
(1999) 09 KAR CK 0056

In the Karnataka High Court

Case No : Writ Petition No. 15792 of 1999

P. Sooryanarayana Shetty and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Child Labour (Prohibition and Regulation) Act, 1986 — Section 14, 16, 17
Constitution of India, 1950 — Article 226

Citation : (1999) ILR (Kar) 4721 : (2000) 5 KarLJ 570

Hon'ble Judges : G. Patribasavan Goud, J

Bench : Single Bench

Advocate : Sri K. Prakash Hegde, Sri G.K. Shevgoor and Sri S.N. Bhat, for the Appellant; Sri K.H. Jagadish, Government Advocate, for the Respondent

Judgement

G. Patribasavan Goud, J.—The Supreme Court considered at length the evil consequences of the continued employment of child labour notwithstanding the relevant constitutional and statutory provisions in that regard. Referring to various constitutional and other statutory provisions, convention on the rights of a child concluded by the U.N. General Assembly and Reports of various Committees, the Supreme Court found that, notwithstanding all these safeguards against the abuse of child labour, children are continued to be subjected to hardship that should not have visited them at their tender age. While doing so, the Supreme Court also took guidance from the provisions of the Child Labour (Prohibition and Regulation) Act, 1986 ("Act" for short) in order to give certain directions with reference to the provisions of the said Act, in addition to giving other directions. While doing so, the Supreme Court also noticed as to how, notwithstanding the penal provisions contained in Section 14 of the Act, the abuse has continued. It is then that the Supreme Court in M.C. Mehta Vs. State of Tamil Nadu and others, , gave certain directions. To give shape to the said directions, the Supreme Court, in paragraph 31 of its judgment, directed the States to take steps as listed in the said paragraph. The very first step was to require a survey to be made within six months in respect of the type of child

labour referred to in course of the judgment. It is in pursuance of the said survey that, in all these cases, the Labour Inspector has informed the petitioners herein, who are employers in the cashew industries, telling them that in each of their establishments, a child or children is/are employed and as such they being "offending employers", they are required to comply with the Supreme Court direction in that regard, the same being as follows, as to be found in paragraph 27 of the judgment of the Supreme Court.

".....Taking guidance from the Act 61 of 1986 the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs. 20,000/- and the Inspectors, whose appointment is visualised by Section 17 to secure compliance with the provisions of the Act, should do this job. The Inspectors appointed u/s 17 would see that for each child employed in violation of the provisions of the Act, the concerned employer pays Rs. 20,000/-which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund....".

In pursuance of this direction of the Supreme Court, in each of these cases, Labour Inspector has called upon each of these petitioners-employers to pay Rs. 20,000/- in respect of each child employed in contravention of the provisions of the Act, and where the said amount is not paid, the same is sought to be recovered as arrears of land revenue. It is seeking quashing of the relevant directions in this regard both relating to demanding a sum of Rs. 20,000A in respect of the alleged employment of each child in contravention of the provisions of the Act as also in respect of recovery of the amount by way of arrears of land revenue, that the petitioners have approached this Court under Article 226 of the Constitution.

2. Before proceeding to consider the relevant provisions of the Act, I may also refer to one more direction of the Supreme Court in the said decision. That could be found at paragraph 31(9) of the said decision. The Supreme Court observes therein thus:

"We should also like to observe that on the directions given being carried out, penal provisions contained in the aforementioned 1986 Act would be used where employment of a child labour, prohibited by the Act, would be found".

3. The Act sought to prohibit engagement of children in certain employments, and to regulate the conditions of work of children in certain other employments. Section 2(ii) defines "child" as meaning a person who has not completed his fourteenth year of age.

Section 3 totally prohibits employment of children in certain occupations and processes and it provides that no child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule to the Act or in any workshop wherein any of the processes set forth in Part B of the Schedule to the Act is carried on, the only concession as provided in the proviso to the said Section 3 being, the said prohibition would not apply to any workshop wherein

any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, the Government.

While Section 3 thus totally prohibited employment of children in certain sectors, Part III of the Act consisting of Sections 6 to 13 deal with regulation of conditions of work of children in an establishment or class of establishments in which none of the occupations or processes referred to in Section 3 is carried on. In short, such establishments could be termed as non-prohibited establishments, and with regard to children employed in such establishments, Part III of the Act took care of certain aspects with regard to welfare of children, since employment of children was permissible. That is how Section 7 deals with hours and period of work, Section 8 with weekly holidays, Section 9 notice to Inspector, Section 10 empowering the Inspector to decide disputed age of children, Section 11 requiring maintenance of register, Section 13 dealing with health and safety.

In this context itself, I may refer to Section 17 of the Act, which provides that the appropriate Government may appoint Inspectors for purposes of securing compliance with the provisions of the Act. It further provided that any Inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code.

4. Sections 14 and 16 deal with penalties for contravention of the provisions of the Act and the aspects relating to filing of complaints, taking of cognizance by Courts, etc., sub-section (1) of Section 14 provides that whoever employs any child or permits any child to work in contravention of the provisions of Section 3, shall be punishable with imprisonment for a term which shall not be less than three months, but which may extend to one year, or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees, or with both. Sub-section (2) of Section 14 provided that whoever, having been convicted of an offence u/s 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

While sub-sections (1) and (2) of Section 14 of the Act deal with contravention of Section 3, wherein employment of children was totally prohibited, sub-section (3) of Section 14 deals with contraventions in respect of areas where employment of children is permitted but still the employer does not comply with the statutory requirement in that regard as contained in Part III of the Act. That is how, under sub-section (3) of Section 14, failure to give notice to the Inspector u/s 9, failure to maintain a Register as required by Section 11, etc., are made punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

Section 16 of the Act inter alia provides that any person, Police Officer or Inspector may file a complaint in any Court of competent jurisdiction with regard to commission of an offence under the Act, and that every certificate as to the

age of the child which has been granted by the prescribed medical authority shall, for the purposes of the Act, be conclusive evidence as to the age of the child to whom it relates. Rule making power u/s 18 inter alia provided, by Section 18(2)(c), to prescribe the medical authorities which may issue such certificates as also, to prescribe a form of such certificate, the charges which may be made thereunder and the manner in which such certificate may be issued. Rule 17 of the Child Labour (Prohibition and Regulation) Rules, 1988 deals with these aspects.

5. I have referred to earlier Section 9 of the Act requiring notice to be issued to the Inspector where the employment of children is permitted under Part III of the Act. Section 9(2) requires every occupier, in relation to an establishment in which employment of children is permitted under Part III of the Act and in pursuance of which, who employs or permits to work any child, to send a written notice to the Inspector within 30 days from the date of such employment, containing particulars mentioned in sub-section (1) of Section 9 of the Act. Section 10 provides that if any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.

6. In the above background, we may refer to the facts of these cases.

7. All the petitioners herein are employers in the cashew industries. Item 17 of Schedule B to the Act refers to cashew and cashew nut decaling and processing. This is a process which the petitioners-employers have been carrying on in relation to their cashew industry, and this is a process in respect of which appointment of children is prohibited by Section 3 of the Act. If any child therefore is found employed in respect of the said process, then, apart from the penal provisions contained in the Act, employer concerned would also come within the ambit of the directions of the Supreme Court with regard to paying Rs. 20,000/- in respect of each child so employed in contravention of the provisions of the Act. I have also referred earlier as to how the Supreme Court directed survey to be undertaken within six months, and the respective notices issued to the employers indicating that the alleged employment of child labour in contravention of the provisions of the Act was noticed in course of the said survey. According to the learned High Court Government Advocate Sri K.H. Jagadish, once the authorities undertook the said survey in compliance with the directions of the Supreme Court and found the children employed in contravention of the provisions of the Act, employers had no alternative but to pay Rs. 20,000/- in respect of each child so employed, and, it is for this reason that the notices were initially issued and when payment was not made, steps were taken to recover the amounts as arrears of land revenue. Before coming to this aspect, I shall refer to one other submission made by the learned Counsel for the petitioners in this context. That the direction of the Supreme Court with

regard to recovery of Rs. 20,000/- in respect of each child so employed has to be complied with, there can be no exception to that from any quarter. What Sri K. Prakash Hegde, Sri S.N. Bhat, Sri G.K. Shevgoor, and Sri C.M. Mohan Rao, learned Counsel for the petitioners, urge is that the Supreme Court, in relation to this direction, specifically used the term "offending employer", and not merely that, the Supreme Court also said in the very context that the offending employer must be asked to pay, as compensation for every child employed in contravention of the provisions of the Act, a sum of Rs. 20,000/-. Learned Counsel for the petitioners, therefore, urge that before the employers could be called upon to so pay the sum of Rs. 20,000/-, it must first be established that they are the offending employers, particularly in the context in which the Supreme Court refers to the contravention of the provisions of the Act. Learned Counsel for the petitioners, therefore, urge that such employers would come within the term "offending employers" only after they are prosecuted for and have been convicted of an offence punishable u/s 14 of the Act. Sri K.H. Jagadish, learned High Court Government Advocate, however, refers to the other directions in paragraph 31(9) of the judgment of the Supreme Court wherein, as already seen, the Supreme Court observes that on the directions given being carried out, which directions included the survey to be undertaken in the very first instance and then to proceed to recover a sum of Rs. 20,000/- in respect of each child, penal provisions contained in the Act should be used wherein employment of child labour prohibited by the Act is found. I am therefore of the opinion that when the Supreme Court refers to "offending employer" in relation to recovery of Rs. 20,000/-, this was independent of the prosecution and conviction u/s 14 of the Act and also in addition to such prosecution and conviction. The offending employer i.e., one who contravenes the provisions of the Act, may be independently prosecuted by any person, Police Officer or Inspector filing a complaint u/s 16 of the Act. It is without reference to this that the Supreme Court's direction relating to recovery of Rs. 20,000/- in respect of each child so employed needs to be implemented. Therefore, when the Supreme Court, in the said direction relating to recovery of Rs. 20,000/- for each child, refers to an employer as offending employer who has employed any child in contravention of the provisions of the Act, it should be taken that, for this purpose, it would be the Inspector appointed u/s 17 of the Act, for the local limits of which the concerned establishment is situated, that needs to be convinced that the employer concerned is such offending employer. The Inspector, in this regard, might have received information either in course of the survey as directed by the Supreme Court or in course of his normal duties as Inspector of the local area concerned. On receiving any such information or on finding a child or children having been so employed in contravention of the provisions of the Act, the Inspector would be duty bound in terms of the directions of the Supreme Court to recover Rs. 20,000/- in respect of each child. To that extent, therefore, the Inspector of the local area taking steps in this regard cannot be taken exception of. It is the further procedure that the Inspector concerned in each of these writ petitions has followed that needs to be

taken exception of. It is to be remembered that the onerous responsibility has been cast upon the Inspector concerned with regard to recovery of Rs. 20,000/- in respect of each child so employed, in pursuance of the directions of the Supreme Court. It is also to be remembered that, but for this direction by the Supreme Court, no employer could have been called "offending employer" having employed a child in contravention of the Act, unless he had been convicted in that regard for an offence punishable u/s 14 of the Act. Where an employer is prosecuted for the commission of such an offence punishable u/s 14, he would have the benefit of a fair trial. In relation to the direction by the Supreme Court with regard to recovery of Rs. 20,000/- however, though no procedure is suggested, still it is necessary for the concerned authorities to realise as to what a tremendous responsibility is placed upon the Inspector concerned, to dub a man as someone who had contravened the provisions of the Act. Before the employer is so labeled as an offending employer contravening the provisions of the Act, and before the employer is consequently asked to pay Rs. 20,000/- as such offending employer in respect of each child, the least that could be expected was a show-cause notice and an opportunity of being heard. In all these cases, either no such opportunity is given, or where it is given, it can hardly be called reasonable. The Inspector has almost summarily proceeded to straight away come to the conclusion that the employer concerned is an offending employer, and then to proceed to recover the amount as arrears of land revenue. It is for this reason that the impugned orders need to be quashed, and the matters remitted to the concerned Inspector.

In these, as also in every case, where the Inspector of the local area where the establishment is situated intends to proceed to act in pursuance of what the Supreme Court directed in paragraph 27 of the judgment in relation to recovery of a sum of Rs. 20,000/- in respect of each child so employed, it shall be necessary for the Inspector, on his receiving information with regard to such employment, to first issue show-cause notice to the employer concerned setting out in detail, in the said show-cause notice, as to all the particulars of the information that he had received either in course of survey or in course of local inspection or otherwise, calling upon the employer to show cause within a reasonable time which shall be not less than 15 days from the date of receipt of such notice, as to why the said employer should not be directed to pay Rs. 20,000/- in respect of each child so employed. Employer could then submit a representation and may or may not ask for an opportunity of personal hearing. In the event the employer asks for personal hearing, it shall be the duty of the Inspector to afford such opportunity of personal hearing. The Inspector would thereafter decide as to whether the employer concerned is or is not an offending employer within the meaning of paragraph 27 of the judgment of the Supreme Court. It is possible that in some of the said cases, there could be dispute relating to the age of any child. It would be obligatory in that situation on the part of the Inspector u/s 10 of the Act to refer the question for decision to the Prescribed Medical Authority, in the event a certificate as to the age of such a

child granted by the Prescribed Medical Authority is not produced in course of such enquiry before the Inspector. Even otherwise, there is Rule 17 of the Child Labour (Prohibition and Regulation) Rules, 1988 with regard to certificate of age to be issued by the medical authority in that regard. It is on consideration of the said representation of the employer, after affording him opportunity of personal hearing if the employer so desires, and after considering the said certificate of the Prescribed Medical Authority where such situation arises, the Inspector shall have to decide as to whether the employer concerned can be called "offending employer" within the meaning of paragraph 27 of the judgment of the Supreme Court. If the Inspector so decides, he shall then record his conclusion with reasons therefore and pass necessary order to that effect. He shall then communicate the said order in writing to the employer concerned, either by getting it delivered personally or by sending it under registered post acknowledgement due. While so communicating the order, the Inspector shall call upon the employer to pay Rs. 20,000/- in respect of each child so appointed, within 15 days from the date of receipt of the said order. In the event the employer fails to pay the said amount, then, the same could be proceeded to be recovered as arrears of land revenue.

8. Petitions are allowed. Impugned orders quashed. Inspectors concerned are at liberty to proceed afresh in accordance with the procedure set out above.