
(2019) 08 UK CK 0104

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 740 Of 2008, 10 Of 2009

Shariff

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 13-08-2019

Acts Referred:

Child Labour (Prohibition & Regulation) Act, 1986 — Section 14, 17
Factories Act, 1948 — Section 2(cb), 87

Citation : (2019) 08 UK CK 0104

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Siddhartha Sah, Jaywardhan Kandpal

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J

1. Since the issue raised in both the writ petitions is common and identical, therefore, these writ petitions are heard together and decided by this common order. However, for the sake of convenience the facts of Writ Petition (M/S) 740 of 2008 are being referred in this order.

2. The petitioner has challenged the order of the Assistant Labour Commissioner, District Haridwar, who has imposed a penalty of Rs.20,000/- (Rupees Twenty Thousand Only) against the petitioner under the Child Labour (Prohibition & Regulation) Act, 1986 (from hereinafter referred to as the "Act").

3. It is alleged that "gudcharkhi" which is a crusher where sugarcane is crushed to make "jaggery", the petitioner had employed a child labour and on being inspected by the concerned authority under the Act, a report was given to the Assistant Labour Commissioner, District Haridwar who has imposed a penalty of Rs.20,000/- (Rupees Twenty Thousand Only) upon the petitioner.

4. A provision of penalty is provided under Section 14 of the Act as it was

applicable at the relevant time and the cognizance of a complaint can only be taken by a court of the Metropolitan Magistrate or a Magistrate, First Class.

5. Nevertheless the fact remains that straightway a penalty has been imposed on the petitioner not under the provisions of the Act, but as per the directions of the Hon'ble Apex Court given in the case of *M.C. Mehta Vs. State of T. N. & others* reported in (1996) 6 SCC page 756. The order passed by the Assistant Labour Commissioner is a cyclostyle order which only refers to the judgment of the Hon'ble Apex Court passed in *M.C. Mehta (supra)*, in order to prevent a child labour being used in factories. The Hon'ble Apex Court in the paragraph no. 29 of the said judgment held as under:-

"29. 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 indication 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 fulfillment 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 under section 17 would see that for each child employed in violation of the provisions of the Act, the employer concerned 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 district wise or area wise. The fund so generated shall form corpus whose income shall be used only for the child concerned. 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."

(Emphasis supplied)

6. The fact, however, remains that "gudcharkhi" crusher is not a prohibited factory or work place under the Act. Crusher is not mentioned either in Part A or Part B of the Schedule.

7. At Item No (15) of Part B of the Schedule, "Hazardous processes" is defined under Section 2 (cb) and "dangerous operations" is notified in Rules made under Section 87 of the Factories Act, 1948 (63 of 1948). But again "gudcharkhi" is not defined as a "hazardous processes" either under the Act, or notified as "dangerous operations" in Rules. Moreover no notification etc., has been placed before this Court by the learned State Counsel in this regard, which may show that a "gudcharkhi" is a place covered under the Act.

8. In view thereof, the writ petitions succeed and are hereby allowed. The impugned orders dated 20.02.2008 and 24.04.2008 passed by respondent no.2 are hereby set aside.