
(2002) 12 MP CK 0034

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6380 of 2002

Raj Homes Pvt. Limited

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 04-12-2002

Acts Referred:

Child Labour (Prohibition and Regulation) Act, 1986 — Section 14(1), 3

Citation : (2003) 3 LLJ 626 : (2003) 2 MPLJ 572

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Ashok Lalwani, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Petitioner in this writ petition assails the validity of the order P/6 passed on July 1, 2002 by the Assistant Labour Commissioner, Bhopal District, Bhopal under the Child Labour (Prohibition and Regulation) Act, 1986, by which the petitioner has been directed to make payment of Rs. 20,000/- per labour and release the child labour and in case the petitioner does not deposit the amount, same shall be considered to be disobedience of the order passed by the Apex Court and the matter shall be referred for appropriate action to Hon"ble the Supreme Court. In case the amount is not deposited the same shall be recovered as an arrear of land revenue.

A show-cause notice P/1 was issued to the petitioner on August 23, 2002. On the basis of inspection report, petitioner was required why not legal action be not initiated against the petitioner for violation of Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986. Petitioner submitted a reply P/2 to the show-cause notice and contended that the petitioner involved in selling the houses. The houses are constructed through the contractors. Petitioner is involved in selling of the houses. The labourers are employed by the contractors.

Hence, the show-cause notice is not based on proper enquiry. On October 20, 2001 the construction of the houses in question was not started. Petitioner has tried to ascertain the names of the labourers employed by the contractor, but, could not come to know of the names mentioned in the notice. Thus, the same creates doubt as to correctness of the notice. Show-cause notice has been issued after six months. Thus, no action can be taken. Petitioner submits that in accordance with the instructions P/4 issued by the Labour Commissioner, Madhya Pradesh, Indore on December 23, 1998, opportunity of hearing should be granted and a speaking order should have been passed and cases be decided within a month and hearing should be done by the Assistant Labour Commissioner or Labour Officer. Petitioner submits that the prosecution launched is bad in law so also the impugned order. Criminal case has also been filed before the Chief Judicial Magistrate, Shahjahanabad, Bhopal on the basis of inspection report dated October 23, 2001 for violation of Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986, which is punishable u/s 14(1)(3) of the Act. Petitioner has filed reply to the recovery order P/6. It is contended by the petitioner in the reply P/7 that petitioner has not been found guilty of the charges by the Court. Labour Commissioner could not issue the order. Same is not in accordance with the: decision of the Apex Court.

Learned counsel for the petitioner assails the validity of the order on the ground that proper enquiry has not been conducted before passing the impugned order. Evidence should have been recorded. Order has not been passed within six months.

In W.P. No. 4795/2000, Raj Kumar Tiwari v. State of M. P. and Ors., decided on August 21, 2002, the decision of Apex Court in M.C. Mehta Vs. State of Tamil Nadu and others, : M.C. Mehta Vs. State of Tamil Nadu and others, was considered:

The Apex Court in M.C. Mehta Vs. State of Tamil Nadu and others, has laid down that children aged about 14 years cannot be employed in any factory or mine or other hazardous work and they must be given education as mandated by Article 45 of the Constitution and interpreted in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . It is the duty of the employer to comply with the provisions of Child Labour (Prohibition and Regulation) Act. Section 14 of the Act has provided for punishment upto one year, minimum being 3 months or fine up to Rs. 20,000/-, minimum being Rs. 10,000/- or with both to one who employs or permits any child to work in contravention of provisions of Section 3. The Apex Court considered the mandate of the Articles 24,39(e)(f), 41, 45, 47 and held:

"15. To accomplish the aforesaid task, we have first to note the constitutional mandate and call on the subject, which are contained in the following Articles;

Prohibition of employment of children in factories, etc. - No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in

any other hazardous employment.

39(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

39(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Right to work, to education and to public assistance in certain cases.- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance, in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Provision for free and compulsory education for children.-- The State shall endeavour to provide, within a period often years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Duty of the State to raise the level of nutrition and the standard of living and to improve public health.-- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring above prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Of the aforesaid provisions, the one finding place in Article 24 has been a fundamental right ever since January 28, 1950. Article 45 too has been raised to a high pedestal by Unni Krishnan (supra), which was decided on February 4, 1993. Though other Articles are part of directive principles, they are fundamental in the governance of our country and it is the duty of all the organs of the State to apply these principles. Judiciary, being also one of the three principal organs of the State, has to keep the same in mind when called upon to decide matters of great public importance. Abolition of child labour is definitely a matter of great public concern and significance."

The Apex Court directed the survey to be made of child labour within six months from the date of the order. The Apex Court held that any violator is liable to pay compensation of Rs. 20,000/- for every child employed in contravention of the provisions of the Act. The Apex Court further held that Government must either provide job for an adult member of the family in lieu of the child belonging to that family who has been employed in the mine or other hazardous work or it must deposit Rs. 5,000/- for each child. Welfare corpus of fund was also directed to be prepared where alternative employment is not made available. The parents/guardians of the child would be entitled to be paid per month the income on the corpus of Rs. 20,000/- for each child. However, it was made imperative to send

that child for education to avail the benefit of corpus fund. The Apex Court also appointed the Inspectors to carry out the compliance u/s 17 of the Act.

The Apex Court has held that under the provisions of the Act the inspectors whose appointment is visualised by Section 17 have to secure compliance with the provisions of the Act. 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 the instant case report of the inspector is available and that is piece of evidence and is based on actual inspection. Notice to inspect has been given in relation to establishment in which the child was employed or permitted to work as mandated by Section 9. If there is dispute as to Section 10 comes into picture and the child has to be referred by the inspector for decision to the prescribed medical authority for determination of the age. In the absence of certificate as to age of the said child granted by the prescribed medical authority, the Apex Court observed that it is for the inspector to ensure the compliance of the Act. The Apex Court has observed as under:

"27. It may be that the problem would be taken care of to some extent by insisting on compulsory education. Indeed, Neera thinks that if there is at all a blueprint for tackling the problem of child labour, it is education. Even if it were to be so, the child of a poor parent would not receive education, if per force it has to earn to make the family meet both the ends. Therefore, unless the family is assured of income aliunde, problem of child labour would hardly get solved; and it is this vital question which has remained almost unattended. We are, however, of the view that till an alternative income is assured to the family, the question of abolition of child labour would really remain a will-o-the wisp. Now, if employment of child below that age of 14 is a constitutional indictment insofar as work in any factory or mine or engagement in other hazardous work, and if it has to be seen that all children are given education till the age of 14 years in view of this being a fundamental right now, and if the wish embodied in Article 39(e) that the tender age of children is not abused and citizens are not forced by economic necessity to enter avocation unsuited to their age, and if children are to be given opportunities and facilities to develop in a healthy manner and childhood is to be protected against exploitation as visualised by Article 39(f), it seems to us that the least we ought to do is see to the fulfilment of legislative intent behind enactment of the Child Labour (Prohibition and Regulation) Act, 1986. Taking guidance therefrom, we are of the view that 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. The liability of the employer would -not cease even if he would desire to disengage the child presently employed. It would perhaps be appropriate to have such a fund districtwise or areawise. The fund so generated shall form corpus whose income-shall be used only for the concerned child. The quantum could be the income earned on the corpus deposited qua the child. To generate greater income, fund can be deposited in high yielding scheme of any nationalised bank or other public body."

There is nothing to doubt the correctness of the report of the inspector. Age of the child is not disputed. What was the dispute that the construction was not started, but, on spot construction was found and report of the inspector cannot be disbelieved as the child were found working. The reply filed is evasive and self contradictory. On the one hand it is stated that the house was constructed through the contractor, on the other hand it was tried to be contended that the petitioner could not ascertain the name of all the children employed by the contractor. Considering the nature of report, in my opinion the show-cause notice given is proper and no further detailed enquiry was necessitated in the circumstances. Considering the nature of the objection raised by the petitioner, no detailed enquiry was necessary as report of the inspector is prima facie evidence of the facts so found with respect to age if that is disputed of a child labour, then the matter has to be dealt in accordance with Section 10 which situation is not available in the instant case.

Counsel for the petitioner has placed reliance on a decision of this Court in W.P. No. 1619/1998, Ircon International Limited and Ors. v. State of M, P. and Ors. The facts of the said decision are distinguishable. No opportunity of hearing was granted before issuance of notice of demand. Here, opportunity has been granted. Show-cause notice was given. Petitioner submitted the reply. Thus, the decision in W.P. No. 1619/1998 is of no assistance to the arguments raised by learned counsel for the petitioner. In the aforesaid decision P/3, this Court held that:

"3. This Court by order dated March 5, 1998 in W. P. No. 4609/1997 after referring to the earlier decision of this Court in the case of Amolchand Jain v. State (W.P. No. 927/1997) disposed of on October 13, 1997 has held that the demands raised without affording an opportunity of hearing to the person affected is unsustainable in law. In the aforesaid case leave has been granted to the competent authority to proceed afresh in accordance with law.

In view of the aforesaid decision the demand made under Annexure P-I series deserves to be quashed and accordingly I do so. It would be open to the competent authority to hear the petitioner/petitioners afresh and consider the contentions and pass a speaking order in accordance with law, to cut-short delay, it is directed that the petitioner/petitioners shall appear before the competent authority on May 15, 1998 on which date the competent authority shall fix a date of hearing and thereafter the petitioner and decide the matter in accordance with

law by passing a speaking order.

Thus, the facts are totally distinguishable. Opportunity of hearing has been afforded in the instant case show cause notice was given and the decision is in accordance with law laid down by the Apex Court in M.C. Mehta 's case (supra). I do not find any ground to make an interference in the writ petition. Same is dismissed.