
(2004) 09 MP CK 0077
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1606 of 1997

Zulfikar

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 22-09-2004

Acts Referred:

Child Labour (Prohibition and Regulation) Act, 1986 — Section 2
Constitution of India, 1950 — Article 226, 227

Citation : (2005) 105 FLR 332 : (2005) 2 LLJ 747

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : J.B. Dave, for the Appellant; Sunil Jain, G.A., for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—Challenge in this petition filed under Article 226/227 of the Constitution of India is to a RRC (Revenue Recovery Certificate) Annexure P-7. It is for recovery of Rs. 20,000/- issued under the provisions of Child Labour (Prohibition and Regulation) Act, 1986 (for short hereinafter called "The Act").

2. Petitioner is the resident of village Karoli in Tehsil- Manawar in District-Dhar. He gave contract to construct his house to one Radheshyam Patidar. It is said that on April 1, 1997 one Inspector appointed under the Act came on the spot where the house was under construction and found that one girl was working. According to report of Inspector the girl by name Idi was minor and hence, since she was found working in construction activity and hence petitioner was held liable to pay fine of Rs. 20,000/-. The case of petitioner in reply to show cause issued to him was that the girl was not actually working but she had come to meet her father-Jamsingh who was working as labourer in the construction work. According to petitioner, girl had come to deliver her father and lunch packet in the afternoon and hence, neither any case for taking action is made out nor has any breach occurred. By impugned RRC, the demand for Rs. 20,000/- is issued. It is this demand which is under challenge. Notice of the writ was issued to

respondent/State. Reply is filed.

3. Heard Shri J.B. Dave, learned counsel for the petitioner and Shri Sunil Jain, learned Government advocate for respondent- State.

4. Having heard learned counsel for the parties and having perused record of the case, I am of the opinion that this petition deserves to be allowed, resulting in quashing of the impugned demand (Annexure P-7).

5. In the first place, the impugned RRC is not based on any order much less reasoned order that would have enabled this Court to see/examine as to whether any proper factual inquiry into the factual allegations levelled in show cause and its reply was held and if so, what led the authority to pass the impugned RRC demanding a sum of Rs. 20,000/- from the petitioner. In other words, there is nothing on record to show that any fact finding inquiry was held whereby one can consider whether explanation offered by the petitioner was taken into account, or not and what was that basis for imposing a fine of Rs. 20,000/-. It may be that what the petitioner said in his reply to show cause was plausible explanation. It is not in dispute that petitioner was not engaged in any commercial activity as defined in Section 2(iv) of the Act which defined what is establishment. Admittedly, the petitioner was constructing his own house with the aid of some contractor. Construction of house in itself may not amount to establishment and hence on this ground alone, the impugned demand does not appear to be valid in law. In any event, even if it is held that construction undertaken by the petitioner fell within the category of establishment even then it was necessary for the authorities to have held proper inquiry and then returned a categorical finding of fact holding the petitioner liable for breach of the provisions of Act. Mere raising a demand for Rs. 20,000/- without there being anything in support cannot sustain. It is unreasonable, arbitrary and against the requirement of Act.

6. Accordingly, and in view of aforesaid discussion, the petition succeeds and is hereby allowed. Impugned demand dated September 9, 1997 (Annexure P-7) issued by Tehsildar-Manawar (respondent No. 1) is hereby quashed by issuance of Writ of certiorari.