
(2008) 12 AHC CK 0160
In the Allahabad High Court

Roop Narain Shukla

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 08-12-2008

Acts Referred:

Citation : (2008) 12 AHC CK 0160

Hon'ble Judges : Bala Krishna Narayana, J

Final Decision : Allowed

Judgement

B. K. Narayana, J.

Heard learned counsel for the petitioner and learned Standing Counsel for the opposite parties.

The instant writ petition has been filed by the petitioner for quashing the order dated 18.09.2007 passed by the opposite party no.2 under the provisions of the Child Labour (Prohibition and Regulation) Act, 1986 (hereinafter referred to as "the Act") whereby the opposite party no.2 held that the petitioner was liable to pay Rs.80,000/ to the child labourers, who were found to have been employed in the petitioner's establishment on the date on which the establishment of the petitioner was surveyed and the order dated 17.11.2007 by which the application filed by the petitioner before the opposite party no.2 for recalling his earlier order dated 18.09.2007 has been rejected.

Learned counsel for the petitioner has submitted that the child labourers, who were allegedly found working in the petitioner's establishment were above 17 years of age and hence the provisions of the Act cannot be invoked in the case of the petitioner.

Learned counsel for the petitioner has further submitted that the petitioner in his application dated 06.11.2007 filed before the opposite party no.2 had made a specific prayer that the dispute regarding the age of child labourers, who were allegedly found working in the petitioner's establishment, be referred to the prescribed medical authority as there was no proof of age of the children found

to have been working in the petitioner's establishment. The said prayer of the petitioner was turned down by the opposite party no.2 and the matter was decided against the petitioner on the ground that the petitioner had failed to file any document with regard to proof of the age of the children.

Learned counsel for the petitioner has next submitted that the opposite party no.2 acted illegally in refusing to refer the dispute with regard to the age of alleged child labourers in total disregard of the mandatory requirements of Section 10 of the Act, which 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.

Learned Standing Counsel appearing for the opposite parties made a feeble attempt to defend the impugned orders by urging that the onus of proof that the children found to have been working in the petitioner's establishment were above the age of 15 years will lie upon the petitioner and the petitioner having failed to lead any evidence in his defence, the impugned orders were rightly passed against the petitioner.

I have carefully examined the respective submissions of the learned counsel for the parties and perused the record.

It is an admitted position that the prayer of the petitioner for referring the dispute with regard to the age of the children found to have been working in the petitioner's establishment to the prescribed medical authority was rejected by the opposite party no.2. It is also not disputed that there is no documentary evidence on the basis of which the age of the children can be ascertained. Section 10 of the act clearly 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.

In support of his contention, the learned counsel for the petitioner has relied upon a judgement of the Apex Court rendered in the case of Anant Construction Co. vs. Govt. Labour Officer and Inspector, reported in (2006) 9 SCC 225.

Thus, it is clear that the impugned orders have been passed by the opposite party no.2 without complying with the mandatory requirements of Section 10 of the Act and without properly appreciating the correct legal position.

In view of the aforesaid, the writ petition is liable to be allowed.

The writ petition is accordingly allowed and the orders dated 18.09.2007 and 17.11.2007 (Annexure Nos.1 and 2 to the writ petition) passed by the opposite

party no.2 are quashed. The matter is relegated back to the opposite party no.2 to pass a fresh order in the matter strictly in accordance with law after giving opportunity of hearing to the petitioner.