shop is engaged in hazardous operations nor the nature of his work was hazardous and therefore, the authorities had erred in imposing the penalty despite a judgment of this Court rendered in the case of Chhota Bhai Munna Bhai and Co., Naini, Allahabad Vs. State of U. P. and others,

5. A perusal of the notice shows that the alleged child labour, Meharban, was found cleaning utensils in the Petitioner's tea shop. Apparently, neither tea shop is a hazardous industry or cleaning of utensils is hazardous process nor it is a factory. The notice also does not mention strength of the workers.

6. Some suggestions were made by the Labour Commissioner with regard to compensation/penalty before the Supreme Court in the case of M.C. Mehta (supra) which have also been quoted in the case of Chhota Bhai Munnu Bhai (supra) which is to the following effect :

CRITERIA FOR COMPENSATION IN FACTORIES :

(a) In case of child worker, who has not completed 14 years of age, found working in factory in hazardous process, a compensation of Rs. 50,000 per child is being suggested.

(b) In case of child worker, who has not completed 14 years of age, found working in factory using non-hazardous process, a compensation of Rs. 20,000 per child is being suggested.

(c) In case of young persons, between 14-18 years, found working in factory without obtaining certificate of fitness in hazardous process a compensation of Rs. 20,000 per child is being suggested.

(d) in case of young persons between 14-18 years, found working in a factory without obtaining certificate of fitness using non-hazardous process, a compensation of Rs. 10,000 per child is being suggested.

CRITERIA FOR COMPENSATION IN SHOPS AND ESTABLISHMENTS :

(i) In petty establishments such as road side dhabas, tea shops, halwai shop, scooter cycle repair shops, tailors and other similar establishments employing 4 or less workmen, the compensation suggested is Rs. 5,000 per child.

(ii) In small establishments such as restaurants, sweet shops, dhabas, auto repair workshops etc. employing 5 or more workmen, the suggested compensation is Rs. 10,000 per child.

(iii) In establishments where the employer is himself physically handicapped and the establishment is a petty establishment, a token compensation of Rs. 2,000 has been proposed.

(iv) In case where the employer is a well established concern and is employing 100 or more workmen, located in a prime market the suggested compensation is Rs. 25,000 for each child.

(v) In cases where child labour is not prohibited but only regulated Rs. 5,000 have been recommended in all such case irrespective of the number of employees/status of establishment, as the employer failed to produce statutory records in respect of such children.

(vi) No compensation has been recommended in those cases where the employer has been acquitted by trial court.

7. The said suggestions/recommendations were accepted by the Supreme Court and it passed an order on 10.12.1986. But subsequently it passed an order on 18.12.1996 clarifying the earlier order showing that the earlier directions given on 10.12.1996 were in relation to hazardous industries. Neither in the notice nor in the impugned order there is any allegation or even application of" mind as to whether the Petitioner's was a hazardous industry and whether the child labour was involved in hazardous occupation and what was the strength of workers. Further, the notice does not take into account the subsequent order of the Supreme Court dated 18.12.1996. This Court in the case of Chhota Bhai Munnu Bhai (supra), after considering the two directions of the Apex Court, held in paragraph 34 to the following effect :

The notice had not taken into account the subsequent order of the Supreme Court. The notice had not taken into account that the industries are hazardous and yet the occupations may be non-hazardous, so as to come within the exception Clause of the processes carried on by the occupier with the aid of his family. The notices which have been issued to those engaged in non-hazardous processes, is conspicuous by the absence of noticing the second order of the Supreme Court which requires the occupier to deposit a compensation lesser than that which was mentioned in the first order of the Supreme Court. The notices which have issued to the Petitioners is the consequence of the survey.

and thereafter it went on to quash the notice.

8. From the admitted facts in the notice and the order, it is apparent that Clauses (a) to (d) do not apply as it is not a factory. The notice and the order are also vague as to how the compensation has been fixed at Rs. 20,000 as in none of the Clauses (i) to (vi) the amount has been fixed by the Supreme Court. Examined from any angle the notice is highly vague and even the consequential order shows non-application of mind and therefore cannot be sustained.

9. For the reasons above, this petition succeeds and is allowed and the impugned order dated 23.10.2009 and the consequential citation dated 25.1.2010 are hereby quashed.

10. It is further directed that the amounts deposited in pursuance of the orders of this Court shall be refunded to the Petitioner forthwith not later than 15 days from the date of submission of a certified copy of this order.