
(2008) 07 AHC CK 0195
In the Allahabad High Court

Rahul Kumar Proprietor of Sheetal Hotal	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:

Child Labour (Prohibition and Regulation) Act, 1986 — Section 10, 3

Citation : (2008) 118 FLR 796 : (2008) 3 LLJ 881

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the petitioner and learned Standing Counsel representing respondents No. 1 to 4.

2. The undisputed facts of the case are that the Inspector appointed under the Child Labour (Prohibition of Regulation) Act 1986, inspected the establishment of the petitioner allegedly in his absence. A show-cause notice was thereafter issued on 24.4.2008 to the petitioner by the Dy. Labour Commissioner, Meerut for depositing Rs. 20,000/- having allegedly contravened the provisions of Section 3 of the aforesaid Act or filing his objection within 15 days.

3. The petitioner filed his objection on 9.5.2008 disputing the age of the child labour stating that the age of alleged child labour has been incorrectly recorded by the labour inspector and he is above 14 years of age as such neither is any contravention of the provisions of the Act nor is covered under the definition of child labour as given in the Act. Thereafter the Dy. Labour Commissioner, Meerut has now passed the impugned order dated 26.5.2008 directing the petitioner to deposit Rs. 20,000/- in respect of the aforesaid child Act.

4. After going through the provision of Section 10 and Rule 17 framed under the Child Labour (Prohibition of Regulation) Act, 1986, the Standing Counsel has fairly stated that the impugned order for payment of Rs. 20,000/- has been issued with first getting the age of the alleged Child Labour verified by the

prescribed Medical Authority.

5. Section 10 provides that if any question arises between the inspector and the occupier as to 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 Officer, be referred by the Inspector for decision to the prescribed Medical authority.

6. Rule 17 of the Child Labour ((Prohibition of Regulation) Act 1986 provides for certificate of age follows:

Certificate of age-. (1) all young persons in employment in any of the occupations set-forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on, shall produce a certificate of age from the appropriate medical authority, whenever required to do so by an Inspector.

(2) the Certificate of age referred to in Sub-rule (1) shall be issued in Form B.

(3) The charges payable to the medical authority for the issue of such certificate shall be the same as prescribed by the State Government or the Central Government, as the case may be, for their respective Medical Boards.

(4) The charges payable to the medical authority shall be borne by the employer of the young person whose age is under question.

7. Learned Standing Counsel does not dispute the provisions.

8. From conjoint reading of Section 10 and Rule 17, it is apparent it:

(1) it is duty of the occupier/employer to provide a certificate in respect of all young persons in his employment in any occupation given in schedule A and B of the Act and

(2) charges of issuance of such certificate by the medical authority shall be born by the employer of young persons whose age is disputed.

9. Since the petitioner could not produce the medical certificate of the young person employed by him at the time of inspection, it was duty of the Inspector u/s 10 to have brought the young person said to be child labour employed by the petitioner who have medically examined by the Appropriate Government Authority before issuance of any recovery certificate.

10. It appears from the reading of the provision of the Act that an embargo has been placed upon the authorities to first get age of the young person/child labour employed by a occupier, determined and only then notice of recovery can be issued which has not been done in the instance case.

11. A large number of such cases are coming before this Court wherein the labour court authority are issuing notice to the occupier for payment of Rs. 20,000/- on basis of inspection report without getting the said child labour

medically examined for determination of age by an appropriate Medical Authority. The impugned proceeding of issuance of notice or recovery certificate without determination of the age of the child labour according to the provision of Section 10 and Rule 17 of the Act is clearly illegal.

12. For all the reason stated above, the petition is allowed. The Recovery Certificate dated 26.5.2008 is quashed. It is directed that Labour Inspector will first get age determined by medical examination of young person/child labour allegedly to the employee of the petitioner through the Prescribed Medical Officer under the Act and only then necessary orders may be passed in pursuance of the notice dated 24.4.2008.