
(2012) 02 RAJ CK 0107
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7150 of 2010

Vinod Kumar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Child Labour (Prohibition and Regulation) Act, 1986 — Section 14, 16
Rajasthan Land Revenue Act, 1956 — Section 256, 257

Citation : (2012) 134 FLR 875 : (2012) 3 RLW 2731 : (2012) 3 WLN 154

Hon'ble Judges : Alok. Sharma, J

Bench : Single Bench

Advocate : Sandeep Jain, for the Appellant; S.D. Khaspuria, Dy. Govt. Counsel, for the State, for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—This writ petition has been filed with the prayer that notice dt. 14-9-2009 issued under Secs. 256 and 257 of the Land Revenue Act, 1956 by the Sub Divisional Officer, Malpura, as also the notice dt. 6-5-2010 issued by the Tehsildar Malpura be quashed and set aside, in so far as the said notices seek to recover Rs. 1 lac from the petitioner as penalty for purported violation of the Child Labour (Prohibition and Regulation) Act, 1986 (herein after "1986 Act"). From the record of the case it transpires that the petitioner had earlier approached this Court by way of writ petition No. 6609/2005, whereupon vide order dt. 29.8.2005, this Court had held that in the event the petitioner were to challenge the order passed by the Labour Commissioner, based whereon recovery notice dt. 8-8-2005 under challenge in the said petition was issued, he may do so within fifteen days. A DB Special Appeal No. 866/ 2005 filed by the petitioner against the order dt. 29.8.2005, came to be dismissed on 5.7.2007 on the ground that the counsel was not in a position to show as to whether the order of the Labour Commissioner as required by order dt. 29.8.2005 in writ petition No. 6609/2005 had been challenged or not.

2. In pursuance of the order dt. 29.8.2005 in writ petition No. 6609/2005, the petitioner made representations to the Assistant Labour Commissioner Tonk on 8.8.2007, 12.10.2009, and 23.10.2009 denying his liability under the provisions of 1986 Act on any count whatsoever both factual and legal. However, the said representations were not addressed. It is not disputed by the counsel for respondents that there is no provision for appeal against the order of the Labour Commissioner passed under the provisions of 1986 Act, nor in fact such an order has yet been communicated to the petitioner. In fact, in the reply to writ petition no such order has been relied on by the respondents, nor any copy thereof has been annexed with the reply. Consequently compliance with the order dt. 29-8-2005 in writ petition No. 6609/2005 could only entail a representation to the Labour Commissioner.

3. Heard learned counsel for the parties, and perused the impugned orders dt. 14.9.2009 and 6.5.2010 and other material available on record of the writ petition.

4. The legal question agitated in this petition is as to whether the petitioner can be liable to a penalty under the provisions of 1986 Act, without first criminal proceedings being initiated against him by lodging a complaint under Sec. 16 of 1986 Act, a trial thereon and holding the petitioner guilty.

5. The counsel for the petitioner has relied on a judgment of this Court dt. 2.8.2006 passed in writ petition No. 6410/2003, Roop Chand vs. State of Rajasthan, wherein this Court has held thus:

6. From perusal of Section 16 of Act of 1986 it is apparent that any person, police officer or inspector is required to file a complaint of commission of offence under the Act of 1986 in any Court of competent jurisdiction that is of the Court of Metropolitan Magistrate or Magistrate of the first class as the case may be. After filing a complaint trial is required to be made for convicting a person for contravention of any of the provisions of the Act of 1986. In the instant matter though a survey was made by the respondents but admittedly no complaint was filed before the competent Court, therefore, no penalty upon the petitioner could have been imposed. The imposition of penalty by the department authorities themselves is, therefore, wholly without jurisdiction. It is relevant to mention here that in the notice impugned the term used for penalty is compensation but that is nothing but penalty provided under Sec. 14 of Act of 1986.

7. Accordingly, this petition for writ is allowed. The penalty being wholly without jurisdiction is hereby quashed.

8. Consequently, the demand against the petitioner in that case for recovery under Secs. 256 and 257 of Land Revenue Act was set aside.

9. It is not in dispute that in the instant case no criminal complaint under Sec. 16 of 1986 Act was filed against the petitioner and quite obviously the petitioner has not been put to trial and found guilty. This is not disputed by the respondent

State.Counsel for respondent has however relied upon a circular dt. 19-3-2002, issued by Labour Department, purportedly in pursuance of the judgment of Hon"ble Supreme Court in M.C. Mehta Vs. State of Tamil Nadu and others, It has been submitted that under the said circular it has been provided that recovery from guilty employer, employing a child, under the provisions of 1986 Act, can be made without filing of a complaint under Sec. 16 of the 1986 Act and holding of the accused therein as guilty. It has been submitted that the demand notice dt. 14.9.2009 and 6.5.2010 have to be sustained by this Court on the basis of circular dt. 19.3.2002.

10. Counsel for the petitioner has submitted that the circular dt. 19.3.2002 issued by the Labour Department is on a complete misconstruction of the order of the Hon"ble Supreme Court in case of M.C. Mehta vs. State of Tamil Nadu (supra). It is submitted that in paragraphs 24 and 27 of M.C. Mehta's case (supra) the Hon"ble Supreme Court far from issuing any direction to circumvent the provisions of 1986 Act for the purpose of holding an employer guilty of contravention of provisions of 1986 Act and levying penalty upon him, the Hon"ble Supreme Court has only reiterated the statutory provisions while emphasising the need to implement the same with sensitivity to the object of the 1986 Act and with alacrity.

11. It is further submitted that the circular dt. 19-3-2002 cannot entail a variation of statutory provisions set out in 1986 Act for the purpose of levy of penalty nor would it be reasonable to construe the judgment of the Hon"ble Supreme Court supplanting the statute unless clearly so directed.

12. It is reiterated that as held by this Court in case of Roop Chand vs. State of Rajasthan (supra) a penalty can only be imposed subsequent to lodging of complaint, conducting a trial, holding guilty the employer of a contravention of any provision of 1986 Act. Counsel submits that any other construction of the 1986 Act would be wholly arbitrary, unconstitutional and subversive of the rules of natural justice and violative of the rule of law where a citizen could be penalised without any trial or even a fair hearing.

13. Having heard learned counsel for the parties, I find substance in the submissions of learned counsel for the petitioner.

14. However in terms of the order dt. 29.8.2005, passed by this Court in writ petition No. 6609/2005, the petitioner was required to challenge the order passed by the Labour Commissioner, whereupon the petitioner has submitted several representations before the Assistant Labour Commissioner Tonk, and Labour Commissioner Jaipur, which have not yet been addressed. Consequently the Labour Commissioner is directed to decide the representations of the petitioner keeping in view the observations of this Court in case of Roop Chand vs. State of Rajasthan (supra) and overlooking the circular dt. 19.3.2002 directing levy of penalty and recovery under the 1986 Act on a palpable erroneous reading of the judgment of the Hon"ble Supreme Court in case of M.C.

Mehta (supra). The representation should be decided within a period of four weeks from the receipt of certified copy of this order. Till the decision of the representation filed by the petitioner no coercive steps shall be taken for recovery of the amount of penalty under the notices dt. 19.9.2009 and 6.5.2010.

15. The writ petition stands disposed of accordingly. Stay application stands dismissed.