
(2018) 10 UK CK 0021

In the Uttarakhand High Court

Case No : Writ Petition No. 3008 (M/S) of 2018

Prince Khanna

APPELLANT

Vs

Deputy Labour Commissioner and another

RESPONDENT

Date of Decision : 06-10-2018

Acts Referred:

Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 — Section 3, 17

Citation : (2018) 10 UK CK 0021

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : H.C. Bisht, Tarun Lakhera

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J.

The petitioner has raised two issues before this Court assailing the impugned notices dated 28th May, 2018, issued by the Inspector under the Child

and Adolescent Labour (Prohibition and Regulation) Act, 1986 as well as the notice dated 4th September, 2018, issued by the Deputy Labour

Commissioner.

As far as the 1st challenge given to the notice dated 28th May, 2018 is concerned, which was the source of inception of proceedings against him for

violating the provisions contained under Section 3 of the Act, apparently, that is the notice which has been issued by the Inspector as contemplated

under Section 17 of the said Act. Hence, the issue of competence may not be an issue which is involved in the challenge given to the notice dated 28th

May, 2018. Secondly, there may not be any occasion for the petitioner to give challenge to the said notice, annexure No. 2 to the writ petition, because

after being served with the said notice, he himself has voluntarily submitted to the competence of authority issuing notice and has filed his reply on the merits of the allegations levelled against him in the notice.

Thirdly, he may not have grievance against the notice dated 28th May, 2018, because on a reporting of the offence under Section 3 of the Act, by

virtue of notice dated 28th May, 2018, he was not in fact called upon to appear on a specified date to submit his reply (Notice annexed by the

petitioner is an incomplete document, page no. 1 has not been appended).

It is settled law that writ Court's jurisdiction cannot be invoked against a notice which simply calls upon a person noticed to submit a reply until

and unless it suffers from the vice of the competence of the authority and is without jurisdiction. So far as the notice dated 28th May, 2018 is

concerned, a challenge is not given from said view point. Thus, the said notice is affirmed.

As far as the notice dated 4th September, 2018 is concerned for the purposes of extending his argument that Deputy Labour Commissioner is not

competent under the Act to issue notice, the petitioner has raised his argument, from the view point to the interpretation given to para 5 of the said

notice, which by making reference to the judgment of the Hon'ble Apex Court as rendered in M.C. Mehta's case has made an observation to

the following effects :

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What he tries to submit is that when the Clause 5 makes a reference that he has to pay the amount of Rs.20,000/-, as a matter of fact, no

determination is required to be made because there is positive conclusion already drawn. Hence, from this view point, he submits that the notice would

lack competence.

This Court is not in agreement with the argument as extended by the learned counsel for the petitioner, for the reason being that if an authority

observes with regard to the liability having an element of future determination and payment, it will not be treated as positive conclusion, that is an

issue which is going to effect the merit not the competence, as the competence as already referred above is the authority vested with the Officer to

issue a notice or take an action. Merely a pre decision on issue the notice will not amount to take away the competence of an authority to issue a

notice.

Lastly, the order which has been put to challenge, i.e. 28th September, 2018, there is no cause for him to challenge the same for the reason that, that is

an order on which the adjournment was sought by the petitioner which was allowed and the matter has been directed to be posted on 8th October,

2017, since this being an order which has been solicited by the petitioner himself on his application for adjournment, it cannot be impugned in the writ

petition.

Consequently, the Writ Petition is devoid of merits, fails and is accordingly dismissed.