

Raj Kumar Tiwari Vs. State and ors.

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Court : Madhya Pradesh

Decided On : Aug-21-2002

Reported in : (2003)IIILLJ1045MP

Judge : Arun Mishra, J.

Acts : Child Labour (Prohibition and Regulation) Act, 1986 - Sections 2, 3 and 14

Appeal No. : W.P. No. 4795/2000

Appellant : Raj Kumar Tiwari

Respondent : State and ors.

Advocate for Def. : V. Awasthi, G.A.

Advocate for Pet/Ap. : M.K. Sulakhe, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Arun Mishra, J.

1. Petitioner is challenging the order by which penalty has been imposed of Rs. 20,000/- on the petitioner for employing a child labour Mohd. Ali S/o Habib Ali, resident of Sanodha as per order P.2. In the order itself the age of Mohd. Ali is

mentioned to be 14 years. Petitioner challenges the impugned order P. 2 on the ground that enquiry has not been conducted. Reply submitted by the petitioner has not been taken into consideration and recovery is being made of the penalty.

2. Return has been filed adopting the return filed in W.P. No. 4314/1997 (Prem Chand Sitaram Sahu v. State of M.P.) pointing out that penalty has been rightly imposed. In view of the report submitted by Inspector, the order is proper and no interference is called for.

3. The Apex Court in M. C. Mehta v. State of Tamil Nadu, AIR 1997 SC 699 : 1996 (6) SCC 756 : 1997-II-LLJ-724 had laid down that children aged about 14 years cannot be employed in any factory or mine or other hazardous work and they must be given education as mandated by Article 45 of the Constitution and interpreted in Unni Krishnan J.P. v. State of Andhra Pradesh, AIR 1993 SC 2178 : 1993 (1) SCC 645. It is the duty of the employer to comply with the provisions of Child Labour (Prohibition and Regulation) Act. Section 14 of the Act has provided for punishment up to one year, minimum being 3 months or fine up to Rs. 20,000/-, minimum being Rs. 10,000/- or with both to one who employs or permits any child to work in contravention of provisions of Section 3. The Apex Court considered the mandate of the Articles 24, 39(e)(f), 41, 45, 47 and held:

'15. To accomplish the aforesaid task, we have first to note the constitutional mandate and call on the subject, which are contained in the following Articles:

24. Prohibition of employment of children in factories, etc. - No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

39(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

39(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

41. Right to work to education and to public assistance in certain cases.- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to Work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

45. Provision for free and compulsory education for children.- The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

16. Of the aforesaid provisions, the one finding place in Article 24 has been a fundamental right ever since January 28, 1950. Article 45 too has been raised to a high pedestal by Unni Krishnan, which was decided on February 4, 1993. Though other Articles are part of directive principles, they are fundamental in the governance of our country and it is the duty of all the organs of the State to apply these principles. Judiciary, being also one of the three principal organs of the State, has to keep the same in mind when called upon to decide matters of great public importance. Abolition of child labour is definitely a matter of great public concern and significance.'

4. The Apex Court directed the survey to be made of child labour within six months from the date of the order. The Apex Court held that any violator is liable to pay compensation of Rs. 20,000/- for every child employed in contravention of the provisions of the Act. The Apex Court further held that Government must either provide job for an adult member of the family in lieu of the child belonging to that family who has been employed in the mine or other hazardous work or it must deposit Rs. 5,000/- for each child. Welfare corpus of fund was also directed to be

pre paid where alternative employment is not made available. The parents/guardians of the child would be entitled to be paid per month the income on the corpus of Rs. 20,000/- for each child. However, it was made imperative to send that child for education to avail the benefit of corpus fund. The Apex Court also appointed the Inspectors to carry out the compliance under Section 17 of the Act.

5. The submission raised that petitioner was not heard is not correct. Enquiry was also held. However, sine qua non is that a child should be below age of 14 years for applicability of the aforesaid directions. Child has been defined in Section 2(ii) of the Child Labour (Prohibition and Regulation) Act, 1986, to be a person who has not completed his fourteenth year of age. The order itself indicates that Mohd. Ali S/o Habib Ali is of 14 years. There is no finding recorded in the order that Mohd. Ali is below 14 years.

6. In the instant case, it is apparent that the age of child Mohd. Ali is not found to be below 14 years. Thus, the impugned order is bad in law and is set aside.

7. Writ petition is allowed. Costs on parties.