
(2016) 08 RAJ CK 0071
In the Rajasthan High Court
Case No : Civil Writ (C.W.) No. 5531 of 2004

Vinod Kumar Kejriwal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 22-08-2016

Acts Referred:

Child Labour (Prohibition and Regulation) Act, 1986 — Section 14, 16

Citation : (2017) 1 CLR 34 : (2016) 151 FLR 538

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Mr. Rajesh Joshi, Senior Advocate and Mr. Harshit Bhurani, Advocate, for the Petitioners; Mr. Devkinandan Vyas, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Sandeep Mehta, J.—By way of the instant writ petition, the petitioner has approached this Court for assailing the legality and validity of the show cause notice Annex.1 dated 11.10.2004 and recovery notice Annex.2 dated 6.11.2004 issued to him by the Regional Deputy Labour Commissioner, Bhilwara and District Collector, Tonk respectively for the purported recovery of Rs. 1,80,000/- in compliance of the Hon"ble Supreme Court's judgment in the case of M.C. Mehta v. State of Tamil Nadu (Civil Petition No. 456/1986).

2. Mr. Rajesh Joshi learned senior counsel assisted by Mr. Harshit Bhurani advocate relied upon the judgment rendered by the Division Bench of this Court in the case of State of Rajasthan & Ors. v. Bhinmal Cooperative Marketing reported in 2002(4) WLN 208 and so also, the order dated 2.8.2006 passed by the learned Single Bench of this Court in the case of Chand. v. State of Rajasthan & Ors. (S.B. Civil Writ Petition No. 6410/2003) and urged that the impugned show cause notice as well as recovery notice were issued without following the mandatory procedure prescribed under the Child Labour (Prohibition and Regulation) Act, 1986 (for short, "the Act of 1986") and thus, the same cannot stand to scrutiny and deserve to be set aside. He urged that the order imposing

penalty is virtually by way of punishment under Section 14 of the Act of 1986. Such punishment could only have been imposed by the competent Court after trying the petitioner in pursuance of a complaint under Section 16 of the Act of 1986 and upon finding him guilty of the charges after a full dressed trial. Thus, he urged that the impugned notices are grossly illegal and deserve to be set aside.

3. Per contra, learned counsel Mr. Devkinandan Vyas representing the respondents relied upon the Hon''ble Supreme Court judgment in the case of M.C. Mehta v. State of Tamil Nadu and others reported in AIR 1997 SC 699 and contended that the direction to effect recovery from the petitioner is unquestionable because the petitioner was found indulged in committing violations of the provisions of the Act of 1986 and thus, as per the directions given at para 27 of the above judgment, the competent authority under the Act of 1986 was perfectly justified in inflicting the penalty upon the petitioner in the above terms. He thus urged that the writ petition is liable to be dismissed.

4. I have considered the rival arguments and have perused the material available on record as well as the judgments cited at the Bar.

5. The Hon''ble Supreme Court in the case of M.C. Mehta while invoking the provisions of the Act of 1986 recommended that the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act at the rate of Rs. 20,000/- per child. The offending employer would definitely be the one who is tried and convicted by a competent Court. Sections 14 and 16 of the Act of 1986 clearly indicate that the order of fine is in the nature of punishment and can only be imposed after the competent Court convicts the offender of the offence under the Act of 1986. Thus, evidently, the order of compensation has to be preceded by a trial under the Act of 1986.

6. Admittedly, in the case at hand, neither any complaint was filed nor any trial was held. The Regional Deputy Labour Commissioner, Bhilwara unauthorisedly and in a highhanded fashion ; well beyond the scope of his jurisdiction issued notice to the petitioner under the provisions of the Act of 1986 and thereafter proceeded to impose the questioned penalty against him. Consequently, the impugned show cause notice Annex.1 and recovery notice Annex.2 are grossly illegal, perverse, arbitrary and without jurisdiction and cannot be sustained in the eyes of law.

7. As an upshot of the above discussion, the instant writ petition deserves to be and is hereby allowed. The impugned show cause notice Annexure. 1 and recovery notice Annexure 2 are hereby quashed and set aside.

8. No order as to cost.