Performance of Labour Administration: A Critical Analysis of Cases Filed under Child Labour (Prohibition and Regulation) Act, 1986

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Chapter I

Introduction

Conviction rates of labour law are one of the ways to assess how effectively the labour law enforcement system is functioning. In the context of child labour Act it is particularly important that those who violate the law are convicted and appropriately punished. The labour law enforcement system that consistently fails to secure convictions has little credibility and the danger exists that people may give up reporting violation of the legal provisions. In the context of child labour such a situation would pave way for perpetuation of the practice of employing children. It is therefore important to analyze the factors responsible for conviction of the cases of complaints under the Child Labour (Prohibition and Regulation) Act, 1986 and the causes of acquittals if there is a low rate of convictions. It is also important to understand how effectively the labour enforcement machinery works to hold the perpetrators accountable for their actions.

Children to become responsible and productive members of society ought to be brought up in an environment, where opportunities of education and training are provided and is conducive to their social, mental and physical development. Otherwise, the country gets deprived of potential human resources for the social progress, economic empowerment, social stability and good citizenry. It also depresses the wage of adult labour. Hence the society needs a child labour free labour market far from greater or lesser child labour participation rate.

Article 32 of the Convention on the Rights of the Child calls upon the State parties to protect the child from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. Furthermore it requires State parties to take necessary action to ensure the implementation of this provision.

In India, to combat and to regulate child labour there are a number of legislation right from the Factories Act, 1881 to the latest Child Labour (Prohibition and Regulation) Act, 1986. Though, the legislation has traversed a long journey, they could not make any significant dent in combating child labour. What constraints the effective implementation of the laws needs to be proved. One plausible argument is that the conflict between the economic compulsion on the part of the child labour families renders the legal compulsion on the part of the employers (not to employ

child labour/comply regulatory measures) useless. This is how economic forces circumvent laws, in particular the opportunity cost perception of the child labour families. These perceptions may prejudice the minds of the enforcement authorities. Moreover, the existing lacunae in the law enforcement machinery need to be located and rectified which shall be one of the steps towards ending Child Labour.

It is imperative to understand the enforcement status of the legal provisions pertaining to child labour. India is yet to ratify the core ILO Conventions 138 and 182 which is a pointer that the existing legal framework for addressing child labour is not adequate or at par with global labour standards.

Issues and Implications

Prevalence of child labour has been in one form or the other in different countries throughout history. The primitive and labour intensive agriculture required involvement of all members of the household including children who worked as a part of the family labour in their own land. It was perceived as a process through which children acquire skills and knowledge for everyday living. In the early stages of Industrialism, work participation in the production process was considered as "a convenient solution to pressing labour problems."[1] The difficult working conditions of children that hinder their protection and development was brought to the limelight during the 19th century British industrial revolution. The pernicious practice of employing labour of tender age in *cotton manufactory* in England[2] is depicted in a conversation between Robert Southey and a Manchester gentleman who is showing him over the cotton factories:

> Mr. -------- remarked that nothing could be so beneficial to a country as manufacture. "*You see these children, sir*" said he. "*In most parts of England poor children are a burthen to their parents and to the parish; here the parish, which would else have to support them, is rid of all expense; they get their bread almost as soon as they can run about, and by the time they are seven or eight years old bring in money. There is no idleness among us: they come at five in the morning; we allow them half an hour for breakfast, and an hour for dinner; they leave work at six, and another set relieves them for the night; the wheels never stand still.*"

1 Colin Heywood, (1988) Children in Nineteenth-Century France: Work, Health and Education among the Classes Populaires, Cambridge University Press, Cambridge, Page 124.

2 www.books.google.com/books/about/letters_from_England.html, Don Manuel Albarez Espriella, (1808) Letters from England, Longman, London.

Child labour continues to be a serious threat to social development, perpetuates poverty and compromises with the objective of reaching economic growth with social justice (ILO, 2002).[3]

Definitions and Concept

Age determination is crucial for determining responsibility for an offence of violation of law relating to employment of children. Age of a child is associated with his/her physical, psychological and social development. Definition of the term 'child' depends on the definition of 'age' which has a historical time and socio-cultural frame. The United Nations Convention on the Rights of the Child defines child as "a human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier".[4] The subject 'minimum age for admission to employment' is discussed in different ILO Conventions. In India, at present there is no standard definition of 'child'. The upper age limit has been determined differently under various enactments. As per Article 24 of the Constitution of India, no child below the age of 14 years is to be employed in any factory, mine or any hazardous employment. In the context of free and compulsory education for children, the Constitution defines the age of a child as fourteen years. The Child Labour (Prohibition and Regulation) Act, 1986 (CLPR Act) defines child as "a person who has not completed his fourteenth year of age" and prohibits employment of children (those who have not completed their fourteenth year) in specified occupations and processes. The CLPR Act lays down procedure to decide modifications to the schedule of banned occupations or processes.

Work that affects health and safety and mental, moral, and psychological development of children should be totally prohibited. Such work should be distinguished from the activities that are carried out by children which do not interfere with their schooling but provide them with socialization skills, relational skills and experience thereby contributing to their overall development and growth[5]. Work by children taking place in the family environment i.e. family farms or family enterprises are considered as non-hazardous i.e. — child work.[6] In India, children who work as a part of the

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[3] ILO (2002), "A Future Without Child Labour", Report of the Director-General of the ILO to the 90th Session of the International Labour Conference, Geneva

[4] Convention on the Rights of the Child" The Policy Press, Office of the United Nations High Commissioner for Human Rights

[5] Website of ILO. http://www.ilo.org/ipec/facts/lang--en/index.htm

[6] Bukht, M., S.,(2009) A Comparative Study of Conflicting Images of Child Between South Asia And Nordic Countries, Faculty of social sciences Oslo university college., Oslo. www.hioa.no/nno/content/download/17751/190973/file/CHILD.

family are kept out of the purview of the Child Labour (Prohibition and Regulation) Act, 1986 for the Act.

Working children are classified into different categories such as 'children at work' 'children in employment', 'children in economic activity' 'child labour' 'children in hazardous work' and 'children in worst forms of child labour'.

According to the ILO, children who are economically active, including those temporarily out of work with a formal connection to a job, are considered to be 'children in employment'[7]. For the limited purpose of identification, 'children in employment' is referred to 'children involved in economic activity' for at least one hour in the reference week of the survey'[8]. Economic activity is any activity that results in production of goods and services that adds value to national product[9]. In some countries, if a child is engaged to carry out work, whether or not the child receives payment, or any other kind of reward, the child is considered to be employed.[10]

'Child labour' refers to work that is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.[11]

Work is hazardous when it is likely to harm the health, safety or morals of children and the work that subjects the child to illness or injury from the use of dangerous tools, unsafe machinery, toxic substances (insecticides, herbicides, lead, potassium cyanide), and exposure to extreme temperatures and falling object[12]. The hazards may be obvious and threaten immediate damage to the health of children such as heavy lifting, exposure to dust

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7 A Report of ILO (2009) Defining child labour: A review of the definitions of child Labour in policy research, ILO office , Geneva, www.ilo.org/ipecinfo/product/download.do?type=document&id

8 http://data.worldbank.org/indicator/SL.TLF.0714.ZS

9 Fifth Quinquennial Survey (1997) Economic Activities and School Attendance by Children of India, National Sample Survey Organisation, Department of Statistics Government of India, New Delhi, citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.194...pdf

10 Information Sheet (2004) Employment of Children Laws, Department for Child Protection, Department of Consumer and Employment Protection, Government of Western Australia. www.commerce.wa.gov.au/labourrelations/PDF/Factsheets/Employmentofchildrenlaws.pdf

11 http://www.ilo.org/ipec/facts/lang--en/index.htm

12 Donnell, OO., Rosat ,F. C., et.al (2002) Child Labour and Health: Evidence and Research Issues, Understanding Children's Work (UCW) Project University of Rome, Via Columbia, Rome. https://secureweb.mcgill.ca/familymed/sites/mcgill.ca.familymed/files/report_1._child_labour_and_health.pdf

generated during various mining operations and other risks arising in construction, manufacturing and mining. Also in slaughter-houses and leather tanning industry children are exposed to chemicals, animal wastes and dirt and stench from decomposing offal and decaying carcass (Usha, 1984; Nihila, M. 2002; Sekar, H.R. 2003).

Involvement and exposure to dangerous activities such as armed conflict, drug-trafficking, sexual exploitation will have immediate and life-time damaging consequences on the children. There is an urgent need to prioritize these forms of child labour for total elimination from the face of the globe. According to ILO Convention No. 182, the worst forms of child labour (WFCL), includes (a) all forms of slavery or practices similar to slavery such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the Health, safety or morals of children.[13]

Causes and Impact of Child Labour

Child labour is a symptom of the underlying problems of widespread poverty and inequality in society. It is also a cause of poverty; children who join the workforce at an early stage do so without any formal education or skills that will help them to be upwardly mobile. In most cases, they are involved in monotonous and laborious tasks. They grow up as illiterates devoid of any skills for further development. Consequently, they get into some low paid unskilled work when they become adults. As adults when they marry and have children, they are already in a poor economic condition and are forced to send their children for work. Therefore the cycle of child labour - poverty – illiteracy – child labour continue to persist (Sekar, H.R. 1993).

Studies on child labour in the *beedi* industry show a vicious cycle of child labour-poverty-child labour operating in these areas and the prevalence of child labour for more than three generations. Thus, child labour has perpetuated poverty and vice-versa again and again. This vicious cycle is strengthened by adult unemployment owing to large number of children

[13] A Report of ILO (2011) Children in Hazardous Work , International Programme on the Elimination of Child Labour , Geneva, www.ilo.org/wcmsp5/groups/public/@dgreports/.../wcms_155428.pdf

competing for jobs with adults. Moreover, not only does child labour increase labour supply and result in increasing under employment and unemployment of adult workers, it makes the labour cheap and depresses the general wage level as well (Vidyasagar, R. 2000).

Another often quoted factor that forces children into work is the state of the basic education system. Even after the enactment of the RTE Act, every child of school-going age does not get access to education, especially in the rural and tribal areas. Even in the places where it is available parents are not in a position to enroll and retain their children in school due to foot-loose nature of their work, constantly moving from place to place in search of earning their livelihood. Moreover schools where the curriculum is unattractive cannot be an instrument for attracting children away from the labour market. In spite of substantive achievements, particularly higher enrolment rates in the last decades, the primary education system remains dysfunctional because of low retention and high dropout rates, and class, gender and regional disparities in access to education (Sekar, H.R. & Mohammad, N. 2001).

Child labour is not a supply side phenomenon alone; it is also a creation of demand side factors thriving on the seedbed of poverty. In the unorganized manufacturing sector, artisans are totally dependent on middlemen for credit to buy raw material and tools. Since most of the artisans are illiterate, they are unaware of the trends in the market and end up incurring losses. Moreover, the artisans are not in a strong bargaining position in regard to the price of the output; they have to sell their products to middlemen at less remunerative prices. Therefore, the only way to survive in the competitive business is to rely heavily on cheap labour (Sekar, H.R. & Mohammad, N. 2001).

The adverse consequences of children working in hazardous occupations are many. Firstly, it poses a challenge to the safety of the workers. Secondly health hazards have more long-term implications in terms of making the person invalid for any work at an early age. Various studies have shown that the impact of the hazardous work begins to show in its severe form only after 2-3 years in terms of morbidity, fever, cold, cough, dysentery, body ache and weakness, tuberculosis and other diseases (Bimal, 2000).

Those who work in lime kilns and slate mines from their childhood are prone to respiratory diseases and many do not live to attain the age of eighteen (Vishwanathan, 1987). The average age of workers is around thirty-five in Markapur slate mines of Andhra Pradesh. When adults become invalid workers at their economically productive age, they are forced to push their children into work for the survival of their family (Chandra, 2000). The most hazardous work processes in lock-making are polishing,

electroplating and spray painting. In polishing work, child workers inhale powder and metal dust continuously. This leads to respiratory and other lung related diseases. In electroplating, chemicals such as hydrochloric acid are used and the limbs of children get affected when they regularly dip the cross-section of the locks in these chemical solutions for electroplating. In most of the units, children work without wearing any footwear or gloves. The other hazardous impact of this work relates to the inhaling of noxious fumes, emitted from the chemical solutions when a current is passed through it. It affects both lungs and eyes. In one study, breathing trouble was found to be rampant among workers engaged in electroplating work. Besides, there always remains a possibility of receiving electric shocks, because most of the electroplating units have procured electricity supply illegally through open wiring. Children working in spray painting units are affected by respiratory diseases and pneumoconiosis.

The ILO Report of the Director General in the 68th Session of the International Labour Conference 1983 observed that the vulnerability of working children to health hazards is increased by the high incidence of malnutrition and undernourishment, in contrast to their increased requirement for energy utilization to perform heavy work activities. The incidence of communicable diseases is always higher among these children. Children come into close contact in work situations with infective cases of tuberculosis and other similar diseases. Severe malnutrition, anemia, hard labour, fatigue and inadequate sleep make them more susceptible to diseases (Sekar, H. R., 1993). Long working hours, unhygienic and unsafe surroundings, less than subsistence wages and hazardous tasks are the characteristic features of child labour scenario in the Sivakasi match industry. The risk from fire is ever present because all chemicals used in the manufacturing of matches - ammonium phosphate, potassium chlorate, sulphur, manganese and phosphorus are inflammable. There is a high risk of fire and explosion in the raw materials store, and in the paste making, match head coating and box filling processes. Child workers are exposed to continuous heat in certain manufacturing processes in the match factories such as preparation of chemical coating mix and chemical dipping of the match sticks. Body aches, fever, cough, cold, headache, stomachache or itching in the hands are reported to be common physical ailments among most of the child labourers in the match and fireworks industry.

Most of the studies conducted on the issue of child labour, focused on the magnitude, forms, nature of child labour in different sectors of the economy and the causes and consequences of the problem. Studies have also assessed the adverse impact on the health of children because of their employment in specific occupations and processes. However, very few studies have focused exclusively on child labour legislation and the

status and outcome of its enforcement. These studies broadly enlist the provisions on child labour in various labour laws, highlight salient features of the Child Labour (Prohibition and Regulation) Act, 1986 as well as the loopholes in the Act. Some of these studies have documented highlights of the Supreme Court judgments on Child Labour and recommendations of various committees to strengthen child labour legislation (Varghese, J. 1989; Gathia, J. & Mahajan, K. 1990; Patel, B.B. 1991). Efforts to enforce legislation prohibiting child labour should be supplemented with measures of attacking poverty directly and compulsory primary education (Subrahmanya, R.K.A. 1991).

Another study points out thorough understanding of legislation pertaining to child labour as a pre requirement for formulating an integrated approach to child welfare (B.B. Patel, 1991). A study of child labour legislation in India provides a historical overview and provides a critical analysis of the Legislative Assembly debates on the issue of child labour over a period of time (Sekar, H.R. 1997). The study 'Child Labour in India: Nature, Causes and Eradication' concludes that legislation remains on paper and the employers easily avail of loopholes in the law. It suggests a multi-pronged strategy with a clear goal of total ban on child labour with time bound programmes (Usha, K. 1991).

Some other studies observe that the weak enforcement of the existing laws is owed to the fact that the law is vague and in some cases self-contradictory with some of the enactments that have legal provisions relating to Child Labour laying down the minimum age as 14 for both boys and girls which implies that for children above 14 years labour is legal and permitted (Madabhushi, S. 2012)[14]. The Act is viewed, by some scholars as vague and contradictory, when compared to the constitutional frame work that guarantees the right to education to children in the age group of 6-14 years (Gaur, M. 2008).[15]

Though the studies reviewed look extensively on various aspects relating to the issue of child labour, the issues pertaining to legislation and enforcement are either overlooked or sparingly investigated. Even in the study which has made some attempt to look into the legislative aspects of child labour, they are by and large confined to some specific geographical locations. None of the studies have systematically looked into the underlying features for low

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[14] Madabhushi, S., 2012 ,'Legal Provisions Regarding Age of Child, to protect the Rights of Children', NALSAR Law University ,available at http://www.ncpcr.gov.in/Reports/Discussion_Paper_on_Legal_Provisions_Regarding_Age_of_Child.pdf

[15] Gaur, M. (2008): 'The Child Protection – A fiction', Alfa Publications, New Delhi. (pp- 109-114)

conviction rates under Child Labour (Prohibition and Regulation) Act, 1986. The present study was an attempt to fill this gap by examining the scope and existing infirmities of the legislation, particularly the Child Labour (Prohibition and Regulation) Act. The study has also made analysis of select prosecutions launched under the CLPR Act in order to arrive at reasons for the existing rate of convictions under the Act. Further an attempt has been made to locate the impediments and challenges in achieving convictions with the view to suggest remedial measures. In order to understand the grounds for conviction in the cases filed under Section 14 of the Child Labour (Prohibition & Regulation) Act, 1986, an attempt has also been made to analyze some of the cases that have resulted in conviction.

Data Sources and Methodology

Communications were sent to the Departments of Labour and Employment of all the States and Union Territories in India. Sample of Lower Court cases were received only from the States of Andhra Pradesh, Gujarat, Kerala, Karnataka, Madhya Pradesh, Rajasthan, Tamil Nadu and Uttar Pradesh and from the Union Territory of Puducherry. High Court and Supreme Court cases on the issue of child labour were downloaded from the internet sources for analysis.

The present study followed case study method. "Individual case tracking method" was used to examine the process and the outcome of each case. Since very few cases reported during a particular year are finalized during the same year hence convictions in a particular year are seldom with respect to the prosecutions launched in that same year. To substantiate the case analysis, in-depth unstructured interviews and Focus Group Discussions were held with 92 Officers of the Labour Enforcement Machinery in different batches during their training period at the V.V. Giri National Labour Institute. These officers were from the Labour Departments of 20 different States and 2 Union Territories. One-fourth of the officers were from the Central Labour Services. Responses were elicited in an interview format from some of these officers who could not participate in discussions. The Designation of the Officers who participated in the discussions are in different positions of hierarchy and designation namely Deputy Chief Labour Commissioner, Assistant Labour Welfare Commissioner, Deputy Labour Commissioner, Assistant Labour Commissioner, Labour Enforcement Officer, Labour Officer, Labour Inspector, Inspector (Minimum Wages), Inspector (Plantation), Inspector (Rural Labour), and Assistant Labour Officer. Interviews and Group discussions were designed to capture various perceptions on the issue of child labour and the challenges in enforcement. All the research techniques were complementary.

Chapter II

Statutory Provisions and Child Labour in India: An Overview

Child labour legislation in India has traversed a long way since the nineteenth century when the issue of child labour was recognized as a grave problem. Protection of law was first extended to working children by enacting the Factories Act in the year 1881. It set the minimum age of employment in factories at seven years and allowed a maximum of nine hours of work per day. It also provided for at least four holidays in a month and prohibited successive employment of child workers in two factories employing 100 or more workers and, therefore, gave no protection to children employed in smaller factories. The Factories Act was amended periodically and the minimum age of employment of the child was increased gradually. In 1891, the Act was amended and the minimum age of employment in factories was raised to nine years and the maximum hours of work reduced to seven. In addition, children were prohibited from working between 8 PM and 5 AM.

In 1911, the Factories Act was amended and the Act prohibited work in certain dangerous processes and required a certificate of age and fitness. In 1922, the Factories Act was amended to provide for changes in order to implement the ILO Convention No. 5 by raising the minimum age to 15 years in general, restricting working hours to six hours and also providing for intervals of half an hour if children were employed for more than 5 hours and thirty minutes. This Act was applicable to establishments using mechanical processes employing 20 or more persons. In 1926, the Factories Act was amended to impose certain penalties on parents and guardians for allowing their children to work in two different factories on the same day. In 1934, the Factories Act Prohibited work in factories for children under 12 years and employment was restricted to 5 hours a day for children between 12 and 15 years along with other restrictions for children between 15 and 17 years.

The Factories Act, 1948 envisaged great detail the prohibitory and regulatory provisions with regard to children below 14 years and young persons respectively. Section 67 of the Factories Act completed prohibits the employment of children below 14 years in any factory. Section 68 provides that a child who has completed his/her 14 years or an adolescent can be required or allowed to work in any factory if a certificate of fitness granted with reference to him/her under Section 69 is in custody of the

manager of the factory and for this such child or adolescent carries the certificates while he/she is at work-a token giving a reference to such certificate. The obligation rests on the occupier as well. Section 71 provides for restriction on hours of work - a child may be permitted or allowed to work in any factory. It provides a ceiling of four and a half hours in every day of work. The Section prohibits employment of children during the night, which means between 10 p.m. and 6 a.m. Section 71(5) provides that no female child shall be required or permitted to work in any factory except between 8 a.m. and 7 p.m. Section 72 provides for notice for periods of work for children. Section 75 empowers the Inspector under the Act to require medical examination where he is of the opinion that any person working in the factory without a certificate of fitness is not a young person or where young person working with a certificate of fitness is no longer prohibited to work – in the capacity stated in the certification. The Section further empowers the Inspector under this Act to direct that such person or young person shall not be employed or permitted to work until he has been so examined and has been granted a certificate of fitness. Section 2(b) defines adolescent as a person who has completed his 15th year of age but has not completed his 18 years. Section 104 prescribes that the onus of proof as to the age is on the accused. The accused has to prove that such person is not under such age. Section 92 provides for penalty on conviction as imprisonment for a term which may extend to two years or with fine which may extend to rupees 1 lakh or with both.

Legislation prohibiting the employment of children in mines was also evolved with the passing of the Mines Act in 1901 which prohibited the employment of a child labour (12 years) in any mine where the conditions were dangerous to their health and safety. This Act restricted child employment in open cast mines with depths of less than 20 feet. In 1923, the Indian Mines Act increased the minimum age to 13 years and restricted the weekly hours of work for children to 54 underground and 60 above ground. It also changed the definition of mine to include any excavation irrespective of depth used for searching for or obtaining minerals. In 1935, the Mines Act was amended to introduce divisions of children according to age-groups. It raised the minimum age to 15 years and required a certificate of physical fitness from a qualified medical practitioner from those between 15 and 17 years of age. It also restricted working time to a maximum of 10 hours a day and 54 hours a week for work above the ground nine hours a day for work underground. The Mines Act, 1952, under Section 40, prohibits the employment of persons below 18 years of age in any mine or part thereof. Sub Section 2 or Section 14 provides that apprentices or other trainees not below 16 years of age may be allowed to work in a mine or part thereof but only under proper supervision.

The Indian Ports Act of 1931 prescribed 12 years as the minimum age for handling goods in ports. In 1932, the Tea Districts Emigrant of Labour Act was passed to check the migration of labourers and provided that no child under 16 be employed or allowed to migrate unless the child was accompanied by the parents or adults on whom the child was dependent.

Children (Pledging of Labour) Act, 1933, is still in the statute book. The Act explicitly prohibits the making of agreements to pledge the labour of children and employment of children whose labour has been pledged. Section 2 defines child as a person who is under the age of 15 years. Section 3 provides that all such agreements pledging the labour of child are void. Section 4 provides for penalty for parents or guardians making agreement to pledge the labour of child. Section 6 provides for penalty for employing a child whose labour has been pledged.

Based on the recommendation of the 23rd session of the International Labour Conference in 1937 where a convention with a special article exclusively on India was adopted, and requiring ratification by the Indian government to prohibit child work below 13 years of age to work in certain categories of employment, the Employment of Children Act, 1938, was enacted. The Act prohibited child labour in the transport of passengers, goods, mails, by rail or in the handling of goods at docks, quays or wharves, but excluding transport by hand. The Employment of Children Act, 1938, was the first act which directly addressed the problem of child labour in India. In 1978, the Employment of Children Act was amended prohibiting the employment of a child below 15 years in occupations on railway premises such as cinder-picking or clearance of ash pits or building operations, in catering establishments and in any other work which was carried on or in close proximity to or between the railway lines.

Minimum Wages Act passed in 1948 defines a 'child' to mean a person who had not completed 14 years of age. It required that the appropriate government fixed different rates of wages for adults, adolescents and children. It also provided the normal working hours for a child to be 4 ½ hours and that no child could be employed or permitted to work overtime.

In 1958, the Merchant Shipping Act prohibited the employment of children under 15 in any ship, except in school ships, in ships where all employees were members of a family, in a home trade ship of less than 200 tons gross, or where the child was employed at nominal wages and would be in the charge of the father or other male relative.

Motor Transport Workers Act, 1961, prohibits, under Section 21, employment of children in any capacity, in any motor transport undertaking. Section 2

(C) defines a child as a person who has not completed his 14 years and an adolescent is defined as a person who has completed his 14 years but has not completed his 18 years. Section 22 provides that where an adolescent is required to or allow to worked in any motor transport undertaking the employer shall maintain a certificate of fitness and the adolescent shall, while at work, carry the certificate as a token giving a reference to such certificates.

In 1961, the Apprentices Act was passed and prohibited the apprenticeship or training of a child below 14 years and, in the case of the apprenticeship of other minors, required contract between the guardian and the employer. The Apprentices Act also sets the maximum weekly hours for an apprentice at 42 to 48 hours in total, depending on the number of years spent as an apprentice. No apprentice, other than short-term apprentices, may work between 10 p.m. and 6 a.m. except with the permission of the competent authority.

In 1966, the Bidi and Cigar Workers (Conditions of Employment) Act was passed. It not only prohibited the employment of children under 14 in industrial premises where any process connected with the manufacture of *bidis* and cigars takes place, but also the employment of young persons who have completed their 14th but not 18th year of age, between 7 p.m. and 6 a.m.

Likewise, the Bonded Labour Systems (Abolition and Regulation) Act, 1976, vide Section 4 abolished the Bonded Labour System. Every bonded labour including child bonded labour are freed and discharged from any obligation to render any bonded labour. Sub Section 2 or sub section 4 provides that no person shall make any advance under or in pursuance of bonded labour system or compel any person to render any bonded labour or other forms of forced labour. Section 16 provides for penal provisions and prescribes punishment or imprisonment for a term which may extend to 3 years and also fine which may extend to two thousand rupees. Section 15 provides that the burden of proof is on the accused to prove that such debt is not a bonded debt.

The Shops and Commercial Establishment Acts passed by various State Legislatures also provide complete prohibition on employment of children below 14 years in any shop or commercial establishment.

It is obvious from the above discussion that there were stringent legal provisions pertaining to employment of children in various other labour laws much before the enactment of the Child Labour (Prohibition & Regulation) Act which was passed by Indian Parliament in 1986.

Chapter III

The Child Labour (Prohibition and Regulation) Act, 1986: Critical Analysis

The Child Labour (Prohibition and Regulation) Act, 1986 has been enacted with the object to prohibit the engagement children in certain employments and to regulate the conditions of work of children in certain other employments. This Act is a notable departure from the erstwhile sectoral approach. The word "child" has been defined in Section 2(ii) of the Child Labour (Prohibition and Regulation) Act, 1986, and it means a person who has not completed his fourteenth year of age. The Act provides for a very comprehensive and detailed scheme of prohibition and regulation of child labour.

Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986 provides that no child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on. Thus the Act classifies employment of children as labour into two categories. i) The Act prohibits the employment of children in certain occupations and processes; ii) The Act is permissive in engaging child labour in all the non-prohibited occupations and processes but regulates the conditions of working. The prohibited, occupations and processes are listed out in the Schedule. The Schedule to Section 3 of the Act is in two parts, Part A and Part B. Part A of the Schedule lists the prohibited occupations and part B of schedule lists the prohibited processes. Section 3 of the Act categorically provides that no person below the age of 14 years shall be employed or permitted to work in any of the occupations set forth in part A of the schedule or in any workshop wherein any processes set forth in part B is carried on. It is evident that section 3 makes a distinction. In that there is total prohibition to work in any of the occupation set forth in Part A, whereas the total prohibition as far as the occupations referred to in Part B is concerned, is only for working in a workshop where such an occupation is carried. That is to say, that the statute bans employment of a child if the occupation mentioned in Part B is carried on in an organized and systematic manner in a workshop, but there is no prohibition to the child being employed at a place where it is carried on in a disorderly manner since that is not a workshop. This distinction should not exist and should be done away with. The occupation mentioned in Part B is equally hazardous to health as those mentioned in Part A. Therefore, the

prohibition to employ a child should exist in both.[16] Section 3 does not prohibit the employment of child labour in the fields for raising cotton seed plantation. Further, Section 3 also does not prohibit employment of child labour in agricultural operations[17]

New India Assurance Company Limited v. Rachalah Basaiah Ganachari,[18] was called upon to consider the applicability of the Workmen's Compensation Act (now Employee's Compensation Act). While dealing with this issue, the court pointed out that the scheme of the Workmen's Compensation Act nowhere states that there is a prohibition to employ a child. According to the definition under Section 2 of the Child Labour (Prohibition and Regulation) Act, 1986, the court then referred to the definition of 'Child' to mean a person who has not completed his fourteenth year of the age. Admittedly in the case on hand, the boy was 13 years old. Hence, he was a child as on the date of the accident. But Section 3 of the same Act clearly states that a child may be employed for each of the works which are not covered under Parts A and B.

The court also referred to section 3 to make it clear that a child should never be employed. A check is that a child cannot be employed for such Act which comes under Parts A and B. In view of Section 3 and in the absence of any specific prohibition under the Workmen's Compensation Act, it can be very well held that a child can be employed to carry out the work provided this work does not come under the Parts A and B of the Schedule of the Child Labour (Prohibition and Regulation) Act, 1986. In view of this, the Karnataka High Court held that it is an admitted fact that it is an amputation of the right hand at the shoulder joint. So, the disability is 90% and therefore, the Commissioner has rightly awarded the compensation of Rs. 81,496/-.

The proviso to Section 3 reads –"provided that nothing in this Section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from Government."[19] From this it is clear that Section 3 of the Act is not applicable to a case where the occupier of the workshop takes the help of any member of his family. Thus in Hemendra Bhai vs. State of Chhattisgarh, 2003 (97) FLR 402, (2003) IILLJ 645 CG,

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16 A. Srirama Babu v. The Chief Secretary To The Government of Karnataka , ILR 1997 KAR 2269;1998 (1) KarL J 191

17 C. Prakash Rao and Others, 2003(1) ALT (Crl.) 235 (D.B) (A.P) v. Government of Andhra Pradesh

18 2001ACJ2113; [2001(88) FL R 488]; ILR2000KAR4743; 2001(3) KarLJ135

19 Chhota Bhai Munnu Bhai & Co. vs. State Of U.P., (1999) IILLJ 956 All

the Chhattisgarh High Court held that even if the occupier of the house, which if treated as workshop, is found to have engaged any child in *bidi* making, the same cannot be said to be violative of Section 3 of the Act.[20] The provision of Section 3 keeps any occupation, a work or process – i.e. carried on by the occupier with the aid of his family – out of the purview of the Act. This provision offers protection to several match, carpet, glass and bidi manufacturing units to continue the exploitation under the umbrella of the family. Therefore, there is a need to add to the provision that "it shall be presumed that the occupier is also the employer for the purpose of the Act and shall be liable for prosecution. The onus to prove that the child is a member of his or her family would rest on the occupier."[21]

Though the provision says that nothing in this section shall apply to any workshop where any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from the government, when certain occupations and processes are harmful to the health of children, it remains applicable even if children work as part of family entrepreneurial enterprises, or state managed/ established/aided/recognized schools.

The Act makes a clear distinction between prohibited and non-prohibited categories and provides in part II regulatory provisions where child labour is committed subject to restrictions contained in Sections 7, 8 and 9 of the Act. Under Section 7 no child shall be required or permitted to work in any establishment in excess of such number of hours as may be the prescribed for such establishment or class of establishments. Under Section 8 every child employed in an establishment shall be allowed in each week, a holiday of one whole day, which shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months. Section 9 of the Act imposes an obligation upon the occupier of the particular establishment in which a child is employed to send notice to the Inspector of such employment. This means, notice need be given only if a child is employed. This provision in fact acts as a safety valve for the employer to escape from the rigors of the Act. Violation thereof may arise when a notice is not sent and still a child is employed. Unless the Inspector conducts inspection of every establishment, he cannot discover the violation. Even if discovered, any number of defenses can be visualized with respect to the point of time when the child was

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[20] Hemendra Bhai vs. State of Chhattisgarh, 2003 (97) FLR 402, (2003) IILLJ 645 CG

[21] Sekar, Helen R., Making National Child Labour Policy A Reality: Towards the Amendment of Child Labour Prohibition and Regulation) Act, 1986 Awards Digest, Journal of Labour Legislation, Vol. XXXIII-11-12, November-December, 2007

employed. Therefore, it should be made a mandatory condition that every occupier of an establishment should send a notice to the Inspector containing the information regarding the employment of a child either in the affirmative or in the negative, annually. Such an affirmation will assist the authorities to cross-check whether the establishment is employing or not employing a child. This legislation should come alive and should cease to be an ornamental legislation intended to subside the hue and cry of the public.[22]

Section 10 of the Act deals with disputes as to age, which reads "If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority." It is evident from this that it is a mandatory duty on the part of the prosecution to produce the certificate issued by the prescribed medical authority to prove the age of the child and also to examine the medical officer issuing such certificate under the Child Labour (Prohibition and Regulation) Act, 1986.

It is important to discuss the judicial approach to the rules relating to admissibility of evidence regarding the age of child. In Madan Mohan Singh v. Rajnikant,[23] the Supreme Court held that: "Such entries may be in any public document i.e., school register, voter register or voter list or family register prepared under the rules and regulations etc. in force and may be admissible under section 35 of the Evidence Act." So far as the entries made in the official records by an official or person authorized in performance of official duties are concerned they may be admissible under Section 35 of the Indian Evidence Act but the court has a right to examine their probative value. The authenticity of the entries made would depend on whose information such entries stood recorded and what was his source of information. The entry in the school register / school leaving certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal case".

For determining the age of a person, the best evidence is of his/ her parents, if it is supported by unimpeachable documents. In case the date of birth depicted in the school register/ certificate stands belied by the unimpeachable evidence of reliable persons and contemporaneous

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[22] A. Srirama Babu v. The Chief Secretary to the Government of Karnataka, ILR 1997 KAR 2269;1998 (1) KarLJ 191

[23] AIR 2010 SC 2933

documents like the date of birth register of the Municipal Corporation, Government Hospital/ Nursing Home etc., the entry in the school register is to be discarded.

The Allahabad High Court in a judgment reported in 2002(1) Crimes P. 323 examined the scope of section 10 of The Child Labour (Prohibition and Regulation) Act, 1986. In this case, "Sri Rampreet Ram, the labour enforcement officer has stated that the Child Labourer, who was found working at the loom of the applicant named Ashok s/o Basdeo aged about 11 years. He has not stated as on what basis he ascertained the age of the said person. The record shows that neither any documents nor any medical certificate regarding age of the alleged child was produced. There is also nothing on record to show that the applicant had admitted the age of the above person." On these facts the court observed that as required under section 10 there was no certificate as to the age of the child by the prescribed medical authority was produced. The court held that it is the duty of the Inspector to obtain a certificate of the prescribed medical authority regarding the age of the child. In the absence of such certificate and evidence the accused cannot be convicted.

Section 14 of the CLPR Act is noteworthy which provides for penalties for violation of Section 3. This Section is a clear departure from similar provisions in other labour laws. The Section provides for minimum of penalty below which punishment on conviction cannot be inflicted. Under section 14, whoever employs or permit any child to work, in violation of Section 3, is punishable with imprisonment for a term which shall not be less than 3 months but which may extend to one year or with fine which shall not be less than Rs.10,000 and which may extend to Rs.20,000 or with both. For subsequent offence the accused shall be punishable with imprisonment which shall not be less than 6 months and which may extend to 2 years.

Whoever fails to give notice as required by Section 9 or fails to maintain register under Section 11 or fails to display notice as required by Section 12 or fails to comply with or contravenes any provision of the Act or Rules made there under, he shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to Rs. 10,000/- or with both.

A perusal of the aforesaid provisions clearly establish that a penalty can only be imposed if a child below 14 years of age is found working or in employment or permitted to work in any occupation. Section 14 applies to the case where somebody is sought to be prosecuted before the competent court. It is the only penal provision under the Child Labour

(Prohibition and Regulation) Act, 1986. It does not authorize the labour Inspector/ Assistant Labour Commissioner or any other person to impose any penalty[24] while sub-sections (1) and (2) of Section 14 of the Act deals with contravention of Section 3, wherein employment of children was totally prohibited, sub-section (3) of Section 14 deals with contraventions in respect of areas where employment of children is permitted but still the employer does not comply with the statutory requirement in that regard as contained in Part III of the Act. That is how, under sub-section (3) of Section 14, failure to give notice to the Inspector under Section 9, failure to maintain a Register as required by Section 11, etc., are made punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both. The punishment to be awarded in cases of violation of the statute should be deterrent. The punishment laid down under Section 14 can hardly be described as a deterrent punishment.

Section 15 of the Act is in furtherance to the provisions of Section 14. This Section provides that offences under Section 67 of the Factories Act, 1948, Section 40 of the Mines Act, 1952, Section 109 of the Merchant Shipping Act, 1958 and Section 21 of the Motor Transport Workers Act, 1961, on conviction, shall be punishable under Section 14 of the Act and not under relevant provisions in the concerned Acts. However, a limiting factor is contained under Section 10 and 14 of the Act, which envisages burden of proof on the Inspector – a clear departure from the Factories Act, 1948 and Bonded Labour System (Abolition) Act, 1976.

The aforesaid section requires amendment making the punishment under Section 14 to be in addition to the punishment under the above Act. This is so that if one is proceeded under the Factories Act, the delinquent faces more serious punishment for violation. Section 92 of the Factories Act provides for imprisonment which may extend up to two years or a fine which is up to one lakh of rupees. Hence an occupier of a Factory saves himself from the appropriate punishment contemplated under the Factories Act if proceeded under Section 14 of the present Act. This certainly requires appropriate amendment. The punishment under the present Act should be made in addition to the punishment under the above said enactments.[25]

Section 14 would not authorize an Inspector to hold a person guilty of the offences, nor would they be entitled to award any punishment to the

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[24] Haria Ginning and Pressing... v. Mamlatdar, (2007) 2 GLR 2095, (2008) ILLJ 432 Guj

[25] A. Srirama Babu v. The Chief Secretary To The Government of Karnataka , ILR 1997 KAR 2269;1998 (1) KarL J 191

alleged wrongdoer. Once a person is prima facie found to be an offender, the Labour Department or Inspector or any competent Officer of the Labour Department would be required to file a complaint before the competent Judicial Magistrate and if they secure conviction of such offender, then, the Court would award such penalty, which may be the jail sentence or fine or both.[26]

The Inspector or Officer of the Labour Court unless is vested with the powers of the Magistrate under the provisions of the Act, he/they cannot exercise such powers. Section 14 of the Act is the only penal provision under the Act. It does not authorize the Labour Inspector, Assistant Labour Commissioner or any other person to impose any penalty[27]

Section 16(1) of the Act inter alia provides that any person, Police Officer or Inspector may file a complaint in any Court of competent jurisdiction with regard to commission of an offence under the Act. Section 16 (3) provides that "no court inferior to that of a Metropolitan Magistrate or a Magistrate of First class may try the offence under the Act. Section 17 empowers the appropriate government to appoint Inspectors for the purposes of securing compliance with the provisions of this Act and any Inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

Section 18(2) (c) empowers the appropriate government to make rules regarding a) grant of certificates of age in respect of young persons in employment or seeking employment; b) the medical authorities which may issue such certificate; c) the form of such certificate, the charges which may be made thereunder; and d) the manner in which such certificate may be issued. It is important to examine Rules framed by different States in this context. Rule 19 of Andhra Pradesh Child Labour Rules 1995, where it analyzed in respect of a child in an establishment, the Inspector of the area within whose jurisdiction the establishment is situated may, at any time, in writing require the employer or occupier to produce at his own cost within such time, not being less than ten days from the date or requisition one of the following documents showing the age of such child labour employed viz. a certified copy of any extract from (i) the records of any school; (ii) the birth register of local authority; (iii) certificate granted by any Government Medical and Health Officer.

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[26] Haria Ginning and Pressing ... v. Mamlatdar, (2007) 2 GLR 2095, (2008) ILLJ 432 Gujarat

[27] Haria Ginning and Pressing ... v. Mamlatdar, (2007) 2 GLR 2095, (2008) ILLJ 432 Gujarat

With regard to certificate of age, Rule 17 of Uttar Pradesh Child Labour Rules 1988 states that (1) All young persons in employment in any of the occupations set-forth in Part A of the Schedule or in any workshop wherein any of the processes set-forth in Part B of the Schedule is carried on, shall produce a certificate of age from the appropriate medical authority, whenever required to do so by an Inspector; (2) The certificate of age referred to in sub-rule (1) shall be issued in Form 'B'; (3) The charges payable to the medical authority for the issue of such certificate shall be the same as prescribed by the State Government or the Central Government, as the case may be for their respective Medical Boards; (4) The charges payable to the medical authority shall be borne by the employer of the young person whose age is under question.

Rule 17 of Gujarat Child Labour Rules 1994 with regard to Certificate of age states that- (1) All young persons in employment in any of the occupations set-forth in Part A of the Schedule or in any workshop wherein any of the processes set-forth in Part B of the Schedule is carried on, shall produce a certificate of age from the appropriate medical authority, whenever required to do so by an Inspector; (2) The certificate of age referred to in sub-rule (1) shall be issued in Form 'B'; (3) The charges payable to the medical authority for the issue of such certificate shall be the same as prescribed by the State Government or the Central Government, as the case may be for their respective Medical Boards.; (4) The charges payable to the medical authority shall be borne by the employer of the young person whose age is under question.

Concerning Certificate of age, Rule 17 of Tamil Nadu Child Labour Rules 1988, prescribes that (1) All young persons in employment in any of the occupations set-forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on, shall produce a certificate of age from the appropriate medical authority, whenever required to do so by an Inspector; (2) The certificate of age referred to in sub-rule (1) shall be issued in Form 'B'; (3) The charges payable to the medical authority for the issue of such certificate shall be the same as prescribed by the State Government or the Central Government, as the case may be for their respective Medical Boards; (4) The charges payable to the medical authority shall be borne by the employer of the young person whose age is under question. Further the Rules provide explanation that- For the purposes of sub-rule (1), the appropriate "Medical authority" shall be Government medical doctor not below the rank of an Assistant Surgeon of a District or a regular doctor or equivalent rank employed in Employees' State Insurance Dispensaries or Hospitals.

Section 10 of the CLPR Act provides that if any question arises between an Inspector and an occupier as to the age of any child found employed and working and wherein there is an absence of a certificate as to the age of such child granted by prescribed medical authority, the matter will be referred by the Inspector for decision to the prescribed medical authority. Section 16 (2) of the Act further provides that certificate as to the age of the concerned child granted by prescribed medical authority shall be final and conclusive proof of the age of the child. Thus the Act has made it very clear that the medical certificate could be the conclusive evidence as to the age of child. **The provisions contained in Section 10 and Section 16 (2) of the Child Labour (Prohibition and Regulation) Act, 1986, coupled with the standard of proof required in criminal trials as being beyond reasonable doubts have been the major factors in abysmally low convictions and high number of acquittals from courts.**

Chapter IV

Causes for Low Rate of Conviction and Large Number of Acquittals: Analysis based on Court Judgments

In order to determine the grounds for low rate of conviction it is necessary to examine the cases decided by various high courts and subordinate courts. Analytical study of various judgments and orders delivered by courts from the States of Andhra Pradesh, Chhattisgarh, Karnataka, Rajasthan, Tamil Nadu and Uttar Pradesh and from the Union Territory of Puducherry and some of the cases of the High Courts in India reveal several reasons and factors responsible for low rate of convictions on prosecutions filed under Section 14 of the Child Labour (Prohibition & Regulation) Act, 1986 which are discussed in this chapter. The basic reasons and factors for low rate of convictions are:

- Burden of proof on the Inspector is envisaged under the Section 10 of the Child Labour (Prohibition & Regulation) Act, 1986. The Inspector in many cases failed to properly discharge this responsibility cast upon them under this Section.
- With the standard of proof as in criminal trials being 'beyond all reasonable doubts', the prosecution even where assisted by Assistant Public Prosecutors, failed to establish it in case of meeting stringent standards of proof in the trial courts resulting in acquittals of the accused on grounds of benefit of doubt in their favour.
- The Section 14 of this Act, under which prosecutions were launched for violation of Section 3 of the Act, provides for minimum of fine and imprisonment, below which penalty on conviction cannot be imposed. The provision being highly stringent and a clear departure from penal provisions prescribed in all other labour laws resulted in very low number of confessions of guilt and were vehemently contested by the accused denying the charges and complaint from the prosecution.
- Even in very small number of cases where the accused confessed the guilt before the courts, the trial court over looked the penal provisions under Section 14 of the Act and awarded a comparatively lesser fine than the prescribed minimum fine under this Section. A few notable examples are:

    i. C A No.11358 M.P. State through LEO(Central) Satna vs. Dashrahrath Sonkriya S/o of Beni Madhav.

ii. C A No.11359 M.P. State through LEO(Central) Satna vs. Munna Prajapati S/o Prabhu Kumhar

iii. C A No.11361 M.P. State through LEO(Central) Satna vs. Sanjai Srivastava S/o Gopal Prasad

In all the above cases despite confession of guilt by the accused before trial court, the Hon'ble Court of Chief Judicial Magistrate, Satna vide order 11.12.2010 awarded a fine of Rs.5000 each in all those cases, failing which imprisonment from 3 to 5 days. There is no information available whether an appeal was filed against this order by the State.

Confession of guilt by the accused before trial court are more common under other labour laws where the penal provisions in those Acts provide for maximum limits of punishment and not minimum limits as in the Child Labour (Prohibition & Regulation) Act, 1986 and leave discretion with the court to award punishment within the prescribed maximum limits.

In Uttar Pradesh, against a few such orders under Section 14 of the Child Labour (Prohibition & Regulation) Act, 1986, particularly during the period immediately after the child labour survey of 1997, appeals were filed in the Higher Courts where the appellate court directed the imposition of penalty as per the provisions under Section 14 of the Child Labour (Prohibition & Regulation) Act, 1986.

Notably in the following cases where the accused pleaded guilty, the trial court awarded punishment as per provisions of Section 14 of the Act.

- Assistant Labour Officer, Thiruvananthapuram Ist circle vs. Veluswamy (C.C.382/2009)
- Assistant Labour Officer, Thiruvananthapuram Ist circle vs. Syam Sunder Ayas (C.C. 381/2009)

In both these cases, the accused pleaded guilty before the trial court and the Hon'ble Court of Judicial First Class Magistrate 2 Thiruvananthapuram vide order dated 17.9.2009 convicted the accused persons for offences under Section 3, Section 12 and Section 16 of the Act and awarded Rs.10,000 in each of the cases as fine for violation of Section 3 and Rs.1000 in addition, for violation of Section 12 of the Act.

- State represented by K. Kaliaperumal, Asstt. Inspector of Labour, Govt. of Pondicherry vs. J. Murugan, Employers M/s Murugan Auto Works, Mailam Road, Sedarpet, Pondicherry (STR No. 215/2003)

In this case, the Court of Judicial Magistrate First Class at Pondicherry vide order dated 17.12.2004 convicted the accused and sentenced the accused to three months simple imprisonment. No monitory fine is imposed. The case was decided in favour of the State following confession of the guilt by the accused. In this case, inspection was conducted in the premises of the accused at 11:15 AM on 19.4.2002. One child aged 12 years was found working as helper in Auto Works of the accused which attracted Item No. 20 of Part B of schedule under Section 3. The prosecution submitted 3 evidences, 2 from the Inspecting Officers and one from concerned child labour who testified before the trial court and corroborated the case of prosecution saying that at the time of inspection his age was 13 years and he was working for one year prior to inspection for Rs.20 per day as coolie. The inspection note and survey formats duly signed by the accused and concerned child labour were produced as documents in support of the case. The prosecution case was that, a repeat survey was being organized during the months of March to May 2002, which was well within the knowledge of the accused and despite this the accused engaged the concerned child labour. The accused failed to cross examine the State witnesses, rather admitted then the inspection and the testimony of the concerned child labour as true. The accused was convicted and sentenced to imprisonment.

- The State represented by Asstt. Inspector of Labour, Govt. of Puducherry vs. T. Dharmaraj, Employer of Kaleeswari Waste Paper Mart, Puducherry (STR No.214/2003)

In this case, the complainant moved a petition under Section 257 Cr. P.C. to withdraw the complaint. The Hon'ble Court allowed the petition and hence the accused was acquitted vide order dated 29.3.2007 by the Hon'ble Court of Judicial Magistrate First Class Puducherry.

- State of Gujarat vs. Bhupendra Kumar Jag Jivan Das

In this case, the Hon'ble High Court of Gujarat, in an appeal filed by the State against this order dated 23.3.1990 passed by Hon'ble Judicial Magistrates first class Manvadar in Summary Case No. 89/1990, held that "Section 15(1) of Child Labour (Prohibition and Regulation) Act, 1986 read with Section 15(2) (A) of the said Act makes it clear that the said provision is an overriding provision and it will take precedence over the provisions of Section 92 of the Factories Act, 1948".

The facts of the case are that the Inspector under Factories Act, 1948, inspected the factory premises of the accused on 18.12.1989 and found a child name Jyotsna Polabhai aged about 12 years employed there in violation of Section 67 of Factories Act which is punishable under Section

92 of the Factories Act. The accused had accepted the violation of Section 67 before trial court. On such confession the trial court convicted the accused under Section 92 of the said Act imposing a fine of Rs.200 and in default thereof, simple imprisonment of 5 days. Hence the appeal. The case of the appellant State before Hon'ble High Court was that the order of sentence passed by trial court was grossly inadequate and too lenient particularly in view of overriding provisions of Section 15 (1) (2) of Child Labour (Prohibition and Regulation) Act, 1986.

The order dated 12.1.2001 passed by the Hon'ble High Court in the above case, held that in case of violation under Section 67 of the Factories Act, cognizance had to be taken of Section 14 irrespective of the fact that whether mention of the same has been made or not in the complaint. The Hon'ble Court observed thus, "even otherwise, in our view, the law viz. existing statutory law has to be applied by the Court concerned and whether the relevant provisions have been pointed out or not by one party or the other, it is the duty of the court and in case of an error in applying the correct and legal provisions of the Act, it becomes duty of the appellate court to correct such error."

The court further observed that minimum penalty has been prescribed under Section 14 of CL (PR) Act, 1986 and on conviction the penalty has to be imposed keeping in view the provisions of Section 14. "The statute does not provide any discretion for imposing penalty less than the minimum prescribed and hence the said sentence of fine has to be enhanced to the minimum prescribed in the statute……". As a result, penalty was enhanced to Rs.10,000 as per Section 14 of the CL(PR), 1986 as per Section 14 of CL(PR) Act, 1986.

In large number of cases, the accused were acquitted by the trial courts for reasons that the prosecution side failed to prove beyond reasonable doubts, the factors of inspection on the date and time alleged; because of the faulty, inaccurate, incomplete and contradictory information in the inspection notes and survey formats; because of failure to produce independent witnesses and also because of half-hearted and cursory and casual approach of prosecution witnesses before the trial courts and also during the inspection and survey of child labour. The casualness in the survey personnel inducted from various departments of Government for the purpose of survey and often individual quotas fixed for labour department personnel for detection of child labour, was to a large extent responsible for this phenomenon of incomplete, inconsistent information in survey formats which could not stand the judicial scrutiny in the courts of law.

Delayed launching of prosecution and delayed commencements of trial were also responsible particularly where Inspectors had been transferred from some other places and had to be summoned to pursue and also in such cases other witnesses including the concerned child labour could not be produced to testify before the trial courts. Some of the notable examples are:

- Labour Inspector, Labour Department, Bharatpur vs. Pappu S/o Babulal Jat (Criminal Case No.76/98)
- Shyam Singh, Labour Inspector, Bharatpur vs. Pappu S/o Babulal Jat (Criminal Case No.77/98)

In both cases, the accused was acquitted by the Hon'ble Court of Judicial Magistrate First Class Bharatpur. In the above noted cases, the survey was conducted on 3.5.1998 and 2.5.1997 respectively whereas the orders are dated 19.10.2006 and 14.7.2006 respectively. In both these cases, on behalf of the State, it was alleged that matter is very old and particulars cannot be recalled.

Interestingly, in both the cases the prosecution were launched on the basis of surveys conducted following Hon'ble Supreme Court order dated 10.12.1996. The concerned Factory, at the time of survey, was found closed and no child labour was found working. The information in survey formats was filled only on the basis of hearsay information from neighbours. The age and the employment of child labour were also filled on the basis of only hearsay information. In 77/98 about the Labour Inspector who filed the prosecution testified before the court that he was not personally present in the survey team at the time of survey and has only filed complaint on the basis of survey formats made available to him. The other witness on behalf of the state turned hostile, who was an employee of the Nagar Palika and who testified before the court, though present in the survey, he does not recall as to who was the owner of the establishment and further that he simply signed in the survey format which were filled up by other surveyors not knowing personally the contents mentioned therein. In both the above cases, the accused was acquitted. The Court found that the evidence produced in support of prosecution does not support or prove the alleged offense beyond doubt. The Court held that it was not proved that the establishment was under the control of the accused and he employed the concerned child labour.

- The State through Senior Labour Inspector Belgaum vs. Pundlik Kalappa Jodhar, owner of Vinayak fabricators, Belgaum (Criminal Case No.390/2011).

In this case also Hon'ble Court of Judicial Magistrate First Class, Belgaum acquitted the accused vide order dated 18.12.2012 much on similar grounds allowing benefit of doubt in favour of the accused. The facts of the case are that establishment of accused was inspected on 7.12.2010 and child labour by the name Kumar Gyneshwar Mohan Chogule, aged about 12 years was found employed in the workshop and the signature of the child labour was also obtained on the inspection report.

The prosecution in support of the complaint produced the evidence of headmasters of Kamleshwar High School, where the concerned child was studying in 8th standard. The said witness justified that on the request of the complainant he had issued two letters with regard to the admission of concerned child and also certificate of his date of birth being 31.1.1998. In cross examination the witness admitted that he cannot read and write Kannada language and the letters had been drafted by another Kannada teacher. The letters were issued only at the request of the complainant. There was contradiction also in the said letters and the testimony of witness as to the date when concerned child had started absenting from school.

The Inspector admitted that three persons (two Labour Enforcement Officers) accompanied him at the time of inspection but signature of these two others were not obtained on inspection note and survey formats. The court observed that there are no independent witnesses produced by the state and there was no documentary proof to show that the accused was the owner of the workshop. The very ownership/possession of workshop by the accused was denied and challenged. The court held that the prosecution has failed to establish any nexus between child labour and workshop. The court acquitted the accused on grounds of serious doubts about the factors of inspection and the employment of child labour.

- The State of Andhra Pradesh represented by Asstt. Labour Officer Manda Peta vs. Revada Satyanarayana S/o Appalaswamy, Employer of Brick Kill, Alamuru (STC 52/2009)

This case decided by Court of Judicial Magistrates First Class, Alamaru, Andhra Pradesh vide order dated 28.10.2011. The facts of the case are that accused was found engaging a child by name Vanva Guna aged about 12 years in his Brick Kiln when the inspection was conducted on 7.12.2007 at about 4 p.m. From the side of the State two witnesses testified, one Asstt. Labour Officer, Manda Peta and the Labour Officer, Amalapuram. The Hon'ble Court acquitted the accused on the grounds that show cause notice was not sent to accused by registered post; statement of child and his parents were not recorded at the time of inspection; no independent witnesses were produced though 5 to 6 workers were found working at

the site and their statement were not recorded at the time of inspection; no knowledge whether the parents were also working in the same Brick Kiln; no documentary proof regarding the age of the concerned child was produced; and no mention as to what precisely the alleged child labour was doing.

On the other hand, the accused in defense produced the evidence of Headmaster of M.P.P. School, first Alamuru, who deposed, as per the attendance register, the said child attended the school from 9 to 3.30 p.m. The different case was that the parents of the concerned child were working and living in the premises of the Brick Kiln and the child after school simply went to meet his parents and was not working.

The Hon'ble Court held that the prosecution failed to prove the child was actually working in the Brick Kiln and allowed benefit of doubt in favour of the accused.

- State represented by K. Kaliaperuman, Asstt. Inspector of Labour, Govt. of Pondicherry vs. Paul & Janarthan Employers M/s Annai P.V.C. Industries Villianur (STR No.213).

In this case also the accused was acquitted by Hon'ble Court of Judicial Magistrate First Class Pondicherry vide order dated 16.11.2004 on grounds of benefits of doubts in favour of the accused and further prosecution having failed to establish beyond reasonable doubts the offence alleged against the accused.

The facts in brief are that inspection/survey was conducted in the premises of the accused on 20.3.2002 and a child aged 14 namely Sivanathan S/o Siva Prakasam was found engaged as a helper in collecting plastic wastes, which is a prohibited category of occupation as per Item No.38 of part B of schedule to Section 3 of CL(PR) Act. Inspection note and survey formats were completed and signature of the accused and left hand thumb impression of the child labour were obtained. The same were produced as documents and two Inspectors testified before the court in support of the complaint.

The court noted the following ambiguities in the prosecution case:

- The concerned child labour was not examined and not produced before the court.
- Independent witness not mentioned in the complaint and was not produced in the court to establish the fact of inspection in the premises of the accused.
- The complaint was filed on 7.3.2003 after the lapse of one year without any reason of justification to prove the diligence of prosecution

- No identification marks of child labour are mentioned in the inspection report.
- The complaint is vague to say whether the factory is a partnership firm or a private limited company. Role of the accused was not mentioned in the complaint to fix the responsibilities.
- The child labour was not produced before the authorized Medical Officer to prove that the child is below 14 years of age.

And hence the acquittal of the accused was ordered on the ground that the prosecution has failed to prove the case beyond reasonable doubt.

A number of complaints filed in the trial courts under Section 14 of the CL(PR) Act, 1986 for violation of Section 3 of the said Act could not succeed in securing convictions of the accused on grounds of failure of the prosecution side to effectively discharge the burden of proof envisaged under Section 14(1) and also because of the failure of the inspecting authority to refer the matter to prescribe medical authority for verification of the age of the concerned child labour as envisaged under Section 10 of the Act. It is very pertinent to refer to the following two decisions passed by Hon'ble High Court at Allahabad and to the directions contained therein.

- Subhash Chand Jaiswal vs. State of Uttar Pradesh (Criminal Revision No.2459/2001) Order dated 6.12.2001
- Ram Chander vs. State of Uttar Pradesh (Criminal Revision No.2324/2001) Order dated 6.12.2001

In both the revision petitions before Hon'ble High Court of Judicature at Allahabad – Judgment and Order passed by Additional Sessions Judge, Varanasi dismissing the appeal, and confirming the conviction of the appellants under Section 14(1) of CL(PR) Act, 1986 and sentence of 3 months rigorous imprisonment passed by the Additional Chief Judicial Magistrate, Varanasi was challenged by the appellants before Hon'ble High Court.

The Hon'ble High Court acquitted the accused in both the revision petitions mainly on the ground that the Inspector under Section 14 of the CL(PR) Act, 1986 failed primarily in the discharge office responsibility as envisaged under Section 14 of the Act which casts burden of proof on the Inspector and not on the accused and the Inspector failed to discharge that responsibility and further on the ground that the Inspector did not refer the concerned child for age verification as envisaged under Section 10 of the Act.

In Subhash Chandra Jaiswal case the Hon'ble Court observed thus: " He (The LEO) has not stated on what basis he ascertained the age of the said person. The record shows that neither any document, nor any medical certificate regarding the age of alleged child was produced. There is also nothing on record to show that the applicant had admitted the age of above person".

The Hon'ble Court further observed, "The Inspector ought to have obtained a certificate from prescribed Medical Authority. But it was not done in this case and the trial court as well as appellate court blindly accepted the age stated by the Enforcement Officer which was not on the basis of any document or medical certificate. As such there was no proper ascertainment of the age of the alleged child and in the absence of the age, it cannot be said that he was a child as defined in Section 2 (ii) of the Act. In the absence of such evidence, the applicant cannot be convicted thus the revision succeeds."

In the Ram Chandra Case, the Hon'ble High Court explained the provisions of Section 14(1) which casts the burden to prove on the Inspector. The Hon'ble court observed thus," as required by Section 14(1) the initial burden of the prosecution is to prove that applicant (accused) had employed a person below 14 years of age and only then the ingredients on Section 14(1) can be said to have been proved by the prosecution. The burden of proving the negative fact that the boy who was found working was not below 14 years of age cannot be shifted on the accused".

Elaborating the responsibility cast on the Inspector under Section 10 of the Act, the Hon'ble Court observed thus, "But it was the duty of the prosecution to file such certificate to prove the age of child especially when the applicant "accused" had not admitted the age of the child given by the Enforcement Officer in the inspection note."

The Court observed that this duty as envisaged under Section 10 of the Act on the Inspector cannot be shifted on the accused. In case the prosecution itself could not prove the age of the child as required by the Act, the applicant (accused) cannot be compelled to fill up the lacunae of the prosecution".

The revision succeeded on these grounds and the accused was acquitted. These two landmark judgments the Hon'ble High Court Allahabad laid down the basic principles for the Inspector and for the prosecution in complaints under Section 14 of the Act.

Keeping in view, the position as interpreted and elaborated by the Hon'ble High Court in the above revision petitions, acquittals were ordered on the following cases by the trial courts on similar grounds.

- The State through the Labour Inspector vs. Baman Appaya Lohar Proprietor Akshaya Iron Works, Belgaum (C.C. No. 594/2003).

The Hon'ble Court of Judicial Magistrate First Class IVth Court at Belgaum acquitted the accused on grounds that the Inspector failed to refer the child to prescribed medical authority which is necessary in view of Section 10 and Section 16 of CL(PR) Act, 1986 particularly in respect of concerned child labour.

The Court further observed that extracts of school register have birth date but that is not conclusive proof in view of mandatory provisions of Section 10. The Court held that the Act does not envisage as equivalent proof, the birth date certificate from school or even the parents statement, though birth entry made in the birth and death register maintained by Competent Authority could not be a conclusive proof in case of doubtful medical opinion.

- Andhra Pradesh State represented by Asstt. Labour Officer First Circle, Kakinada vs. Pandrawada Sreeramchandra Murthy, Door No. 2-17A-32 Venkatnagar, Kakinada (STC No.11/2008).

The Hon'ble Court of 6th Additional Judicial Magistrate First Class at Kakinada, Andhra Pradesh acquitted the accused in this case on grounds of benefit of doubt and for reasons that the concerned child, a domestic servant, found on inspection on 7.11.2007, sweeping the floor, was not presented before the prescribed medical authority and envisaged under Section 10 of the Act, even despite serious objections on behalf of the accused.

The facts of the case are that the concerned child informed his age as 12 years at the time of inspection which was conducted the presence of the wife of the accused, who refused to sign on inspection note, though signature of another servant, on the spot was obtained on the inspection note. The accused replied to the inspection notice on 12.10.2007 there with enclosing school certificate of concerned child stating the date of birth as 13.7.1995.

The Hon'ble Court held that the age recorded in the school certificate is not conclusive proof being based only on the information of parents for the purposes of admission though entries from birth and death register could be more conclusive, but the same was not presented by the Inspector. On the other hand, the accused produced medical certificate dated 16.1.09 stating the age on examination as 16 years and hence the court held that the child was not below 14 years on the date of inspection. Benefit of doubt in favour of the accused resulted in acquittal.

- U.P. State through Labour Enforcement Officer, Aligarh vs. Suraj Pal, (Case No.128/1999) order dated 22.6.2012
- U.P. State through Labour Enforcement Officer, Aligarh vs Chandan Bansal, (Case No.7620/2008) order dated 26.5.2012

In both the above cases, the Hon'ble Court of Chief Judicial Magistrate, Aligarh, U.P. acquitted the accused on the grounds mainly that the Inspector failed to discharge the burden of proof which lies on him and further failed to produce the child before the prescribed medical authority as envisaged under Section 10 of the Act particularly on the face of denial by the accused as to the age of concerned child labour.

The court further observed that there were no independent witnesses and the Inspector failed to tell the correct location of the establishments and exact time of inspection. The prosecution failed and the accused were acquitted.

- Bhaiya Lal Shukla and others vs. State of M.P. and others (2000) ILLJ 640 M.P.) order dated 12.3.1999 by Hon'ble High Court, M.P.
- Bhagwan Das and another vs. State of M.P. (2000) ILLJ 661 M.P.) order dated 9.7.1998 passed by Hon'ble High Court, M.P.

In these two repetition the Hon'ble High Court, M.P. has held that a showcause notice to the accused and a fair opportunity of being heard to the accused is mandatory before a demand for Rs.20,000 per child labour identified as employed in violation of Section 3 of the CL(PR) Act, 1986 could be raised against the offending employer.

Facts of the case before Hon'ble High Court are that the Inspector, under the Act on the basis of findings in the survey, had raised the demand for Rs.20,000 per child labour from the offending employers in deference to the directions contained in writ petition (C) No.465 of 1986 (AIR 1997 SC 699: 1996 (6) SCC 756:1997-11-LLJ-724) M.C. Mehta vs. State of Tamil Nadu decided by Hon'ble Supreme Court on 10th December, 1996.

The Hon'ble apex court in the said decision, on the ground that the problems of child labour in India has spread too long, far and wide and it had by now assumed the shape of an All India Evil. The court held that the offending employer must be asked to pay compensation for every child labour employed in contravention of the provisions of the Act, a sum of Rs.20,000. The court had issued a direction that the Inspectors appointed under Section 17 of CL(PR) Act, 1986, in order to secure compliance of the Act, should do this job. The court further directed that the sum so collected

shall be deposited in the fund known as Child Labour Rehabilitation cum Labour Welfare Fund. The proceeds thereof shall be utilized for education and economic rehabilitation of the freed child labour.

The respondent -State pleaded that the demand was raised following the findings of survey in compliance of direction of Hon'ble Supreme Court and that it was not necessary for the respondents to hear the accused or to give an opportunity to the accused for hearing.

The appellants on the other hand pleaded that the impugned order has been passed in after due regard of elementary principle of natural justice.

The Hon'ble High Court came to the conclusion that the Hon'ble Apex Court had not issued any blanket direction requiring an Inspector to raise the demand identifying a person as an 'offending employer' nearly on his subjective satisfaction. The Hon'ble High Court quashed the demand notices on the ground "I am of the clear opinion before saddling the employer with the liability to pay the amount, the Inspector had to arrive at the finding on an objective satisfaction and ought to have disclosed to the alleged offending employer the material sought to be utilized and relied upon against him.

The appeal to the writ petition was allowed and demand notices were quashed. Show cause notices and an opportunity of being heard to the accused were held as mandatory before a demand could be raised. The accused (appellants) were directed to appear before the Inspector and the Inspectors were directed to issue show cause notice afresh.

In Uttar Pradesh the demands were raised by officers in the rank of Asstt. Labour Commissioner and other senior officers who have also been notified Inspectors under Section 17 of the Act and recovery certificates were issued to the collectors for realizing the amount as arrears of land revenue but in many cases, on appeal before higher courts, the cases were remanded back to the issuing officers with a view to afford an opportunity to accused for being heard and for passing reasoned speaking order.

These appear to be the major causes for low rate of convictions from the court in complaint cases filed under Section 14 of the CL(PR) Act, 1986.

Grounds for Acquittal of Cases

In the following sections the basic grounds for acquittal of cases filed under Section 14 of the Child Labour (Prohibition & Regulation) Act, 1986 are discussed and distributed state-wise.

Andhra Pradesh

An analysis of cases decided by the High Court and the subordinate courts of the State of Andhra Pradesh reveals that the following factors led to the acquittal:

1. Prosecution failed to establish that the accused employed child labour under the age of 14 years.[28]
2. The prosecution failed to secure the date of birth certificate from the concerned Panchayat Office.[29]
3. The prosecution also failed to secure the time of birth of the child from the parents.[30]
4. Accused himself filed the certificate from the Doctor which is based on growth of the different organs of the body of the child which is more reliable than study certificate.[31]
5. Prosecution failed to prove that the said child Parvathi is below the age of 14 years and she is working as servant-maid at the house of the accused since one day with cogent evidence.[32]
6. Prosecution did not examine any witness from the Brick Kiln of accused.[33]
7. Prosecution did not know whether the parents of the child labour were working in the said brick kiln or not.[34]

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[28] *State vs. Pala Manchi Raju, S/o Venkanna*, S. T. C. No. 46/2007 on 23rd January 2009 by the court of The Additional Judicial First Class Magistrate Bhimavaram

[29] *State vs. Pandrawada Sreeramachandra Murthy, S/o Lava Rao*, S. T. C. No. 11/2008 on 23rd January 2009 by the Court of The Additional Judicial First Class Magistrate Kakinada

[30] *State vs. Pandrawada Sreeramachandra Murthy, S/o Lava Rao,* S. T. C. No. 11/2008 on 23rd January 2009 by the Court of The Additional Judicial First Class Magistrate Kakinada

[31] *State vs. Pandrawada Sreeramachandra Murthy, S/o Lava Rao*, S. T. C. No. 11/2008 on 23rd January 2009 by the Court of The Additional Judicial First Class Magistrate Kakinada

[32] *State vs. Pandrawada Sreeramachandra Murthy, S/o Lava Rao,* S. T. C. No. 11/2008 on 23rd January 2009 by the Court of The Additional Judicial First Class Magistrate Kakinada

[33] *State vs. Ravada Satyanarayana S/o Appalaswamy*, S. T. C. No. 52/2009 on 28th October 2011 by Court of The Additional Judicial First Class Magistrate Alamuru

[34] *State vs. Ravada Satyanarayana S/o Appalaswamy*, S. T. C. No. 52/2009 on 28th October 2011 by Court of The Additional Judicial First Class Magistrate Alamuru

8. Prosecution has not filed any document regarding the age of the child.[35]
9. Prosecution has failed to perform its bounden duty of the Inspection authority to mention in their inspection report, how many workers were working at the time of inspection.[36]
10. The complainant filed Xerox copies of medical certificates along with report, the same was not marked and he has not examined the person who issued said certificates. When the said certificates are not marked, they will not helpful to the case of the prosecution.[37]
11. There is no documentary evidence on record to prove that the Kiln where the child is alleged to be employed is owned by the accused. No revenue official have been examined to prove that the Kiln belong to the accused.[38]
12. No proper explanation was given by the prosecution with regard to the discrepancy that occurred in the case.[39]
13. The prosecution failed to produce any document or any Medical Record to show that the child labourer is a child within the meaning of section 2 (ii) of the Child Labour (Prohibition and Regulation) Act. 1986.[40]

Andhra Pradesh High Court Judgment- Grounds for acquittal

The Inspector and labour officer who filed the complaint failed to follow the procedure laid down in section 10 of the Act[41]

Chhattisgarh

The analysis of a case decided by the High Court of the State of Chhattisgarh reveals that the following factors led to acquittal:

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35 *State vs. Ravada Satyanarayana S/o Appalaswamy,* S. T. C. No. 52/2009 on 28th October 2011 by Court of The Additional Judicial First Class Magistrate Alamuru

36 *State vs. Ravada Satyanarayana S/o Appalaswamy,* S. T. C. No. 52/2009 on 28th October 2011 by Court of The Additional Judicial First Class Magistrate Alamuru)

37 *Assistant Labour Officer vs. Penugonda Sridevi,* S. T. C. No. 33/2009 on 16th August 2012 by Court of The Additional Judicial First Class Magistrate Nidadavolu

88 *State vs. P. V. V. N. Satyanarayana,* S. T. C. No. 14/2009,on 9th October 2012 by the Additional Judicial First Class Magistrate Amalapuram

39 *State vs. P. V. V. N. Satyanarayana,* S. T. C. No. 14/2009,on 9th October 2012 by the Additional Judicial First Class Magistrate Amalapuram

40 *State vs. Peddenti Apparao*, S. T. C. No. 3/2009 on 9th April 2010 by the Additional Judicial First Class Magistrate Kakinada

41 *Ramachandra Rao vs. State of Andhra Pradesh,* 2006(2) ALT (Cri, 271 AP)

1. The alleged child labour was not working in the premises of the firm.[42]
2. The surveyor has not stated in his statement that he ascertained the age of the alleged child from other persons.[43]
3. The surveyor has not collected any document like birth certificate or medical certificate of the alleged child that he/ she was below fourteen years of age.[44]
4. The prosecution has not produced any documentary evidence to show that the said child was below fourteen years of age.[45]

In the case, Hemendra Bhai v. State of Chhattisgarh,[46] the firm has not employed the child as labourer or permitted to work in any workshop where the process of *bidi* making is carried on. But she was engaged in the work of *bidi* making with another worker (father) who was supplied raw materials for making *bidis* who takes the same to his house for the purpose. The criminal proceedings were initiated against the firm of the appellant. Aggrieved by this order the appellant filed a petition under Section 482 of the Code of Criminal Procedure. Dealing with the petition the High Court of Chhattisgarh ruled:

i. A case under Section 14 CD of CLRA is made out only if the child labourer is employed in the firm of the appellant.
ii. If the worker is employed by the firm who supplied raw material to the workers for making bidis at his house where he makes bidis at his convenience and thereafter handing over the same to the firm and takes the help of anybody at his home for making bidis, there is no supervision and control over such person.
iii. In view of proviso to Section 3, the Act is not applicable where the worker takes the help of any family members.

Gujarat

An analysis of cases decided by the high court of the State of Gujarat reveals that the following factor led to acquittal: The Mamlatdar/Assistant Labour Commissioner did not make any inquiry, but, simply said they were not satisfied with the reply to the notice of show cause.[47]

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42 *Hemendra Bhai vs. State of Chhattisgarh,* 2003 (97) FLR 402, (2003) IILLJ 645 CG

43 *Hemendra Bhai vs. State of Chhattisgarh,* 2003 (97) FLR 402, (2003) IILLJ 645 CG

44 *Hemendra Bhai vs. State of Chhattisgarh,* 2003 (97) FLR 402, (2003) IILLJ 645 CG

45 *Hemendra Bhai vs. State of Chhattisgarh,* 2003 (97) FLR 402, (2003) IILLJ 645 CG

46 (2003) 2 LLJ 645.

47 Haria Ginning and Pressing v. Mamlatdar and Ors, (2007) 2

Karnataka

An analysis of cases decided by the High Court and the subordinate courts of the State of Karnataka reveals that the following factors led to the acquittal:

1. The parents of the child labour are now examined before the Court[48]
2. The child witness is not examined before the Court.[49]
3. The prosecution has not produced any document before the Court to show that the child was working in the establishment run by the accused.[50]
4. Prosecution has not produced any document before the court to show that the accused was running a factory as contended.[51]
5. The prosecution has not produced any evidence either oral or documentary before the Court to connect the accused for an offence under Section 14 of the child labour (Prevention & Control), Act 1986.[52]
6. Medical certificate from the competent doctor was not produced by the prosecution before the Court.[53]
7. Prosecution failed to produce any document from the local authority to show that the accused was running the establishment[54]
8. No *Mahazar* with regard to the existence of the establishment was conducted by the prosecution.[55]
9. The owner of the land where the child labourers were employed was not examined.[56]
10. No proof was placed by the prosecution about the correct age of the child labour.[57]

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[48] Labour Inspector vs. Shekharappa Myageri, C.C. No.101/2004 dt. 2.6.2005

[49] *Labour Inspector vs. Shekharappa Myageri,* C.C. No.101/2004 dt. 2.6.2005

[50] *Labour Inspector vs. Shekharappa Myageri,* C.C. No.101/2004 dt. 2.6.2005

[51] *Labour Inspector vs. Shekharappa Myageri,* C.C. No.101/2004 dt. 2.6.2005

[52] *Labour Inspector vs. Shekharappa Myageri,* C.C. No.101/2004 dt. 2.6.2005

[53] *Hotel Labour Inspector vs. Ramanna (Ramakrishna) S/o Somanna.* C.C. No.104/2004 dated 4.7.2005

[54] *Hotel Labour Inspector vs. Ramanna (Ramakrishna) S/o Somanna.* C.C. No.104/2004 dated 4.7.2005

[55] *Labour Inspector vs. Vasappa* CC No. 95/2004 dated 22.08.2005

[56] *State by the Labour Inspector vs. Sharanappa,* CC No. 187/2000 dated 30.08.2004

[57] *State by the Labour Inspector vs. Baburaj Pillai*, CC No. 207/2000 dated 11.01.2005

11. Prosecution has not produced any license to show that the accused is running the said establishment.[58]
12. No witness other than the Labour Inspector was examined by the prosecution to establish the case of the complainant.[59]
13. Prosecution case suffers from infirmities and discrepancies.[60]
14. Prosecution failed to prove that the accused alone is the proprietor of the alleged establishment.[61]
15. Prosecution case was filed after the expiry of six month, a period prescribed under the Karnataka Shops and Commercial Establishment, Act[62]
16. The author of the document containing a certificate issued by the Headmaster of the school which discloses the date of birth of the child in question was not produced.[63]
17. There is a material variation between the witnesses produced by the prosecution in respect to the date of inspection and alleged work of alleged child.[64]
18. The witness was declared hostile by the prosecution and thereby the prosecution failed to create any material against the accused to prove the case.[65]
19. Prosecution has not maintained visitor's book in the hotel where the child labour is alleged to be working.[66]
20. Prosecution has not drawn any *Panchnama* at the time of the Inspection of the hotel.[67]
22. No age certificate of the child labour had been marked (exhibited) before the court to show that the child is below the age of 14 years.[68]
23. Prosecution has not verified the Register having appointed the labourers by the accused.[69]

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[58] *Labour Inspector vs. Shankrappa,* CC No. 480/2000 dated 16.02.2004
[59] *State by the Labour Inspector vs. Kalakappa,* CC No. 47/2007 dated 05.06.2012
[60] *State by Labour Inspector vs. Shiva Kumar,* CC No. 447/2006 dated 24.07.2008
[61] *State by Labour Inspector vs. Shiva Kumar,* CC No. 447/2006 dated 24.07.2008
[62] *State by the Labour Inspector vs. Sangamesh,* CC No. 96/2000 dated 01.09.2003
[63] *State by the Labour Inspector vs. ShriPadappa,* CC No. 60/2006 dated 29.12.2008
[64] *State by the Labour Inspector vs. Shivanagouda,* CC No. 6/2007 dated 23.02.2008
[65] *State by Labour Inspector vs. ChannaBasayya,* CC No. 391/03 dated 27.05.2004
[66] *State by Labour Inspector vs. KarunakarShetty,* CC No. 394/03 dated 27.05.2004
[67] *State by Labour Inspector vs. KarunakarShetty,* CC No. 394/03 dated 27.05.2004
[68] *State through Labour Inspector vs. AndaihBalageri Math,* CC No. 3/2007 dated 03.05.2010
[69] *LEO., Kushtagi vs. Shri Ravi Kumar Udupi,* CC No. 59/2006 dated 23.09.2009

24. The alleged child labour was present only on the day of raid conducted by the Labour Department and not on other days.[70]
25. The evidence regarding the raid conducted by the Labour Department is not substantiated by the independent source.[71]
26. All the witnesses are the official witnesses.[72]
27. The doctor who examined the child labour has not done X- ray to ascertain the age of the child.[73]
28. Prosecution has not proved that the accused appointed child labour in his business as on the day of the visit by the investigating squad.[74]
29. Even though the prosecution stated that the neighbours have refused to give the statement but this fact is not mentioned in the Inspection Report.[75]
30. There is no rebuttal evidence on the part of the prosecution to disprove the certificate issued by the Headmaster of the college and the oral evidence about the date of birth led by the defense, particularly when the prosecution failed to produce any certificate issued by a prescribed medical authority to prove the age of the child.[76]
31. Mere production of the certificate issued by the doctor without examining the authority issuing the said certificate, the said document cannot be proved.[77]
32. There is no proof that the accused is the owner of said establishment[78]
33. There is a contradiction regarding the age of the child in the transfer certificate issued by the school and the medical certificate issued by the medical officer.[79]

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70 *State by the Labour Inspector vs. Shri C. Prasad*, CC No. 277/2009 dated 30.04.2010

71 *Labour Inspector vs. Syed,* CC No. 394/2008 dated 06.10.2009

72 *Labour Inspector vs. Syed,* CC No. 394/2008 dated 06.10.2009

73 *Labour Inspector vs. Syed,* CC No. 394/2008 dated 06.10.2009

74 *State by Labour Inspector Mandya vs. Y Ashok Kumar,* C.C. No. 350/2007 decided on 05.09.2008 by the court of PRL. Civil Judge & JMFC, Mandya.

75 *State by Senior Labour Inspector Mysore vs. Nissar Ahamed* , C.C. No. 954/2002 decided on 31.12.2005 by the court of JMFC, Mysore.

76 *State of Karnataka by Labour Inspector Saundati vs. RajuTodakar,* C.C. No. 358/2002 decided on 11.2.2004 by the court of JMFC, Ramdurg

77 *State of Karnataka by Labour Inspector Saundati vs. Basavaraj Goolappa Shettar* , C.C. No. 9/2003 decided on 14.12.2009 by the court of JMFC, Saundatti

78 *State by the Labour Inspector vs. Marappa S/o Koci Marappa,* C.C. No.1476/2006 decided on 27th November, 2009 by the Court Of Civil Judge (Jr.Dn) & Jmfc, Sandur

79 *State by the Senior Labour Inspector vs. A.I Sundar*, C.C. No. 599/2009 on 22/12/2009 In the court of the Metropolitan magistrate traffic court)

34. The father of the child deposed that he has not sent the child to work.[80]

35. The Inspector did not seize the Payment Register, Muster Roll during the raid.[81]

36. The prosecution has failed to collect the age certificate of the child from the school.[82]

37. Even though the prosecution produced the medical certificate and also the doctor issuing such certificate. But the evidence of the doctor was found not to be satisfactory since no scientific method was adopted to determine the age.[83]

38. The Labour Inspector failed to produce the reply given by the accused and also the demand notice issued to the accused.[84]

Madhya Pradesh

In *Raj Homes Pvt. Ltd. v. State,*[85] the Assistant Labour Commissioner, Bhopal, issued a show cause notice to the employer in construction work and directed it to pay Rs. 20,000/- per child for violation of Section 3 of the CLPR Act. The employer challenged this order in the High Court of Madhya Pradesh on three grounds, namely i) proper enquiry was not conducted ii) evidence was not recorded iii) order was not passed within 6 months. However, the High Court dismissed the petition and held that i) Report of Inspector was available which was a piece of evidence and was based on actual inspection ii) Notice to inspect was given in relation to the establishment where the child labour was employed iii) Age of the child was not in dispute.

In *Raj Kumar Tiwari v. State,*[86] the employer was found guilty for employing a child below 14 years of age. In view of this the magistrate imposed a fine of Rs. 20.000/-. The employer challenged this order in the High Court on

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80 *State by the Senior Labour Inspector vs. A. I Sundar,* C.C. No. 599/2009 on 22/12/2009 In the court of the Metropolitan magistrate traffic court)

81 *State by the Senior Labour Inspector vs. K.M. Subhadra ,* C.C. No. 257/2009 on 08/12/2009 In the court of the Metropolitan magistrate traffic court)

82 *State by the Senior Labour Inspector vs. Sameer Pasha ,* C.C. No. 92/2010 on 12/03/2013 In the court of the Metropolitan magistrate traffic court)

83 *State by the Senior Labour Inspector vs. Sameer Pasha,* C.C. no. 92/2010 on 12/03/2013 In the court of the Metropolitan magistrate traffic court)

84 *State by the Senior Labour Inspector vs. Sameer Pasha ,* C.C. No. 92/2010 on 12/03/2013 In the court of the Metropolitan Magistrate Traffic Court)

85 (2003) III LLJ 626 (M.P.)

86 (2003) 3 LLJ 1045.

the ground that no enquiry was held before imposing the fine. Even though the High Court found that the enquiry was held, it set aside the order of the magistrate on the ground that under Section 14 it is *sine quo non* that the person / child employed must be one who has not completed 14 years of age, which has not been complied with because the child employed was of 14 years old and not below 14 years of age.

Puducherry

An analysis of cases decided by the High Court and the subordinate courts of the Union Territory of Puducherry reveals that the following factors led to the acquittal:

1. The child labour was neither examined nor produced before the court by the prosecution[87].
2. The Prosecution has neither produced nor examined any independent witnesses to establish the factum of the inspection in the premises of the accused[88].
3. The prosecution failed to file the complaint within the period of one year from the date of inspection on the grounds of administrative delay and this fact was not substantiated by materials or records[89].
4. The inspection report only mentioned the name of the child labour and his father's name but did not refer to the identification mark[90].
5. The child labourer was not produced before the competent Medical Officer to prove that the child labourer is below the age of 14 years[91].
6. The complaint is vague in as much as it did not mention whether the Factory is a partnership firm or Private limited company[92].
7. The prosecution did not refer the role of the accused in the complaint in order to fix responsibility[93].
8. The complainant withdrew the complaint filed before the Court[94].

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87 State represented by Assistant Labour Inspector, Puducherry v. Paul and R. Janarthan, S.T.R. No. 213/ 2003 on 16.11.2004 by the court of the judicial magistrate at Puducherry

88 Ibid.

89 Ibid.

90 Ibid.

91 Ibid.

92 Ibid.

93 Ibid.

94 State represented by Assistant Labour Inspector, Puducherryv. T. Dharmaraj, S.T.R. No. 214/ 2003 on 29.03.2004 by the court of the judicial magistrate at Puducherry

Rajasthan

An analysis of cases decided by the High Court and the subordinate courts of the State of Rajasthan reveals that the following factors led to the acquittal:

1. Prosecution has not produced any documents regarding the age of the child labourer working in the carpet factory.[95]
2. Prosecution case was not coroborated by witnesses other than the Inspector.[96]
3. No child labourer was found working on the site.[97]
4. No independent witness has been examined by the prosecution.[98]
5. No register was available on the site on the basis of which it can be said that the child labourer was employed in the carpet factory.[99]
6. The labour Inspector has not carried out any survey of the establishment.[100]
7. The complaint even though it was signed by the Inspector its contents were not filled by him but was filled by his office staff.[101]
8. The Survey report, even though it was signed by the Inspector, he was not aware about its contents.[102]
9. No document was produced in the Court for identification of the establishment.[103]

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[95] *State by the Labour Inspector, Labour Department, Bharatpur v. Pappu s/o BabuLal* on 19th October, 2006 by The Court of Judicial Magistrate First Class Bharatpur

[96] *State by the Labour Inspector, Labour Department, Bharatpur vs. Pappu s/o BabuLal* on 19th October, 2006 by The Court of Judicial Magistrate First Class, Bharatpur

[97] *State by the Labour Inspector, Labour Department, Bharatpur vs. Pappu s/o BabuLal* on 19th October, 2006 by The Court of Judicial Magistrate First Class, Bharatpur

[98] *State by the Labour Inspector, Labour Department, Bharatpur vs. Pappu s/o BabuLal* on 19th October, 2006 by The Court of Judicial Magistrate First Class Bharatpur)

[99] *State by the Labour Inspector, Labour Department, Bharatpur vs. Pappu s/o BabuLal* on 14th July, 2006 by The Court of Judicial Magistrate First Class, Bharatpur

[100] *State by the Labour Inspector, Labour Department, Bharatpur vs. Pappu s/o BabuLal* on 14th July, 2006 by The Court of Judicial Magistrate First Class, Bharatpur)

[101] *State by the Labour Inspector, Labour Department, Bharatpur vs. Pappu s/o BabuLal* on 14th July, 2006 by The Court of Judicial Magistrate First Class, Bharatpur

[102] *State by the Labour Inspector, Labour Department, Bharatpur vs. Pappu s/o BabuLal* on 19th October, 2006 by The Court of Judicial Magistrate First Class, Bharatpur

[103] State by the Labour Inspector, Labour Department, Bharatpur vs. Pappu s/o BabuLal on 19th October, 2006 by The Court of Judicial Magistrate First Class, Bharatpur

10. Prosecution has not mentioned the age of the child.[104]
11. Contradictory statements of witnesses were noticed.[105]
12. Prosecution has not verified the ownership of the accused at the time of raid.[106]
13. The child was not identified by the Inspector[107]
14. Prosecution has not produced any certificate or record of the school run by Panchayat.[108]
15. Parents of the child are also not aware about the school record of the child.[109]

Tamil Nadu

An analysis of cases decided by the High Court and the subordinate courts of the State of Tamil Nadu reveals that the following factors led to the acquittal:

1. The prosecution failed to produce the doctor despite several summons.[110]
2. The name of the doctor has not been mentioned in the charge sheet as witness[111].

The workshop on enforcement of child labour laws in match and fireworks industry in Tamil Nadu organised by the Tamil Nadu Institute of Labour Studies and the national Labour Institute (Now V. V. Giri National Labour Institute) in the year 1991 identified the following major grounds

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104 *State by the Labour Inspector, Labour Department, Bharatpur vs. Pappu s/o BabuLal* on 19th October, 2006 by The Court of Judicial Magistrate First Class, Bharatpur

105 *State by the Labour Inspector, Labour Department, Bharatpur vs. Pappu s/o BabuLal* on 14th July, 2006 by The Court of Judicial Magistrate First Class, Bharatpur)

106 *State by the Labour Inspector, Labour Department, Bharatpur vs. Pappu s/o BabuLal* on 14th July, 2006 by The Court of Judicial Magistrate First Class, Bharatpur)

107 *State by the Labour Inspector, Labour Department, Bharatpur vs. Pappu s/o BabuLal* on 29th July, 2006 by The Court of Judicial Magistrate First Class, Bharatpur)

108 *State by the Labour Inspector, Labour Department, Bharatpur vs. Pappu s/o BabuLal* on 23th August, 2006 by The Court of Judicial Magistrate First Class Bharatpur)

109 *State by the Labour Inspector, Labour Department, Bharatpur vs. Raghuvir Singh s/o Gulab Singh* on 23th August, 2006 by The Court of Judicial Magistrate First Class Bharatpur)

110 *State of Tamil Nadu vs. Ganesan,* C.C. No. 148/1992 on 4th March 1992 by the Court of the Chief Judicial Magistrate, Kamrajar

111 State of Tamil Nadu vs. Ganesan, C.C. No. 148/1992 on 4th March 1992 by the Court of the Chief Judicial Magistrate, Kamrajar

for acquittal of the accused found guilty for violating the Child Labour (Prohibition and Regulation) Act, 1986.[112]:

1. There was a delay in filing the case.
2. There was no Medical Officer's certificate to record that the children allegedly employed in the factory were below the age of 14 years.
3. The inspecting official did not obtain deposition from any other workmen of the factory.
4. The Inspector who prosecuted the case was not a notified Inspector under section 17 of Child Labour (Prohibition and Regulation) Act, 1986.
5. The certificate of age was not issued in the prescribed form.
6. The prosecution failed to produce the child in court.
7. The register of Child Labour was not seized and produced before the court.
8. The Inspector did not file the case with a valid certificate of age.
9. The medical officer was not a notified Inspector under section 17 of Child Labour (Prohibition and Regulation) Act, 1986.
10. In the absence of any rule framed by the State Government under section 18 of the Act wherein he was not a notified Inspector under section 17 of Child Labour (Prohibition and Regulation) Act, 1986, the legality of attracting section 14 of the Act for the award of punishment would not be maintainable.

Uttar Pradesh

An analysis of cases decided by the High Court and the subordinate courts of the State of Uttar Pradesh reveals that the following factors led to the acquittal:

1. Prosecution has failed to get the child labourer examined by the Competent Medical Officer regarding the age of the child.[113]
2. The age of the child certified by the competent Medical Officer was 18 years.[114]

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[112] E. Ilamathian, E. 'Autopsy of Cases' in Helen, R. and Pinto, G. (1992) 'Situation of Working Children in Tamil Nadu, Child Labour Cell, National Labour Institute, Noida.

[113] *Child Labour Inspector vs. Ms. Singh Seva Board/ Vijay Kumar,* Saharanpur Judgment dated 4th November 2010, In The Court of Chief Judicial Magistrate Saharanpur

[114] *Child Inspector vs. Rehnuma Saharanpur,* Judgment dated 1st July 2011, In The Court of Chief Judicial Magistrate Saharanpur

3. Prosecution has not carried out any inspection of the establishment.[115]
4. Prosecution has not seen any record or register of the establishment.[116]
5. Prosecution has not carried out any medical examination of the child labour.[117]
6. Prosecution has not produced any document regarding the age of the child labourer.[118]
7. The case was filed 12 years ago.[119]
8. Prosecution has not produced any document regarding the age of the child.[120]
9. It is not clear whether the Inspection was made of the Factory or Residence.[121]

Decision of the High Court

An examination of the case decided by the Allahabad High Court reveals that the Court has acquitted the accused for alleged violation of the provisions of the child labour (Prohibition &Regulation) Act, 1986 mainly on the ground that the prosecution failed to produce any document or medical certificate regarding the age of the alleged child.[122]

These are the major reasons for acquittals in majority of the cases filed under Section 14 of the Act. Apart from these, half–hearted and often indifferent and callous approach of the surveyors particularly where Surveyors were inducted from various other departments of Government and notified as Inspectors under Section 17 of the CL(PR) Act has also been responsible because the Surveyors when presented as witness on behalf

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115 *Child Labour Inspector vs. Sumerchand, Saharanpur,* Judgment dated 6th May, 2011, In The Court of Chief Judicial Magistrate Saharanpur

116 *Child Labour Inspector vs. Sumerchand, Saharanpur,* Judgment dated 6th May, 2011, In The Court of Chief Judicial Magistrate Saharanpur

117 *Child Labour Inspector vs. Sumerchand, Saharanpur,* Judgment dated 6th May, 2011, In The Court of Chief Judicial Magistrate Saharanpur

118 *Child Labour Inspector vs. Sumerchand, Saharanpur,* Judgment dated 6th May, 2011, In The Court of Chief Judicial Magistrate Saharanpur

119 *State v. Mohammad Riaz*, Judgment dated 11th October 2012 In The Court of Chief Judicial Magistrate Aligarh

120 *State v. Mohammad Riaz* Judgment dated 11th October 2012 In The Court of Chief Judicial Magistrate Aligarh

121 *State v. Mohammad Riaz* Judgment dated 11th October 2012 In The Court of Chief Judicial Magistrate Aligarh

122 *Subhash Chandra Jaiswal v. State of Uttar Pradesh,* 2002(92) FLR 208 (ALL H.C.

of the state miserably failed to stand the judicial scrutiny. Incomplete and often conflicting statements before courts from these Surveyors resulted in weakening the case of the prosecution. In many cases where the witnesses from the side of the State including personnel from the Department of Labour appeared as the testimony before the courts reluctant, and half-hearted, only doing their duty as officially assigned to them without any personal commitments and fervor for the cause and the efforts beyond the whole exercise, i.e. elimination of child labour, resulted in a number of acquittal cases.

Reasons for Conviction of Cases: Analysis of Cases from Karnataka

In order to understand the grounds for conviction in the cases filed under Section 14 of the Child Labour (Prohibition & Regulation) Act, 1986, an attempt has been made to examine some of the cases which were decided by the subordinate courts of the State of Karnataka. An analysis of these cases reveals that conviction order was passed in the following cases on the following grounds:

1. The prescribed medical authority to whom the case was referred for determining the age of the child certified that he has not completed his fourteenth year of age. Thus there is no scope for the defense to rebut this conclusive evidence under Section 16(2) of the Act.
2. The accused has engaged the child in an occupation prohibited under Section 3 of the schedule Part A (15) of the Act.

   (State Represented by- Senior Labour Inspector v. K.S. Gurumurthy, C.C. No. 1577/2008 dated 12.11.2010 decided by the court of PRL. Civil Judge & JMFC, Chikmaglur. See also C.C. No. 1503/2008 dated 12.11.2010.
3. The accused has not produced any evidence before the court to prove that the child was above fourteen years of age and he is not a child labourer.
4. Even though there are some minor discrepancies in the evidence of the prosecution witnesses, these minor discrepancies will not shake the testimony of prosecution witnesses. (State Represented by- Labour Inspector, Mandyav. Tukaramrao, C.C. No. 343/2007 dated 18.04.2012 decided by the court of PRL. Civil Judge & JMFC, Mandya).
5. The accused disputed the age of the child certified by the competent medical officer but he has not produced any document to show that the child was studying in the school as claimed by him. (State Represented by- Labour Inspector, Mandya vs. M.L. Subramini, C.C.

No. 141/2008 dated 30.10.2012 decided by the court of PRL. Civil Judge & JMFC, Chikmaglur)

6. The accused has not produced any document to show that he has given intimation under Karnataka Shops and Commercial Establishment Rules, 1963 to the complainant indicating the transfer of ownership from him to his son. In the absence of such intimation the plea taken by the accused that he is not the owner but such ownership has been transferred to his son is not maintainable.

7. The Accused neither put forward any specific defense nor explained the incriminating circumstances. Therefore the conduct of the accused provides the missing link leading to the guilt of the accused.

8. To prove the alleged offence it is sufficient for the complainant to show that the child labourer was less than 14 years. It is not compulsory for the complainant to prove the exact age of the Child. (State Represented by- Senior Labour Inspector, Bangalore v. M. Raju , C.C. No. 3297/2009 dated 15.04.2011 decided by the court Metropolitan Magistrate traffic court, Bangalore)

Effect of failure to explain incriminating circumstances by the accused

The Supreme Court in *Josef v. State of Kerala, 2000 (5) SCC 197,* held that "the accused in spite of explaining the incriminating circumstances totally denies everything when these circumstances were brought to his notice by the court. Such denial provides the missing link, unmistakably and inevitably leading to the guilt of the accused."

Chapter V

Conclusion and Recommendations

The reason for very poor rate of convictions is one of the major challenges which needs to be examined. If the trend continues it would not only result in perpetuation and persistence of the problem of child labour but also in wasted human resources and human talents and skills, low productivity, decline in wage rates, stunted growth of future generation, perpetuation of poverty and economic inequality, increased illiteracy and increased bottlenecks in the development process.

The study of prosecutions launched under Section 14 of the Child Labour (Prohibition and Regulation) Act, 1986 and decisions from some of the courts acquitting the accused would definitely indicate that prosecutions have in most cases failed to prove averment in the complaints beyond the accepted standards of reasonable doubts as is expected in criminal trials for conviction of the accused. In a number of cases acquittals were ordered because the Inspector appointed under Section 17 of the Act failed to discharge the burden of proof which the Act casts upon the Inspector under Section 14 and also under Section 10 of the Act.

Failure on the part of the Inspector, in many cases, to produce the identified child before the prescribed Medical Authority, under the mandatory provisions of Section 16 of the Act, particularly in cases where Section 10 of the Act was attracted, resulted in failure of the prosecution and acquittal of the accused. Besides the Labour Inspectors who are mainly responsible, there are others included such as Medical Officers, Surveyors, Witnesses, Government, Legal Provisions, Lawyers, Courts, Trade Unions, NGOs and Welfare Organizations that are equally responsible for the low conviction rate of prosecutions launched under the Child Labour (Prohibition and Regulation) Act, 1986.

Non-compliance of Statutory duty by Labour Inspectors resulting in low rate of convictions

A survey of decided cases reveals that in several cases Inspectors failed to perform the following obligation imposed upon them under the Child Labour (Prohibition and Regulation) Act, 1986:

a) Under Section 14(1) the initial burden is upon the prosecution to prove that the accused had employed a person below 14 years of age and only then the requirement of said section can be said to have been fulfilled by the prosecution. However in several

cases the Inspector has not discharged this duty. Courts have, therefore, held that this burden of proving negative, the fact, that the boy/girl found working was not below 14 years of age, cannot be shifted on the accused.

b) Section 10 of the Child Labour (Prohibition and Regulation) Act says that if any question arises between an Inspector and the occupier as to the age of any child, who is employed or is permitted to work by him in an establishment, the question shall, in the absence of certificate as to age of the child, be referred by the inspector to the prescribed medical authority for medical examination of the child. Here again the Inspector in several cases failed to perform this statutory obligation which has resulted in acquittal.

c) As per Rule 17 of the rules framed under the Child Labour (Prohibition and Regulation) Act, 1986 the reference should be made to appropriate Medical authority who shall be a government medical doctor not below the rank of an assistant surgeon of a district or regular doctor of an equivalent rank.

d) Section 16(2) of the Act says that every certificate as to the age of the child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates. Thus, a statutory duty has been imposed upon the prosecution to file such certificate in order to prove the age of the child specially where the applicant had not admitted the age of the child, non-compliance of which resulted in discharge.

Non-compliance of other duties by Labour Inspectors resulting in low rate of convictions

Quite apart from the failure to perform adequately the aforesaid statutory duty, an analysis of various decisions of the subordinate courts and High Courts reveal that the Inspectors failed to properly discharge the following main responsibilities imposed on them under the Child Labour (Prohibition and Regulation) Act, 1986.

a) There was a delay in filing the case within the prescribed period.

b) The inspecting official did not obtain deposition from any other workmen of the factory.

c) The inspector who prosecuted the case was not a notified Inspector under section 17 of Child Labour (Prohibition and Regulation) Act, 1986.

d) The certificate of age was not issued in the prescribed form.

e) The prosecution failed to produce the child and parents in court.

f) The register of Child Labour was not seized by the Inspector and produced before the court.

g) The Inspector did not file the case with a valid certificate of age.

h) The medical officer was not a notified Inspector under section 17 of Child Labour (Prohibition and Regulation) Act, 1986.

Absence of any Local Support to the Labour Inspectors resulting in low rate of convictions

The processes as enumerated in part B and occupations as enumerated in Part A of the schedule to Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986, are scattered in very large geographical areas mostly in the rural areas, where the Inspectors hardly get any local support, in collecting relevant and reliable information. In most cases, the Inspector tries to get as much information as possible and that also too quickly, to leave the place after completion of job. Needless to mention, sometimes the personal safety of the enforcement agency is also at risk in view of the hostile attitude of employer. Further, the non-co-operation from the workers whose support is needed to be enlisted for purposes of independent witnesses is also responsible for acquittal of the accused.

Failure to discharge other obligations laid down by the Court by Labour Inspectors resulting in low rate of convictions

a) Show cause notice

Even though there is no express provision in the Child Labour (Prohibition and Regulation) Act, 1986 for issuing show cause notice as to why accused should not be prosecuted in the court for violation of the provisions of the Act, a perusal of section 10 reveals that there is an implied provision to this effect. Therefore as per the provisions of section 10 issuing of show cause notice is necessary. However, it has been observed that in several cases, the Inspector has not issued show cause notice.

b) Burden of proof

Under Section 10 of the Child Labour (Prohibition and Regulation) Act, 1986 the burden of proof lies upon the inspector /prosecution to prove the minority of the child labourer, by producing medical opinion or any school certificate in which

child labourer is said to have studied or any birth certificate pertaining to the child. These documents though not conclusive but *prima facie* establishes the age of the child labour. However decided cases reveal that the inspectors in several cases have failed to perform this responsibility cast upon them under section 10.[123]

c) Reference to medical officer for medical examination

The inspector should refer the child labourer for medical examination in order to comply with the mandatory requirement laid down in section 10 of the Child Labour (Prohibition and Regulation) Act, 1986. This is so because section 16(2) says that any medical certificate issued by medical authority is conclusive proof.

Personal Reasons of Labour Inspectors resulting in low rate of conviction

The following personal reasons relating to Inspectors are also sometimes accountable for low rate of conviction:

a) Inadequate knowledge of legal provisions and the rules framed there under and inadequate knowledge about the procedural requirements

b) Want of adequate training

c) Lack of commitment

d) Poor accountability

Medical Officers responsible for low rate of conviction

Study of decided cases reveals that in several cases, the medical report submitted by the medical officer regarding the age of the child before the court is not based on the x-ray examination as well as clinical examination. An analysis of decided cases also reveals that the medical officer failed to perform the aforesaid clinical examination. In view of this, the Court has not accepted the certificate issued by him. The court observed that as per medical jurisprudence particular bone joints and teeth will grow at a particular age. Even secondary sexual symptoms will give the particulars about the age of the child which can be easily assessed using clinical examination.[124] There is a need to sensitise the medical officers concerned about the court's decision.

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[123] State by the senior labour inspector v. TatyaJallappaPatil, C.C. No. 1017/2002 on 09/06/2004 (the court of the Metropolitan magistrate traffic court)

[124] State by the senior labour inspector v. TatyaJallappaPatil , C.C. No. 1017/2002 on 09/06/2004 (the court of the Metropolitan magistrate traffic court)

Surveyors responsible for low rate of conviction

Decided cases reveal that indifferent and callous approach of surveyors has also been responsible for low conviction. Indeed, the surveyors when presented as witness on behalf of the State have miserably failed to stand to the judicial scrutiny. Quite apart from this, incomplete and often conflicting statements before courts from these surveyors resulted in weakening the case of the prosecution.

Witnesses are responsible for poor rate of conviction

In many cases the witnesses mentioned by the prosecution including personnel from the Department of Labour who are asked to appear as the testimony before the courts are generally reluctant, half-hearted and are interested only in doing their duty as officially assigned to them without any personal commitments and fervor. This has affected the efforts made by the Inspectors and the whole exercise regarding elimination of child labour goes waste, ultimately resulting in acquittal.

Government is responsible for low rate of conviction

a) Failure to provide adequate Infrastructural facilities to Enforcement Machinery

Broadly speaking, it is the responsibility of the State Government to ensure effective and purposeful implementation of Child Labour (Prohibition and Regulation) Act. For this, it is imperative on the part of the State Government to create and maintain infrastructural facilities for the enforcement machinery.

b) Administrative dimensions of implementation of Act

The problems relating to administration can broadly be divided into following categories:

a) Organisational
b) Functional
c) Consultative
d) Evaluative and
e) Constraints

c) Size of Enforcement Machinery

In most of the States, the enforcement machinery of the Department of Labour is numerically very small and ill-equipped with no proper means of communication and transport.

d) Failure to fill vacancies

It has been reported that in several cases, government has not filled the posts of Inspector lying vacant and the existing Inspection Machinery are asked to undertake this additional responsibility. This, in effect, has affected the enforcement of the Act.

e) Failure to frame effective district-level plans for identification of child labour

In some States, for instance, in Uttar Pradesh, officers from other departments like SDMs, Tehsildars, Naib Tehsildars, Block Development Officers, Assistant Development Officers, Basic Shiksha Adhikari, Assistant Basic Shiksha Adhikari, have also been notified as Inspectors under Section 17 vide notification No. 3401/36 -3-98 -16 (3) (s) -97 dated 28.12.1998. But hardly any noticeable effort in this direction by any of these functionaries has been made despite clear instructions from the State Govt. to frame effective district-level plans for identification of child labour. This has, in effect, made the inspection machinery weak and ultimately affected the rate of conviction.

f) Failure to frame Rules

In the absence of any rule framed by some of the State Governments under section 18 of the Child Labour (Prohibition and Regulation) Act, 1986 the legality of attracting section 14 of the Act for the award of punishment would not be maintainable.

g) Difficulty in getting independent witnesses

Experience shows that in several cases, it is a gigantic task to find independent witnesses in and around, and to collect reliable details on the spot to substantiate, subsequently the complaints filed in the courts.

Courts are responsible for poor rate of conviction

An analysis of decided cases of the High Courts and subordinate courts reveal that the following factors have been responsible for low rate of conviction on prosecutions filed under Section 14 of the Child Labour (Prohibition & Regulation) Act, 1986:

a) Conflict / confusion regarding the birth certificate

There is a contradiction regarding the age of the child in the transfer certificate issued by the school and the medical certificate issued by the medical officer.[125] This has also resulted in acquittal.

[125] *State by the senior labour inspector v. A.I Sundar*, C.C. No. 599/2009 on 22/12/2009 In the court of the Metropolitan magistrate traffic court

b) Effect of minimum penalty on low rate of conviction

Section 14 of Child Labour (Prohibition and Regulation) Act, under which prosecutions were launched for violation of Section 3 of the Act, prescribes minimum fine and imprisonment, below which penalty on conviction cannot be imposed. The provision being highly stringent, as compared to penal provisions prescribed in all other labour laws resulted in very low number of conviction. Indeed, the decided cases reveals that in several cases, the accused have vehemently contested and denied the charges leveled in the complaint filed by the prosecution.

c. Confession of guilt

In some cases where the accused confessed the guilt before the courts, the trial court have over looked the penal provisions under Section 14 of the Act and awarded a comparatively lesser fine than the prescribed minimum fine under this Section. A few notable examples are:

C A No.11358 M.P. State through LEO(Central) Satna vs. DashrahrathSonkriya S/o of BeniMadhav.

C A No.11359 M.P. State through LEO(Central) Satna vs. MunnaPrajapati S/o PrabhuKumhar

C A No.11361 M.P. State through LEO(Central) Satna vs. Sanjai Srivastava S/o Gopal Prasad

i. In all the above cases despite confession of guilt by the accused before trial court, the Chief Judicial Magistrate, Satna vide order 11.12.2010 awarded a fine of Rs.5000 each in all those cases, failing which, an imprisonment from 3 to 5 days. There is no information available as to whether an appeal was filed against this order by the State.

ii. Confession of guilt by the accused before trial court are more common under other labour laws where the penal provisions in those Acts prescribes for maximum limits of punishment and not minimum limits as in the Child Labour (Prohibition & Regulation) Act, 1986 and leave discretion with the court to award punishment within the prescribed maximum limits.

d. Appeals

In Uttar Pradesh, against a few such orders under Section 14 of the Child Labour (Prohibition & Regulation) Act, 1986, particularly during the period immediately after the child labour survey of 1997, appeals were filed in the higher Courts where the appellate court directed the

imposition of penalty as per the provisions under Section 14 of the Child Labour (Prohibition & Regulation) Act, 1986.[126]

e. Standard of proof

Standard of proof as in criminal trials being 'beyond all reasonable doubts', the prosecution even where assisted by Assistant Public Prosecutors, failed to meet stringent standards of proof in the trial courts which has resulted in acquittals of the accused mainly on the ground of benefit of doubt in favour of the accused.

f. Cognizance by the Magistrate

In D. Lakshminarayana v. V. Narayana,[127] the Supreme Court observed

i. Even though the expression "taking cognizance" by the Magistrate has not been defined in the Code, the ways in which such cognizance can be taken are set out in Clauses (a), (b) and (c) of Section 190(1).

ii. Whether the Magistrate has or has not taken cognizance of the offence depends on the circumstances of the particular case including the mode in which case is sought to be instituted and the nature of the preliminary action, if any, taken by the Magistrate.

iii. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding Sections in Chapter XV of the Code of Criminal Procedure 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a). If instead of proceeding under Chapter IX he, in the judicial exercise of his discretion, has taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 256(3), he cannot be said to have taken cognizance of any offence."

g. Summoning of an accused

The Supreme Court in *Pepsi Foods Ltd. v. Special Judicial Magistrate*[128] laid down the following principles for summoning the accused:

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[126] *Assistant Labour Officer, Thiruvananthapuram Ist circle v. Veluswamy*, C.C.382/2009 see also, *Assistant Labour Officer, Thiruvananthapuram Ist circle v. Syam Sunder Ayas*, C.C. 381/2009

[127] AIR 1976 SC 1672

[128] (1998) 5 SCC 749

i. Summoning of an accused in a criminal case is a serious matter.

ii. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has only to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion.

iii. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto.

iv. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and whether that would be sufficient for the complainant to succeed in bringing the charge home to the accused.

v. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused.

vi. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.

h. Proving beyond doubt

Viewed from the angle of preponderance of probabilities the prosecution was at least in some cases not all that weak but it has failed on the level of proving beyond doubt as required in the criminal trial to secure conviction.

Statutory Provisions and Legislative measures also affect the Conviction Rates to a great extent:

1. Proviso to Section 3 and its Effect

Existing Provision

The proviso to Section 3 of Child Labour (Prohibition and Regulation) Act reads-

"Provided that nothing in this Section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from Government."

From the above it is clear that Section 3 of the Act is not applicable in a case where the occupier of the workshop takes the help of any member of his

family. Thus in *Hemendra Bhatia v State of Chhattisgarh*,[129] the Chhattisgarh High Court held that even if the occupier of the house, which if treated as workshop, is found to have engaged any child in beedi making, the same cannot be said to be violating Section 3 of the Act.

2 Child Labour (Prohibition and Regulation) Amendment Bill, 2012

The aforesaid bill prohibits employment of children in all occupations and processes to facilitate their enrolment in schools in view of the Right of Children to Free and Compulsory Education Act, 2009 and to prohibit employment of adolescents (persons who have completed fourteenth year of age but have not completed eighteenth year) in hazardous occupations and processes and to regulate the conditions of service of adolescents in line with the ILO Convention 138 and Convention 182, respectively. Section 3 of the Bill provides:

"No child shall be employed or permitted to work in any occupation or process

Provided that nothing in this section shall apply where the child helps his family after his school hours or helps his family in fields, home-based work, forest gathering or attends technical institutions during vacations for the purpose of learning, but does not include any help or attending technical institutions where there is subordinate relationship of labour or work which are outsourced and carried out in home."

3 A perusal of the aforesaid provisions of the Bill reveals that

i. Employment of children below 14 years would be completely prohibited and the age of the prohibition would also be linked to the age under Right to Free and Compulsory Education Act

ii. There is a prohibition of working of children / Adolescent from 14 to 18 years in Mines, Explosives and hazardous occupations set forth in the Factories Act, 1948;

iii. There is no bar on children helping their families after school hours and in vacations, in fields, and home based work (except commercial purpose). Parents and Guardians of children would be punishable under this Act only when they permit engagement of their children for commercial purposes in contravention to this Act.

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[129] 2003 (97) FLR 402, (2003) IILLJ 645 (CG)

4 Child Labour (Prohibition and Regulation) Amendment Bill, 2012

The aforesaid bill inserted new Section 3A which prohibits employment of adolescents in any hazardous occupations and processes specified in the proposed Schedule.

5 Plea to amend section 3

In some cases, children who were working in the establishment of the accused with their families in certain occupations and processes have not been convicted because it is allowed under the proviso to section 3.

In view of the above, it is felt that non applicability of the child Labour (Regulation and abolition) Act, 1986, to the child working with their family which involves hazardous work is violative of Article 24 of the constitution. Thus, there is a need to amend Section 3 so as to incorporate that the employment of children below 14 years should be completely prohibited.

We also feel that there should be no bar on children helping their families after school hours and during vacation in school, in agricultural land, or home based work but we strongly feel that the parents and guardian of the children should not be permitted to work with the aid of his family or to any school established by or receiving recognition from the government. Further, the child should not be permitted to work with their family except in the two situations mentioned above.

The aforesaid suggestion has, to a great extent, been met by the Child Labour (Prohibition and Regulation) Amendment Bill, 2012.

6 Section 10 and Amendment thereto

Existing Provision

Section 10 of the Child Labour (Prohibition and Regulation) Act, 1986 provides:

"if any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority".

Need to amend Section 10

Decided cases reveal that in most of the cases if not all, the employer / accused has not been convicted because of the existing provisions of section 10 which requires that if any question arises relating to the age of the child such question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the inspector for decision to the prescribed medical authority. Here it may be mentioned that in most of the cases the inspector has either failed to obtain a certificate from the competent medical officer or even if he has been able to do so he has failed to examine him before the court in order to prove the issuance of said certificate by him. Another problem which has also been highlighted in the cases decided by the subordinate court is in regard to the contradictions between the age certificate issued by the recognized medical officer and the school certificate issued by the headmaster/ headmistress.

Amendment Proposed

In view of above, it is suggested that section 10 be amended to provide that no child should be employed in any occupation covered by the Child labour (Prohibition and Regulation) Act, 1986 unless he/ she has obtained a certificate regarding age and fitness from work by the competent authority.

7 Amendment to Section 12

Section 12 of the Child Labour (Prohibition and Regulation) Act requires, *inter alia,* that every railway administration is required to display notice containing an abstract of section 3 and 14. However, unlike other words such as port authority the expression "Railway Administration has not been defined in the Act".

8 Penalties and Amendment thereto

Section 14 of the Child Labour (Prohibition and Regulation) Act provides

(1) Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

(2) Whoever, having been convicted of an offence under Sec. 3, commits a like offence afterwards, shall be punishable with imprisonment for

a term which shall not be less than six months but which may extend to two years.

(30 Whoever -

a. fails to give notice as required by section 9, or

b. fails to maintain a register as required by Sec. 11 or makes any false entry in any such register; or

c. fails to display a notice containing an abstract of Sec. 3 and this section as required by Sec. 12; or

d. fails to comply with or contravenes any other provisions of this Act or the rules made thereunder;

shall be punishable with simple imprisonment, which may extend to one month or with fine, which may extend to ten thousand rupees or with both.

9 Child Labour (Prohibition and Regulation) Amendment Bill, 2012

Clause 9 of the Bill No. LXII of 2012, (introduced in the Rajya Sabha), proposed the following amendment: In the existing Section 14,

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

"(1) Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years' or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both;

Provided that the parents or guardians of such children shall not be punished unless they permit such child for commercial purposes in contravention of the provisions of section 3.

(IA) Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of section 3A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both:

Provided that the parents or guardians of such adolescent shall not be punished unless they permit such adolescent to work in contravention of the provisions of section 3A.";

(b) in sub-section (2),—

(i) for the word and figure "section 3", the words, figures and letter, "section 3 or section 3A" shall be substituted;

(ii) for the words "six months but which may extend to two years", the words "one year but which may extend to three years" shall be substituted;

(c) clauses (a), (b) and (c) of sub-section (3) shall be omitted.

Insertion of New Section 14A:

The Bill has inserted a new section 14A which provides that the offences under the proposed legislation shall be cognizable notwithstanding anything contained in the Code of Criminal Procedure, 1973;

10. Section 17 and Amendment thereto

Existing Section

Section 17 of the Child Labour (Prohibition and Regulation) Act, 1986 provides:

The appropriate Government may appoint inspectors for the purposes of securing compliance with the provisions of this Act and any Inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

Amendment Proposed in the Rajya Sabha

Child Labour (Prohibition and Regulation) Amendment Bill, 2012 inserted new Section 17A and 17B. While the former empowers the District Magistrate to implement the provisions of Section 17, the latter deals with Inspection and Monitoring. Thus, Sections 17A and 17B provides as under:

"17A. The appropriate Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

17B. The appropriate Government shall, make or cause to be made periodic inspection of the places at which the employment of children is prohibited and hazardous occupations or processes are carried out, at such intervals

as it thinks fit, and monitor the issues, relating to the provisions of this Act."

An appraisal

A perusal of the aforesaid amendment suggests the following:

i. The insertion of new section 17A empowers the appropriate Government to confer such powers and impose such duties on a District Magistrate as may be necessary to ensure that the provisions of the proposed legislation are properly carried out and to empower the District Magistrate to specify the officer subordinate to him who shall exercise all or any of the powers and perform all or any of the duties so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer in accordance with the rules made by the appropriate Government;

ii. The insertion of new section 17B empowers the appropriate Government to make periodic inspection or cause such inspection to be made, of the places at which the employment of the children is prohibited and the hazardous occupation or process are carried out, at such intervals as it thinks fit and monitor the issues relating to the provisions of the Act;

11. Amendment in Section 18

In order to meet the provisions contained in proposed section 17A, the following amendments have been made in Section 18 by inserting Clause (b) in Sub-section 2 for clauses (b), (c) and (d):

"(b) The powers to be exercised and the duties to be performed by the officer specified and the local limits within which such powers or duties shall be carried out under section 17A."

Lawyers of the accused affect Conviction Rates

Experience shows that the accused are very often assisted by leading lawyers before the trial court which poses a challenge for the prosecution to handle a case with equal expertise, knowledge and experience. On the other hand, the state, have only a panel of lawyers who are in several cases, not so competent and therefore, on some occasions, have not been able to meet the points raised by the Counsel of the accused.

Role of Trade Unions and NGOs in increasing Conviction Rates

In order to strengthen the hands of prosecution and Inspectors, trade unions and NGOs can help in several ways namely; i) production of independent

witnesses; ii) identification of the accused; and iii) by informing the Inspector about the violation of the Child Labour (Prohibition and Regulation) Act and also bring it to the notice of the appropriate government.

But a fair appraisal of the total situation would definitely warrant an understanding of the onerous responsibility of the enforcement machinery and the real difficulty the inspectorate faces while conducting the inspection particularly under Section 3 of the CL(PR) Act, 1986. In the first place the responsibility for identification of child labour is very largely on the enforcement personnel of the Department of Labour and that too, on the Labour Enforcement Officer despite the fact that officers from other Department have also been notified as Inspectors under Section 17.

In Uttar Pradesh, for example, officers from other departments like SDMs, Tehsildars, Naib Tehsildars, Block Development Officers, Assistant Development Officers, Basic Shiksha Adhikari, Assistant Basic Shiksha Adhikari, have all been notified Inspectors under Section 17 vide notification No. 3401/36 -3-98 -16 (3) (s) -97 dated 28.12.1998. But hardly any noticeable effort in this direction has been made by any of these functionaries despite clear instructions from the State Govt. to frame effective district-level plans for identification of child labour, enlisting all these functionaries in special campaigns to be launched periodically from time to time.

Secondly, the enforcement machinery of the Department of Labour being numerically very small and ill-equipped with proper means of communication and transport; face virtually total non-co-operative response and support from employers, who view inspection as virtual invasion. In some cases, the situation has turned virtually hostile and enforcement personnel left on their own, had gigantic task to find independent witnesses in and around, and to collect reliable details on the spot to substantiate, subsequently the complaints filed in the courts. Thirdly, the processes as enumerated in part B and occupations as enumerated in Part A of the schedule to Section 3, are scattered in very large geographical areas mostly in the rural areas, where the Inspector hardly found any local support, in collecting relevant, reliable information. In most cases, the situation was to get as much information quickly and to leave. Needless to mention that their personal safety was at risk in many places in view of the hostile attitude of employer and non-co-operation from the workers whose support was needed to be enlisted for purposes of independent witnesses.

As directed by the Supreme Court, the child labourer identified as employed in violation of Section 3 had to be immediately withdrawn from the places of work and had to be produced by the inspector before

prescribed Medical Authority under Section 16 of the Act. The custody of this withdrawn child labourer during the intervening period posed serious problem and in some cases resulted in real awkward situations. The reason was that there is no arrangement, no place to house these children till their repatriation to their families, often in the adjoining states under police escort. The enforcement machinery was in many cases left to its own ingenuity to find ways and they often land in difficult and inexplicable situations. Many examples can be mentioned but one horrible situation arose when parents of rescued children filed writ of habeas corpus where children following the rescue, had been housed in a shelter home. Despite information being sent to parents, one person from the native village of the sponsoring state appeared, whom the children also recognized and to whom custody of children was handed over. But he turned out to be an agent of the defaulting employer and took the children back to work. The children were subsequently found working with the same employer and this time also armed with medical certificate from the Medical Authority. This instance from carpet weaving belt of Eastern Uttar Pradesh is cited only as example of the onerous responsibility and difficult situation often faced by enforcement personnel.

Realizing this difficulty, the Hon'ble High Court, Allahabad in criminal writ petition No.15630/06 (Vishnu Dayal Sharma vs. State of U.P. and others) vide order dt. 22.5.08 has directed that children thus identified and rescued be presented before the child welfare committee under Juvenile Justice Act, 2000, which then shall make arrangements for transitory home, medical examination and rehabilitation package of thus rescued children. The State Government of Uttar Pradesh has issued detailed instructions vide order dated 9.7.2008 in compliance of the afore-mentioned directions from the Hon'ble High Court of Allahabad.

Fixing individual targets of inspection under legal provisions pertaining to child labour under various labour laws and more particularly targets for identification of child labour both in hazardous and non-hazardous processes and occupations have often put the enforcement personnel in very tight corners and have resulted only in numerical inspection and mediocrity which was hardly sustainable because of tight judicial scrutiny before trial courts. Often, it is felt that a few quality inspections based on team work is a better option than mere numerical mediocre inspections. It is again felt that inspection for the identification of child labourers, for the main purpose of rehabilitation of such children and their families is a better option, which shall be more socially acceptable than launching prosecution indiscriminately in all such cases. It is a matter of experience

that such inspections/surveys yields better results in identification of working children. The non-invasive survey in Uttar Pradesh is a case in point.

It is felt that launching prosecution is not an end in itself. The main thrust of activity will better beyond rehabilitation. The complaints can be filed under Section 14 only on selective basis where there is hope for prosecutions to succeed reasonably and such cases should be pursued with all the information and zeal which could be proved to substantiate the averments in the complaints launched against the accused. Needless to mention, that provisions under Section 14 of the CL (PR) Act, 1986 being very strict and prescribing minimum penalty and fine and not maximum limits as in other labour laws, these cases are hotly contested by the accused. They are assisted by leading legal professionals and successful prosecution before the trial courts on behalf of the State is enhanced by the challenging task and needs to be taken with utmost care and caution. Failure of prosecution and resultant acquittals only bring disrepute and send wrong signals in society. It would be better to be selective in approach particularly in this sphere.

Lastly, viewed from the angle of preponderance of probabilities in many of the cases examined, the case of the prosecution was at least in some cases not all that weak but it failed on the level of proving beyond doubt as is required in the criminal trial to secure conviction.

Taking all these factors cumulatively in account, it is realized that securing cent percent conviction, though desirable, it not even all that very necessary. If conviction could be secured in a few select cases with deterrent punishment as prescribed under the Act, the same shall be enough to send right messages across to all those taking chances with the law of the land.

If burden of proof under the Act could be shifted upon the accused, by way of amendment, as already exists in the Factories Act, 1948 and Bonded Labour (System) Abolition Act, 1976, the case of Enforcement Machinery shall be strengthened in such vulnerable areas as in the eradication and rehabilitation of child labour.

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Appendix

Table 1: Status of Enforcement of Child Labour Prohibition and Regulation Act in Andaman and Nicobar Islands (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	-	-	-	-
1993-1994	-	-	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	-	-	-	-
1998-1999	2	6	-	-
1999-2000	5	19	-	-
2000-2001	9	17	-	-
2001-2002	9	9	-	-
2002-2003	-	-	-	-
2003-2004	9	-	-	-
2004-2005	23	23	-	-
2005-2006	330	-	-	-
2006-2007	191	-	-	-
2007-2008	261	-	-	-
2008-2009	-	-	-	-
2009-2010	-	-	-	-
2010-2011	-	-	-	-
2011-2012	-	-	-	-
2012-2013	-	-	-	-

Table 2: Status of Enforcement of Child Labour Prohibition and Regulation Act in Andhra Pradesh (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990		-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	-	-	-	-
1993-1994	-	-	-	-
1994-1995	49110	1801	291	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	41159	15025	11770	5619
1998-1999	13018	3011	3011	3594
1999-2000	18176	2948	1576	857
2000-2001	36351	8317	756	592
2001-2002	37819	7617	7617	1365
2002-2003	16218	16218	3568	1365
2003-2004	29355	16395	4870	2158
2004-2005	14736	9211	1212	1109
2005-2006	11220	8099	6124	620
2006-2007	53843	53843	9228	-
2007-2008	1063	727	146	-
2008-2009	1299	946	138	-
2009-2010	803	511	88	-
2010-2011	-	-	-	-

Table 3: Status of Enforcement of Child Labour Prohibition and Regulation Act in Arunachal Pradesh (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	8	-	-	-
1990-1991	12	-	-	-
1991-1992	2	-	-	-
1992-1993	-	-	-	-
1993-1994	-	-	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	-	-	-	-
1998-1999	-	-	-	-
1999-2000	-	-	-	-
2000-2001	-	-	-	-
2001-2002	-	-	-	-
2002-2003	-	-	-	-
2003-2004	36	-	24	-
2004-2005	199	13	11	-
2005-2006	-	-	-	-
2006-2007	-	-	-	-
2007-2008	-	-	-	-
2008-2009	-	-	-	-
2009-2010	-	-	-	-
2010-2011	-	-	-	-
2011-2012	-	-	-	-
2012-2013	-	-	-	-

Table 4: Status of Enforcement of Child Labour Prohibition and Regulation Act in Assam (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	--	-	-	-
1992-1993	17	6	-	-
1993-1994	42	12	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	4110	159	-	-
1998-1999	2950	35	-	-
1999-2000	1699	13	-	-
2000-2001	356	18	-	-
2001-2002	1768	116	-	-
2002-2003	1633	119	-	-
2003-2004	1888	38	12	-
2004-2005	497	48	-	-
2005-2006	3506	1	1	-
2006-2007	4025	-	-	-
2007-2008	4056	3	9	-
2008-2009	3213	-	11	-
2009-2010	3172	-	1	-
2010-2011	2332	-	12	-

Table 5: Status of Enforcement of Child Labour Prohibition and Regulation Act in Bihar (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	398	-	-	-
1993-1994	1321	4	-	-
1994-1995	1717	292	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	11899	987	72	-
1998-1999	9560	504	334	2
1999-2000	14313	581	234	1
2000-2001	11684	548	49	-
2001-2002	48415	3719	315	-
2002-2003	48276	6065	398	-
2003-2004	36835	5431	385	-
2004-2005	22800	4332	259	-
2005-2006	19984	3488	147	-
2006-2007	20542	2514	284	-
2007-2008	24720	-	1391	-
2008-2009	33686	-	1217	-
2009-2010	22918	1481	-	-
2010-2011	12288	-	632	-
2011-2012	11330	-	1258	-
2012-2013	7197	-	716	-

Table 6: Status of Enforcement of Child Labour Prohibition and Regulation Act in Chandigarh (U.T.) (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	74	-	-	-
1993-1994	-	-	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	1951	-	-	-
1997-1998	-	-	-	-
1998-1999	-	-	-	-
1999-2000	-	-	-	-
2000-2001	-	-	-	-
2001-2002	624	-	-	-
2002-2003	458	-	-	-
2003-2004	966	-	-	-
2004-2005	1123	-	-	-
2005-2006	994	-	-	-
2006-2007	1454	-	-	-
2007-2008	**1475**	**8**	8	-
2008-2009	453	16	15	-
2009-2010	1000	41	2	-
2010-2011	1535	45	33	-
2011-2012	1329	33	18	-
2012-2013	622	12	2	-

Table 7: Status of Enforcement of Child Labour Prohibition and Regulation Act in Chhattisgarh (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	-	-	-	-
1993-1994	-	-	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	3480	386	357	2
1998-1999	2880	91	91	2
1999-2000	580	6	6	-
2000-2001	335	44	44	-
2001-2002	624	-	-	-
2002-2003	896	104	104	-
2003-2004	966	-	-	-
2004-2005	1427	4	4	-
2005-2006	1217	10	10	-
2006-2007	3648	19	19	-
2007-2008	2135	-	7	-
2008-2009	1525	-	96	-
2009-2010	1337	-	1	-
2010-2011	1780	62	62	-
2011-2012	-	-	-	-
2012-2013	-	-	-	-

Table 8: Status of Enforcement of Child Labour Prohibition and Regulation Act in Dadra and Nagar Haveli (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	-	-	-	-
1993-1994	-	-	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	51	-	-	-
1998-1999	58	-	-	-
1999-2000	62	-	-	-
2000-2001	65	-	-	-
2001-2002	65	-	-	-
2002-2003	67	-	-	-
2003-2004	69	-	-	-
2004-2005	70	-	-	-
2005-2006	71	-	-	-
2006-2007	69	-	-	-
2007-2008	-	-	-	-
2008-2009	-	-	-	-
2009-2010	-	-	-	-
2010-2011	-	-	-	-
2011-2012	-	-	-	-
2012-2013	--	-	-	-

Table 9: Status of Enforcement of Child Labour Prohibition and Regulation Act in Daman and Diu (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	-	-	-	-
1993-1994	15	11	-	-
1994-1995	18	-	-	-
1995-1996	89	-	-	-
1996-1997	143	-	-	-
1997-1998	180	-	-	-
1998-1999	500	-	-	-
1999-2000	450	-	-	-
2000-2001	470	-	-	-
2001-2002	490	-	-	-
2002-2003	215	-	-	-
2003-2004	310	-	-	-
2004-2005	405	-	-	-
2005-2006	365	-	-	-
2006-2007	150	-	-	-
2007-2008	378	-	-	-
2008-2009	-	-	-	-
2009-2010	-	-	-	-
2010-2011	-	-	-	-
2011-2012	-	-	-	-
2012-2013	--	-	-	-

Table 10: Status of Enforcement of Child Labour Prohibition and Regulation Act in Delhi (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	2321	-	-	-
1991-1992	1094	-	-	-
1992-1993		-	-	-
1993-1994	187		-	-
1994-1995	1735	-	-	-
1995-1996	115	-	-	-
1996-1997	241	108	108	-
1997-1998	16424	552	552	236
1998-1999	1500	26	26	11
1999-2000	1671	20	20	10
2000-2001	1304	-	-	-
2001-2002	1609	207	101	0
2002-2003	1482	98	36	0
2003-2004	1017	209	66	0
2004-2005	1400	243	74	0
2005-2006	1020	273	253	10
2006-2007	202	313	1446	
2007-2008	2587	248	338	-
2008-2009	-	-	313	-
2009-2010		-	284	-
2010-2011	-	-	581	-
2011-2012	-	-	614	-
2012-2013	--	-	185	-

Table 11: Status of Enforcement of Child Labour Prohibition and Regulation Act in Gujarat (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	636	-	-	-
1990-1991	-	-	-	-
1991-1992	982	-	-	-
1992-1993	2748	-	-	-
1993-1994	2440	-	-	-
1994-1995	2752	-	-	-
1995-1996	2786	-	-	-
1996-1997	2121	2	2	-
1997-1998	2985	207	166	3
1998-1999	2657	157	76	-
1999-2000	2210	29	20	12
2000-2001	3438	95	62	-
2001-2002	600	36	11	-
2002-2003	1002	7	7	3
2003-2004	323	177	29	-
2004-2005	47	320	106	-
2005-2006	2560	1219	23	2
2006-2007	211	546	10713	-
2007-2008	26292	276	183	-
2008-2009	8995	302	517	-
2009-2010	13711	218	413	-
2010-2011	12640	117	370	-
2011-2012	8015	236	71	-
2012-2013	6863	163	95	-

Table 12: Status of Enforcement of Child Labour Prohibition and Regulation Act in Goa (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991		-	-	-
1991-1992		-	-	-
1992-1993		-	-	-
1993-1994			-	-
1994-1995		-	-	-
1995-1996		-	-	-
1996-1997	884			
1997-1998	1990	35	35	0
1998-1999	168			
1999-2000	6			
2000-2001	43			1
2001-2002	20			2
2002-2003				4
2003-2004	218			
2004-2005	1400	1400	243	74
2005-2006	387			
2006-2007				
2007-2008				-
2008-2009	164	-		-
2009-2010	72	-		-
2010-2011	756	-		-
2011-2012	225	-		-
2012-2013	332	-		-

Table 13: Status of Enforcement of Child Labour Prohibition and Regulation Act in Haryana (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	-	-	-	-
1993-1994	241	45	-	-
1994-1995	174	-	-	-
1995-1996	21	-	-	-
1996-1997	177	-	-	-
1997-1998	49	-	-	-
1998-1999	150	-	-	-
1999-2000	126	-	-	1
2000-2001	36	1	1	-
2001-2002	1985	52	50	-
2002-2003	2817	15	11	23
2003-2004	2830	42	38	18
2004-2005	1200	40	13	3
2005-2006	1136	-	-	2
2006-2007	1956	-	-	-
2007-2008	3302	201	-	-
2008-2009	3430	105	251	-
2009-2010	2739	20	35	-
2010-2011	2537	58	210	-
2011-2012	2934	100	82	-
2012-2013	3955	125	105	-

Table 14: Status of Enforcement of Child Labour Prohibition and Regulation Act in Himachal Pradesh (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	75	-	-	-
1993-1994	72	-	14	10
1994-1995	174	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	-	-	-	-
1998-1999	-	-	-	-
1999-2000	-	-	-	-
2000-2001	-	-	-	-
2001-2002	1558	4	-	-
2002-2003	1843	-	3	3
2003-2004	1749	-	1	1
2004-2005	1096	-	-	-
2005-2006	2072	-	-	-
2006-2007	2287	-	-	-
2007-2008	2986	-	3	-
2008-2009	2321	-	-	-
2009-2010	-	-	-	-
2010-2011	-	-	-	-
2011-2012	-	-	-	-
2012-2013	-	-	-	-

Table 15: Status of Enforcement of Child Labour Prohibition and Regulation Act in Jammu & Kashmir (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	267	-	-	-
1991-1992	267	-	-	-
1992-1993	-	-	-	-
1993-1994	-	-	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	-	-	-	-
1998-1999	3	-	-	-
1999-2000	119	6	6	0
2000-2001	657	25	8	0
2001-2002	530	16	16	0
2002-2003	842	5	5	1
2003-2004	2393	9	9	0
2004-2005	600	2	2	0
2005-2006	1481	1	17	3
2006-2007	4378	64	60	1
2007-2008	4686	61	61	-
2008-2009	3074	42	41	-
2009-2010	3949	-	5	-
2010-2011	2868	-	35	-
2011-2012	4681	12	38	-
2012-2013	3868	24	27	-

Table 16: Status of Enforcement of Child Labour Prohibition and Regulation Act in Jharkhand (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991		-	-	-
1991-1992		-	-	-
1992-1993	-	-	-	-
1993-1994	-	-	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	-	-	-	-
1998-1999		-	-	-
1999-2000				
2000-2001			1	
2001-2002	3005	101	19	29
2002-2003	3096	103	42	7
2003-2004				
2004-2005				
2005-2006				
2006-2007				
2007-2008				-
2008-2009				-
2009-2010				-
2010-2011				-
2011-2012				-
2012-2013				-

Table 17: Status of Enforcement of Child Labour Prohibition and Regulation Act in Karnataka (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991		-	-	-
1991-1992		-	-	-
1992-1993	-	-	-	-
1993-1994	-	-	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	5213	127	37	2
1998-1999	9926	4849	109	2
1999-2000	12009	694	297	36
2000-2001	19189	773	730	122
2001-2002	20240	1079	492	95
2002-2003	18616	350	300	78
2003-2004	17427	1508	2781	79
2004-2005	16253	1434	612	80
2005-2006	27601	2405	1078	139
2006-2007	39658	1792	3235	
2007-2008	17333	1073	2732	-
2008-2009	27944	610	287	-
2009-2010	13454	546	356	-
2010-2011	13609	549	479	-
2011-2012	11593	180	232	-
2012-2013	7174	112	101	-

Table 18: Status of Enforcement of Child Labour Prohibition and Regulation Act in Kerala (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	-	-	-	-
1993-1994	-	-	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	1112	45	4	2
1998-1999	2343	267	18	2
1999-2000	136	247	0	2
2000-2001	-	-	-	-
2001-2002	1307	-	-	-
2002-2003	3400	1	1	1
2003-2004	1140	29	-	-
2004-2005	4414	22	1	-
2005-2006	5874	20	1	-
2006-2007	6073	23	1	-
2007-2008	11128	4	2	-
2008-2009	5312	5	4	-
2009-2010	1761	3	3	-
2010-2011	1322	7	-	-
2011-2012	3908	-	-	-
2012-2013	5274	3	-	-

Table 19: Status of Enforcement of Child Labour Prohibition and Regulation Act in Lakshadweep (U.T.) (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	-	-	-	-
1993-1994	-	-	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	-	-	-	-
1998-1999	-	-	-	-
1999-2000	-	-	-	-
2000-2001	-	-	-	-
2001-2002	-	-	-	-
2002-2003	-	-	-	-
2003-2004	-	-	-	-
2004-2005	-	-	-	-
2005-2006	1	-	-	-
2006-2007	-	-	-	-
2007-2008	-	-	-	-
2008-2009	-	-	-	-
2009-2010	-	-	-	-
2010-2011	-	-	-	-
2011-2012	-	-	-	-
2012-2013	-	-	-	-

Table 20: Status of Enforcement of Child Labour Prohibition and Regulation Act in Madhya Pradesh (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	3483	-	-	-
1990-1991	7970	-	-	-
1991-1992	-	-	-	-
1992-1993	12038	-	-	-
1993-1994	2588	-	-	-
1994-1995	497	-	6	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	8641	800	800	-
1998-1999	8106	146	146	106
1999-2000	963	10	10	19
2000-2001	1073	97	97	19
2001-2002	3392	51	51	-
2002-2003	15979	291	291	-
2003-2004	1101	28	28	66
2004-2005	5319	54	54	16
2005-2006	5360	37	37	5
2006-2007	5317	150	5516	-
2007-2008	5817	58	5817	-
2008-2009	3963	25	7264	-
2009-2010	-	-	7707	-
2010-2011	-	-	5772	-
2011-2012	5734	170	170	-
2012-2013	7355	502	502	-

Table 21: Status of Enforcement of Child Labour Prohibition and Regulation Act in Maharashtra (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	-	-	-	-
1993-1994	731	29	21	-
1994-1995	-	-	-	-
1995-1996	540	167	100	7
1996-1997	50	-	1	-
1997-1998	10095	316	9	6
1998-1999	15621	133	30	-
1999-2000	14194	123	27	4
2000-2001	5550	5	6	5
2001-2002	66276	1390	16	6
2002-2003	15979	291	291	0
2003-2004	18214	124	83	8
2004-2005	27228	70	32	4
2005-2006	24965	117	84	12
2006-2007	27351	399	54	-
2007-2008	23315	357	323	-
2008-2009	16825	106	106	-
2009-2010	5946	71	29	-
2010-2011	2940	15	15	-
2011-2012	8617	113	120	-
2012-2013	3573	58	125	-

Table 22: Status of Enforcement of Child Labour Prohibition and Regulation Act in Manipur (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	-	-	-	-
1993-1994	9	-	-	-
1994-1995	13	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	-	-	-	-
1998-1999	-	-	-	-
1999-2000	-	-	-	-
2000-2001	-	-	-	-
2001-2002	88	-	-	-
2002-2003	92	-	-	-
2003-2004	134	-	-	-
2004-2005	244	-	-	-
2005-2006	241	-	-	-
2006-2007	195	-	-	-
2007-2008	77	-	-	-
2008-2009	139	-	-	-
2009-2010	704	9	4	-
2010-2011				-
2011-2012				-
2012-2013				-

Table 23: Status of Enforcement of Child Labour Prohibition and Regulation Act in Meghalaya (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	404	-	-	-
1990-1991	195	-	-	-
1991-1992	188	-	-	-
1992-1993	369	-	-	-
1993-1994	270	-	-	-
1994-1995	244	-	-	-
1995-1996		-	-	-
1996-1997	74	-	-	-
1997-1998	328	-	-	-
1998-1999	193	-	-	-
1999-2000	216	-	-	-
2000-2001	185	5	5	-
2001-2002	228	-	-	-
2002-2003	242	-	-	-
2003-2004	205	-	-	-
2004-2005	229	-	-	-
2005-2006	299	-	-	-
2006-2007	425	-	-	-
2007-2008	211	-	-	-
2008-2009	-	-	-	-
2009-2010	-	-	-	-
2010-2011	-	-	-	-
2011-2012	-	-	-	-
2012-2013	388	-	2	-

Table 24: Status of Enforcement of Child Labour Prohibition and Regulation Act in Mizoram (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	-	-	-	-
1993-1994	-	-	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998		-	-	-
1998-1999		-	-	-
1999-2000		-	-	-
2000-2001		-	-	-
2001-2002		-	-	-
2002-2003		-	-	-
2003-2004		-	-	-
2004-2005	1	-	-	-
2005-2006		-	-	-
2006-2007		-	-	-
2007-2008		-	-	-
2008-2009		-	-	-
2009-2010		-	-	-
2010-2011		-	-	-
2011-2012		-	-	-
2012-2013	13	-	-	-

Table 25: Status of Enforcement of Child Labour Prohibition and Regulation Act in Nagaland (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	-	-	-	-
1993-1994	-	-	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	-	-	-	-
1998-1999	-	-	-	-
1999-2000	-	-	-	-
2000-2001	-	-	-	-
2001-2002	5948	-	-	-
2002-2003	6115	-	-	-
2003-2004	6681	-	-	-
2004-2005	5750	-	-	-
2005-2006		-	-	-
2006-2007	5871	-	-	-
2007-2008		-	-	-
2008-2009	6916	-	-	-
2009-2010	-	-	-	-
2010-2011	-	-	-	-
2011-2012	-	-	-	-
2012-2013	-	-	-	-

Table 26: Status of Enforcement of Child Labour Prohibition and Regulation Act in Orissa (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	14	-	-	-
1990-1991	29	-	-	-
1991-1992	16	-	-	-
1992-1993	7	-	-	-
1993-1994	95	79	-	-
1994-1995	240	-	1	-
1995-1996	101	31	4	-
1996-1997	792	120	2	-
1997-1998	373	352	8	-
1998-1999	314	128	129	-
1999-2000	192	19	27	1
2000-2001	174	62	134	1
2001-2002	231	135	1	5
2002-2003	167	110	1	-
2003-2004	163	162	1	-
2004-2005	239	177	5	-
2005-2006	153	120	1	1
2006-2007	2671	449	73	-
2007-2008	973	492	145	-
2008-2009	134	32	60	-
2009-2010	891	187	99	-
2010-2011	325	69	16	-
2011-2012	766	149	46	-
2012-2013	474	149	34	-

Table 27: Status of Enforcement of Child Labour Prohibition and Regulation Act in Pondicherry (U.T.) (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	-	-	-	-
1993-1994	-	-	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	9355	-	-	-
1998-1999	8604	-	-	-
1999-2000	8910	-	-	-
2000-2001	12941	-	-	-
2001-2002	12745	-	-	-
2002-2003	-	11511	-	-
2003-2004	12497	-	-	1
2004-2005	17494	-	-	-
2005-2006	3262	-	-	1
2006-2007	15335	-	-	-
2007-2008	10671	-	-	-
2008-2009	14183	-	-	-
2009-2010	12200	-	-	-
2010-2011	9932	-	-	-
2011-2012	-	-	-	-
2012-2013	-	-	-	-

Table 28: Status of Enforcement of Child Labour Prohibition and Regulation Act in Punjab (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	3958	-	-	-
1990-1991	1964	-	-	-
1991-1992	1230	-	-	-
1992-1993	740	17	-	-
1993-1994	726	1	1	-
1994-1995	550	-	-	-
1995-1996	314	3	3	2
1996-1997	591	15	12	-
1997-1998	2290	22	39	-
1998-1999	1934	8	5	12
1999-2000	2466	3	2	20
2000-2001	1810	3	0	1
2001-2002	3729	16	6	2
2002-2003	3128	-	-	-
2003-2004	4725	29	38	30
2004-2005	4946	9	9	16
2005-2006	5737	23	20	17
2006-2007	9432	172	52	-
2007-2008	12664	206	212	-
2008-2009	-	-	76	-
2009-2010	-			-
2010-2011	12485	655	69	-
2011-2012	26386	1011	1011	-
2012-2013	27769	683	683	-

Table 29: Status of Enforcement of Child Labour Prohibition and Regulation Act in Rajasthan (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	327	-	-	-
1990-1991	66	-	-	-
1991-1992	28	-	-	-
1992-1993	174	1	1	-
1993-1994	181	-	1	-
1994-1995	175	-	-	-
1995-1996	31	-	-	-
1996-1997	13	-	-	-
1997-1998	832	0	891	125
1998-1999	1524	0	601	168
1999-2000	2946	0	29	102
2000-2001	829	0	50	67
2001-2002	13430	521	20	106
2002-2003	6019	26	55	57
2003-2004	3603	8	0	1501
2004-2005	2832	12	7	15
2005-2006	3350	0	13	6
2006-2007	6090	19	22	26
2007-2008	7737	26	26	-
2008-2009	5677	9	9	-
2009-2010	6	6	5631	-
2010-2011	2024	18	18	-
2011-2012	3429	-	45	-
2012-2013	2768	-	-	-

Table 30: Status of Enforcement of Child Labour Prohibition and Regulation Act in Sikkim (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	-	-	-	-
1993-1994	-	-	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	-	-	-	-
1998-1999	-	-	-	-
1999-2000	-	-	-	-
2000-2001	-	-	-	-
2001-2002	10	-	-	-
2002-2003	14	-	-	-
2003-2004	18	-	-	-
2004-2005	21	-	-	-
2005-2006	32	-	-	-
2006-2007	40	-	-	-
2007-2008	4163	-	-	-
2008-2009	4233	-	-	-
2009-2010	-	-	-	-
2010-2011	-	-	-	-
2011-2012	-	-	-	-
2012-2013	-	-	-	-

Table 31: Status of Enforcement of Child Labour Prohibition and Regulation Act in Tamil Nadu (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	38	-
1990-1991	-	-	3	1
1991-1992	-	-	3	1
1992-1993	-	-	-	1
1993-1994	-	-	-	1
1994-1995	-	-	-	-
1995-1996	383	39	65	-
1996-1997	229	-	-	-
1997-1998	117875	1908	627	63
1998-1999	122769	496	1718	120
1999-2000	140465	343	367	224
2000-2001	247156	68	202	91
2001-2002	215227	887	134	75
2002-2003	184948	791	317	108
2003-2004	132619	575	282	68
2004-2005	120265	553	185	137
2005-2006	121166	1434	415	80
2006-2007	220667	636	603	434
2007-2008	171455	394	689	-
2008-2009	204374	186	218	-
2009-2010	195826	67	79	-
2010-2011	129047	59	38	-
2011-2012	-	-	-	-
2012-2013	-	-	-	-

Table 32: Status of Enforcement of Child Labour Prohibition and Regulation Act in Tripura (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	9	-	-	-
1993-1994	-	-	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	270	11	5	-
1998-1999	35	-	-	-
1999-2000	77	-	-	-
2000-2001	10	-	-	-
2001-2002	153	-	-	-
2002-2003	334	-	-	-
2003-2004	336	-	-	-
2004-2005	844	-	-	-
2005-2006	898	-	-	-
2006-2007	157	-	-	-
2007-2008	-	-	-	-
2008-2009	-	-	-	-
2009-2010	-	-	-	-
2010-2011	-	-	-	-
2011-2012	-	-	-	-
2012-2013	-	-	-	-

Table 33: Status of Enforcement of Child Labour Prohibition and Regulation Act in Uttar Pradesh (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	5506	1035	1863	68
1990-1991	4346	650	613	71
1991-1992	2982	683	766	273
1992-1993	11534	1883	1876	162
1993-1994	7986	1654	1271	254
1994-1995	2025	61	61	-
1995-1996	319	246	243	-
1996-1997	5824	264	249	-
1997-1998	-	4069	4069	15
1998-1999	-	170	170	106
1999-2000	-	1261	1261	38
2000-2001	-	323	323	51
2001-2002	-	947	311	57
2002-2003	-	493	321	23
2003-2004	8496	860	399	
2004-2005	3	0	31	10
2005-2006	1926	246	19	40
2006-2007	3807	2513	117	19
2007-2008	6432	5421	592	-
2008-2009	5682	-	678	99
2009-2010	5519	-	643	198
2010-2011	2135	422	356	444
2011-2012	853	655	655	101
2012-2013	455	36	36	156

Table 34: Status of Enforcement of Child Labour Prohibition and Regulation Act in West Bengal (1987-88 to 2012-13)

Year	Inspections	Violations	Prosecution	Convictions
1987-1990	-	-	-	-
1990-1991	-	-	-	-
1991-1992	-	-	-	-
1992-1993	-	-	-	-
1993-1994	-	-	-	-
1994-1995	-	-	-	-
1995-1996	-	-	-	-
1996-1997	-	-	-	-
1997-1998	23785	859	6	-
1998-1999	14433	1236	5	-
1999-2000	15697	1239	62	-
2000-2001	535	53	-	-
2001-2002	8067	149	5	-
2002-2003	5851	94	-	-
2003-2004	6517	96	-	-
2004-2005	5000	78	-	-
2005-2006	3722	36	-	-
2006-2007	3821	112	7	-
2007-2008	-	-	-	-
2008-2009	2,209	45	2	-
2009-2010	1,138	20	5	-
2010-2011	380	28	-	-
2011-2012	620	14	9	-
2012-2013	133	92	17	-

Annexure

The Child Labour (Prohibition and Regulation) Act, 1986

(Act No. 61 of 1986)

[23rd December, 1986]

An Act to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments

Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:

PART I

PRELIMINARY

1. Short title, extent and commencement - (1) This Act may be called the Child Labour (Prohibition and Regulation) Act, 1986. (2) It extends to the whole of India. (3) The provisions of this Act, other than Part III, shall come into force at once, and Part III shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint, and different dates may be appointed for different States and for different classes of establishments.

2. Definitions - In this Act, unless the context otherwise requires,

   (i) "appropriate Government" means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government;

   (ii) "child" means a person who has not completed his fourteenth year of age;

   (iii) "day" means a period of twenty-four hours beginning at midnight;

   (iv) "establishment" includes a shop, commercial establishment, work-shop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment;

   (v) "family", in relation to an occupier, means the individual, the wife or husband, as the case may be, of such individual, and their children, brother or sister of such individual;

   (vi) "occupier", in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop;

(vii) "port authority" means any authority administering a port;

(viii) "prescribed" means prescribed by rules made under Sec.18;

(ix) "week" means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Inspector;

(x) "workshop" means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of Sec. 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply.

PART II

PROHIBITION OF EMPLOYMENT OF CHILDREN IN CERTAIN OCCUPATIONS AND PROCESSES

3. Prohibition of employment of children in certain occupations and processes — No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on :

   Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.

4. Power to amend the Schedule - The Central Government, after giving by notification in the official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any occupation or process to the Schedule and thereupon the Schedule shall be deemed to have been amended accordingly.

   Construction of a section — It is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different parts of the same section.

5. Child Labour Technical Advisory Committee — (1) The Central Government may, by notification in the official Gazette, constitute an advisory committee to be called the Child Labour Technical Advisory Committee (hereinafter in this section referred to as the Committee) to advise the Central Government for the purpose of addition of occupations and processes to the Schedule.

(2) The Committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government.

(3) The Committee shall meet as often as it may consider necessary and shall have power to regulate its own procedure.

(4) The Committee may, if it deems it necessary so to do, constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter, any person who is not a member of the Committee.

(5) The term of office of, the manner of filling casual vacancies in the office of, and the allowances, if any, payable to, the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint any person who is not a member of the Committee as a member of any of its sub-committees shall be such as may be prescribed.

PART III

REGULATION OF CONDITIONS OF WORK OF CHILDREN

6. Application of Part — The provisions of this Part shall apply to an establishment or a class of establishments in which none of the occupations or processes referred to in Sec. 3 is carried on.

7. Hours and period of work — (1) No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.

(2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.

(3) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub-section (2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

(4) No child shall be permitted or required to work between 7 p.m. and 8 .a.m.

(5) No child shall be permitted or required to work overtime.

(6) No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

Provision if mandatory or directory — The surest test for determination as to whether the provisions is mandatory or directory is to see as to whether the sanction is provided therein.

8. Weekly holidays — Every child employed in an establishment shall be allowed in each week, a holiday or one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

9. Notice to Inspector — (1) Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall, within a period of thirty days from such commencement, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars, namely:

(a) the name and situation of the establishment;

(b) the name of the person in actual management of the establishment;

(c) the address to which communications relating to the establishment should be sent; and,

(d) the nature of the occupation or process carried on in the establishment.

(2) Every occupier, in relation to an establishment, who employs, or permits to work, any child after the date of commencement of this Act in relation to such establishment, shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars as are mentioned in sub-section (1).

Explanation – For the purposes of sub-sections (1) and (2), "date of commencement of this Act, in relation to an establishment" means the date of bringing into force of this Act in relation to such establishment.

(3) Nothing in Secs. 7,8 and 9 shall apply to any establishment wherein any process is carried on by the occupier with the aid of his family or

to any school established by, or receiving assistance or recognition from, Government.

Explanation — It is now well settled that an explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities, which may have crept in the statutory provision.

10. Disputes as to age — If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.

11. Maintenance of register — There shall be maintained by every occupier in respect of children employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment showing -

    a. the name and date of birth of every child so employed or permitted to work;
    b. hours and periods of work of any such child and the intervals of rest to which he is entitled;
    c. the nature of work of any such child; and,
    d. such other particulars as may be prescribed.

12. Display of notice containing abstract of Secs.3 and 14 — Every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of Secs. 3 and 14.

13. Health and safety — (1) The appropriate Government may, by notification in the official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.

    (2) Without prejudice to the generality of the foregoing provisions, the said rules may provide for all or any of the following matters, namely:

    (a) cleanliness in the place of work and its freedom from nuisance;
    (b) disposal of wastes and effluents;

(c) ventilation and temperature;
(d) dust and fume;
(e) artificial humidification;
(f) lighting;
(g) drinking water;
(h) latrine and urinals;
(i) spittoons;
(j) fencing of machinery;
(k) work at or near machinery in motion;
(l) employment of children on dangerous machines;
(m) instructions, training and supervision in relation to employment of children on dangerous machines;
(n) device for cutting off power;
(o) self-acting machines;
(p) easing of new machinery;
(q) floor, stairs and means of access;
(r) pits, sumps, openings in floors, etc.;
(s) excessive weights;
(t) protection of eyes;
(u) explosive or inflammable dust, gas, etc.;
(v) precautions in case of fire;
(w) maintenance of buildings; and,
(ii) safety of buildings and machinery.

PART IV

MISCELLANEOUS

14. Penalties — (1) Whoever employs any child or permits any child to work in contravention of the provisions of Sec 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

(2)Whoever, having been convicted of an offence under Sec. 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

(3) Whoever -

(a) fails to give notice as required by Sec. 9, or

(b) fails to maintain a register as required by Sec. 11 or makes any false entry in any such register; or

(c) fails to display a notice containing an abstract of Sec. 3 and this section as required by Sec. 12; or

(d) fails to comply with or contravenes any other provisions of this Act or the rules made thereunder; shall be punishable with simple imprisonment, which may extend to one month or with fine, which may extend to ten thousand rupees or with both.

Penalty — Mens rea — Essential — Penalty proceedings are quasi criminal proceedings. Before penalty can be imposed it has to be ensured that mens rea has been established.

Penal provision — Object of — The law in its wisdom seeks to punish the guilty who commits the sin, and not his son, who is innocent.

15. Modified application of certain laws in relation to penalties — (1) Where any person is found guilty and convicted of contravention of any of the provisions mentioned in sub-section (2), he shall be liable to penalties as provided in sub-sections (1) and (2) of Sec. 14 of this Act and not under the Acts in which those provisions are contained.

(2) The provisions referred to in sub-section (1) are the provisions mentioned below :

(a) section 67 of the Factories Act, 1948 (63 of 1948);

(b) section 40 of the Mines Act, 1952 (35 of 1952);

(c) section 109 of the Merchant Shipping Act, 1958 (44 of 1958); and

(d) section 21 of the Motor Transport Workers Act, 1961 (27 of 1961).

16. Procedure relating to offences — (1) Any person, police officer or Inspector may file a complaint of the commission of an offence under this Act in any Court of competent jurisdiction.

(2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.

(3) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

Court Duty of — The Court should meticulously consider all facts and

circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is used as an instrument of oppression to have an unfair advantage to the plaintiff.

17. Appointment of inspectors — The appropriate Government may appoint inspectors for the purposes of securing compliance with the provisions of this Act and any inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

Public servant — Every public officer is a trustee and in respect of the office he holds and the salary and other benefits, which he draws, he is obliged to render appropriate service to the State. If an officer does not behave as required of him under the law he is certainly liable to be punished in accordance with law.

18. Power to make rules — (1) The appropriate Government may, by notification in the official Gazette and subject to the condition of previous publication, make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :

(a) the term of the office of, the manner of filling casual vacancies of, and the allowances payable to, the Chairman and members of the Child Labour Technical Advisory Committee and the conditions and restrictions subject to which a non-member may be appointed to a sub-committee under sub-section (5) of Sec.5;

(b) number of hours for which a child may be required or permitted to work under sub-section (1) of Sec.7;

(c) grant of certificates of age in respect of young persons in employment or seeking employment, the medical authorities, which may issue such certificate, the form of such certificate, the charges, which may be made thereunder, and the manner in which such certificate may be issued:

Provided that no charge shall be made for the issue of any such certificate if the application is accompanied by evidence of age deemed satisfactory by the authority concerned;

(d) the other particulars, which a register maintained under Sec.11, should contain.

Rules for effectuating the purpose of the Act — The general power of framing rules for effectuating the purposes of the Act, would plainly authorize and sanctify the framing of such a rule.

19. Rules and notifications to be laid before Parliament or State legislature—

(1) Every rules made under this Act by the Central Government and every notification issued under Sec.4, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

(2) Every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the Legislature of that State.

20. Certain other provisions of law not barred — Subject to the provisions contained in Sec.15, the provisions of this Act and the rules made thereunder shall be in addition to, and not in derogation of, the provisions of the Factories Act, 1948 (63 of 1948), the Plantations Labour Act, 1951 (69 of 1951) and the Mines Act, 1952 (35 of 1952).

21. Power to remove difficulties — (1) If any difficulty arises in giving effect of the provisions of this Act, the Central Government may, by order published in the official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date on which this Act receives the assent of the President.

(2) Every order made under this section shall, as soon as may be after it is made, before the Houses of Parliament.

22. Repeal and savings — (1) The Employment of Children Act, 1938 (26 of 1938) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the Act so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

Implied repeal — It is well settled that when a competent authority makes a new law which is totally inconsistent with the earlier law and that the two cannot stand together any longer it must be construed that the earlier law had been repealed by necessary implication by the latter law.

23. Amendment of Act 11 of 1948 — In Sec.2 of the Minimum Wages Act, 1948-

(i) for Cl.(a), the following clauses shall be substituted, namely:

"(a) 'adolescent' means a person who has completed his fourteenth year of age but has not completed his eighteenth year;

(aa) 'adult' means a person who has completed his eighteenth year of age;";

(ii) after Cl.(b), the following clause shall be inserted, namely:

"(bb) `child' means a person who had not completed his fourteenth year of age;".

24. Amendment of Act 69 of 1951 — In the Plantations Labour Act, 1951—

(a) in Sec.2, in Cls.(a) and (c), for the word "fifteenth", the word "fourteenth" shall be substituted;

(b) Sec.24 shall be omitted;

(c) in Sec.26, in the opening portion, the words "who has completed his twelfth year" shall be omitted.

25. Amendment of Act 44 of 1958 — In the Merchant Shipping Act, 1958, in Sec.109, for the word "fifteen", the word "fourteen" shall be substituted.

26. Amendment of Act 27 of 1961 — In the Motor Transport Workers Act, 1961, in Sec.2, in Cls.(a) and (c), for the word "fifteenth", the word "fourteenth" shall be substituted.

THE SCHEDULE

PART A

OCCUPATIONS

Any occupation connected with -

(1) Transport of passengers, goods or mails by railway;

(2) Cinder picking, clearing of an ash pit or building operation in the railway premises;

(3) Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train;

(4) Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines;

(5) A port authority within the limits of any port;

*(6) Work relating to selling or crackers and fireworks in shops with temporary licences;

#(7) Abattoirs/Slaughter House.

(8) Automobile workshops and garages

(9) Foundries

(10) Handling of toxic or inflammable substances or explosives

(11) Handloom and power loom industry

(12) Mines (underground and under water)and collieries;

(13) Plastic units and fibreglass workshops

(14) Employment of Children as domestic workers or servants

(15) Employment of Children in dhabas (road-side eateries), restaurants, hotels, motels, tea-shops, resorts, spas or other recreational centres

(16) Diving

(17) Caring of Elephants

(18) Children working in Circus

PART B

PROCESSES

1. Beedi-making.
2. Carpet-weaving.
3. Cement manufacture, including bagging of cement.
4. Cloth printing, dyeing and weaving.
5. Manufacture of matches, explosives and fire-works.
6. Mica-cutting and splitting.
7. Shellac manufacture.
8. Soap manufacture.
9. Tanning.
10. Wool-cleaning.
11. Building and construction industry.
12. *Manufacture of slate pencils (including packing).
13. *Manufacture of products from agate.
14. *Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benezene, pesticides and asbestos.
15. # "Hazardous processes" as defined in Sec.2(cb) and `dangerous operations' as notified in rules made under Section 87 of the Factories Act, 1948 (63 of 1948).
16. # Printing as defined in Section 2(k)(iv) of the Factories Act, 1948 (63 of 1948).
17. # Cashew and cashewnut descaling and processing.
18. # Soldering processes in electronic industries.
19. 'Aggarbatti' manufacturing
20. Automobile repairs and maintenance including processes incidental thereto namely welding, lathe work , dent beating and printing
21. Brick kilns and roof tiles units
22. Cotton ginning and processing and production of hosiery goods
23. Detergent manufacturing

24. Fabrication workshops (ferrous and non-ferrous)
25. Gem-cutting and polishing
26. Handling of chromite and manganese ores
27. Jute textile manufacture and coir making
28. Lime kilns and manufacture of lime
29. Lock making
30. Manufacturing processes having exposure to lead suggest primary and secondary smelting, welding and cutting of lead-painted metal constructions, welding of galvanized or zinc silicate, polyvinyl chloride, mixing (by hand) of crystal glass mass, sanding of scrapping of lead paint, burning of lead in enameling workshops, lead mining, plumbing, cable making, wire patenting lead casting type founding in printing shops. Store type setting, assembling of cars, shot making and lead glass blowing.
31. Manufacture of cement pipes, cement product and other related work
32. Manufacture of glass, glassware including bangles, florescent tubes, bulbs and other similar glass products
33. Manufacture of dyes and dye stuff
34. Manufacturing or processing and handling of pesticides and insecticides
35. Manufacturing or processing and handling of corrosive and toxic substances, metal cleaning and photo engraving and soldering processes in the electronic industry.
36. Manufacturing or burning coal and coal briquettes
37. Manufacturing of sport goods involving exposure to synthetic material, chemicals and leather.
38. Moulding and processing of fibre glass and plastic
39. Oil expelling and refinery
40. Paper making
41. Potteries and ceramic industry
42. Polishing, moulding, cutting , welding , manufacture of brass goods in all Forms

43. Processing in agriculture where tractors, threshing and harvesting machines are used and chaff cutting
44. Saw mill - all processes
45. Sericulture processing
46. Skinning ,dying and processes for manufacturing of leather and leather Products
47. Stone breaking and stone crashing
48. Tobacco processing including manufacturing of tobacco, tobacco past and handling of tobacco in any form
49. Tyre making repairing , re-treading and graphite benefaction
50. Utensils making, polishing and metal burring
51. 'Zari' making(all processes)
52. Electroplating
53. Graphite powdering and incidental processing
54. Grinding and glazing of metals
55. Diamond cutting and polishing
56. Extraction of slate from mines
57. Rag picking and scavenging
58. Processes involving exposure to excessive heat (eg. Working near furnace) and cold
59. Mechanized fishing
60. Food processing
61. Beverage Industry
62. Timber handling and loading
63. Mechanical lumbering
64. Warehousing
65. Processes involving exposure to free silica such as slate, pencil industry, stone grinding, slate stone mining, stone, quarries, agate industry

SUPPLEMENT

Child Labour (Prohibition and Regulation) Act, 1986

In exercise of the powers conferred by section 4 of the Child Labour (Prohibition and Regulation) Act, 1986[1*], the Central Government hereby adds the following occupation and processes in the Schedule to the said Act, namely:

In the Schedule to the said Act -

(1) In Part A, after item (5) and the entry relating thereto, the following item and entry shall be inserted, namely:-

"(6) Work relating to selling of crackers and fire works in shops with temporary licences.";

(2) In Part B, after item (II) and the entry relating thereto, the following items and entries shall be inserted, namely:-

"(12) manufacture of slate pencils (including packing).

(13) manufacture of products from agate.

(14) manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos."

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* Ins. by Notification No.S.O.404 (E) dated the 5th June, 1989 published in the Gazette of India, Extraordinary.

\# Ins. by Notification No.S.O.263 (E) dated 29th March, 1994 published in the Gazette of India, Extraordinary.

Court Cases

Andhra High Court

P. Ramachander Rao Vs State Of Andhra Pradesh on 18 March, 2006

THE HON'BLE Dr. JUSTICE G. YETHIRAJULU

Criminal Petition No.793 of 2004

18-03-2006

P. Ramachander Rao

State of Andhra Pradesh

rep.by Inspector under Child Labour (P&R)

Act, 1986 & Asst. Labour Officer, Peddapally

Counsel for petitioner: Sri B.G. Ravindera Reddy

Counsel for respondent: Public Prosecutor

:ORDER:

This Criminal Petition is filed against the registering of C.C.No.110 of 2003 on the file of the Judicial First Class Magistrate, Peddapally, Karimnagar District, under Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986 (for short 'the Act') alleging that the petitioner herein had employed one Chennmma, daughter of Sri Balaswamy, aged 12 years, as a child labour in his work spot in violation of Section 3 of the Act.

2. A complaint is filed by the Inspector, under Child Labour (Prohibition & Regulation) Act, 1986 and Assistant Labour Officer, Peddapally, under Section 3 of the Act. The petitioner is a contractor of the works taken over by M/s. Teja Constructions at Peddakalvala Village, Peddapally Mandal, Karimnagar, carrying on the construction of Canal. The process of construction is declared as hazardous process as notified by the Government of India, vide Entry No.11 of Schedule Part-B of the Act. On 01-08-2002 at about 12.45 p.m. the Inspector, Karimnagar, on an inspection of the work spot of the accused, found that a child, by name Chennamma, daughter of Sri Balaswamy, aged 12 years, had been engaged by the accused and found to be working in the work spot of the accused in violation of Section 3 of the Act. The accused was not present at the time of inspection in the work spot. The Inspector drafted an inspection report on the spot and sent to the District Labour Officer, Karimnagar for taking further action. A demand notice was issued to the accused, by the Labour Officer,

Karimnagar, under a copy to the Superintending Engineer, Godavari Valley Circle No.2, Sriram Sagar Project, Jagityal, with a direction to deposit Rs.20,000/- through a demand draft in favour of Child Labour Rehabilitation-cum-Welfare Fund of Karimangar District, within seven days, from the date of receipt of notice issued on 02-08-2002. The notice was served on the accused by registered post with acknowledgement due on 02-09-2002.

In reply to the notice, the accused submitted his reply dated 16-09-2002 contending that the child labour identified by the Inspector was having 15 years of age. But the Labour Officer did not convince with the age, therefore, requested the accused to produce the child labour along with documentary evidence in his office on 08-11-2002 at 11 a.m. to conduct an enquiry in the matter and marked a copy of the notice to the Superintending Engineer. The Superintending Engineer also requested the accused to take action on the notice issued by the Labour Officer, Karimnagar, through his letter dated 13-11-2002.

In continuation of his reply, the accused submitted a xerox copy of the paper clipping and requested to ponder the issue and advice him for necessary disposal. As the accused was not present at the time of inspection in the work spot and not responded to the notice issued, a show cause notice was issued to the accused for violation of Section 3 of the Act in October 2002 with a direction to show cause in writing as to why the penal action should not be taken against him. The notice was served on 22-01-2003 and no reply was received from the accused after lapse of the time mentioned in the show cause notice and no one came forward to take responsibility of violation taken place in the work spot, the contractor held responsible for the violation. The accused having failed to deposit the welfare fund as per demand notice issued, in pursuance of the direction of the Supreme Court, rendered himself liable to pay an amount of Rs.20,000/- to the said Child Labour Rehabilitation-cum-Welfare Fund. The complainant, therefore, prays that the accused may be tried and dealt with according to law for contravention of Section 3 of the Act and rendered himself liable for punishment under Section 14 (1) of the Act and also prays that an amount of Rs.20,000/- towards Child Labour Rehabilitation-cum-Welfare Fund may be recovered from the accused according to the direction of the Supreme Court in W.P.(C) No.465 of 1996 in M.C. Mehta and Government of Tamilnadu and others.

3. The trial Court took cognizance of the offence and being aggrieved by the taking cognizance of the offence, the accused filed the present Criminal Petition challenging the validity of the prosecution.

4. The learned Public Prosecutor submits that the Inspector, on seeing the girl, found her as 12 years old, therefore, he issued a notice show cause as to why the accused shall not be prosecuted. But, the accused did not respond to the notice and did not make his appearance before the Labour Officer to explain. Hence, it shall be held that he engaged a girl aged 12 years, which is an offence under Section 3 of the Act. Therefore, he is liable to be prosecuted.

5. The point for consideration is whether the accused committed the offence under Section 3 of the Act and he is rendered himself liable for prosecution.

6. The Child Labour (Prohibition and Regulation) Act was introduced in 1986. There are a number of Acts, which prohibit the employment of children below 14 years and 15 years in certain specified employments. However, there is no procedure laid down in any law for deciding in which employments, occupations or processes the employment of children should be banned. There is also no law to regulate the working conditions of children in most of the employments where they are not prohibited from working and are working under exploitative conditions. Therefore, the Bill intends to i) ban the employment of children, i.e., those who have not completed their fourteenth year, in specified occupations and processes; ii) lay down a procedure to decide modifications to the Schedule of banned occupations or processes; iii) to regulate the conditions of work of children in employments where they are not prohibited from working; iv) lay down enhanced penalties for employment of children in violation of the provisions of this Act, and other Acts which forbid the employment of children; and v) to obtain uniformity in the definition of "child" in the related laws.

7. Child is defined in Section 2 (ii) of the Act, which reads as follows: " 'Child' means a person who has not completed his fourteenth year of age."

8. Under Section 3 of the Act, no child shall be employed or permitted to work in any of the occupations set forth in Part-A of the Schedule or in any workshop wherein any of the processes set forth in Part-B of the Schedule is carried on:

   Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.

9. Section 10 of the Act deals with disputes as to age, which reads as follows:

"If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority."

10. Section 14 (1) of the Act deals with penalties, which reads as follows: "Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both."

11. The learned counsel for the revision petitioner submits that from a reading of Section 10 of the Act, it is clear that whenever there is any dispute regarding the age of the child, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority and in the absence of sending the child to the medical authority for determination of the age, the Inspector or the Labour Officer cannot determine the age. In the absence of any record to show that the child is of a particular age, the complaint that the child of 12 years old is engaged, is without any proof regarding the age, therefore, the prosecution itself cannot be maintained.

12. The learned Public Prosecutor submits that on 02-08-2002 a demand notice was issued directing the accused to pay Rs.20,000/- towards Child Labour Rehabilitation-cum-Welfare Fund on account of employing a girl by name Chennamma, aged 12 years as child labour. A show cause notice was also issued on 17-01-2003 informing that he employed child labour by name Chennamma, aged 12 years in an establishment covered by hazardous employment and thereby he contravened Section 3 of the Act. Therefore, he was directed to show cause in writing, within seven days, from the date of receipt of this notice as to why the penal action should not be taken against him for violation of the said provision of the Act. The contention is that as he did not give any reply to the show cause notice or failed to attend before the Labour Officer and failed to deposit the amount demanded under the demand notice, the accused is liable to be prosecuted.

13. In para 4 of the complaint, it is mentioned that the notice was served on the accused on 02-09-2002 and he sent a reply to the notice on 16-09-2002 mentioning that the child labour identified by the Inspector

is having 15 years of age. But the Labour Officer, instead of sending the child labour to the medical officer for determination of the age, held that the reply of the accused that the child is 15 years of age is not convincing one. Before filing the prosecution, the complainant did not rely on any record to the effect that the child did not complete 14 years. Had the complainant sent the child to the medical officer as required under Section 10 of the Act, the age would have been determined, which would have resolved the issue whether he is liable for prosecution or not. The Inspector and the Labour Officer before filing the complaint failed to follow the procedure prescribed under Section 10 of the Act having admitted that the accused contended that the child is of 15 years age.

14. In the light of the above circumstances and in view of the violation of the procedure prescribed under Section 10 of the Act, the prosecution cannot sustain.

15. Accordingly, the Criminal Petition is allowed and the complaint is dismissed by quashing the proceedings in C.C.No.110 of 2003 in the Court of the Judicial First Class Magistrate, Peddapally.

Hemendra Bhai vs State of Chhattisgarh on 6 January, 2003

Equivalent citations: 2003 (97) FLR 402, (2003) IILLJ 645 CG

Bench: K Kuranga

ORDER

K.H.N. Kuranga, C.J.

1. In this petition filed under Section 482 of the Code of Criminal Procedure, one of the partners of the firm, namely, M/s. Dayalal Meghji & Co. prays for quashing of the proceedings in Criminal Case No. 872 of 1999 (State of M.P. Vs. Hemendra Bhai s/o late Daya Bhai Manik) pending on the file of Judicial Magistrate First Class, Raipur.

2. Few facts necessary for the disposal of the petition are these:--

   The applicant is the partner of the firm M/s. Dayalal Meghji & Co. (hereinafter referred to as "the firm"), a firm registered under the Partnership Act, 1932 having its principal place of business at Malviya Road, Raipur. The firm carries on business of manufacturing and selling of Badshahi Farmaish Bidi, popularly known as 345 Bidi since last several decades.

3. The Supreme Court while deciding Writ Petition No. 465 of 1986 (M.C. Mehta Vs. State of Tamil Nadu and others), reported in (1996) 7 SCC 756, has given certain directions. As per the said directions of the Supreme Court in the said case, on 4-7-1997 a survey had been got conducted by the Labour Department of the State. A Surveyor named S.S. Shukla conducted the inspection of the house of one Santosh Sahu, resident of Village Datrangi, Bhatapara, District Raipur and found that Ku. Kevra, aged about 11 years was making Bidis. On being asked, she told him that the Bidis were made for the firm. Thereafter he filled up the prescribed Form No. 1 and submitted a report to the Assistant Labour Commissioner, Raipur.

4. The Assistant Labour Commissioner, Raipur issued a show-cause notice to the firm directing it to deposit Rs. 20,000/- as per the directions of the Supreme Court in the aforesaid case and further to provide education to the children engaged in the Bidi manufacturing activities in the premises of the firm. The firm challenged the said demand notice in W.P. No. 1240 of 1998 before the High Court of Judicature, Madhya Pradesh at Jabalpur and the High Court passed an order (Annexure-A) on 23-3-1998 directing the firm to appear before the officer concerned and the said officer was directed to provide opportunity of hearing to the applicant. The Court further directed

that the notice of demand shall not be given effect to till the disposal of the representation made by the firm. The Court also directed the officer to consider the representation of the firm before initiating any criminal proceedings if the same had not been already initiated.

5. On 30-4-1998, a show-cause notice (Annexure-B) was issued to the firm calling upon the firm to show cause to why an amount of Rs. 20,000/-be not recovered from the firm as per the directions of the Apex Court. The firm has submitted a detailed representation on 13-5-1998 before the concerned officer as per Annexure-C.

6. The Inspector appointed under the Child Labour (Prohibition and Regulation) Act, 1986 (hereinafter referred to as "the Act") filed the charge sheet as per Annexure-D before the Chief Judicial Magistrate, Raipur, for the commission of the offence under Section 14 of the Act against the petitioner- Hemendra Bhai, showing him as the employer. The said case was subsequently transferred from the file of the C.J.M. to the Court of Judicial Magistrate First Class, Raipur and it is numbered as Cr. Case No. 872/1999. After filing of the charge-sheet, the applicant appeared before the Court. The case was adjourned for arguments on charge from day-to-day. Preliminary objections were filed on 15-1-1999 before the Court stating that the charge-sheet has been filed on the basis of the report submitted by the survey team appointed by the Collector. It does not appear from the charge-sheet that the survey team had inspected the firm of the applicant. A case under Section 14(1) of the Act is made out only if the child labourer is employed in the firm of the applicant. Without inspecting the premises of the firm, it is not possible to hold that the applicant has employed child labourer. The case relates to scheme of supplying raw material to the worker employed by the firm for making Bidis at his house where he makes Bidis at his convenience and thereafter handing over the same to the firm. If the worker employed by the firm takes the help of anybody at his home for making Bidis, there is no supervision or control of the firm over such persons or job nor such persons can be said to be employees of the firm. In view of the Proviso to Section 3, Section 3 of the Act is not applicable to a case where the occupier of the workshop takes the help of any member of his family. Even if the occupier of the house, which if treated as workshop, is found to have engaged any child in Bidi making, the same cannot be said to be violative of Section 3 of the Act.

7. After filing of the objections, the case is being adjourned from time to time and the applicant has filed this petition.

8. The learned Counsel for the petitioner submitted that the learned Magistrate without taking cognizance of the offence alleged against

the petitioner is proceeding with the criminal proceedings initiated against the firm, and, therefore, the entire criminal proceedings initiated against the firm are vitiated and liable to be quashed. He has relied upon two decisions of the Supreme Court in D. Lakshminarayana v. V. Narayana, reported in AIR 1976 SC 1672 and Pepsi Foods Ltd. and Anr. Vs. Special Judicial Magistrate and others, reported in (1998) 5 SCC 749.

9. The learned Counsel further submitted that Section 3 of the Act is not applicable to the facts of the present case. It is submitted that in view of Proviso to Section 3 of the Act, even if the house of the father of the child labourer is treated as a workshop, the firm has no ultimate control over the affairs of the said house or workshop and even if the occupier of the house is found to have engaged any child in Bidi making, the same cannot be said to be violative of the said Section. Therefore, the criminal proceedings initiated against the firm are liable to be quashed.

10. The learned Counsel further submitted that the Surveyor who visited the house of the child labourer has not collected any documentary evidence regarding age of the said child such as her birth certificate or medical certificate. Even the Inspector who has filed the complaint against the firm has also not produced any such documents. Thus they failed to prove the age of the girl and therefore, the proceedings initiated against the firm showing the applicant, as the accused is liable to be quashed on this ground alone.

11. The first contention of the learned Counsel for the applicant is that the Court below is proceeding with the criminal proceedings without taking cognizance of the offence alleged against the firm.

12. The Supreme Court in D. Lakshminarayana's case (supra), held thus:--

"The expression "taking cognizance" by the Magistrate has not been defined in the Code. The ways in which such cognizance can be taken are set out in Clauses (a), (b) and (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which case is sought to be instituted and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding Sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a). If instead of proceeding under Chapter IX he, has in the judicial

exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 256(3), he cannot be said to have taken cognizance of any offence."

13. The Supreme Court in Pepsi Foods Ltd. and Anr. (supra), has held that :--

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. Is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

14. In the present case, it is clear from the order-sheet maintained by the learned Magistrate that he has not applied his mind to the facts of the case and the law applicable to the present case. He has not even stated that he has perused or read the charge-sheet, which has to be treated as a complaint filed by the Inspector under Section 16 of the Act. The Supreme Court has held in the aforesaid two judgments that the Magistrate has to apply his mind to the facts of the case and the law applicable to the case, which the learned Magistrate has failed to do in this case. Thus he has not taken cognizance of the offence alleged against the applicant and, therefore, the criminal proceedings initiated against the applicant is liable to be quashed.

15. The next contention raised by the learned Counsel for the petitioner is that Section 3 of the Act is not applicable to the facts and circumstances of the present case and no case under Section 3 of the Act is made out against the petitioner.

16. Section 3 of the Act provides that no child shall be employed or permitted to work in any of the occupation set forth in Part A of the Schedule or in any workshop wherein any processes set forth in Part B of the Schedule is carried on.

17. In the present case the firm has not employed the child as labourer or permitted to work in any workshop where the process of Bidi making is carried on. In the reply to the show-cause notice issued to the firm by the Assistant Labour Commissioner, it is stated that, in the Bidi industry there are two kinds of labourers engaged in the work of Bidi making, one--workers engaged in the premises of the industry, and another-- workers who are supplied raw materials for making of Bidis who take the same to their respective houses for the purpose.

18. Further, in the submissions given in writing to the District Collector, Raipur on behalf of the firm it is stated that-

    "only those persons arc given raw materials whose names have been entered in the muster rolls with an understanding that he himself is making the Bidis and not through any other person. If he does so he can be penalised for the breach of contract. If he engages his children for a help or to train them in making Bidis, for the fault of his, another person (the employer) cannot be penalised. It may be added that no sensible employer will ever try to engage the child labour when he is required to pay the same rates of wages which he is required to pay an adult worker, unlike in other trades....."

    This document is found in the record of the Trial Court.

19. The learned Counsel for the petitioner submitted that the workers who arc supplied raw materials by the firm take the same to their respective houses for making Bidis. They file an application for temporary work of Bidi making stating as follows :--

    This is to request you that I know Bidi making work and want to roll limited quantity of 500 to 700 bidis for some reasons. If you require making of bidis more than that, I will make bidis in excess quantities but of my own accord I want to roll 500 to 700 bidis.

    The worker signs an understanding or agreement with the firm, which is to the following effect:--

    As per your aforesaid request you may be allowed to work on temporary basis of rolling Bidis (for a particular period). If the conditions above arc acceptable to you then you affix your signature in the agreement and take Bidi leaves and tobacco for manufacturing Bidis.

    The learned Counsel has also produced a copy of an application filed before the firm by one of the workers.

20. It is clear from this document that the workers who are supplied raw materials for making Bidis take the raw materials from the firm after giving the undertaking that they themselves would make Bidis and

if they roll Bidis in their respective houses taking the assistance of their children, the firm cannot be held responsible since the firm has no control or supervision over the work of those workers who take raw material to their houses for making Bidis. It is further stated in the reply that the raw material was supplied only to those workers whose names are entered in the Register maintained by the firm. The remuneration is also given only to them. It is not possible for the firm to have any control or supervision over the Bidi making job being done at the houses of workers according to their convenience. The firm has no knowledge or information as to whether the workers who make the Bidis at their houses take the help of any of their family members or children in the said job. If they take any such help, the firm cannot be held responsible for the same. Thus, it cannot be said that the firm is the employer of the child labourer and Section 3 of the Act has not been contravened by the firm.

21. As already stated, according to the firm the workers employed by the firm enter into an agreement with it, take raw materials for Bidi making to their respective houses with an understanding that they themselves would make Bidis and supply the same to the firm. If they take the assistance of their children at home and makes Bidis and then supply to the firm, the firm cannot be prosecuted for violation of Section 3 of the Act.

22. The Proviso to Section 3 says that nothing in this Section shall apply to any workshop wherein any process is carried out by the occupier with the aid of his family or to any school established by, or receiving assistance, or recognition from Government.

23. The word 'workshop' has been defined in Section 2(x) of the Act. "Workshop" means any premises (including the precincts thereof) wherein any industrial process is carried on but does not include any premises to which the provisions of Section 67 of the Factories Act, 1948, for the time being applies. The word 'occupier' has also been defined in Section 2(vi) of the Act. "Occupier" in relation to an establishment or workshop means the person who has the ultimate control over the affairs of the establishment or workshop. Even if the house of the worker is treated as "workshop" within the meaning of the aforesaid definition, the worker who is the owner of the said house becomes the occupier. If he employs his children who are below the age of 14 years for the purpose of Bidi making in his house, for such a case Section 3 of the Act is not applicable in view of the Proviso and thus, it cannot be said that the applicant has committed an offence under Section 3 of the Act.

24. He further submitted that the Inspector who filed the charge-sheet against the firm has not produced any documents or material to show that the child labourer who was found working at the time of inspection was below 14 years of age. He has not produced any medical certificate or birth certificate regarding the age of the child. The Counsel has relied upon the judgment of Allahabad High Court in Subhash Chandra Jaiswal v. State of U.P., reported in 2002 Cr.LJ 1223. In the said case, the Labour Enforcement Officer under the Act visited the establishment of the applicant therein and found one Ashok Prajapati aged about 11 years was employed as labourer to work in the establishment. He prepared a spot note and obtained the signature of the child labourer on it and thereafter a complaint was filed under the Act against the applicant in that case. The learned Magistrate after considering the evidence held that the applicant therein had employed a child labourer aged 11 years and thus violated Section 3 of the Act and committed an offence punishable under Section 14 of the Act, and accordingly convicted him and sentenced to undergo R.I. for three months. The applicant therein preferred a criminal appeal before the Appellate Court but the Appellate Court dismissed the appeal. In the said case, the Court held that the Labour Enforcement Officer has stated that child labourer who was found working at the loom of the applicant therein was aged 11 years. He has not stated as on what basis he ascertained the age of the said person. The record shows that neither any documents nor any medical certificate regarding the age of the alleged child was produced. There is nothing on record to show that the applicant therein had admitted the age of the said person. The Court further held that the Appellate Court also blindly accepted the age stated by the Enforcement Officer, which was not on the basis of any document or medical certificate. As such there was no proper ascertainment of the age of the alleged child and in the absence of such evidence it cannot be said that he was a child as defined in Section 2(ii) of the Act. In the absence of such evidence, the applicant therein could not be convicted and the Court allowed the revision filed by the applicant, quashed the conviction and sentence passed against the applicant therein and acquitted him of the offence.

25. It is contended on behalf of the petitioner that there is no documentary evidence to show that the girl was below the age of 14 years. The statement of the Surveyor was recorded by the Assistant Labour Commissioner in which he has stated that he went to the village on the order of the Sub Divisional Officer, Bhatapara and collected information about labourers engaged in Bidi manufacturing. He found Ku. Kevra daughter of Santosh Sahu, aged about 11 years making

Bidis. He made enquiries from the girl and filled up the relevant proforma. The girl stated that she makes Bidis for the Company of Dayal Meghji. In cross-examination he stated that he had conducted survey of the establishment of the employer, i.e., the firm but visited the house of Santosh Sahu, father of the girl. The girl stated that she makes Bidis for Rs. 400/- per month. It is clear from the statement of the Surveyor that he visited the house of Santosh Sahu and not the premises of the firm. The girl was working in the house of Santosh Sahu, i.e., her father and she was not working in the premises of the firm. The Surveyor has not stated in his statement that he ascertained the age of the girl from any other person. He himself has stated that he found the girl aged about 11 years working in the house of Santosh Sahu. The Surveyor who visited the house of the Santosh Sahu has not collected any documents like birth certificate or medical certificate of the girl to show that she was aged below 14 years. "Child" has been defined in Section 2(ii) of the Act according to which "child" means a person who has not completed his fourteenth year of age. In this case, there is no documentary evidence to show that the girl was below 14 years of age. In the circumstances, as held by the Allahabad High Court in the case of Subhash Chandra Jaiswal (supra), the criminal proceedings initiated against the firm without ascertaining the age of the girl is liable to be quashed.

26. In the result, the petition stands allowed. The criminal proceedings initiated against the applicant vide Criminal Case No. 872 of 1999 pending on the file of Judicial Magistrate, First Class, Raipur, are hereby quashed.

In the High Court of Delhi At New Delhi

\+ **W.P. (C) 9767/2009**

COURT ON ITS OWN MOTION ……Petitioner

Versus

GOVT OF NCT DELHI ……Respondent

Through: Mr. A.S. Chandhiok, ASG with
Mr. Sanjay Katyal, Ms. Sweta Kakkad &
Mr. Varun Pathak, Advs, for UOI.
Ms. Mukta Gupta, Standing Counsel
With Mr. Rajat Katyal, Adv. For State.
Mr. Anil Shrivastav, Adv, for NCPCR.
Ms. Asha Menon, Member Secretary,
DLSA with Mr. Harish Dudani, OSD for
DLSA.

AND

\+ **W.P. (CRL) 2069/2005**

SAVE THE CHILDHOOD
FOUNDATION …….Petitioner

Through: Mr. H.S. Phoolka, Sr. Adv with
Ms. Sunita Tiwari & Mr. Bhuwan
Ribbu Advocates.

Versus

UNION OF INDIA & ORS. …Respondents

Through: Mr. A.S. Chandhiok, ASG with
Mr. Sanjay Katyal, Ms. Sweta Kakkad &
Mr. Varun Pathak, Advs for UOI
With Mr. Rajat Katyal, Adv for NCPCR.
Ms. Asha Menon, Member Secretary,
DLSA with Mr. Harish Dudani, OSD for
DLSA.

AND

WP(C) No.9767/09, WP (Crl) 2069/05, W.P. (C) Nos. 15090/06, 4125/07, 4161/08

\+ **W.P. (C) 15090/2006**

Q.I.C. & A.C. ……..Petitioner

Through: None,

Versus

MINISTRY OF LABOUR &
EMPLOYMENT & ANR. ……Respondents

Through: Ms. Zubeda Begum, Adv. For GNCTD And Labour Department.
Mr. Anil Shrivastav, Adv, for NCPCR,
Ms. Asha Menon, Member Secretary, DLSA with Mr. Harish Dudani, OSD for DLSA.

AND

\+ **W.P. (C) 4125/2007**

ALL INDIA BHRASHTACHAR
VIRODHI MORCHA (REGD.) …….Petitioner

Through: Mr. Tiger Singh, Adv with Ms. Jasbir Singh & Mr. Manmeet Singh, Advs.

Versus

KAROL BAGH BANGIYA
SWARAN SHILPI SAMITI
(REGD.) & ORS. ……Respondents

Through: Mr. Manyank Nagi, Adv for R-1.
Ms. Deepak Tiwari, Adv for Ms. Sujata Kashyap, Adv for GNCT.
Mr. Sanjeev Sabharwal, Adv with Mr. Hem Kumar, Adv for MCD.
Ms. Aakanksha Munjhal, Adv for R-7,
Mr. Anil Shrivastav, Adv for NCPCR
Ms. Asha Menon, Member Secretary, DLSA with Mr. Harish Dudani, OSD for DLSA.

AND

WP(C) No. 9767/09, WP (Crl) 2069/05, W.P. (C) Nos. 15090/06, 4125/07, 4161/08

\+ **W.P. (C) 4161/2008**

COURT ON ITS OWN MOTION .....Petitioner

Versus

STATE NCT OF DELHI .....Respondents

Through: Ms. Zubeda Begum, Adv for GNCT.
Mr. Anil Shrivastav. Adv for NCPCR.
Ms. Asha Menon, Member Secretary.
DLSA with Mr. Harish Dudani, OSD for DLSA.
Reserved on: July 09, 2009
Date of Decision: July 15, 2009

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1 Whether Reporters of local papers may be allowed To see the judgment? Yes.

2 To be referred to the Reporter or not? Yes.

3 Whether the judgment should be reported in the digest? Yes.

JUDGMENT

MANMOHAN. J:

1. Today's children constitute tomorrow's future. To ensure a bright future of our children, we have to ensure that they are educated and not exploited.

2. In fact, children are the most vulnerable members of any society. They are entitled to special care and assistance because of their physical and mental immaturity. The problem is more complicated in developing countries like ours, where child labour exists in relationship with illiteracy and poverty.

3. To eliminate the menace of child labour and to effectuate the mandate of Articles 23, 24, 39, 45 and 47 of the Constitution, Supreme Court had given a large number of mandatory directions in **"M.C. Mehta**

v. State of Tamil Nadu reported in AIR 1997 SC 699". One of the important directions was to direct an employer to pay a compensation of Rs. 20,000/- for having employed a child below the age of 14 years in hazardous work in contravention of Child Labour (Prohibition & Regulation) Act, 1986 (hereinafter referred to as "CLPRA, 1986"). The appropriate Government was also directed to contribute a grant/ deposit of Rs. 5,000/-for each such child employed in a hazardous job. The said sum of Rs. 25,000/- was to be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund and the income from such corpus was to be used for rehabilitation of the rescued child.

4. As the constitutional mandate and statutory provisions with regard to children were not being vigorously implemented and there was lack of coordination between different agencies of the Government of NCT of Delhi and other authorities, this Court, vide a detailed order dated 24th September, 2008 directed the National Commission for Protection of Child Rights (hereinafter referred to as "National Commission"), to formulate a detailed Action Plan for strict enforcement and implementation of CLPRA, 1986 and other related legislations. The National Commission was directed to suggest measures regarding education, health and financial support to the rescued children. The National Commission was also directed to suggest measures for timely recovery and proper utilization of funds collected under the Supreme Court's direction in the aforesaid **M.C. Mehta's** case.

5. The National Commission after holding consultation with various stakeholders and after conducting research and survey submitted to this Court a Delhi Action Plan for Total Abolition of Child Labour.

6. According to the National Commission, the child labour profile in Delhi is of two types namely, out-of-school children living with their parents in Delhi and migrant children from other states who have left their family behind.

7. The Action Plan for Total Abolition of Child Labour is based on two strategies. The first strategy is an "Area Based Approach" for elimination of child labour, wherein all children in the age group of 6 to 14 years would be covered whether they are in school or out-of-school. The National Commission has proposed that this approach be initiated as a Pilot Project in North-West District of Delhi.

8. The second strategy is an approach to be adopted in the context of migrant child labour. It involves a process of identification, rescue, repatriation and rehabilitation of child labour. This strategy is proposed to be implemented as a Pilot Project in South Delhi District.

9. It is pertinent to mention that both the strategies in essence implement CLPRA, 1986, Delhi Shops and Establishment Act, 1954, Juvenile Justice (Care and Protection of Children) Act, 2000 and the Bonded Labour System (Abolition) Act, 1976.

10. One of the objectives of the Area Based Approach is to mobilize and build consensus on the issue of total abolition of child labour through universalisation of elementary education. The plan attains to mobilize and build consensus by holding public meetings, rallies and by involving Municipal Councilors, RWAs' etc.

11. The Area Based Approach also aims to enroll all children in the age group of 6 to 14 years in schools and to withdrawn from work in classes according to their age through programmes of various courses and accelerated learning. This objective is sought to be achieved by setting up Transitional Education Centres or Non-Residential Bridge Course Centres or Residential Bridge Course Camps as well as by holding Short Term Camps. This approach also aims to build local institutions for protection of Child Rights by forming Committees and Forums of Liberation of Child Labour (Youth and Teacher's Wings) as well as strengthening of "Vidyalaya Kalyan Samitis and by implementing training and retention programmes or issues relating to Child Labour and Children Rights to Education along with tasks and roles of specific stakeholders.

12. The Strategy for Unaccompanied Migrant Child Labourers in Delhi is based on "Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour" issued by Ministry of Labour and Employment, Government of India, 2008. According to the Action Plan, trafficked and migrant child labourers are primarily engaged in prohibited occupations such as zari, bulb manufacturing, auto workshop units and domestic household etc.

13. This strategy contemplates constitution of a **Steering Committee on Child Labour** at the State level and **District Level Task Force on Child Labour** at District Level.

14. The Delhi Action Plan provides for a detailed procedure to be adopted at the pre-rescue and actual rescue stage. The pre-rescue plan deals with as to how information is to be collected, verified and as to the composition of the rescue team. The pre-rescue plan provides for prior preparation of residential centres through RBC, JJ Homes, NGO Shelter for accommodating the child labour proposed to be rescued.

15. The Delhi Action Plan provides a detailed procedure for interim care and protection of the rescued children. It provides for immediate

medical examination of the children and as to how investigation is to be conducted and charge sheet is to be prepared.

16. The strategy for Unaccompanied Migrant Children also provides for assessment and verification of Child's background and intra state as well as inters state repatriation.

17. The Action Plan provides for detailed procedure for rehabilitation and social integration of the child labour as well as training and capacity building of duty bearers.

18. In a bid to ensure proper coordination amongst different agencies of the Government of NCT of Delhi, the Action Plan defines the role and responsibilities of various departments/authorities involved in the process in the following consolidated manner;

"7.7. The Responsibilities of the Respective Departments

7.7.1. Delhi Police

The concerned Deputy Commissioner of Police should:

a. Make the necessary arrangements of police force for raids as per the demand and requirement of Action Force;

b. Personally participate in the raids conducted by the Action Force;

c. Should take charge of the child labour liberated by the Action Force;

d. Should take steps to arrest the owners/employers of the child labour as per provision of Indian Penal Code Sec. 331, 370, 374, and 34 as well as provisions of Sec. 23, 24, 26 of Child Justice (Care and Protection) Act. They should register the crime and take all the necessary future steps to conduct further criminal proceedings.

e. Should treat the liberated child labour with respect and honour and hand them over to children's home in the charge of officers of Women and Child Welfare Department.

f. Put forward he cases of child labour as per Section 32 with the help of Action Force in front of Child Welfare Committee, the children should be handed over to their parents through JAPU if the children are from other states.

7.7.2. Department of Labour, GNCTD:

a) To keep the areas in their jurisdiction where the child labour is likely to be hired under continuous active surveillance.

b) In case the child labour is found to be employed and if their number is high, then immediate action should be taken within 24 hours after

contacting the District Collector and police officers by carrying out a raid through Action Force. If the number of child labour is less, then immediate action should be taken to liberate them on the very day with the help of departmental colleagues and police.

c) To keep track of the planning and conduct of every child labour rescue operation. It should be ensured that adequate number of officers and shop inspectors are present during the raid. There should be active participation in the liberation of child labour. Necessary action should be carried out against the employer of the child labourer as per the provisions of Section 3 of Child Labour (Prohibition and Regulation) Act, 1986; if this is applicable. If Section 3 of the Act is not applicable then action should be taken under provisions of Section 7, 8, 9, 11, 12 and 13.

d) Even if the job carried out by the child worker does not fall under the dangerous job category, the child labourer should be liberated from the clutches of unscrupulous employers and handed over to the police with a view to eradicate the undesirable practice of child labour and bringing these children under the mainstream of education.

e) To document all details of the liberated child worker by obtaining details from him in an affectionate manner and furnishing a copy to the police department. A complaint against the employer of the child labourer should be lodged (with the help of Task Force, if necessary) with the police and his statement should be recorded as a matter of formality and duty.

f) While obtaining information from the child labourer, if it is found that the employer had paid any money as financial assistance, loan advance etc. to the parents, then immediate report should be made to the District Collector for declaring the child labourer as "forced" labourer and a copy should be endorsed to the Government through the Commissioner.

g) Due care of the liberated child labourers should be taken till they are sent to the Children's Home and it should be seen that they are provided with proper food, water and other facilities in time.

h) As per the definition specified in Section 2(K) of the Juvenile Justice (Care and Protection of Children) Act 2000, the individual who is below 18 years of age should be considered as a child. Therefore, in the course of raid, if child workers above 14 years of age are found, then they should also be liberated from the clutches of the employer(s) and handed over the police.

i) A sum of Rs. 20,000/- (Rupees Twenty Thousand) should be recovered from the employer of child labourer subjected to legal action vide

Section 3 of Child Labour (Prohibition & Regulation) Act 1986 as per the directives issued by the Hon'ble Supreme Court in the M.C. Mehta case, 1996 and credited to the District Child labour Welfare Fund of the District to which the child originally belongs.

j) To designated nodal officers at senior level to be part of the District Level Child Labour Task Force (districtwise) and also for the rescue team.

k) To strengthen the intelligence network through the Community workers of the Labour Department on the status of out-of-school children, places of work involving children and their employers/ contractors/middlemen, etc.

l) Necessary legal action should also be taken against the employers of child labourers under the following legislations and corresponding Rules(wherever applicable):

i. Delhi Shops and Establishment Act, 1954.
ii. Minimum Wages Act, 1948.
iii. Motor Transport Workers Act, 1961.
iv. Factory Act, 1948.
v. Interstate Migrant Workmen (Regulation of Employment and Condition of Services) Act, 1979.
vi Contract Labour (Regulation & Abolition) Act, 1970.

7.7.3 Women and Child Welfare Department, GNCTD

a. Generation of awareness among masses against the practice of child labour. Steps should be taken for the rehabilitation of local child labourers with the help of Deputy Commissioner (DC) and voluntary organizations. If the child labourer happens to be from the local area.

b. Take charge of child labourers liberated by the Action Force and see that they are provided adequate food, clothing and shelter. Due care should be taken about their safety.

c. If the child worker happens to be a local person. She/he liberated Child Labourers have been placed should arrange for the interaction/ taking of statements by the concerned Child Welfare Committee.

d. The Superintendent of the Children Home to which the liberated Child Labourers have been placed should arrange for the interaction/ taking of statements by the concerned Child Welfare Committee.

e. Information about instructions of the Child Welfare committee should be independently submitted to the DC and Labour Commissioner every month.

f. DWCD, GNCTD should designate nodal officers at senior level who can be part of the District Child Labour Task Force for every district.

g. Issue letters to the respective CWC's to nominate a member who can be part of the District Child Labour Task Force. Such member of the CWC can be a link between the CWC and District Child Labour Task Force for all practical purposes, including, attending the pre-rescue planning meeting of the Task Force, and issuing Orders for the interim care and custody of the rescued child reports (SIR), repatriations/follow S up. The CWC Member will get the inquiry done and Social Investigation Report prepared under JJ Act in a child friendly manner at the camp/home/hostel/RBC where the children have been lodged.

h. To keep the Homes ready for the reception and suitable accommodation of the rescued child labourers.

7.7.4 Education Department, GNCTD

(a) In order to absorb the liberated child labourer into mainstream of education without any discrimination, (sex/caste etc.) they should be offered free and compulsory education and should be compelled to receive it.

(b) Various schemes sponsored by the Central and State Governments should be implemented for this purpose.

(c) During their educational period, they should get the benefit of free meals scheme of the State Government.

(d) The Department will set up initially 250 Alternative Innovate Education Centres (AIEC/NRBCs in the areas of child labour concentration and/or in the areas having large number of out-of-school children. The Department would also ensure that all the children at NRBCs/RBCs are given free mid day meal (as assured by the Department, vide UEE Mission letter no. 39, dated 11.4.2009).

(e) Care should be taken to see that the child labourer develops liking for the education.

(f) The education officer and Principal of the school should be held responsible for the dropouts among the child labourers receiving education.

(g) Parents of child labourer should be counseled to stress the importance of education among the labourers.

(h) Monitoring of academically weaker children in schools will be done with the involvement of CRC and NGOs for (as assured by

the Department, vide UEE Mission letter no. 39, dated 11.4.2009) preventing dropouts.

(i) The concerned District Urban Resource Centre, Coordinator, (DURCC) will send a monthly report to the Dy. Commissioner of the District with a copy of the same to the SPD (SSA) and Director (Education), GNCTD about the following:

   i. School wise and class wise attendance and drop-outs corresponding to the number of children enrolled.

   ii. Number of out-of-school children in the district (school wise and class wise) along with the list;

   iii. The efforts made for awareness/sensitization/educational counseling of children and their parents.

Such reports should be examined in the following meeting of the district level Task Force and of the state level Steering Committee as well as at the highest level in the Education Department of GNCTD for remedial measures.

(a) Department will ensure that all its schools have adequate number of teachers in proportion to children in each class (subject specific, wherever applicable) and they are maintaining punctuality. It should also introduce a system of incentive/reward for its schools which maintains higher enrolment/retention of out-of-school children and prevent dropouts as well as a system of disincentives for those who consistently fail to identify, enroll and retain the out-of-school children.

7.7.5. Health Department, GNCTD

a. After receiving information about raid of Action Force through Labour Officer/Police Officer, complete medical examination of liberated child labourers should be carried out.

b. Immediate medical treatment should be initiated, if required.

c. Clear certificate of age (issued by medical officers not below the rank of Government Assistant Surgeon) of the liberated child labour should be furnished immediately to the investigating police officer or Government labour officer as per their demand.

d. Expenses incurred towards the treatment and issuance of medical certificate should be met the DC from the District Child Welfare Fund and should be recovered from the employer of the child labourer and reimbursed to the District Child Welfare Fund after recovery.

7.7.6. Municipal Corporation of Delhi (MCD)

a. Under is Slum Development Programme, the MCD should enhance the standard of living of all children living in the slums within its jurisdiction and particularly ensuring effective access to free health check up and medical care, quality education, recreation, vocational training and community life.

b. MCD Schools should provide free and compulsory education to all rescued child labourers belong to Delhi irrespective of their age (by arranging accelerated learning for the older children through NRBCs wherever necessary for mainstreaming them to age appropriate classes) without any discrimination (sex/caste etc.) They should be mentoring the non-formal education programmes run by NGOs in various slums with a view to bringing all out-of-school children in the area into the fold of mainstream education.

c. The Headmasters and the teachers of the MCD schools will hold a monthly meeting of the parents for sensitizing/counseling them about importance of the education. Experts/communities leaders would be invited to such meetings.

d. MCD will also have sensitization/counseling programmes for the slum-dwellers in general about the importance of education for their children and the facilities available for the same as well as the long-term evil impacts of child labour through meetings, prabhat feries, documentary films, etc in the colonies.

e. The MCD should ensure that all its schools have adequate number of teachers in proportion to children in each class (subject specific, wherever applicable) and such teachers are maintaining punctuality. It should also introduce a system of incentive/reward for its schools which maintains higher enrolment/retention of out-of-school children and prevent dropouts as well as a system of disincentives for those who consistently fail to identify, enroll and retain the out-of-school children.

f. The Education Department of MCD will obtain the list of children who are not attending schools and will instruct the Principal of the concerned school(s) to bring such children back to school.

g. The concerned Zonal Dy. Education officer (DEO) will send a monthly report to the Dy. Commissioner of the District with a copy of the same to the Labour Commissioner and the Education Department of MCD about the school wise and class wise attendance and drop-outs corresponding to the number of children admitted. The report should also include the efforts made for sensitization/educational counseling of children and their parents. Such reports should be examined in the

following meeting of the district level Task Force and of the state level Steering Committee as well as in the Education Department of MCD for remedial measures.

h. The Zonal Deputy Education Officer (DEO) will be responsible as the Nodal Officer on behalf of MCD on various matters relating to the pre-rescue planning, rescue and post-rescue rehabilitation/education in the concerned MCD area(s).

7.7.7. Deputy Commissioner of the District concerned.

a. To ensure that no incidence of child labour in any form is found within his/her jurisdiction.

b. To get the meeting of the District level Task Force on Child Labour on monthly basis and to preside over the same.

c. To forward a copy of the monthly meetings of the District level Task Force on Child Labour, detailed report of the review meeting should be sent to the Government of NCT of Delhi through Labour Commissioner.

d. To get a list of all voluntary organizations dealing with the problems of child labour prepared with areas of their expertise and to ensure that such list is updated on regular basis. Along with these organizations, public awareness drives should be arranged. Public opinion should be generated to stress that education is the right of every child and is a first step towards progress.

e. To get constantly updated about the raids, rescues and rehabilitations of child labourers in the district and to extend all necessary support to the rescue team.

f. To ensure that all necessary actions are taken within his competence under the Bonded Labour System (Abolition) Act and Rules, 1976 as well as under the "Centrally Sponsored Plan Scheme for Rehabilitation of Bonded Labour", if the facts and circumstances in which child labourers are found lead to the presumption that they are forced labourers/bonded labourers.

g. To also ensure that Rs. 20,000/- per child labourer is recovered from his/her employer and credited along with Rs. 5000/- to the District Child Labour Welfare Fund, as per the direction of the Hon'ble Supreme Court of India in the case of M.C. Mehta, 1996.

h. To furnish a utilization certificate to the Government through the Labour Commissioner about the funds started above on half yearly basis, before 30 September and 31 March every year.

i. Guidance may be sought (wherever necessary) from the Labour Commissioner with regard to the utilization of collected funds. As

far the rehabilitation of the child labourers for whom the amount is collected.

j. As per the judgment of the Supreme Court cited above, adult unemployed member of the family of the child labourer should be provided employment there in his place and the child should be directed to receive education.

k. In case the child has taken up the job due to economic condition of the family, adequate efforts should be made to provide all benefits to the family under all relevant developmental and social security schemes of the Government.

7.8. The above roles and responsibilities of concerned departments/ authorities of Government of NCT Delhi will be required for implementing both Strategy – I (Social Mobilization for Total Abolition of Child Labour) and Strategy – II (Pre-rescue, Actual-rescue, Interim Care, Enforcement of Laws, Repatriation and Rehabilitation of Child Labour)."

1. Subsequent to the filing of the aforesaid Action Plan, the Labour Department of Government of NCT Delhi has raised some issues. According to the Labour Department, CLPRA, 1986 prohibits employment of children only in certain scheduled occupations and processes. Consequently, according to the Labour Department, child workers employed in non-hazardous jobs cannot be rescued. The Labour Department has further urged that in the Action Plan it has been stipulated that all children between the age of 14 to 18 years have to be liberated and handed over to the police, even though CLPRA, 1986, defines child as a person who has not completed 14 years of age.

2. On a perusal of CLPRA, 1986, we are of the view that under the said Act, only child workers employed in scheduled occupation and processes can be liberated and children employed above the age of 14 years cannot be rescued.

3. However, in our view, the Juvenile Justice (Care and Protection of Children) Act, 2000, would apply to children between the age of 14 and 18 years as well as to those children employed below the age of 14 years in non-scheduled occupation and processes. Consequently, the said children would be governed by the Juvenile Justice (Care and Protection of Children) Act, 2000 as well as Bonded Labour System (Abolition) Act, 1976, if applicable and not by CLPRA, 1986, as stipulated in the Delhi Action Plan prepared by the National Commission.

4. Moreover, at the request of Labour Department, we direct that the responsibility of lodging a police complaint against an employer employing child labour would lie with the Delhi Police and not the Labour Department as directed in the Delhi Action Plan. We further

clarify that the authority to take action under the Bonded Labour System Abolition Act, 1976, would be the Deputy Commissioner of District concerned and not the Labour Department. Accordingly, paras (e) and (f) of para 7.7.2 of the Delhi Action Plan are amended.

5. It is further clarified that the recovery of fine of Rs. 20,000/- as stipulated by the Supreme Court in M.C. Mehta's case will not have to await a conviction order of the offending employer. The said amount would be utilized for the educational needs of the rescued child even if the child has subsequently crossed the age of 14 years.

6. The Deputy Director, Child Welfare, has also filed a Status Report stating that considering the capacity and existing strength of NGOs" and Government run institutions in Delhi, the department would be able to accommodate only about 500 additional children every month, since the restoration efforts would be made to motivate NGOs to enhance their capacity to accommodate more children and to register more Children Homes.

7. Keeping in view the aforesaid infrastructural limitation, we direct the labour department to begin implementing the Delhi Action Plan by accommodating for the time being about 500 children every month.

8. Moreover, being cognizant of the fact that ground level reality may be different from the one projected in the Action Plan, we grant liberty to the above-mentioned authorities to seek clarification or amendment of the Action Plan from this Court.

9. To conclude, we would only quote what Dr. Dorothy, I. Height, a social activist, has said, "we have got to work to save our children and do it with full respect for the fact that if we do not, no one else is going to do it."

10. Consequently, we accept the Delhi Action Plan which provides a detailed procedure for interim care and protection of the rescued children to be followed by Labour Department as prepared by the National Commission with the modifications mentioned hereinabove in paras 20 to 26 and we further direct all the authorities concerned to immediately implement the same. The Government of NCT of Delhi through the Labour Department is directed to file its First Taken Report to this Court after six months. For this purpose, list the present batch of matters on 13th January, 2010.

MANMOHAN
(JUDGE)

CHIEF JUSTICE

JULY 15, 2009

In the High Court of Gujarat

(S.C.A. No. 6190/1997 with S.C.A. 6191/1997 dated July 30, 2007)

PRESENT

MR. JUSTICE R.S. GARG

Between

Haria Ginning and Pressing Factory

And

Mamlatdar and Others

Child Labour (Prohibition and Regulation Act (61 of 1986) – Section 14 – Direction by Mamlatdar to employer to deposit Rs. 20,000 for each child labour allegedly engaged, and for non-compliance face legal action-Such direction, not sustainable, for lack of consideration, much less enquiry, of defences taken.

Petitioner were employers allegedly of Child Labour. They were directed to pay Rs. 20,000/- for each child Labour failing which there was threat of legal action. They challenged it in these petitions. They were allowed with costs of Rs. 10,000/- in each case.

HELD: The High Court observed that the Inspector or Mamlatdar could not act on the basis of whims and caprice. In cases like the present an enquiry was required to be made. Defence of the petitioners could not be rejected holding it to be *prima facie* bogus and could not be rejected on the ground that the authority was not satisfied.

(*Para 9*)

Section 14 of the Child Labour (Prohibition and Regulation) Act, 1986 would not authorize a Mamlatdar or Inspector to hold a person guilty of the offences; nor would they be entitled to award punishment.

(*Para 7*)

Unless a person was held guilty by competent (criminal) Court, he could not be declared an offender, nor compensation recovered from him.

(*Para 8*)

Petitions allowed.
For Petitioner: Y.S. Mankad
For Respondents: I.M. Pandya
Case referred to Para 8
1997 (3) GLR 2306 (SC)

JUDGMENT

Per R.S. GARG, J.

In each of the petitions, the petitioners, being aggrieved by the orders dated July 4, 1997 and July 8, 1997 passed by the Additional Labour Commissioner, Gandhidham, Kutch and the Mamlatdar respectively, asking the petitioners to pay a sum of Rs. 20,000/- for each child labour employed by them, are before this Court with a submission that the Assistant Labour Commissioner and the Mamlatdar acted absolutely illegally in issuing such directions.

2. The Mamlatdar-cum-Ex Officio Labour Inspector made inspections on May 2, 1997 in the factory premises of the petitioners, Anjar Ginning and Pressing Company and Haria Ginning and Pressing Factory. After recording the names of as many as nine persons in Special Civil Application No. 6190/1997 and ten persons in Special Civil Application No. 6191/1997, he observed that each of the owners/management of the factories was engaging young boys below 14 years of age and as their engagement was contrary to the provisions of the Child Labour (Prohibition and Regulation) Act, 1986 (hereinafter referred to as "the Act" for short), each was liable to be proceeded with. It was directed that Rs. 20,000/- for each child labour be deposited with the Assistant Labour Commissioner or in the alternative, a legal action would be taken against them. The petitioners, *vide* their replies dated May 14, 1997 in Special Civil Application No. 6190/1997 and dated May 17, 1997 in Special Civil Application No. 6191/1997, submitted that they had not violated any provisions of the Act. Haria Ginning and Pressing Factory submitted that four persons, namely, Hasinaben, Lilaben, Ratanba and Radhiben, were above 14 years of age, while five other children had come to serve the tiffin to the labours/workmen. They submitted that they had not committed any wrong, inspection note was wrong and the persons, who were not engaged as labours. In Special Civil Application No. 6191/1997, the Mamlatdar vide his order dated July 8, 1997, ordered that the explanation submitted by the employer/establishment cannot be accepted in view of the judgment of the Supreme Court and a sum of Rs. 1,40,000/- would be recovered. In Special Civil Application No. 6190/1997, it was ordered that no reasonable defence has the Supreme Court, recovery has to be made. In Special Civil Application No. 6191/1997, no counter-affidavit has been field in Special Civil Application No. 6190/1997. The affidavit is of one S.R. Bodal, Assistant Labour Commissioner, Gandhinagar. In the said affidavit, in paragraph 6, the author of the affidavit has stated as under: "….. I further say that petitioner has not given any defence representation for 9 child labourers shown in Inspection remarks that 5 out of 9 child labourers are not working in their factory and not their

workers, but, they are workers of others outside factory and the parties on whose behalf the job work was done brought their own worker. I say that 4 out of 9 child labourers shown in Inspection remarks and as against it, petitioner has produced evidence of age showing 4 workers being above 14 years or more in age and accepted their evidence. However, no satisfactory evidence are produced for remaining five workers and therefore, actions taken against petitioner is legal and valid".

3. Shri Mankad, learned counsel for the petitioners, submitted that without making any inquiry or without affording any opportunity to the petitioners, the respondents could not direct recovery simply on the strength of the judgment of the Supreme Court. He also submitted that the reply to the show-cause notice could not be treated to be the defence because present was a case where oral evidence ought to have been led in view of the fact that the petitioners had filed certain affidavits before the authority in support of their defence. He also referred to Section 14 of the Act to contend that either one should stand convicted or in an inquiry, he should be held guilty of committing violation of the provisions of the Act.

4. I pointedly asked Shri I.M. Pandya, learned Assistant Government Pleader for the respondent-State, to show me something from the records, on the strength of which the statement has been made that "they are workers of other outside factory and the parties on whose behalf the job-work was done, brought their own worker." Shri Pandya, after seeking instructions from Shri G.G. Sheth, submitted that there is no document with them on the strength of which such statement could be made in the affidavit. Shri Sheth informed the Court that Shri Bodal, the deponent of the affidavit, has already superannuated.

5. Section 3 of the Act provides that no child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on:

   Provided that nothing in Section 3 shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from Government.

6. Sub-section (1) of Section 14 of the Act provides for penalty in a case where any child is engaged to work in contravention of the provisions of Section 3. Sub-section 2 of Section 14 provides that a person who is convicted under Section 3 commits a like offence, he would be punished with a higher sentence and the jail sentence shall not be less than six months. Sub-section (3) of Section 14 provides that whoever fails to give notice as register as required by Section 11 or

makes any false entry in any such register, or fails to display a notice containing abstract of Sections 3 and 14, as required by Section 12, or fails to comply with or contravenes with any of the provisions of the Act or the rules made thereunder, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

7. Section 14 would apply to the case where somebody is sought to be prosecuted before the competent Court. Section 14 would not authorize a Mamlatdar or an Inspector to hold a person guilty of the offences, nor would they be entitled to award any punishment to the alleged wrongdoer. Once a person is *prima facie* found to be an offender, the Labour Department or Inspector or any competent Officer of the Labour Department would be required to file a complaint before the competent Judicial Magistrate and if they secure conviction of such offender, then, the Court would award such penalty, which may be the jail sentence or fine or both.

8. The Inspector or Officer of the Labour Court unless is invested with the powers of the Magistrate under the provisions of the Act, he/they cannot exercise such powers. Section 14 of the Act is the only penal provision under the Act. It does not authorize the Labour Inspector, Assistant Labour Commissioner or any other person to impose any penalty. It is, however, to be noted that in the matter of *M.C. Mehta v. State of Tamil Nadu and Others*, reported at 1997 (3) G.L.R. 2306, the Supreme Court observed that the legislature had strongly desired prohibition of child labour, that Act 61 of 1986 is *ex facie* a bold step, that the provisions of the Act other than Part III came into force at once and for Part III to come into force, a notification by the Central Government is visualized by Section 1(3) of the Act, which notification covering all classes of the establishments throughout the territory of India was issued on May 26, 1993. In paragraph 27 of the judgment, the Apex Court has observed as under:

"27. 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 its 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 visualized by Article 39(f), it seems to us that the least we ought to do is see to the fulfillment of legislative intendment behind enactment of the Child Labour (Prohibition and Regulation) Act, 2 1986. Taking guidance there from, 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 visualized 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 concerned employer pays Rs. 200/- 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 concerned child. 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 nationalized bank or other public body".

The Apex Court observed 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 visualized by Section 17 to secure compliance with the provisions of the Act, should do the job. The Supreme Court used the word 'offender' for the purpose of making recovery of the compensation. A person would be an 'offender' if he is held guilty by a competent Court. In the present case, according to Shri I.M. Pandya, learned Assistant Government Pleader, the prosecution is still pending before the learned Judicial Magistrate and the management/owners of the establishment have yet not been held guilty. The word 'offender' is not used in its loose sense, but, connotes a person against whom allegations are made. The word 'offender' has been used with a sense of responsibility to mean that a person is held guilty by the competent Court, he cannot be declared to be the offender. *Prime facie*, in absence of the conviction of the wrongdoer and a finding by the competent Court that he is declared an 'offender', such compensation/cannot be recovered from him.

9. Assuming that power is conferred upon the Inspector or the Mamlatdar or the Assistant Labour Commissioner to make recoveries from such person, who is alleged to have committed violations of the provisions of the Act, then, such Inspector, Mamlatdar or Assistant Labour Commissioner cannot act on the basis of their whims, caprice or arbitrariness. They cannot simply say that the written statement show cause to the notice does not satisfy them, therefore, the recovery would be made. In cases like the present, an inquiry must include production of oral, so also documentary, evidence. When a person comes before the authority and makes a submission that he had not committed any wrong and his defence was that as many as four persons were above the age of 14 years and other five had come to serve the tiffin upon the workers, then, present becomes a matter of disputed facts. It is to be seen that for other four, the defence was accepted, but, for the remaining five, the Assistant Labour Commissioner filed a false affidavit to mislead this Court. In absence of any document on record to reveal that the child labour was brought by the other industry, who had given job-work to the establishment, he could not have said that the child labour was brought by other workers who had come to complete the job-work of the third parties. In the matters like present, the defence cannot be rejected holding it to be *prime facie* bogus or worth rejection, the authority cannot reject the defence on the ground that such authority was not satisfied. The satisfaction of the authority or the Court though is a perception of that authority, but, the authority or the Court cannot simply hold in two lines that they were not satisfied, therefore, they were rejecting the defences. Some order to be a legal order must have tenets of legal order; they must consider the case of both the sides, arguments raised by both the sides and the reasons for rejecting or accepting the arguments of one or the other made. The authority yet is not given jurisdiction to pick up one view and say that other is wrong. Before rejecting the view or defence, the authority or Court is required to hold that for further reasons, such defence is not palatable.

10. In the present matter, the Mamlatdar/Assistant Labour Commissioner did not make any inquiry, but, simply said that they were not satisfied with the reply to the notice of show cause. Such an approach cannot be protected even under the judgment of the Supreme Court in the matter of *M.C. Mehta (supra)*. The orders passed by the Mamlatdar/Inspector and Assistant Labour Commissioner, for the reasons aforesaid, deserve to and are, accordingly, quashed.

11. Each of the petitions is allowed with costs. Rs. 10,000/- in each case to be paid by the Labour Department to the petitioners within fifteen days from today. The Labour Department, however, would be free to proceed in accordance with law. Rule is made absolute.

Labour Law Journal 2008-January-P.120-124.

Hayath Khan vs The Deputy Labour Commissioner ... on 11 November, 2005

Equivalent citations: ILR 2005 KAR 6001, 2006 (1) KarLJ 365

Bench: R Gururajan

ORDER

R. Gururajan, J.

1. My heart bleeds for the Child Labour in terms of the facts of this case.

Petitioner is running a motor cycle shop in the name and style of Best Service Centre. Second respondent visited the shop of the petitioner and inspected the same on 18-7-2003. He reported that petitioner has employed child labour. He registered a case alleging contravention of Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986 alleging that petitioner has employed Child Labour called Khaza-m-Shekh aged about 11 years. A show cause notice was issued to the petitioner' as to why compensation should not be recovered as arrears of Land Revenue. Thereafter a criminal case was registered against the petitioner. Petitioner filed an application seeking for permission to cross-examine with regard to the report, which was allowed. Petitioner filed his written arguments. First respondent thereafter has chosen to pass the an order imposing Rs. 20,000/ as compensation to be deposited to the District Child labour Rehabilitation and Welfare Fund in terms of Annexure-G dated 31-3-2005. A recovery notice was also issued in terms of Annexure-H dated 30-7-2005. Petitioner in these circumstances is before me.

2. I made a specific request to Sri Subba Rao, Learned Senior Counsel to assist the Court in the case on hand, in the absence of the Child Labour being a party to the proceedings. Sri SZA Khureshi, Learned AGA appears for respondents.

3. Sri Sheelvant, Learned Counsel would basically argue that no compensation can be awarded in a matter like this in the absence of any order at the hands of a Magistrate, in terms of the provisions of the Act. He would also say that even otherwise, the material on record would reveal of no violation by the petitioner on the facts of this case.

4. Per contra, Sri Subba Rao, Learned Senior Counsel would say that the present proceedings are initiated pursuant to the proceedings of the Supreme Court in the case of M.C. Mehta v. State of Tamilnadu. He would also invite my attention to several judgments to say that this Court has to take note of constitutional goal in the matter of meaningful life in

terms of Article 21 of the Constitution of India. He would say that Child Labour is prevalent and engagement of Child Labour is to be arrested strictly, as otherwise, the laudable object in terms of the Constitution cannot be achieved. He wants the petition to be dismissed.

5. Sri SZA Khureshi, Learned AGA would strongly rely on the judgment of the Supreme Court in 1998 All.L.J., 2502.

6. After hearing, I have carefully perused the material on record.

International Labour Organisation has felt that there should be international guidelines by which the employment of children under a certain age could be regulated in industrial undertakings. It suggested that the minimum age of work be 12 years. International Labour Organisation has been playing an important role in the process of gradual elimination of Child Labour and to protest Child from industrial exploitation. It has focused on the following issues;

1 Prohibition of Child Labour
2. Protecting Child Labour at work
3. Attacking the basic cause of Child Labour
4. Helping children to adopt to future work
5. Protecting the Children of working parents.

Various Legislations have been brought into force to arrest Child exploitation.

7. Section 67 of the Factories Act, 1948 prohibits employment of young children. Section 24 of the Plantation Labour Act, 1951 provides that no child who has not completed his twelfth year shall be required or allowed to work in any plantation. Section 109 of the Merchant Shipping Act, 1951 prohibits employment of person under fifteen years of age. Section 45 of the Mines Act provides that no Child shall be employed in any mine, nor shall any Child be allowed to be present in any part of a mine which below ground or in any (open cast working) in which any mining operation is being carried on. Section 21 of the Motor Transport Workers Act, 1961 provides that no Child shall be required or allowed to work in any capacity in any motor transport undertaking. Sections of the Apprentices Act also prohibits employment of fourteen years of age. Section 24 of the Beedi and Cigar Workers (conditions of employment) Act 1966 provides that no child shall be required or allowed to work in any industrial premises (See 1997 SC 679).

8. The Child Labour (Prohibition and Regulation) Act 1986 was brought into force with the laudable object of prohibiting Child Labour. It provides for various contingencies. The Apex Court considered the Child Labour problem in a detailed judgment in AIR 1997 SC 679. A Learned Judge of this Court in 1998(1) KAR.L.J. 191 has ruled that while prohibition of

Child Labour in Article 24 is part of fundamental right, provision for free and compulsory education for children under directive principles has also been declared judicially as fundamental right. The Court has further noticed that though providing facilities for healthy development of Children and protecting them against exploitation is only directive principle it is incidental to right to life and liberty which is fundamental right under Article 21 of the Constitution of India.

9. In the light of these judgments and in the light of the laudable object of the Child Labour Prohibition Act, let me see as to whether the present order requires my interference.

10. The impugned order is questioned by the petitioner on the ground that no compensation could be fixed by the impugned authority and the compensation if at all could be fixed by the jurisdictional magistrate in the light of Section 14 and Section 16 of the Act. Sri K Subba Rao, Learned Counsel says that the said submission has no legs to stand. It is no doubt true that Section 14 provides for a penalty of Rs. 20,000/- by way of fine. A procedure is also prescribed in terms of Section 16. But what cannot be forgotten by this Court is the law declared by the Supreme Court in the case of M.C. Mehta v. State of Tamilnadu(Supra). In the said judgment, the Supreme Court has ruled in para 27 as under;

"... 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 would see that for each Child employed in violation of the provisions of the Act, the concerned employer pays Rs. 20,000/- which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund."

11. In these circumstances, I am of the view that the impugned order cannot be found fault with in the light of this judgment of the Supreme Court. The Supreme Court has ordered compensation in terms of the directions contained in para 27 of the judgment and that cannot be confused with levy of fine by way of penalty under Section 17 of the Act. Penal fine is different from compensation. The said compensation is provided in terms of the direction of the Supreme Court and it is therefore legally acceptable and I do so in the case on hand. The argument in terms of Sections 14 and 16 does not appeal to me since that stands on a different footing. In fact a Learned Judge of the Allahabad High Court in 1998 SC 2502 has chosen to consider this very issue and thereafter has chosen to reject the same in para 8 of the said judgment. The Civil liability to pay compensation arises in terms of the judgment of the Supreme Court in M.C. Mehta v. State

of Tamilnadu(Supra) which has created new rights and obligations enforceable by law in terms of directions. In these circumstances, I am of the view that no case is made out for my interference.

12. I would also say that in these matters there cannot be any rigid or strict enquiry as in other cases. There are Social Welfare measures and it is in the larger interest of Child Labour. I cannot but recall what the Supreme Court has stated while deciding the Minimum Wages Act in Ministry of Labour and Rehabilitation v. Tiffin's Barytes Asbestos and Paints Ltd. In the said judgment, the Court has ruled that a notification fixing minimum wages in a country where wages are already minimal should not be interfered with under Article 226 except on the most substantial of grounds. The minimum Wages Act is a Social Welfare Legislation undertaken to further the Directive Principles of State Policy an action taken pursuant to it cannot be struck down on mere technicalities. The said dictum to a certain extend would be applicable to the facts of this case.

13. I cannot but observe that mere prohibition of Child Labour would not solve the problem. A Welfare State has to take further steps to rehabilitate the Child Labour for a meaningful life in terms of Article 21 of the Constitution of India. That has to be done by the Government. It is hoped that Government would look into it.

14. Before concluding, I cannot but once again reproduce what the Supreme Court has stated at the commencement of the judgment in M.C. MEHTA's case. I would be completing this judgment with those words.

"I am the child.
All the world waits for my coming.
All the earth watches with interest to see what I shall become.
Civilization hangs in the balance.
For what I am, the world of tomorrow will be.
I am the child.
You hold in your hand my destiny.

You determine, largely, whether I shall succeed or fail, Give me, I pray you, these things that make for happiness. Train me, I beg you, that I may be a blessing to the world.

Mamie Gene Cole"

Further, I deem it proper clarify that the finding given in this judgment is only referable to compensation. The criminal liability in the event of any proceedings has to be decided on its merits. This Court places on record its appreciation for the services rendered by Sri K. Subba Rao, Learned Senior Counsel, as a amicus curaie counsel.

Madhya Pradesh High Court

Bhagwandas and Anr. vs State Of M.P. and Anr. On 9 July, 1998

Equivalent citations: (2000) IIILLJ 661 MP

Author: S Srivastava

Bench: S Srivastava

JUDGMENT

S.P. Srivastava, J.

1. Feeling aggrieved by the order passed by the Inspector, Child Labour (Prohibition and Regulation) Act, 1986, dated May 16, 1997 requiring the petitioner in Writ Petition No. 1014/1997 to deposit an amount of Rs. 20,000 for having employed a child labourer and the order dated May 12, 1997 passed by the same authority requiring the petitioner in Writ Petition No. 31 of 1998 to deposit an amount of Rs. 40,000 for having employed two child labourers in violation of the directions issued by the Hon'ble Apex Court vide its judgment and order in Writ Petition (C) No. 465 of 1986, decided December 10, 1996, M.C. Mehta v. State of Tamil Nadu and Ors., they have now approached this Court seeking redress praying for quashing of the aforesaid orders.

2. The respondent authority has filed separate counter-affidavits in opposition to each of the aforesaid writ petitions.

3. A large number of writ petitions have been filed challenging similar orders passed by the Inspector, appointed under the aforesaid Act. The present petitions and the other writ petitions, being Writ Petition No. 89/1996, 1966/1997, 1976/1997, 2132/1997, 2164/1997, 4/1998, 97/1998, 179/1998, 307/1998, 551/1998 and 594/1998 had been directed to be listed together and have been heard along with the present writ petitions.

4. It may be noticed that in the aforesaid writ petitions inspite of repeated opportunities having been provided the respondent-authority has not filed any counter-affidavit. However, learned counsel representing the respondents in his submissions has taken the same stand as has been taken in the present writ petitions.

5. I have heard the learned counsel for the petitioners as well as learned Additional Advocate General representing the respondents and have also carefully perused the record.

6. The Hon'ble Apex Court in its decision in the case of M.C. Mehta v. State of Tamil Nadu AIR 1997 SC 699 : 1996 (6) SCC 756 : 1997-II-

LLJ-724, finding that the problem of child labour in India has spread its fang far and wide and it had by now assumed the shape of an all India evil, holding 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; had issued a direction that the Inspectors, whose appointment is visualised by Section 17 of the Child Labour (Prohibition and Regulation) Act, 1986, (Act No. 61 of 1986), in order to secure compliance of the provisions of the Act, should do this job. It further expressed the view, that the Inspectors appointed under Section 17 would see that for each child employed in violation of the provisions of the Act, the concerned employer pays Rs. 20,000, which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund, making it clear that the liability of the employer would not cease even if he would desire to disengage the child presently employed.

7. The Hon'ble Supreme Court in its decision in the aforesaid case issued various directions requiring the concerned States to follow them. Under one of the directions issued, the State Government was required to make a survey of the offending employers of the child labour, which was to be completed within six months from the date of the judgment. It was directed that it would be the duty of the Inspectors to see that the call of the Constitution, as clarified in the decision, was carried out providing that a district could be the unit of collection so that the executive head of the district keeps a watchful eye on the work of the Inspectors. The Apex Court observed that on the directions given by it being carried out penal provisions contained in the aforesaid Act would be used where employment of a child labour, prohibited by the Act, is found.

8. The respondent-State issued a notification dated November 28, 1996, published on January 24, 1997 whereunder exercising the powers conferred by Section 17 of the Child Labour (Prohibition and Regulation) Act, 1986, it appointed all the Jila Panchayats constituted under the Panchayat Raj Adhmiyam 1993 (No. 1 of 1994) within the local limits of their jurisdiction provided under said Act No. 1 of 1994 as Inspectors for the purpose of Section 17 of the said Act No. 61 of 1986. Later on, the State Government exercising the same jurisdiction appointed vide the Notification dated March 19, 1997 published on March 20, 1997 all the members of survey team constituted by the District Collector as Inspectors within their respective jurisdiction for the purposes of securing compliance of the provisions of the said Act.

9. Learned counsel for the petitioners besides raising various other submissions in support of the writ petitions have strenuously urged

that the impugned order stands vitiated in law as it has been passed in utter disregard of the elementary principles of natural justice without affording any reasonable opportunity of being heard, although under the impugned order onerous liability has been fastened on them by the respondent authority.

10. It is urged that before recording a finding that the petitioners had employed a child labourer and they fell within the ambit of an 'offending employer' an opportunity ought to have been afforded to them to establish that it was not so and the order saddling the petitioners with the impugned liability could have been based not on the substantive satisfaction of the respondent-authority but on an objective satisfaction after considering the relevant material brought before them giving full opportunity to the petitioners to atleast rebut the evidence which was sought to be utilised and relied upon by the respondent-authority against them. This having not been done, it is urged, the impugned order cannot be sustained in law and deserves to be quashed.

11. The contesting respondents in their counter affidavit have asserted that it was in compliance to the directions of the Hon'ble Supreme Court that the Inspectors had surveyed from place to place and wherever the child labour was found a report was prepared and a notice was issued for deposit of Rs. 20,000 for each child labourer. It has been further asserted that in fact it was not necessary for the respondents to hear the respondents or give opportunity to them and in the circumstances a direction was issued for depositing Rs. 20,000 for each child labourer found working with them. It is claimed that this direction for deposit of Rs. 20,000 was not as a penalty or fine but it was required to be deposited in compliance with the directions of the Hon'ble Supreme Court. It has further been asserted that after the completion of the survey, the Collector of the concerned district got verification of the same and had submitted an information to the Chief Secretary of the State, who is to submit the information of child labour workers found working before the Hon'ble Supreme Court, and this survey of child labour was completed in accordance with the directions and guidelines of the State Government issued from time to time.

12. It seems to me that without going into the other submissions made by the petitioners, these writ petitions can be disposed of on a short ground as to whether the impugned action can be said to be initiated in law on account of it being violative of the principles of natural justice.

13. It must be emphasised that natural justice is a concept which has succeeded in keeping the arbitrary actions of the authorities within the limits and preserving the rule of law. But, with all the religious rigidity with which it should be observed, since it is ultimately

weighed in balancing of fairness, the Courts have been circumspect in expanding it to the situations where it would cause more injustice then justice.

14. Further that, which is not fair and just is unreasonable and what is unreasonable is arbitrary. However, there is nothing rigid or mechanical about the rules of natural justice. The principles and procedure relating to them have to be applied which is right, just and fair as natural justice is nothing else but fair play in action.

15. I am of the clear opinion that for ensuring compliance of the principles of natural justice the first rule is that the person making a finding in the exercise of investigative jurisdiction must have his decision on the evidence that has some probative value in the sense described below. The second rule is that he must consider any relevant evidence conflicting with the finding and any rational argument against the finding that a person represented at the inquiry whose interest may be adversely affected by it may wish to place before him or would have so wished if he had been aware of risk of the finding being made. The technical rules of evidence applicable to civil or criminal litigation form no part of the rules of natural justice. What is required by the first rule indicated here in above, is that the decision to make the finding must be based on some material that tends logically to show the existence of facts consistent with the findings and that the reasoning supportive of the finding if it be disclosed is not logically self-contradictory. The second rule requires that any person represented at the inquiry who will be adversely affected by the decision to make the finding should not be left in the dark as to the risk of the finding being made and thus deprived of any opportunity to adduce additional materials of probative value which had it been placed before the decision maker might have deterred him from making the finding even though it cannot be predicated that it would inevitably have had that result. But, there is nothing rigid or mechanical about the aforesaid principles. They are to be applied in particular set of circumstances in a right, just and fair manner as in essence it is only fair play in action.

16. In the present case, the Hon'ble Apex Court had not issued any blanket direction requiring an Inspector to raise the demand identifying a person as an 'offending employer' merely on his subjective satisfaction or to come to a conclusion about his having employed a child labour on such a satisfaction.

17. I am of the clear opinion that before saddling the employer with the liability to pay the amount, the Inspector had to arrive at finding on an objective satisfaction and ought to have disclosed to the alleged

offending employer the material sought to be utilised and relied upon against him.

18. The respondents have taken up the stand that the finding on the aforesaid relevant questions which had been arrived at before raising the demand were based on a survey report carried out by the Inspector and further that it was not necessary for the respondent-authority to hear the petitioners or give any opportunity to them as claimed. This it seems to me, was never intended.

19. A learned Single Judge of this Court in its decision in the case of Amolak Chand Jain v. State of Madhya Pradesh, in Writ Petition No. 927 of 1997, decided on October 13, 1997, had clearly held that it was incumbent upon the respondents to afford an opportunity of hearing before recording a finding in regard to a person being an 'offending employer' or the employee being a child labourer. I am in respectful agreement with the aforesaid view.

20. If the matter is viewed from the aforesaid angle, that being the only view, I find absolutely no difficulty in quashing the impugned order.

21. Taking into consideration the facts and circumstances brought on record and my conclusions, indicated hereinabove, sufficient ground has been made out for interference by this Court.

22. In the aforesaid view of the matter these writ petitions succeed in part.

23. The impugned orders dated May 16, 1997 passed by the Inspector, Child Labour (Prohibition and Regulation) Act, 1986, a copy of which has been filed as Annexure P-1 in Writ Petition No. 1014/1997 and the order dated June 12, 1997 passed by the Inspector, Child Labour (Prohibition and Regulation) Act, 1986, a copy of which has been filed as Annexure P-1 in Writ Petition No. 31 of 1998, are quashed with the direction to the respondent No. 2, Labour Officer, Labour Sub-Division Guna to reconsider the matter in the light of the observations made hercinabove and pass a fresh order in accordance with law.

24. The petitioners are directed to appear before the respondent No. 2, Labour Officer. Labour Sub-Division, Guna/Inspector, Child Labour (Prohibition and Regulation) Act, 1986, along with a certified copy of this order within a period of two weeks. The said authority shall decide the matter afresh finally as provided hereinabove within a period not later than six weeks from the date of production of the certified copy of this order before the said authority.

25. There shall, however, be no order as to costs.

Madhya Pradesh High Court

Bhaiyalal Shukla And Ors. vs State Of M.P. And Ors. on 12 March, 1999

Equivalent citations: (2000) ILLJ 640 MP

Author: C Prasad

Bench: C Prasad

JUDGMENT

C.K. Prasad, J.

1. In all these writ petitions, common questions of law and facts arise and as such they are being disposed of by this common order. In the writ Petitions filed under Articles 226 and 227 of the Constitution of India, petitioners pray for quashing of the notice issued by the Inspector appointed under the Child Labour (Prohibition and Regulation) Act, 1986 whereby, it has asked the petitioners to deposit various amounts on account of the fact that child labour were engaged in their establishment. It is the stand of the petitioners that the Inspector straightaway cannot make demand of the amount indicated in the notice without giving the petitioners opportunity to be heard in the matter.

2. Stand of the respondents is that in view of the judgment of the Supreme Court in the case of M.C. Mehta v. State of Tamil Nadu, (1997-II-LLJ-724) (SC) said mode is permissible. This question pointedly came up for consideration before a learned Single Judge of this Court in the case of Prabhudas Kishoredas Tobacco Products Ltd. v. State of M. P. and Ors. decided on March 5, 1998 vide W.P No. 4809/1997, dated March 5, 1998 and in the said case, it has been held as follows:

   "7. The question that falls for determination is whether the Competent Authority is justified in raising the demand without issuing any show cause to the petitioner indicating that there is violation of the provisions of the Act and, therefore, it is liable as has been envisaged in the Act. As is apparent from Annexure P-7 series, the demand has been made by the Competent Authority/Inspector solely on the basis of the decision of the Apex Court. Needless to emphasise the Apex Court had never intended that straightaway demand could be raised without hearing the employer who is likely to be affected. Their Lordships have held that if there is violation of the provisions of the Act the employer is liable to pay Rs. 20,000 as compensation per child. But there has be to be an adjudication process for determining the violation of the provisions of the Act. At this juncture, I may refer to the decision rendered in the case of Amolakchand Jain v. State, W.P.

No. 927/1997, disposed of on October 18, 1997 wherein, this Court considering the fact that opportunity of hearing was not afforded to the petitioner therein to explain the position, quashed the impugned demands on that ground and granted liberty to the Competent Authority to issue fresh order in accordance with law after hearing the employer in question."

3. The plea taken by the respondents in the present case is one and the same as in the aforesaid case. Following the aforesaid, I find that the demand notice is not sustainable and the same stands quashed. Respondents are further restrained from taking any consequential action in pursuance of the demand notice. As the demand notice has been quashed only on the ground that petitioners were not being given opportunity before passing the same, I do hereby direct the petitioners to appear before the Competent Authority on April 26, 1999 on which date the Competent Authority shall hand over the notice of show cause to the petitioners. Petitioners shall be given liberty to file its objection and explanation and the authority concerned shall decide the matter in accordance with law and pass a speaking order.

4. In the result, all the Writ Petitions stand allowed with the aforesaid direction. No cost.

Madhya Pradesh High Court

Raj Homes Pvt. Limited Vs State Of M.P. and Anr. on 4 December, 2002

Equivalent citations: (2003) IIILLJ 626 MP

Author: A Mishra

Bench: A Mishra

ORDER

Arun Mishra, J.

1. Petitioner in this writ petition assails the validity of the order P/6 passed on July 1, 2002 by the Assistant Labour Commissioner, Bhopal District, Bhopal under the Child Labour (Prohibition and Regulation) Act, 1986, by which the petitioner has been directed to make payment of Rs. 20,000/- per labour and release the child labour and in case the petitioner does not deposit the amount, same shall be considered to be disobedience of the order passed by the Apex Court and the matter shall be referred for appropriate action to Hon'ble the Supreme Court. In case the amount is not deposited the same shall be recovered as an arrear of land revenue.

2. A show-cause notice P/1 was issued to the petitioner on August 23, 2002. On the basis of inspection report, petitioner was required why not legal action be not initiated against the petitioner for violation of Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986. Petitioner submitted a reply P/2 to the show-cause notice and contended that the petitioner involved in selling the houses. The houses are constructed through the contractors. Petitioner is involved in selling of the houses. The labourers are employed by the contractors. Hence, the show-cause notice is not based on proper enquiry. On October 20, 2001 the construction of the houses in question was not started. Petitioner has tried to ascertain the names of the labourers employed by the contractor, but, could not come to know of the names mentioned in the notice. Thus, the same creates doubt as to correctness of the notice. Show-cause notice has been issued after six months. Thus, no action can be taken. Petitioner submits that in accordance with the instructions P/4 issued by the Labour Commissioner, Madhya Pradesh, Indore on December 23, 1998, opportunity of hearing should be granted and a speaking order should have been passed and cases be decided within a month and hearing should be done by the Assistant Labour Commissioner or Labour Officer. Petitioner submits that the prosecution launched is bad in law so also the impugned order. Criminal case has also been

filed before the Chief Judicial Magistrate, Shahjahanabad, Bhopal on the basis of inspection report dated October 23, 2001 for violation of Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986, which is punishable under Section 14(1)(3) of the Act. Petitioner has filed reply to the recovery order P/6. It is contended by the petitioner in the reply P/7 that petitioner has not been found guilty of the charges by the Court. Labour Commissioner could not issue the order. Same is not in accordance with the: decision of the Apex Court.

3. Learned counsel for the petitioner assails the validity of the order on the ground that proper enquiry has not been conducted before passing the impugned order. Evidence should have been recorded. Order has not been passed within six months.

4. In W.P. No. 4795/2000, Raj Kumar Tiwari v. State of M. P. and Ors., decided on August 21, 2002, the decision of Apex Court in M.C. Mehta v. State of Tamil Nadu, AIR 1997 SC 699 : 1996 (6) SCC 756 was considered:

3. The Apex Court in M, C. Mehta v. State of Tamil Nadu and Ors., 1996 (6) SCC 756, has 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 upto 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 often 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 above 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 (supra), 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."

5. 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 prepared 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.

6. The Apex Court has held that under the provisions of the Act the inspectors whose appointment is visualised by Section 17 have to secure compliance with the provisions of the Act. The inspectors appointed under Section 17 would see that for each child employed in violation of the provisions of the Act, the concerned employer pays Rs. 20,000/- which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund.

7. In the instant case report of the inspector is available and that is piece of evidence and is based on actual inspection. Notice to inspect has been given in relation to establishment in which the child was employed or permitted to work as mandated by Section 9. If there is dispute as to Section 10 comes into picture and the child has to be referred by the inspector for decision to the prescribed medical authority for determination of the age. In the absence of certificate as to age of the said child granted by the prescribed medical authority, the Apex Court observed that it is for the inspector to ensure the compliance of the Act. The Apex Court has observed as under:

"27. 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 indiction 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 fulfilment of legislative intendment 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 concerned employer 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 districtwise or areawise. The fund so generated shall form corpus whose income-shall be used only for the concerned child. 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."

8. There is nothing to doubt the correctness of the report of the inspector. Age of the child is not disputed. What was the dispute that the construction was not started, but, on spot construction was found and report of the inspector cannot be disbelieved as the child were found working. The reply filed is evasive and self contradictory. On the one hand it is stated that the house was constructed through the contractor, on the other hand it was tried to be contended that the petitioner could not ascertain the name of all the children employed by the contractor. Considering the nature of report, in my opinion the show-cause notice given is proper and no further detailed enquiry was necessitated in the circumstances. Considering the nature of the objection raised by the petitioner, no detailed enquiry was necessary as report of the inspector is prima facie evidence of the facts so found with respect to age if that is disputed of a child labour, then the matter has to be dealt in accordance with Section 10 which situation is not available in the instant case.

9. Counsel for the petitioner has placed reliance on a decision of this Court in W.P. No. 1619/1998, Ircon International Limited and Ors. Vs. State of M, P. and Ors. The facts of the said decision are distinguishable. No opportunity of hearing was granted before issuance of notice of

demand. Here, opportunity has been granted. Show-cause notice was given. Petitioner submitted the reply. Thus, the decision in W.P. No. 1619/1998 is of no assistance to the arguments raised by learned counsel for the petitioner. In the aforesaid decision P/3, this Court held that:

"3. This Court by order dated March 5, 1998 in W. P. No. 4609/1997 after referring to the earlier decision of this Court in the case of Amolchand Jain v. State (W.P. No. 927/1997) disposed of on October 13, 1997 has held that the demands raised without affording an opportunity of hearing to the person affected is unsustainable in law. In the aforesaid case leave has been granted to the competent authority to proceed afresh in accordance with law.

4. In view of the aforesaid decision the demand made under Annexure P-l series deserves to be quashed and accordingly I do so. It would be open to the competent authority to hear the

petitioner/petitioners afresh and consider the contentions and pass a speaking order in accordance with law, to cut-short delay, it is directed that the petitioner/petitioners shall appear before the competent authority on May 15, 1998 on which date the competent authority shall fix a date of hearing and thereafter the petitioner and decide the matter in accordance with law by passing a speaking order.

10. Thus, the facts are totally distinguishable. Opportunity of hearing has been afforded in the instant case show cause notice was given and the decision is in accordance with law laid down by the Apex Court in M.C. Mehta 's case (supra). I do not find any ground to make an interference in the writ petition. Same is dismissed.

Allahabad High Court

Basudeo Lal Srivastava (D).... vs Punjab National Bank on 18 March, 2004

Equivalent citations: 2004 (2) AWC 1871

Author: T Agarwala

Bench: T Agarwala

JUDGMENT

Tarun Agarwala, J.

1. The plaintiff filed a suit praying that the order dated 11.10.1982 passed by the Disciplinary Authority and the order dated 14.7.1983 passed by the appellate authority censuring the plaintiff and fixing his date of birth as 31.10.1925 be declared illegal, invalid, unconstitutional, void and not binding upon the plaintiff. The plaintiff further prayed that a declaration be issued holding that the correct date of birth of the plaintiff was 10.7.1932 and that the plaintiff was entitled to work till the date of superannuation, i.e., 31.7.1992.

2. The plaintiff alleged that he was appointed as a Daftari in Punjab National Bank in December, 1945. when he was only 13 years 5 months old. In the year 1953, the plaintiff, while in service passed the High School examination in which the date of birth was recorded as 10.7.1932. In the year 1965, the plaintiff realised that his date of birth recorded in the service register was incorrect and accordingly he made a representation to the District Manager, Lucknow to correct his date of birth on the basis of the date of birth recorded in the High School certificate. It was alleged that the District Manager, Lucknow, directed the Manager Branch Office, Varanasi, to make the necessary correction in the service agreement of the plaintiff with regard to his date of birth on the basis of the date of birth recorded in the High School certificate. According to the plaintiff, pursuant to the aforesaid direction, the date of birth was corrected and recorded as 10.7.1932 in the service book of the plaintiff. The plaintiff alleged that after a lapse of 17 years, a charge-sheet dated 28.9.1981 was issued alleging that the plaintiff had mentioned different date of birth at various point of time, with the ulterior motive of continuing in the service beyond the age of superannuation. The plaintiff further alleged that without making any enquiry the disciplinary authority passed an order dated 11.7.1983 censuring the plaintiff and fixing his date of birth as 31.10.1925. The plaintiff, thereafter, preferred an appeal, which was rejected, hence the suit.

3. The defendant bank contended that at the time when the plaintiff joined the services of the bank in December, 1945, he had declared his date of birth as October, 1925. Subsequently at different point of time, the plaintiff gave different declarations with regard to his date of birth. The plaintiff deliberately suppressed his previous declarations and by playing a fraud, got an order for correcting his date of birth on the basis of the date of birth recorded in the High School certificate. The interpolation in the date of birth in the service book was noticed in the year 1981 and accordingly the plaintiff was given a notice and subsequently he was charge-sheeted. Since the reply of the plaintiff was not found satisfactory, the disciplinary authority took a lenient view and only censured him and further directed the Regional Manager to determine the date of birth of the plaintiff. The Regional Manager accepted the date of birth as 31.10.1925, as declared by the plaintiff in the Confidential Report Form dated 26.5.1949. The defendant contended that the plaintiffs date of birth as 10.7.1932, could not be accepted on the ground that the plaintiff would have been a minor when he was employed in December, 1945 and that as a minor he could not be employed in the service of the bank in December, 1945. The defendant further contended that the retirement of the plaintiff is governed by the date of birth as declared by him at the, time of his appointment.

4. The trial court after framing various issues and after considering the evidence on record dismissed the suit of the plaintiff holding that the correct date of birth of the plaintiff was 31.10.1925. The trial court further held that the order passed, by the disciplinary authority as well as by the appellate authority was valid and that the principles of natural justice was not violated by the authorities while fixing the date of birth of the plaintiff. The trial court further found that the date of birth recorded in the High School register could not be accepted as the correct date of birth, inasmuch as the basis of recording the said date of birth in the High School certificate had not been explained or proved by the plaintiff by any oral or documentary evidence. The trial court came to the aforesaid finding on the reasoning that the plaintiff had not given any satisfactory explanation as to on what basis did the plaintiff gave his date of birth while filling the High School Examination Form especially when the plaintiff never went to school nor appeared in Middle School and that the plaintiff had appeared directly for the High School Examination. The trial court further held that various forms filled by the plaintiff at different point of time were in the handwriting of the plaintiff and therefore, the plaintiff at different point of time gave different date of birth for vested reasons.

The trial court further found that no representation was made by the plaintiff in the year 1965 with regard to the correction of the date of birth in the Service Register and therefore, the defendant bank had power to rectify the interpolation of the date of birth made in the service book of the plaintiff.

5. The appellate court concurred with the finding of the trial court and dismissed the appeal of the plaintiff. Aggrieved by the judgment of the court below, the plaintiff has preferred the present second appeal.

6. Heard Sri H.N. Singh, the learned counsel for the plaintiff-appellant and Sri K.L. Grover, the learned counsel for the defendant bank.

7. The present second appeal was admitted, on the following substantial questions of law, namely :

   (1) Whether the court below erred in ignoring the date of birth mentioned in the High School certificate; the genuineness whereof was never disputed by the defendant?

   (2) Whether the defendant acted entirely without jurisdiction in changing the correct date of birth of the appellant without affording any opportunity to him of being heard and the entire proceedings being in violation of principles of natural justice were void?

   (3) Whether the court below has erred in law in altogether omitting to consider the admission of the defendant, which has vitiated the order?

   (4) Whether the order dated 26/27.2.1965 of the defendant had become final and was not open to the defendant to proceed on the assumption that the date of birth of the appellant, as mentioned in the High School certificate was not his date of birth?

   (5) Whether the order dated 10.10.1982 passed by the defendant was clearly without Jurisdiction null and void?

   (6) Whether the suit was barred by the provisions of Section 34 of the Specific Relief Act?

8. The learned counsel for the appellant has only raised two submissions for the consideration of this Court. At the outset, the learned counsel for the appellant conceded that as per rules, the date of birth recorded in the service book could only be rectified on the basis of the date of birth recorded in the High School certificate, provided the incumbent had passed the High School before being employed in the service of the bank. The learned counsel for the appellant further conceded that

where the Incumbent passed the High School examination after being employed, then, in that case the date of birth recorded in the service book given by the incumbent at the time of employment would be taken as correct and treated as final and that the date of birth recorded in the High School certificate could not be made the basis for correcting the date of birth in the service book. However, the learned counsel for the appellant contended that the matter with regard to the plaintiffs date of birth was finally settled in the year 1965, in which his date of birth was recorded as 10.7.1932 on the basis of the High School certificate and which was accepted by the defendant bank. Therefore, the bank could not reopen the issue after a lapse of 17 years and that too at the fag end of the plaintiffs career. In support of his contention the learned counsel for the appellant has relied upon a decision of a Division Bench of this Court in Sankatha Prasad v. Zila Basic Shiksha Adhikari, Fatehpur and Ors., 1989 (1) UPLBEC 613. wherein it was held that the date of birth once entered In the service record became final and in the absence of any provision for correcting the date of birth, the same could not be rectified and became final. The learned counsel for the appellant further relied upon a decision of the Supreme Court in Hindustan Lever Ltd. v. S. M. Jadhav and Anr., 2001 (4) 2.16 (SC) (NOC) : (2001) 4 SCC 52, holding that at the fag end of the career, a party cannot be allowed to raise the dispute regarding the date of birth.

9. The aforesaid submissions raised by the learned counsel for the appellant cannot be accepted and has to be rejected. It has come in evidence that the plaintiff had played a fraud and gave different declarations of his date of birth at different point of time. It has also come in the evidence that the plaintiff had suppressed his previous declaration with regard to his date of birth and somehow managed to get the date rectified. The contention of the learned counsel for the appellant that the matter with regard to the date of the birth was finally settled in the year 1965 and cannot be reopened after 17 years is devoid of any merit. If the date of birth in the service book has been interpolated by suppressing material facts and by playing fraud, there is no reason why the bank cannot investigate into the matter and rectify the date of birth, whenever the error comes to light. The judgment of this Court cited by the learned counsel for the appellant is neither helpful nor applicable and in fact goes against the appellant. The said judgment clearly indicates that in the absence of any rules, the date of birth once entered in the service record becomes final. In the present case, the plaintiff-appellant conceded that as per the rules, the date of birth recorded in the service book could not be rectified on

the basis of the date of birth recorded in the High School certificate where the incumbent had passed the High School examination after being employed in service. Thus, as per the rules, the date of birth recorded in the service register at the time of employment became final and the same could not be rectified or corrected on the basis of the date of birth recorded in the High School certificate especially when the plaintiff had passed the High School examination after being employed in service. The rectification of the date of birth in the service book in the year 1965 was made on misrepresentation and by concealment of material facts.

The rectification could not be done in the first place as it was against the rules. When the fraud played by the appellant was detected by the bank, a notice was served upon the plaintiff and thereafter a charge-sheet was issued. After considering the explanation of the plaintiff the date of birth was rectified by the bank. Therefore, when fraud is played upon the bank, it is always open to the bank to rectify the error whenever it is detected. Consequently, for the aforesaid reasons, the judgment of the Supreme Court in Hindustan Levers case (supra), cited by the learned counsel for the appellant is neither helpful nor applicable to the present facts and circumstances of the case. Thus. I hold that the rectification of the date of birth in the service book of the plaintiff made in the year 1965 had not become final and it was open to the bank to rectify the interpolation when the fraud committed by the plaintiff was detected.

10. The learned counsel for the appellant next contended that there was no bar for a minor being appointed in the service of the bank and therefore, the plaintiff was validly appointed in the year 1945 even though he was only 13 years 5 months old at that point of time. In support of his submission, the learned counsel for the appellant invited my attention to Section 3(3) of the Employment of Children Act, 1938, and contended that a child of 12 years old could be permitted to work in a workshop, which is not mentioned in the schedule. Since the bank is not mentioned in the schedule, the plaintiff-appellant was validly appointed even though he was a minor in the year 1945. The argument of the learned counsel for the appellant is devoid of any merit. The main object of the Employment of Children Act, 1938, was to prevent exploitation of child labour in workshops and other specified occupations. The Act regulates the employment of children in certain Industrial employments. Section 3 of the Act prohibits the employment of a child, who had not completed his 15 years in certain occupation mentioned therein. Section 3 (3) of the Act reads as under

"(3) No child who has not completed his (fourteenth) year shall be employed or permitted to work, in any workshop wherein any of the processes set forth in the Schedule is carried on."

11. The year 'fourteenth' was substituted by the word 'twelfth' w.e.f. 1.4.1949. On this basis, the learned counsel for the appellant submitted that a child, who had not completed his twelfth year could be permitted to work in such workshop other than those mentioned in the schedule and since the bank was not mentioned in the Schedule, the plaintiff-appellant was validly appointed as a minor in the year 1945. This argument of the learned counsel for the appellant is wholly misleading and misconceived. In the first place, the defendant bank is neither a workshop nor an Industrial establishment. The Employment of Children Act, 1938, regulates the employment of children in Industrial Employment. The word "workshop" contemplated in Section 3 (3) of the said Act has been defined under Section 2 (d) of the said Act to mean any premises wherein any industrial process is carried on. Admittedly the defendant bank is not a workshop and therefore Section 3 (3) is not applicable, Not only this, the word 'fourteenth' year was substituted by the word "twelfth" year w.e.f. 1.4.1949, whereas the plaintiff was engaged in the service of the bank in the year 1945. Therefore, the amendment in Section 3 (3) of the said Act is not applicable. It is thus clear that the Employment of Children Act, 1938, is neither helpful nor applicable to the plaintiff's case.

12. On the other hand, the defendant had clearly stated in the written statement that no minor could have been appointed in the service of the bank. Even though this fact had been denied by the plaintiff in his rejoinder-affidavit, he has not been able to prove that the bank had employed persons who were minor in age during the pre-independent period. Thus, the contention of the learned counsel for the appellant that the plaintiff, being a minor in the year 1945, could have been appointed in the service of the bank is devoid of any merit and is rejected.

13. Looking into another aspect of the matter, I find, that the plaintiff had given different declarations with regard to his date of birth at different point of time. In the Confidential Report Form dated 26.5.1949, the plaintiff-appellant had declared his date of birth as October, 1925. He had also shown his educational qualifications as "up to High School". In the Confidential Report Form dated 6.2.1951 he had shown his date of birth as 20.10.1929 and had shown his educational qualifications as "Matric plucked", meaning thereby that he failed in his Matriculation examination. In the Identity Form dated 9.6.1952, the plaintiff

declared his date of birth as 10.7,1929 and had shown his educational qualifications as "upto High School". It is in this Identity form in which the plaintiffs date of birth was altered from 10.7.1929 to 10.7.1932. The courts below have found that the entries in the aforesaid forms were made by the plaintiff-appellant himself and were in the handwriting of the plaintiff. The courts below further found that the alteration made in the identify form was made on the basis of the date of birth recorded in the High School certificate and that the Confidential Report Form was suppressed by the plaintiff, thereby misleading the Regional Manager. What is further striking and glaring is that the plaintiff had given his educational qualifications as "up to High School" whereas the plaintiff in his evidence has admitted that he never studied in any school and that he straightaway give his High School examination in the year 1953. Therefore, it is clear that the plaintiff not only furnished wrong information about his educational qualifications, but also gave different date of birth at different point of time with the ulterior motive of continuing in the service beyond the age of retirement. Thus, the disciplinary authority had rightly and validly rectified the mistake and corrected the date of birth of the plaintiff as 31st October, 1925.

14. In Kondiba Dagadu Kadam v. Savitri Bai Sopan Gujar and Ors., 1999 (2) AWC 16O8 (SC): (1999) 3 SCC 722, the Supreme Court held that concurrent findings of fact howsoever erroneous cannot be disturbed by the High Court in the exercise of powers under Section 100, C.P.C. The Supreme Court further held that in a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court would be binding on the High Court in the second appeal.

15. In my view, the concurrent findings of fact given by the courts below requires no interference by this Court in the second appeal. I further find that the conclusion drawn by the courts below are neither erroneous nor contrary to law. Further, I find that no substantial questions of law are Involved in the second appeal, which requires interference by this Court in the exercise of its limited Jurisdiction under Section 100 of the Code of Civil Procedure. Consequently the second appeal is devoid 6f any merit and is dismissed with costs throughout.

Allahabad High Court

Mahesh Kumar Garg And Ors. vs State Of U.P. And Ors. on 11 April, 2000

Equivalent citations: (2000) 2 UPLBEC 1426

Author: P Kant

Bench: P Kant

JUDGMENT

Pradeep Kant, J.

1. 'Child Labour' is a universally acknowledged problem with so un-proportionate and explosive dimensions that it had been a cause of serious concern since long and all Acts. Regulations and declarations made in this behalf had not been able to meet the challenge, effectively. The Child Labour (Prohibition and Regulation) Act, 1986 (hereinafter referred to as the 'Act' for short) was promulgated looking to the fact that although there were number of Acts which prohibit the employment of children below 14 and 15 years in certain specified employment but there was no procedure laid down in any lay for deciding in which employment's occupations or processes, the employment of children should be banned. It was also found that there was also no law to regulate the working conditions of the children in most of the employments where they were not prohibited from working in exploitative conditions. The Act intended to:

   (i) to ban the employment of children i.e., those who have not completed their 14 years in specified occupations and processes;

   (ii) lay down a procedure to decide modifications to the schedule of banned occupations or processes;

   (iii) regulate the conditions of working of children and the employment where they are not prohibited from working;

   (iv) lay down enhanced penalties for employments of children in violation of the provisions of the Act and other Acts which prohibit the employment of children;

   (v) and to obtain uniformity in the definition of the child in the related laws.

2. With the aforesaid objects the Act was enforced wherein a person who has not completed 14 years of age was defined as a 'Child' under Section 2, Sub-clause (ii) of the Act. Section 2, Sub-clause (iv) defines

establishment which includes a shop, commercial establishment, workshop for residential hostel, restaurant, eating house, theatre or other place of public amusement or entertainment. In view of Section 2. Sub-clause (x) workshop means any premises (including the precincts thereof) wherein any industrial process is carried on but does not include any premises, to which the provisions of Section 67 of the Factories Act, 1948 (Act No. 48 of 1948) for the time being, apply.

3. Part-II of the Act which contains Sections 3, 4 and 5 deals with the prohibition of the employment of children in certain occupations and process. Section 3 reads as under:--

   "3. Prohibition of employment of children in certain occupations and processes.--No child shall be employed or permitted to work in any of the occupations set forth in part A of the Schedule or in any Workshop wherein any of the processes set forth in part B of the Schedule is carried on :

   Provided that nothing in this section shall apply to any workshop wherein any process is carried by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government."

4. The power to amend the schedule has been given to the Central Government and the Child Labour Advisory Committee may be constituted by the Central Government for the purpose of advising to the Central Government regarding the addition of occupations and processes to the Schedule.

5. Part-III of the Act deals with the regulation of conditions of work of children, which provides by virtue of Section 6 to an establishment or a class of establishments in which none of the occupations or processes referred to in Section 3 is carried on.

6. Sections 7 and 8 deal with the hours and period of work and weekly holidays respectively.

7. Section 9 makes it mandatory for the employer/occupier to give the requisite notice regarding the employment of a child and reads as under :--

   "9. Notice to Inspector.--(1) Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall within a period of thirty days from such commencement, send to the Inspector within whose local limits the

establishment is situated, a written notice containing the following particulars namely :--

(a) the name and situation of the establishment;

(b) the name of the person in actual management of the establishment;

(c) the address to which communications relating to the establishment should be sent; and

(d) the nature of the occupation or process carried on in the establishment.

(2) Every occupier, in relation to an establishment, who employees, or permits to work, any child after the date of commencement of this Act in relation to such establishment, send the Inspector within whose local limits the establishment is situated, a written notice containing the particulars as are mentioned in Sub-section (1).

Explanation.--For the purpose of Sub-sections (1) and (2), "date of commencement of this Act. in relation to an establishment" means the date of bring into force of this Act in relation to such establishment.

(3) Nothing in Sections 7, 8 and 9 shall apply to any establishment wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government."

8. If there is any dispute regarding the age of a child, the Act provides by means of Section 10 a procedure for resolving such dispute under Section 10 which reads as under :--

"10. Disputes as to age.--If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority."

9. It is obligatory for the occupier to maintain a register under Section 11 in respect of children employed or permitted to work in any establishment, which should be available for inspection by an Inspector at all times during working hours showing the details of the child as provided in Sections 11(1)(b), (c) and (d). Section 13, deals with the health and safety of the children employed are permitted to work in an establishment or a class of establishments for which the appropriate Government is vested with the powers of making rules by issuing a notification and the Official Gazette.

10. Part IV of the Act is under the head of 'Miscellaneous'. Section 14 in this part deals with the penalties which could be imposed over any employer who employs or permits any child to work in contravention of the provisions of Section. Section 16 gives locus standi to any person, police officer or Inspector for filing the complaint of the commission of an offence under this Act, in any Court of Competent Jurisdiction. Sub-clause (2) of Section 16 makes the age certificate, given by the prescribed medical authority, as a conclusive evidence for the purpose of this Act, as to the age of child to whom it relates. The Sub-clause (3) of Section 16 provides that no Court inferior to that of a Metropolitan Magistrate or a Magistrate of the First Class shall try any offence under this Act.

11. Section 17 deals with the appointment of inspectors and reads as under:--

    "17. Appointment of Inspectors.--The appropriate Government may appoint Inspectors for the purposes of securing compliance with the provisions of this Act and any Inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code (Act No. 45 of 1860)."

12. The appropriate Government has been empowered to make rule under Section 18 in the manner prescribed.

13. Various social organisations. N-G.O.s social anthropologists have-seriously considered the menace of child labour and the Supreme Court while tracing the history and the steps taken by the International Labour Organisation in the year 1919 till the promulgation of the present Act, found itself convinced that the measures which have been taken for routing the ill of child labour or exploitation of child could neither prove appropriate nor effective and therefore, in the case, of M.C. Mehta v. State of Tamilnadu, reported in (1996) 6 SCC 756, fastened the employers/occupiers of every establishment given in the Act with a civil liability of paying the compensation of 20,000/- per child in case the employment has been done by the employer or the child is permitted to work in violation of the provisions of the Act. The scheme of the Act did not provide for any such compensation as it only confined to launching of a criminal prosecution against erring employer/occupier under Section 16 of the Act, permitting the Magistrate to impose penalises as provided under Sections 14 and 15 of the Act. The civil liability of making payment at the rate of Rs. 20,000/- per child arises out of the orders passed by the Apex Court in M.C. Mehta's case (supra).

14. The Hon'ble Supreme Court while considering the plight of the child labourer and the causes of such vast magnitude of such exploitation laid down that a Child Labour Rehabilitation-cum-Welfare Fund should be created district wise or area wise. Every offending employer shall deposit Rs. 20,000/- per child in the said fund. The funds so generated shall form corpus whose income shall be used for the child concerned. The quantum could be the income earned, deposited to qua the child. To generate greater income, fund can be deposited in high-yielding scheme of any nationalised bank or other public body. Multiple directions were issued to the States for giving shape to the directions, issued by the Hon'ble Supreme Court in which the States were required to undertake a sincere and vigorous exercise as provided in the report.

15. In para 29 of the said report the Lordships of the Hon'ble Supreme Court observed "...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-of-the-wisp. Now, if employment of child below the age of 14 is a constitutional indication in so far 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 to see to the fulfilment of legislative intendment 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 is to secure compliance with 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."

16. In obedience of the orders passed by the Apex Court various employers have been subjected to recovery proceedings at the rate of Rs. 20,000/- per child, for realisation of which recovery proceedings have been initiated and coercive methods are being adopted for realisation as arrears of the land revenue. The Court is flooded with writ petitions where the employer/occupier of an establishment have

been required to make the payment as aforesaid in pursuance of the recoveries issued by the Labour Inspectors for complying with the terms of the order. It is a common ground in almost all such cases that no opportunity much less any reasonable opportunity have been given to the employers/occupiers before asking them to make the payment or compensation and the recovery proceedings have been initiated without giving any such opportunity. In some cases show cause notices have been issued by the Labour Inspectors and the reply is submitted by the employers/occupiers but without deciding the objections a final recovery certificate is issued and the recoveries have been initiated. Further, grievance is that even if the employers/ occupiers disputes the age of the alleged child the Labour Inspector does not proceed to get the age determined by the Prescribed medical authority and proceeds to make recoveries. Likewise even if the objection is to the effect that the so called child was never in employment of the establishment nor they were permitted to work, such objections are not considered at all.

17. In the instant case a show cause notice was issued to the petitioners on 24.6.1999 in pursuance of an inspection made by the Survey team on 2.2.1999, stating therein that the petitioners have violated the provisions of Section 3 of the Act and therefore, they should show cause within a period of 7 days as to why action should not be taken against them in this regard. The petitioner No. 1 who is the partner of the petitioner No. 2 submitted his reply to the Labour Enforcement Officer. Gonda on 17.7.1999. In his reply the petitioner asserted that the said children shown to be in their employment have never been remained in their employment nor they were engaged by him. A further objection was raised that no evidence has been provided to the petitioners regarding the age of the aforesaid children nor any certificate of the prescribed medical authority has been made available. Besides this, certain other objections were also raised regarding the non-making of the inspection on 2.2.1999 etc. After submission of the reply to the show cause notice the petitioners were not informed about any decision taken on their reply and straightforward recovery proceedings were initiated by coercive means which have been informed by the citation demands issued by the Tehsildar, Gonda (Sadar) for an amount of Rs. 1,32,000/- as contained in Annexure I. Learned Counsel for the petitioners submits that the authorities were not at liberty to proceed with the recovery, that too by adopting coercive methods without deciding the objections raised "by the petitioners. As a corollary to the aforesaid arguments, the learned Counsel for the petitioners further submits that the petitioners were not afforded any opportunity

much less reasonable opportunity to support their defence nor were they given any opportunity of hearing. Besides this the ages of the children have not been got determined under Section 10 of the Act by the prescribed medical authority. The arguments is that the firstly, so named children were not employed by them and second, there was no basis or evidence with the Labour Enforcement Officer even prima facie to take their ages below 14 years.

18. This Court in the case of Anil Kumar Agarwal v. Assistant Labour Commissioner and Ors.,reported in 1998 (16) LCD 1028, has considered the question of affording opportunity to the erring employer/occupier before he is made to make payment of compensation at the rate of Rs. 20,000/- per child. In deference of the orders passed by the Hon'ble Supreme Court Hon'ble S.R. Singh, J. while taking into account the various provisions of the Act and also the Constitutional provisions contained in Articles 23 and 24 of the Constitution of India held in para 7 of the said report which is as under:--

"7. Right against exploitation is guaranteed by Articles 23 and 24 of the Constitution. Article 39(f) casts a duty upon the State to direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Infringement of fundamental right guaranteed by Article 24, it seems, is a tort which is actionable per se that is without proof of actual damage and consent by the child and/or his parents is not defence and if right to education is a fundamental right. State is equally liable to pay compensation for not providing free education to children; upto the age of 14 years belonging to weaker section of Society. There is no denying the fact that the laudable constitutional objectives afore-stated were sought to be achieved by the Supreme Court in the manner indicated in M.C. Mehta's case (supra), but the principle of law well-settled is that no man should be condemned unheard and therefore, follows that before, an employer is asked to pay compensation he must be given reasonable opportunity of being heard as against the report submitted by the Inspector for realisation of the compensation at the rate of Rs. 20,000/- per child. The objections, if any, filed by the employer on receipt of the show cause notice must also be reckoned with analytically in a lawful and adjudicatory manner before proceeding to realise the amount of compensation. The imperative function of the Inspector appointed under Section 17 of the Act, is to secure compliance with the provisions of the Act, and see that for each child employed in antagonism of the provisions of the Act, the

Employer concerned pays Rs. 20,000/-. The position of the Inspector quo, the provision encapsulated in the Act is that of Prosecutor and it must not be expected of him to discharge the adjudicatory functions. It would have been ideal, if the "appropriate Government" had been provocative in framing the rules and procedure for the enforcement of rights and liabilities arising from large scale infringement of fundamental rights of the children below the age of 14 years as a result of failure to perform path law duty under the Constitution which is sue generis i.e., a class in itself as recognised by the Supreme Court in its judgment in M.C. Media's case. In the absence of rules. I find no other judicial alternative/forum for adjudication of any dispute arising out of Inspection Report except the authorities empowered to issue recovery certificates for realisation of the amount of compensation vide G.O. dated 5.6.1998, namely, the Addl./Deputy/ Asstt. Labour Commissioner who are well equipped to perform adjudicatory function after notice to the Employer to show cause why the recover)' certificate for realisation of the amount of compensation at the rate of Rs. 20,000 per child be not issued. It cannot be repudiated that Addl./ Deputy/Asstt. Labour Commissioner appointed for issuance of a recovery certificates are independent authorities and being connected with adjudication of Labour disputes, it would be within their briefs to decide any controversy such as the controversy whether the child labour is below 14 years and whether the child labour said to have been engaged is pursuing any employment of hazardous nature. In Seth Benarsi Das v. District Magistrate/Collector, Meerut, (1986) 2 SCC 689, the Supreme Court held that proceedings for recovery are like execution proceedings and Recovery Officer/Collector too can examine all questions going to the root of liability but since the Government have appointed Addl./Deputy/Asstt. Labour Commissioner to issue recovery certificates propriety dictates that disputes, if any, going to the root of liability be resolved by such officer before issuing the recovery certificates."

19. Thus in respectful obedience to the orders passed by the Hon'ble Supreme Court, Hon'ble S.R. Singh, J. found that it was necessary for him to create a alternative forum for adjudication of any dispute arising out of any inspection report.

20. I am in respectful agreement with the view taken by Hon'ble S.R. Singh, J. in the aforementioned case. However, I would like to add that placing absolute reliance upon the report of the Labour Inspector/ Labour Enforcement Officer for the purpose of making liable the employer/occupier to pay the compensation at the rate of Rs. 20,000/- per child without giving any reasonable opportunity to the offending

employer/occupier would not be in consonance with the principle of natural justice and would also be violative of the principle of 'Audi Alterm Partem' secondly the jurisdiction or authority to impose and realise the amount of compensation would only arise if it is found that a child has been engaged 'in contravention of the Act'. The Labour Inspectors whose function is to secure compliance with the provisions of the Act cannot be entrusted with adjudication function.

21. Under the Scheme of the Act the employers/occupiers could be subjected only to criminal proceedings and in case it is found that they have contravened the provisions of the Act, they are liable to be punished as per the provisions of the Act. The Civil liability to pay the compensation for violating the provisions of the Act in engaging the child labour mandates from the law propounded by the Hon'ble Supreme Court in M.C. Mehta's case (supra). The moment a liability more so a civil liability is to be fastened upon any employer/occupier, it inherently requires the determination of liability by some authority before proceeding to make recoveries in pursuance thereof. As a consequence, for this determination it goes without saying that the offending persons should be given opportunity before the liability could be imposed, since there may not be any determination of liability without knowing the version of the other side. 'Civil liability' is 'independent of criminal liability' as envisages under the Act. The two liabilities have to be determined separately. The Supreme Court's observation that it is the duty of the Inspector to secure compliance of the provisions of the Act. would mean that if it is found that child labour has been engaged in contravention of the Act the offending employer, would be liable to pay the compensation. This necessarily means that the contravention of the Act has to be found first and only thereafter the compensation can be asked, but if no compensation of any provision of the Act, is detected, the question of asking for any compensation does not arise.

22. In the case, where only the age of the child is disputed by the employer/occupier it is bounded duty of the Inspector to refer the matter to the prescribed medical authority under Section 10 of the Act. The certificate so granted by the Prescribed Medical Authority, would be conclusive evidence regarding the age of the child for the purpose of this Act. In case, the Prescribed Medical Authority records the age of the child below 14 years, that would to be conclusive for launching criminal prosecution for punishing the offending employer/occupier under the provisions of the Act. But in case, the age is found to be more than 14 years, no prosecution can be launched. The contention that unless the prosecution launched against the employer, in which he is found

guilty for violating the provisions of the Act, no money (compensation) can be recovered from him, cannot be said to be correct interpretation of the Act and the Specific directions issued by the Hon'ble Supreme Court. As already stated the civil liability of paying compensation has nothing to do with the criminal prosecution under the Act and both can continue simultaneously. It is no-doubt true that if the age of the child is disputed by the employer/occupier and the challenge is made to the age mentioned in the inspection report, the reference has to be made to the Prescribed Medical Authority by the Inspector himself. Failure to make reference in accordance with the provisions of Section 10 would render the action of realisation of compensation as invalid. Section 10 which deals with the determination of the age, in case of dispute regarding the age of child, has to be taken assistance of even, in the matter where civil liability is to be fastened upon the employer/ occupier.

23. In the case of disputed age once the Prescribed Medical Authority grants certificate it may not be necessary for any other authority to adjudicate upon the said matter and it would also not be necessary to get the said dispute decided before the alternative forums as provided by Hon'ble S.R. Singh, J. in the case of Anil Kumar Agarwal (supra).

24. So far other objections like non-employment and non-engagement of the child by the employer/occupier or like objections are concerned, they have to be decided by the authority as provided in the aforesaid judgment of Anil Kumar Agarwal (supra), namely viz., By the Addl./ Deputy/Asstt. Labour Commissioner. The necessity to provide a forum for determination of such disputes arises because firstly absolute and total reliance cannot be placed upon the inspection report, that too, without affording any opportunity to the offending employer/occupier which necessarily requires that the matter should be considered by an authority who is competent to look into the same. The Inspector himself being the complainant cannot be authorised to decide these objections, which are against his own report. Any decision given by the Inspector, in such a case may fail on the charge of 'bias' and also because 'no one can be Judge of his own cause'.

25. The Supreme Court also while reminding the Inspectors, that it is their duty to secure compliance of the provisions of the Act was conscious of the machinery provided under the Act. The violation of the provisions of the Act has to be determined by the machinery provided therein. If no machinery has been provided for the purpose, under the Act, then independent forum has to be formed. The instructions issued by the Apex Court, only supplement the existing law and an attempt has

been made to fill in the gaps in the Act, for making it more effective and useful. Such directions have been issued. Only in occurance of the object of the Act.

26. Since in the instant case no decision has been taken on the objections filed by the petitioners and the recovery has been initiated, I provide that the Assistant Labour Commissioner shall consider the objections and decide the same expeditiously. I do not propose to quash the recovery certificates but direct that the recovery shall remain in abeyance till the objections are decided by the Assistant Labour Commissioner.

27. I., therefore, provide that in all cases of like nature an inspection has to be made by the Inspector and in case, the Inspector is of the view that the Child Labour has been engaged in contravention of the Act, a show-cause notice shall be issued to the offending employer/ occupier who within the time stipulated, may file objection against the said inspection report raising the plea regarding the age or any other relevant objections. The matter shall be considered any decided by the alternative forum as ordered by Hon'ble S.R. Singh, J. In the case of Anil Kumar Agarwal, namely Addl./Deputy/Assistant Labour Commissioner by exercising adjudicatory function in accordance with the directions issued in the said order.

28. With these observations the present writ petition is disposed of

Allahabad High Court

Matrumal Sharma And Anr. vs The Chief Inspector Of Shops And ... on 25 March, 1952

Equivalent citations: AIR 1952 All 773

Bench: Misra, Beg

ORDER

1. This is a petition under Article 228 of the Constitution praying for transfer of a pending criminal case against the petitioner from the Court of the City Magistrate to this Court.

2. The first petitioner, Matrumal Sharma is the proprietor of Sharma Restaurant in Aminabad, Luckhow. Niranjan Lal Sharma, the second petitioner is its manager. Both of them are being criminally prosecuted under Section 27, U. P. Shops and Commercial Establishments Act, for failure to maintain a register of attendance of employees as required by Rule 13 framed under Section 31 of the Act.

3. Section 26 provides:

   "Subject to any general or special order of the State Government, an employer shall maintain such registers and records and display such notices as may be prescribed."

4. Under Section 31, the State Government is empowered to make rules to carry out the purposes of the Act. It expressly confers rule-making powers with, respect to the maintenance by the employer of registers and records and to regulate "matters which are to be or may be prescribed."

5. Rule 13 enjoins that every employer must maintain a register of attendance and wages in form E and another register of holidays in form F. According to the prosecution case, the applicants are governed by the U. P. Shops and Commercial Establishments Act & they are liable to punishment under Section 27 for infringing the aforementioned rule. Section 27 makes the contravention by an employer of any provision of the Act or any rule or order made thereunder punishable with fine which may extend to fifty rupees for the first offence and to five hundred rupees for every subsequent offence after the first conviction.

6. The defence was based principally on two grounds: (1) That the applicants were not governed by the Act in view of Section 4 which provides that it shall not apply to persons whose work is inherently intermittent such as a traveller or canvasser, it being urged that such was the nature of the work in the applicants' restaurant, and (2) That

the Act infringes the fundamental rights guaranteed under Articles 14 and 19(1) of the Constitution.

7. The criminal case was fixed for hearing in the Court of the City Magistrate for 23-7-1951. On that date the petitioner approached this Court for withdrawal of the case to the High Court under Article 228 of the Constitution which lays down that:

"If the High Court is satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may-

"(a) either dispose of the case itself, or

"(b) determine the said question of law and return the case to the Court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said Court shall on receipt thereof proceed to dispose of the case in conformity with such judgment."

8. The sole question which has been argued and which calls for determination is whether the case against the petitioners involves any substantial question as to the interpretation of the Constitution, the determination of which is necessary for the disposal of the case. It has to be noticed in the first place that if the defence that the Act does not apply to the petitioners succeeds, no decision regarding the Constitutionality of the Act would arise. In order, however, to put an end to the controversy raised on behalf of the petitioners, we think it would be proper to dispose of the application on merits rather than to reject it on the ground that the decision of the constitutional point is not essential at this stage. We will proceed, therefore, to consider as to whether there is a substantial question of interpretation of the Constitution, in other words, whether the Act infringes the fundamental rights conferred by Articles 14 and 19(1)(g) of the Constitution on every citizen of the Indian Union.

9. Article 14 guarantees to every person equality before the law or the equal protection of the law within the territory of India. Section 4 of the impugned Act provides that nothing in it shall apply to

"(a) persons occupying positions of a confidential, managerial or supervisory character:

"Provided that the number of employee so exempted in any shop or commercial establishments shall not exceed ten per cent of the total number of persons employed in such shop or commercial establishment:

"Provided also that in any shop or commercial establishment which employs five persons or less no employee shall be exempt from the provisions of this Act;

(b) persons whose work is inherently intermittent, such as a traveller or canvasser;

(c) offices of Government or of local authorities;

(d) establishments for the treatment or the care of the sick, infirm, destitute, or mentally unfit;

(e) members of the family of any employer."

10. The petitioners maintain that the Act denies equality amongst halwais and restaurant-keepers to which class they belong inasmuch as it prescribes the observance of certain formalities by a class of halwais and restaurant-keepers and subjects them to restrictions and penalties while exempting from its operation classes of persons mentioned in Clauses (a) to (e) and in particular the halwais and restaurant-keepers who carry on their trade with the aid of members of their own family without employing outside labour.

11. The equality referred to in Article 14 has recently been the subject-matter of consideration of their Lordships of the Supreme Court in 'CHARANJIT LAL v. UNION OF INDIA', AIR 1951 S C 41. The interpretation placed by Mukherjea J. with which the Chief Justice of India agreed may be reproduced with advantage:

"It must be admitted that the guarantee against the denial of equal protection of laws does not mean that identically the same rules of law should be made applicable to all persons within the territory of India in spite of differences of circumstances and conditions. As has been said by the Supreme Court of America 'equal protection of laws' is a 'pledge of the nrotection of equal laws'. See 'YICK WO v. HOPKINS', (1886) 118 U S 356 at p. 369, and this means 'subjection to equal laws applying alike to all in the same situation' Vide SOUTHERN RAILWAY CO. v GREENE', (1910) 216 U S 400 at p. 412. In other words, there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is the same. I am unable to accept the argument of Mr. Chari that a legislation relating to one individual or one family or one body corporate would per se violate the guarantee of the equal protection rule.

There can certainly be a law applying to one person or to one group of persons and it cannot be held to be unconstitutional if it is not discriminatory in its character. (See Willis, Constitutional Law, p. 580). It would be bad law 'if it arbitrarily selects one individual or a class of individuals, one corporation or a class of corporations and visits a penalty upon them, which is not imposed upon others guilty of like delinquency'. See 'GULF C. & S. F. R. CO. v. ELLIS', (1897) 163 U S 150 at 159. The Legislature undoubtedly has a wide field of

choice in determining and classifying the subject of its laws, and if the law deals alike with all of a certain class it is normally not obnoxious to the charge of denial of equal protection; but the classification should never be arbitrary. It must always rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which the classification is made; and classification made without any substantial basis should be regarded as invalid. See 'SOUTHERN RAIL WAY CO. v. GREENE', (1910) 216 U S 400 at 412."

12. Patanjali Sastri J. who differed from the other learned Judges on the merits of the application nevertheless considered it undeniable that equal protection of the laws cannot mean that all laws must be quite general in their character and application. He observed that:

"A Legislature empowered to make laws on a wide range of subjects must of necessity have the power of making special laws to attain particular objects and must, for that purpose, possess large power of distinguishing and classifying the persons or things to be brought under the operation of such laws provided the basis of such classification has a just and reasonable relation to the object which the legislature has in view. While for instance a classification in a law regulating labour in mines or factories may be based on age or sex it may not be based on the colour of one's skin. It is also true "that the class of persons to whom the law is made applicable may be large or small and the degree of harm which has prompted the enactment of a particular law is a matter within the discretion of the law makers. It is not the province of the Court to canvass the legislative judgment in such matters."

13. According to Dicey, equality before the law means the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts. He says that: " 'the rule of law' in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals....." (Dicey on the Law of the Constitution, 1948 edn. pages 202-203).

14. Article 14 of the Constitution aims against the conferment of special privileges at law on account of birth, religion, caste or creed and enjoins equal subjection of all persons and classes of persons to the laws of the land without distinction of race, wealth, social status or political affiliations. Applying the principles enunciated by their Lordships of the Supreme Court, it cannot but be held that the inequalities complained of do not come within the constitutional inhibitions of Article 14.

15. The argument relating to the infringement of the freedom to practice the profession of their choice or to carry on any occupation, trade or business rests on three features of the Act. It is urged that inasmuch as the Act (1) regulates the hours of regular and over time work of the employees; (2) regulates the number of holidays and the extent of sick leave and (3) necessitates the keeping of registers of attendance, fines and overtime work etc., it infringes the applicants' right to practice their trade as halwais or restaurant-keepers.

    Sub-article (6) of Article 19 lays down that nothing in Article 19(1)(g) shall affect the operation of any existing law in so far as it imposes reasonable restrictions on the exercise of the right of freedom of profession in the interest of the general public and in particular nothing in the Sub-clause (g) shall affect the operation of any existing law in so far as it prescribes the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business. The freedom referred to does not mean the freedom to carry on a trade or profession in a way which may be prejudicial to the public interest and it has, for example, been generally recognized that the State may validly prohibit gambling or immoral occupations, the employment of child labour in certain industries, the licensing of certain kinds of business in the interest of the public safety or regulate the conditions for the manufacture of foodstuffs or chemical products etc.

    The avowed object of the Act as shown by its preamble is to provide for holidays and to regulate and lay down conditions of and the hours of employment in shops and commercial establishments. It is made applicable to all cases falling outside the purview of Section 4 where labour is employed. The regulation of the hours of work of the employees or the prescription of holidays and sick leave or the insistence on the observance of the legislative requirements to keep proper records of attendance, fines or overtime work, does not it would seem prima facie deny the freedom of profession. Its underlying purpose is to prevent what is called 'sweating of labour' by persons who by nature of their position as employers have a dominant voice and are apt to use it for their own benefit rather than for the benefit of their own employees.

16. As a result of what has been said above, there is no substantial question of law as to the interpretation of the Constitution involved in the criminal case and recourse, therefore, to Article 228 is unjustified.

17. We dismiss the application with costs which we fix at Rs. 160/-. The interim order of stay dated 24-7-1951, is vacated.

Allahabad High Court

U.P. State Sugar Corporation ... vs Ambika Singh And Another on 4 December, 1998

Equivalent citations: 1999 (1) AWC 887

Author: R Trivedi

Bench: R Trivedi

JUDGMENT

R.R.K. Trivedi, J.

1. In this petition counter-affidavit has been filed by respondent No.

1. Learned counsel for the parties agreed that the writ petition may be decided finally at the admission stage.

2. Mahabir Sugar Mills, Diswa Bazar, district Mahrajganj was acquired by the State of U. P. under the provisions of the U. P. Sugar Undertakings (Acquisition) Act, 1971 and after acquisition, its control and management vested in the U. P. State Sugar Corporation (hereinafter referred to as the Corporation) with effect from 28.10.1984.

3. Respondent No. 1 Ambika Singh, an employee of petitioner corporation, had joined as engine driver on 6.9.1947. In the particulars of service maintained by the erstwhile Mahabir Sugar Mills, his date of birth was recorded as 22.9.1929. The name of the post and department mentioned were engine driver in season and fitter Mazdoor in off season, engineering department. Respondent No. 1 was served with a notice dated 31.8.1989 intimating that he shall attain the age of superannuation on 31.10.1989 on completing 60 years of age and he will be relieved from service with effect from 1.11.1989. He was also intimated that after being relieved from service, he may get his account cleared with regard to retiral benefits. The aforesaid notice of retirement, it appears, was served in compliance of the requirement provided in sub-clause (5) of clause LL of the Standing Orders governing the conditions of employment of workmen in Vacuum. Pan Sugar Factories of the State (hereinafter referred to as the Standing Orders). The Standing Orders were published in Official Gazette as Notification No. 5692 (H.D/36-2-110 (H.I) /77, dated 27.9.1988 under the order of the Governor under clause 3 of Article 348 of the Constitution of India. Respondent No. 1 challenged the notice of retirement before the Deputy Labour Commissioner, Gorakhpur, respondent No. 2, under sub-clause (6) of clause LL

which was registered as S. O. Dispute No. 7 of 1990. The Deputy Labour Commissioner by his order dated 1.2.1993, Annexure-9 to the writ petition, accepted the claim of respondent No. 1 and directed the petitioner to correct the record by showing date of birth of respondent No. 1 as 20.4.1934 [in place of 22.9.1929). He set aside the notice of retirement dated 31.8.1939 and also directed that respondent No. 1 shall be entitled for all the benefits which he would have normally received had he been in service.

4. Aggrieved by the aforesaid order of respondent No. 2, the corporation has filed this petition under Article 226 of the Constitution of India.

5.1 have heard Shri R. D. Khare, learned counsel for the petitioner and Shri K. P. Agarwal, learned counsel appearing for respondent No. 1. Respondent No. 2 was represented by learned standing counsel.

6. Learned counsel for the petitioner has submitted that respondent No. 1 joined Service as an employee of Mahabir Sugar Mills on 6.9.1947 and in service records maintained by Mahabir Sugar Mills (P.) Ltd., the date of birth recorded was 22.9.1929. A photo copy of the record has been filed as Annexure-1 to the writ petition. This document. Annexure-1, also contains a declaration and nomination form in which he had been shown as married, name of his wife had been shown as Smt. Lachhi Devi as his nominee and her age had been shown as 22 years. Annexure-1 bears signature of respondent No. 1 also. It has been submitted that looking to the facts mentioned in the service record prepared at the time when respondent No. 1 was employee of Mahabir Sugar Mills, the date of birth 20.4.1934 pleaded by him before respondent No. 2 could not have been believed. In this connection, further submission is that respondent No. 1 became member of the Provident Fund Scheme on 22.9.1956. This document has also been signed by Ambika Singh, respondent No. 1. His age had been shown as 27 years, wife's name mentioned is Lachhi Devi as nominee of respondent No. 1 and the age of the nominee was mentioned as 18 years. Learned counsel has submitted that there was no legal and valid reason to disbelieve this document. A copy of the declaration and nomination form has been filed as Annexure-2. Learned counsel has submitted that respondent No. 1 joined as engine driver and was a skilled worker. If his date of birth is accepted as 20.4.1934 at the time of joining service, he would have been minor aged 14 years. He was not employed as an ordinary unskilled worker. Learned counsel has further submitted that school leaving certificate filed by respondent No. 1 and relied on by respondent No. 2 was not countersigned by any education authority. It was also submitted that

the document filed was only a photostat copy which was inadmissible and could not be read as evidence. Learned counsel for the petitioner has further submitted that under sub-clause (6) of clause LL of the Standing Orders respondent No. 1 could get the age record modified within one year of the enforcement of the Standing Orders but respondent No. 1 never made any such attempt and he challenged the date of birth mentioned in the service record only after receipt of the notice of retirement. Such a stale claim could not have been entertained by the Tribunal as held by Hon'ble Supreme Court and this Court in number of judgments. It has also been submitted that after expiry of the period of one year from the date of enforcement of the Standing Orders, it was not open to the respondent No. 1 to challenge the correctness of the date of birth shown in the Service Record. Respondent No. 2 has failed to consider this material aspect of the case. Learned counsel has submitted that respondent No. 1 had already retired from service from 1.11.1989 and he was not entitled for any relief. The impugned order suffers from manifest errors of law and is liable to be quashed. Learned counsel has placed reliance on the Unreported Judgment of this Court dated 12.12.1993 in Writ Petition No. 42485 of 1992. L. H. Sugar Factories Ltd. v. Shri Jacob and others ; M/s. Tannery footwear Corporation of India Ltd. v. Labour Court III, Kanpur, (1995) 3 UPLBEC 1427 ; Nagar Mahapalika, Bareilly v. Labour Court, Bareilly and others, (1995) 3 UPLBEC 1304 ; Omkar Nath Srivastava v. State of U. P. and others, 1990 ACJ 657 and Union of India v. Ram Sua Sharma, JT 1996 13) SC 72.

7. Learned counsel for the respondents, on the other hand, submitted that the Standing Orders have been framed by the State of U. P. in exercise of its powers under Section 3 (b) of U. P. Industrial Disputes Act, 1947 in exercise of delegated legislative functions. The Standing Orders are service rules applicable to all the Pan Vacuum Sugar Mills in the State of Uttar Pradesh. These Standing Orders are not ordinary standing orders framed under the industrial Employment (Standing Orders) Act, 1946. Learned counsel has further submitted that clause LL of the Standing Orders provides for a complete adjudication of the dispute arising out of the notice of retirement of an employee of a sugar factory. It has been submitted that on reading of clause 6, it does not appear that if the modification of the age record is not claimed within a year from the date of enforcement of the Standing Orders, the workmen shall be debarred from raising the dispute on receipt of the notice of retirement. It has also been submitted that the judgment of the learned single Judge of this Court in case of L. H. Sugar Factories (supra) is not applicable to the facts of the present

case where the statute itself gives the right to workmen to invoke the jurisdiction of the Labour Commissioner at the fag end of his retirement on receipt of the notice of retirement received from the employer. When the Statute gives right to challenge such a notice, the claim cannot be rejected as stale. The right to challenge date of birth recorded in the service records and right to challenge the retirement are not synonymous. The service documents could only be piece of evidence and they could be rebutted by the evidence adduced by respondent No. 1. It has also been submitted that Labour Court has power to appraise and assess evidence adduced by the parties and can record a finding of fact which cannot be interfered with by this Court. The findings recorded by the Deputy Labour Commissioner cannot be challenged in the present proceedings under Article 226 of the Constitution of India. The documents prepared at the time the workman became member of the Employees Provident Fund Scheme, may be presumed to be true but the presumption is rebuttable and it was always open to the respondent No. 1 to prove his correct date of birth by better evidence. The findings recorded by the Deputy Labour Commissioner are findings of fact and cannot be interfered with in the present proceedings. The writ petition is liable to be dismissed. Shri K. P. Agarwal has placed reliance on a Division Bench judgment of this Court in the case of M/s. Deoria Sugar Mills Ltd. v. Deputy Labour Commissioner, Allahabad. 1976 (33) FLR 80.

8. I have carefully considered the submissions of the learned counsel for the parties. Clause LL of the Standing Orders contains provisions for retirement of workmen reaching the age of superannuation. As clause LL is relevant, for convenience and ready reference, sub-clauses (1) to (6) are being reproduced below.

"LL. Retirement of workmen on reaching the age of superannuation.-

1. A workman may be retired from service on reaching the age of superannuation which shall be 60 years.

2. The Provident Fund record of the factory specifying the workman's age should, to being with, be taken as the reliable record of the age of a workman purposes of retirement.

3. This record of age shall stand modified warranted by the following-

   (a) Date of birth as given in High School Certificate. If the school leaving certificate is below High School, then such certificate must be authenticated by the District Inspector of Schools or by the District Education Officer as the case may be.

(b) Date of birth as certified by a Municipal Corporation, Municipal Board, a Cantonment Board, a Notified Area or a Town Area Committee.

(c) An insurance policy taken before November 1, 1960, provided that ;

(i) Where the date, month and the year of birth of a workman are recorded in Provident Fund records shall be taken as final ;

(ii) Where only the month and year of birth are given, the date shall be taken as the 1st of that month ;

(iii) Where the Provident Fund record of the workman does not specify the date or month of birth, in that case the 1st November of the year shall be deemed to be the date for retirement ; and

(iv) The foregoing provisions regarding modification of age shall lapse on expiry of one year from the date of enforcement of these Standing Orders.

4. The age of new entrants shall be accepted on the following basis;

(i) Date of birth given in the High School Certificate/Transfer Certificate ;

(ii) Date of birth as certified by Nagar Mahapalika/Nagar Palika/ Cantonment Board/ Notified Area Committee/ Town Area Committee/ Gram Panchayat:

Provided that the new entrant shall furnish proof of his age within three months of the date of his appointment and the management shall accept it. within six months of the date of appointment. The date of birth so accepted shall be final.

5. The management shall give two months notice to a workman before retiring him.

6. The workmen who are in employment at the time of enforcement of these standing orders shall have the right to get their age record modified as per clause 3 above within one year of enforcement of these Standing Orders. He shall have the right to represent to the Regional Addl./Dy. Labour Commissioner of the area concerned within one month of notice of retirement such representations shall normally be disposed of within a period of one month of the date of receipt of representation from the workmen, and the orders passed by the Addl./Deputy Labour Commissioner regarding the age of the concerned workman shall be final

and shall not be questioned by any party before any Court. In case the Regional Addl./Dy. Labour Commissioner allows the representation, the employer shall modify the record of age of the workman immediately on receipt of the said orders. *****

9. It has not been disputed before me that the Standing Orders have been framed by the State Government in exercise of powers under Section 3 (b) of U. P. Industrial Disputes Act. 1947. Thus, the Standing Orders have statutory force. From perusal of sub-clauses (1) to (4) of clause LL, it is clear that the Standing Orders contain rule of evidence to be observed for purposes of modifying the age record, and for purposes of recording of the date of birth of the new entraint, and for modification of the date of birth in respect of the employees of the sugar factories. Sub-clause (2) says that the Provident Fund record of the factory specifying the age of the workman shall be taken as reliable record for the age of workman for purposes of retirement. Sub-clause (3) provides that the record of age shall stand modified if warranted by certain documents mentioned in clause (a), (b) and (c). However, the proviso says that the foregoing provisions regarding modification of age shall lapse on expiry of one year from the date of enforcement of these Standing Orders. Sub-clause (4) provides that the workmen who are in employment at the time of enforcement of these Standing Orders shall have right to get their age record modified as per clause 3 within one" year of the enforcement of the Standing Orders, From a conjoint reading of sub-clause (4) and proviso of sub-clauses (iii) and (iv), it is abundantly clear that limitation for right to get the age record modified was one year from the date of enforcement of the Standing Orders which came in force on 27.9.1988. Thus, it was open for respondent No. 1 to get his, age record modified by 26.9.1989. The notice of retirement was served on respondent No. 1 in the month of August, 1989. As clear from the impugned order, the application raising the dispute was moved by the respondent No. 1 on 8.9.1989 which was within the period of one year. Though in the objection filed before the Deputy Labour Commissioner in para 15 the respondent No. 1 challenged the correctness of the date of filing of the application on 8.9.1989 but he could not mention any other date of filing of the application either in the objection or in evidence. Thus, the submission of the learned counsel for petitioner that the dispute raised by the respondent No. 1 with regard to the date of birth was barred by limitation cannot be accepted.

10. Now coming to the merits of the claim of respondent No. 1 regarding modification of his date of birth shown in the service record. It has to be seen whether the respondent No. 2 committed any error of law in

accepting his claim. It is not disputed that respondent No. 1 joined service on 6.9.1947 and at the time of joining service, his date of birth recorded in the service record was 22.9.1929. He was thus above 18 years of age. Respondent No. 1 has admitted in his statement on oath that in 1947 he was appointed as a pump driver. He was a permanent employee from the very beginning. Later on he was made engine driver. As already observed earlier, in the service records maintained by Mahabir Sugar Mills, respondent No. 1 had been shown as engine driver in season and fitter Mazdoor in off season in engineering department. Thus from the very beginning, he was engaged, on his own showing, for skilled work either as a pump driver or as engine driver. Such a technical Job could not have normally been assigned to a minor aged 14 years. This material circumstance which was borne out from the record has been totally ignored by respondent No. 2 while appreciating the claim of respondent No. 1. Even assuming that in 1947 there was no minimum age prescribed for employment and the child labour could be engaged for work in factories, such engagements could be for unskilled jobs. Respondent No. 1 became a member of the Employees Provident Fund Scheme in 1956. The declaration and nomination form was filled on 22.9.1956. It was admittedly signed by respondent No. 1. Respondent No. 1, however, stated that he was not asked about the date of birth and his age 27 years was mentioned on the basis of guess work. Respondent No. 1 again failed to test the statement of respondent No. 1 on the basis of the facts available on record. The date of birth of respondent No. 1, in the service record mentioned was 22.9.1929. This document was also signed by respondent No. 1. Age 27 years in 1956 was not on the basis of, guess work but on the basis of the date of birth already mentioned in the service record. In 1956 when the declaration and nomination form was filled, nine years had passed and respondent No. 1 was shown 27 years of age. In view of the fact that service record as well as declaration and nomination form for becoming member of the Employees Provident Fund Scheme were signed by the respondent No. 1, it could be assumed that he had knowledge of the date of birth and the denial of this fact after 44 years could not have been accepted lightly as has been done by respondent No. 1. There is a complete absence of any kind of protest, on the part of respondent No. 1 during his long service of 42 years in the Mill, against the date of birth shown in his service record. Under sub-clause (2) of clause LL for purposes of retirement age mentioned in the Provident Fund record could be accepted as reliable and the petitioner rightly served notice of retirement on the basis of the age shown in the Provident Fund record.

11. Now, it has to be seen whether the respondent No. 1 could establish his date of birth 20.4.1934 by more reliable and cogent evidence. As clear from the impugned order, on 13.2.1991 respondent No. 1 filed one document, i.e., the school leaving certificate which was only a photostat copy. On behalf of petitioners, it has been argued that this document could not be legally read in evidence as the original was not there and it was not signed by the District Education Officer. In para 3 of the counter-affidavit respondent No. 1 has stated that the photostat copy was sufficient piece of evidence and the Deputy Labour Commissioner could peruse the same for coming to the conclusion in proceedings pending before him. In my opinion, though rules of evidence provided in the Evidence Act may not be strictly applicable but as a general rate of precaution, a photostat copy of the certificate could not be read in evidence as primary or secondary evidence. No body appeared from the office which had Issued the certificate, to prove that the original of any such certificate was Issued by proper authority. Respondent No. 2 without making any analysis about the nature of evidence exhibited this document and relied on it for accepting the claim of respondent No. 1. In any case, the minimum requirement on the part of respondent No. 2 was that he ought to have Insisted and asked respondent No. 1 to bring the original certificate on record. In my opinion, the procedure adopted by respondent No. 2 was wholly erroneous and cannot be termed as legal in any manner. Before respondent No. 2 case of petitioners was that if the date of birth 20.4.1934 is accepted, the respondent No. 1 could be of only 14 years of age and this rendered the claim of respondent No. 1 wholly improbable as a person below 18 years of age could not be taken on employment. Respondent No. 2 has only said in the order that In 1947, Factories Act. 1948 was not In force and there was no age bar and respondent No. 1 could be appointed though he was minor. As already observed, before recording this finding respondent No. 2 completely ignored the nature of the job in which respondent No. 1 was engaged, which was as engine driver. Such a job could not be assigned to a minor. The finding of respondent No. 2 thus on this score also suffers from a manifest illegality. Similarly, respondent No. 2 rejected the statement of the clerk who proved Form No. 2 regarding Provident Fund Scheme on the ground that the witness of petitioner could not state that the Form was filled in his presence. The declaration and nomination Form was filled on behalf of respondent No. 1. His wife's name and age was mentioned in the Form. His age was also mentioned and thereafter he signed on it which is not disputed. The bare statement after such a long time of 44 years that a blank form was got signed from him could not have been believed by

respondent No. 2. The nature of information contained therein could be given only by respondent No. 1 which was sufficient to disbelieve his statement. However, respondent No. 2 has miserably failed to make an analytical assessment of the material on record and accepted the claim, of respondent No. 1 regarding the correction of date of birth in the service record, which could not have been accepted in view of the overwhelming facts and circumstances available on record mentioned above. In the circumstances, the order of respondent No. 2 is not sustainable.

12. Another important aspect of the case is that this Court and Hon'ble Supreme Court in number of judgments have cautioned not to accept such stale claims lightly which are raised at the fag end of the service. In case of Union of India v. Ram Sua Sharma (supra), Hon'ble Supreme Court held as under :

"The controversy raised in this appeal is no longer res integra. In a series of judgments, this Court has held that a Court or Tribunal at the belated stage cannot entertain a claim for the correction of the date of birth duly entered in the service records. Admittedly, the respondent had joined the service on December 16, 1962. After 25 years, he woke up and claimed that his correct date of birth is January 2, 1939 and not December 16, 1934. That claim was accepted by the Tribunal and it directed the Government to consider the correction. The direction is par se illegal."

In my opinion, the aforesaid view expressed by Hon'ble Supreme Court is squarely applicable in the facts of the present case. Respondent No. 1 joined service in 1947 mentioning his date of birth as 22.9.1929. He retired from service on 1.11.1989 after serving for 42 years and a few days before his retirement on 8.9.1989, he raised a dispute that his date of birth is 20.4.1934. The Tribunal accepted the claim and directed the correction of the service record with regard to date of birth. In Burn Standard Company v. Dina Bandhu Majumdar, JT 1995 (4) SC 23, Hon'ble Supreme Court while reversing the direction given by the High 'Court held as under :

"The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches."

In Secretary and Commissioner Home Department v. R. Kiruba Karan, 1994 (1) UPLBEC 89 (SC), Hon'ble Supreme Court observed in para 5 of the report as under:

"As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant to prove about the wrong recording of his date of birth in his service book,"

13. If the impugned order is tested and analysed on the basis of the principles laid down by Hon'ble Supreme Court in the cases referred to above, the only conclusion, which is possible, is that respondent No. 2 accepted the claim on the basis of the evidence filed before him which could not even be read in evidence nor could it, in any way, be termed to be an irrefutable evidence so as to render the long standing entries in the service record as incorrect. Viewed from any angle, the order passed by the respondent No. 2 cannot be sustained.

14. Learned counsel for respondent No. 1 placed reliance on the case M/s. Deoria Sugar Mills Ltd. (supra). However, on facts the case is clearly distinguishable and does not help respondent No. 1 in any way.

15. For the reasons stated above, this petition is allowed. The impugned order dated 1.2.1993, Annexure-9 to the writ petition, is quashed. There will be no order as to costs.

Vishnu Dayal Sharma S/O Banwari ... vs State of Uttar Pradesh... on 28 March, 2008

Bench: A Saran, S Shanker

JUDGMENT

Amar Saran and Shiv Shanker, JJ.

1. Heard learned Counsel for the petitioner, learned AGA, Sri A.K. Sand, Assistant Solicitor General of India, Sri. K.C. Sinha; the intervenors Sri Jagriti Singh, advocate, Sister Sheeba Jose, Mr. Sanjeev Singh and Sri Pankaj Naqvi as well as Sri DK Singh, Joint Registrar, High Court, Allahabad. By an order of the Hon'ble the Chief Justice dated 14.12.2008 this cash has been tied up to the Bench presided over by one of us (Amar Saran, J.).

2. Sri A.K. Sand, learned AGA, filed a counter affidavit on behalf of DGP, UP, which mentions that out of a total number of 5612 children, who are reported to be missing for the last 6 years, out of whom 3641 children were reported to be missing in the year 2006 and 1971 children who were missing for the 5 years preceding the year 2006. In our last order of 16.11.2007 we had noted that 4712 children had been] rescued and only 900 children remained to be rescued in this period. This figure of 900 children consisted of 326 children out of 3641 children who are reposed missing in the year 2006 and 574 out of 1971 children, who were missing for the last 5 years. Now for a period of 4 months, from 1.10.2007 to 31.1.2008, 56 children who went missing in the year 2006 have been recovered and only 270 children for the said year remained to be traced out. This figure of 270 children consists of 198 male and 72 female children who are yet to be recovered. For the years 2000 - 2005 out 1971 missing children, 574 children were to be traced out, in the said period of 1.10.2007 to 31.1.2008, 120 children have been recovered and now 454 children (which consists of 337 male and 117 female children) remain to be traced out. Therefore, for the period of 6 years, from 2000 to 2006, out of 5612 missing children, now 4888, have been recovered and 724 still remain to be traced out. This is a considerable achievement of the police and other concerned departments and the concerned parties should be lauded for their efforts. We hope that by the next date of listing, a substantial number of the remaining 724 children who are missing from 2000 to 2006 are also traced out and compliance report in this connection is filed in this court.

   However, to complete the monitoring process by this Court in this regard, it is important to obtain similar figures of the children who went missing in the year 2007 and thereafter and 2008 upto the

present date. The report of the said missing children should be in the similar format as the earlier reports relating to the periods 2000-06 containing the gender and age wise disaggregated break-up and the number of children who have been recovered and the remaining children who are still to be recovered. We hope that the said details will be furnished by the DGP, UP, by the next date of listing.

The affidavit also contains an annexure detailing information relating to publication of information about the missing children in daily newspapers in different zones and details of telecasts about the missing children in various television channels as directed by this Court on 16.11.2007. We now desire that a similar report of publication of information relating to missing children in newspapers and TV telecasts be furnished for the subsequent period by the next date of listing.

3. Sri Sand also drew our attention to an affidavit filed on behalf of the Principal Secretary, Labour, UP Govt., which has detailed the number of children (78548 child labourers) who have been identified at different places in UP during the period 1997 to January, 2008, in pursuance of the direction of the Apex Court in Writ Petition No. 465 of 1986: MC Mehta v. State of Tamil Nadu. 37350 child labourers were found working in hazardous occupations. It is claimed that out of the aforesaid 78548 child labourers, 63999 child labourers were educationally but 10810 child labourers could not be rehabilitated for various reasons. The reasons have not been spelt out, and we would like the Principal Secretary, Labour, UP, to give the reasons category wise on the next date of listing, as spelling out the reasons would help the department as well as this Court for reaching a conclusion as to why it becomes imperative for some children to remain engaged in child labour, (some of these reasons could be starvation and hunger in the family due to unemployment or due to the death of adult earning members, or non-existent, poor quality or harsh and oppressive schooling which are some of the push factors inducing a child to leave home or go missing and sometimes he/she becomes a victim of child traffickers). What steps, if at all, could be taken for disengaging them from child labour and sending them to schools and otherwise rehabilitating them.

4. Likewise, it is mentioned in paragraph 8 of the affidavit that 5378 families out of 29143 identified families whose children were engaged in hazardous occupations, have accepted rehabilitation assistance but 5721 families have refused rehabilitations We would like to receive further information from the labour department as to the different categories of reasons why the 5721 said families, have refused, rehabilitation, It is further mentioned that 2727 prosecutions were launched, by the department before 12.10.1996. The prosecutions

were increased to 8251 upto January, 2008 but out of the total number of 10978 cases, 3328 cases were decided and only in 416 cases, i.e. only in 12 percent of the cases, convictions were secured under the Child Labour (Prohibition and Regulation) Act, 1986. This is an alarmingly low level of conviction and again we would like to receive information from the department as to the reasons why there has been such a poor level of convictions in the cases relating to the employment of child labourers. The pendency level of 7650 in child labour cases upto January, 2008, is also very high and we would like the labour department to move applications in the concerned courts for expeditious disposal of these cases, and we direct the condoned courts to make every effort to decide such case very expeditiously, as engaging a child in child labour, when he ought to be studying in schools and improving his life prospects and also turning into valuable assets for the future of our nation is imperative and unless we can ensure that all children are in school and not engaged in child labour, or in any other wasteful or exploitative conditions, our Constitutional mandate for ensuring that all children between 6 and 14 years are in school shall remain an empty dream, It is also unfortunate that out Rs. 34.19 crore, which were to be recovered on the 7921 recovery certificates issued in pursuance of the orders of the Apex Court in M.C. Mehta's case (supra), only Rs. 1.26 crore have been recovered from the concerned defaulters. The affidavit further mentions the setting up of 1551 special schools under the National Child Labour Project (NCLP) in 38 districts in UP where 75207 children, who were engaged in hazardous occupations, ace studying. The remaining identified child labourers are enrolled in the primary schools of the State Government. Some scholarships, reading materials, which they need etc. are provided under the NCLP and Indus Child Labour Project Schools (ICLPS), UP. There is also a scheme under the 11^th Five-Year Plan in 10 UP districts for a conditional cash transfer scheme for providing cash incentives of Rs. 46,000/- for disabled, unemployed landless parents to enable their children to complete for eduction upto class V. In my view, the important thing is that the benefits intended for the child labourers under the NLCP and ICLPS should actually reach the children who have been rescued from the hazardous child labour and there should be no corruption and diversion of these grants. Furthermore, the quality of schooling in these schools should be of good standard and effectively monitored by the parents and other authorities that the parents feel that there is benefit in sending the child to school, rather than permitting him to be engaged in and employment. Unless these checks on corruptions are imposed and there are quality controls with regard to the standard of teaching and teacher attendance, all these efforts under the Plan will remain only on paper and funds will be

diverted to wrong hands and areas. It is further mentioned that in 70 districts in UP the Child Labour Elimination district-committees have been constituted under the chairmanship of the District Margate, and in the first meeting of the State Monitoring Committee (Child Labour Elimination and Rehabilitation) on 27.12.2007 under the chairmanship of the Principal Secretary, Labour, various directions for implementation of the schemes and directions of the Apex Court were issued. We hope, there is a follow-up and monitoring to ensure that the directions are implemented. On the next date of listing, the copy of the directions as well as the follow-up measures and status report of compliance should be furnished to this Court.

5. A third affidavit has been filed on behalf of the Principal Secretary, Women and Child Development, UP Govt. We are a little disappointed by this affidavit which simply mentions that on 16.11.2007 this Court directed that better particulars and status report on the time-frame when the noted institutions (i.e. Juvenile Justice Boards, Govt. Homes, which are required in all the districts) as per the provisions the Amended Juvenile Justice Act of 2006 would be constituted and also we called for the progress report of the constitution of Child Welfare Committees, which are required in every district as per the amended Section 3 of the Juvenile Justice Act, vide its 2006 amendment and also with regard to the constitution of the Homes in all the districts of UP for children who need care and protection. We also wanted to know the impediments, if any, in constituting these institutions and children homes. We must note with regret that apart from placing the copy of the orders dated 17.7.2007, 18.9.2007 and 16.11.2007 before Justice Y.R. Tripathi who has been engaged for selecting presidents in all the districts relating to the Child Welfare Committees, there has been little further compliance of our earlier orders. No information has been furnished when the said Commission for Protection of Child Rights as required under Section 17 of the Commission for Protection of the Child Rights Act, 2005, for U.P. is to be constituted. The affidavit is silent on all these aspects. In paragraph 3 of the affidavit, there is a reference to a letter dated 19.2.2008 sent by the Director, Women Welfare, to the Under Secretary, Women and Child Welfare, UP Govt. This letter only states that 3 photocopies of this Court's orders dated 17.7.2007, 18.9.2007 and 16.11.2007 were sent to Justice Y.R. Tripathi (retired), Chairman, Juvenile Justice Selection Committee Board, and the Court had sought certain particulars and that there were some financial implications in the order also. This letter which was drafted three days before the scheduled date of listing in pursuance of the order dated 16.11.07 and which only seemed an attempt to pass on the buck to Justice Y.R. Tripathi shows the utter non-seriousness with which this department is dealing with the serious issue of

child welfare and how little regard it is showing for forwarding the pious mission with which this Court is engaged in and where some departments such as the police are rendering effective and laudable support after the Court began to monitor this matter. We hope that by the next date of listing the departmental heads concerned will take more effective steps and furnish better particulars on the matters sought in the present and the last order dated 16.11.07. and other orders and it will not be incumbent upon this Court to summon the officials concerned and seek their explanations for their inaction and lack of concern relating to the issues involved.

6. It may be mentioned that Justice Y.R. Tripathi has himself submitted a detailed report dated 14.2.08 hrough the Registrar General, High Court, which mentions some of the lacunae and impediments in implementation of the Juvenile Justice Act and the other duties entrusted to him. If even a fraction of the sensitivity and concern about the issue was shown by the concerned department of what is shown by Jastice Y.R. Tripathi, we would have a completely different response from them than what we have seen so far in the matter. We hope that Justice Y.R. Tripathi is being sujpfbfc compensated for his efforts and all his expenses are also being met expeditiuously by the government. We would like a reply from the Principal Secretary Women and Child Development on the issues raised in the letter of Justice Tripathi on the next date of listing, the Registry may forward a copy of the letter to the department for their response. The copy of this order be also forwarded to Justice Y.R. Tripathi.

   A fourth affidavit has been filed by Dy. SP of the State Crime Record Bureau, which mentions that a letter was issued by the AQDGP (Law and Order), UP on 30.1.2008 addressed to all the SSPs/SPs and SPs, Railways, whereby they were directed to utilise the departmental website up.missingpersons.in and directed that necessary posters and pamphlets be distributed at all railway stations, bus stand and other public places containing portraits and information about the missing persons/children.

7. We are happy to note that a High-Powered Committee was also constituted consisting of Dy. Director, Traffic, SP, State Crime Record Bureau, SP, Railway, Lucknow, SP (Crime), DGP (Headquarters) and SP (Headquarters), Allahabad, which met on 28^th and 31^st January, 2008, and has resolved that for a public display of news relating to the missing children, television sets connected with internet facilities be installed in each district at railway stations, bus stations and other important public places to be identified by the district police chief. On the public display system, photographs of missing children would be displayed by slide show, which will go on from 5 am to 11 pm daily, with the help of UP

Electronics and for this purpose in UP 300 TV monitors are required in 70 districts. As we have mentioned in our earlier orders that other useful information relating to social issues, or about the identity or photographs of criminals or terrorists etc. could also be flashed of these public display systems to elicit the support of the general public in these matters, these systems will give multiple benefits.

8. An amount totalling Rs. 16,79,28,000 has been estimated to be required for this purpose. In case the concerned department in the State government consider? it difficult to release the amount sought, or it is of the opinion that this estimate is on the higher side, the Committee could consider ways and means for reducing the amount as far as possible, perhaps by recommending normal TV monitors instead of Plasma TV if that is considered feasible by the committee. That however is entirely a matter for the committee to consider as the Court is not an expert on these issues. So far as the recurrent expenditure was concerned, we think that part of it could be borne/ recovered by permitting advertisements on the said public display systems. If they are considered feasible.

The intervenors Sister Sheeba Jose, Mr. Pankaj Naqvi and Sri Sanjeev Singh have filed an impleadment application dated 22.1.2008 which is taken on record wherein they have, inter alia, referred to the weakness in the distribution mid-day meals after making a sample survey in three tehsils of Allahabad, viz. Shankargarh, Soraon and Koraon. A copy of the said application should be forwarded to the District Magistrate, Allahabad, and to the concerned departments in the State government along with this order for their response on the findings and suggestions in the aforesaid impleadment application so that a response may be received regarding the same by the next date of listing and this Court may be in a position to pass appropriate directions.

Sri D.K. Singh, Joint Registrar, High Court, has produced two tables relating to 70 districts about the number of missing children where legal aid has been provided by counsel, the matter has been placed before the monitoring committee in is monthly meeting, the difficulties and problems encountered in the work, any additional suggestions and the number of children who have been recovered. We find that only a one-time response has been given. We would like the concerned district judges to send their responses every two months and the earlier information need not be repeated in the new proforma to be sent by the district judges but only the subsequent events and new cases where children have been recovered/returned by then may be mentioned, and the Registry can update the information in the Chart to be furnished to the Court.

9. As we have stated earlier, the Member-Secretary, Legal Services Authority, has not been engaged in the matter in a pro-active manner that we desired and has not effectively encouraged the district authorities to take up these problems of legal aid nor has he been interacting with them for meeting their difficulties; and financial constraints in running the Legal Aid Centres. We, therefore, direct that the Member-Secretary U.P. Legal Services Authority aforesaid be present on the next date of listing and show what effective measures he has now taken in pursuance of this order as well as the order dated 17.7.2007, which was quoted In Registrar General's earlier letter dated 18.9.2007. The Registrar's note dated 24.10.2007 has mentioned that the judgeships, namely, Agra, Firozabad and Lucknow have submitted considerably detailed reports mentioning the difficulties being faced by them in giving legal aid to the parents of the missing children to come to lodge the report. The said reports may be placed before this Bench on next date.

10. One issue that has caused us considerable anguish is the non-response on behalf of the Principal Secretary, Primary Education, UP, to our specific observations and directions in the orders dated 17.7.2007, 18.9.2007 and 16.11.2007 for making the fundamental right to free and compulsory education to children upto 6 to 14 year, as directed by Article 21A of the Constitution of India and in the Apex Court cases of JP Unnikrishnan and Ors. v. State of AP: ; TA Pai v. State of Karnataka and Ors.:

and PA Inamaar v. State of Maharashtra:
a reality.

11. In this connection we are again quoting the directions contained in our Order dated 16.11.2007:

> By an order dated 17.7.07 we had emphasized the need for ensuring implementation of the fundamental right to free and compulsory education for children in the ages of 6 to 14 years, as directed by Article 21-A (vide 86^th Amendment Act, 2002) and the decisions of the Apex Court in the cases of J.P. Unnikrishnan and Ors. v. State of A.P. , approved in the eleven judge decision in
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> T.M.A. Pai v. Stale of Karnataka and Ors. , and the
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> seven judge decision in P.A. Inamdar, v. State of Maharashtra , and the need for providing mid day meals as
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> stressed by the. Apex Court in PUCL v. Union of India (2007) 1 SCC 728 as fook in school would also be a deterrent to a child leaving home to meet his food needs which are often not fulfilled in his impoverished home. We had further stressed that once the fundamental right to

free and compulsory education was implemented it could be inferred that any child who was out of school was either's neglected or abused child, or a trafficked child or a child engaged in prohibited child labour. On the previous date, i.e. on 18.9.07 in compliance with our aforesaid directions an affidavit had been filed by the Secretary, U.P. Basic Education Board mentioning the progress made for enforcing the fundamental right for closing gender gaps and for making the "Sarva Shiksha Abhiyan" applicable in the whole of U.P. by 2010 under the eighth, five year plan; the number of primary/ Upper primary schools that were established; additional class room$ constructed; shiksha mitras appointed; and other measures taken for girl's education; provision of uniforms etc. However in the last orderdated 18.9.07 we had noted that the Annual State of Education (ASER) Report indicated that 5.9% children of the eligible age are out of school which is apparently inconsistent with the Sarva Shiksha Abhiyan's figures of school attendance and we had therefore called for an estimate of the number of out of school children as per the ASER report and how the variance in the numbers was to be reconciled. We had also alluded to the low quality of learning in Parashadiya and other government schools and the surveys conducted, by various^ organisations on these aspects and the steps needed for improving quality of teaching and for enhancing teacher attendance. On the last occasion Principal Secretary Primary Education U.P. had sought one month's lime for filing the latest household survey reports of the out of school children. On the last date, 18.9.2007 we had also sought information from the Principal Secretary Education about the steps taken or planned for making School head masters, teachers, Gram Pradhans and Panchayat Adhikarjs or Others answerable by issuing suitable Government Orders if chidren of the eligible age, of 6-14 years are found out of school in violation of Article 21-A of the Constitution, We regret to note that no affidavit has been submitted today, although two months have elapsed since our last order dated 18.p.07. Let the details sought by this Court be submitted by the concerned Secretary by the next date of listing.

Again no information has been furnished about the feasibility Of earmarking a budget for preparing photo identity cards as suggested by our orders dated 17.7.07 and 18.9,07 and for taking assistance of Principal Secretary Finance or from the other sources such as Sarva Siksha Adbhiyan as that would prove a useful tool for locating a missing child, as many indigent parents do not possess photographs of their small children. It would also be an effective record for authorities and others to verify whether the child was attending school as claimed.

11. On the next date of listing, we would like some senior official to be sent by the Principal Secretary, Primary Education, UP, to give us a satisfactory compliance report on the aforesaid directions relating to the discrepancy in figures of school attendance between Pratham's ASER report (which estimates the proportion of out of school children at 5.9% and the figures of the Sarva Shiksha Abhiyan; the steps taken for improving the quality of teaching and teacher attendance in the Parashadiya and government schools; furnishing promised copy of the latest house hold survey of number of out of school children; whether any G.O.s have been issued and steps taken for making Gram Pradhans. School head masters. Panchayat adhikaris. and others answerable for ensuring that every child aged 6 to 14 is in school; the feaslibility of earmarking a budget for preparing photo identity cards. In the event of $ failure in producing a satisfactory compliance report, to these directions this Court may have no option but to summon the Principal Secretary himself on the subsequent date of listing and hear him personally in the matter.

12. We also request the the Assistant Solicitor General of India, Sri K.C. Sinha, to inform this Court as to what steps are being taken by the Government of India for making the Offences Against the Children Bill, 2006, an Act and the likely period when the same is expected to be enacted. Secondly, we would like to be informed by the Central Government about the status if any of an Act which b to be promulgated for giving teeth to the newly introduced fundamental light to free and compulsory education for children of 6 to 14 year-group guaranteed by Article 21A of the Constitution. Thirdly we wish to be informed about the steps that are being taken for giving financial assistance for preparing identity cards for all children in schools and the source and the time likely for release of the fund from the Sarva Shiksha Abhiyan or other heads for preparing these identity cards which contain photographs of the children.

    The Registry may send a copy of this order to all the concerned, officials/officers and District Judges as mentioned above Copy of this order be furnished to the learned AGA, Sri A.K. Sand, the learned Assistant Solicitor General of India and the intervenors within a week.

    List on 16.5.2008 for further orders. On that date the names of the intervenors Sister Sheeba Jose, Pankaj Naqvi, Sanjeev Singh and Jagriti Singh be also shown in the cause list.

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A Critical Analysis of Cases Filed under Child Labour (Prohibition and Regulation) Act, 1986

S. C. Srivastava, Pankaj Kumar

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