

Habeas Corpus Writ Petition No. 70403 of 2011

Sageer and others -----Petitioners.

Versus.

State of U.P and others -----Respondents.

Hon'ble Amar Saran, J

Hon'ble Ramesh Sinah, J

"..... Poverty and destitution are almost perennial features of Indian rural life for large numbers of unfortunate ill-starred humans in this country and it would be nothing short of cruelty and heartlessness to identify and release bonded labourers merely to throw them at the mercy of the existing social and economic system which denies to them even the basic necessities of life such as food, shelter and clothing. It is obvious that poverty is a curse inflicted on large masses of people by our malfunctioning socio-economic structure and it has the disastrous effect of corroding the soul and sapping the moral fibre of a human being by robbing him of all basic human dignity and destroying in him the higher values and the finer susceptibilities which go to make up this wonderful creation of God upon earth, namely, man. It does not mean mere inability to buy the basic necessities, of life but it goes much deeper, it deprives a man of all opportunities of education and advancement and increases a thousand fold his vulnerability to misfortunes which come to him all too often and which he is not able to withstand on account of lack

of social and material resources. We, who have not experienced poverty and hunger, want and destitution, talk platitudinously of freedom and liberty but these words have no meaning for a person who has not even a square meal per day, hardly a roof over his head and scarcely one piece of cloth to cover his shame. 'What use are 'identification' and 'release' to bonded labourers if after attaining their so-called freedom from bondage to a master they are consigned to a life of another bondage, namely, bondage to hunger and starvation where they have nothing to hope for - not even anything to die for - and they do not know whether they will be able to secure even a morsel of food to fill the hungry stomachs of their starving children, What would they prize more : freedom and liberty with hunger and destitution starring them, in the face or some food to satisfy their hunger and the hunger of their near and dear ones. even at the cost of freedom and liberty. The answer is obvious. It is therefore imperative that neither the Government nor the Court should be content with merely securing identification and release of bonded labourers but every effort must be made by them to see that the freed bonded labourers are properly and suitably rehabilitated after identification and release.' - Opening words of Justice Bhagwati speaking for the bench in Neeraja Chowdhuri v State of M.P., AIR 1984 SC 1099

We have heard learned counsel for the petitioners and the learned A.G.A.

This Habeas Corpus petition was filed on behalf of 44

labourers who were residents of different villages of districts Muzaffarnagar and Baghpat and who claim to be held in bondage by respondent no.5 Kailash Jain, at his brick-kiln, named the Kunal Brick Field, at village Uldpur (near Sakera Gaon), P.S. Inchauli, district Meerut. The petitioners claimed that they were not allowed to leave the premises and to work elsewhere, their accounts were also not completed and they were not paid their wages in time. Even if they fell ill they were not given medical aid, but were abused and forced to continue to work for the employer.

On 7.12.2011, this Court had allowed two weeks time to the State to obtain instructions and to file a counter affidavit.

A counter affidavit of Sri Anil Kumar, District Magistrate, Meerut has been filed. In this counter affidavit it is stated that the Naib Tehsildar and the Labour Enforcement Officer visited the brick-kiln of respondent no.5, M/s Kunal Brick Kiln Factory in village Uldpur, P.S. Inchauli, district Meerut on 15.12.2011 and made a spot inspection. It was revealed that none of the petitioners were present at the spot. However, one worker Momeen was present who claimed to be working at that brick-kiln for four years. He disclosed that the petitioners had come to the brick-kiln on 11th October and worked till 30th November 2011. After receiving their payments they had voluntarily left for their homes on 9.12.2011. It was denied that the petitioners were kept in bondage, and it was stated that they were being paid wages for providing their labour for making bricks @ Rs 280/ per

thousand bricks. However on the date of visit, owing to the absence of any other labourer, other than Momeen, the work had stopped and the brick-kiln was not functioning. The statement of Rajan Jain, father of respondent no.5 who reiterated Momeen's version was also recorded. The D.M. thereupon reached the conclusion that there was no evidence of bondedness amongst the petitioners and prayed for dismissal of the writ petition with costs.

As none of the petitioners were present at the time of inspection because they appear to have left for their homes, there was no one to controvert the version of the solitary worker Momeen present and the brick owners, Kailash and Rajjan Jain. Consequently we have no option but to accept the favourable report of the Labour Enforcement Officer and Naib Tehsildar which was approved by the D.M., and are therefore unable to grant any further relief to the petitioners in the present petition.

However, we do feel that the D.M. appears to have too readily accepted the report of the Labour Enforcement Officer and the Naib Tehsildar and we are of the opinion that there is a need for this Court to sensitize the District Magistrates and other concerned government functionaries to certain salient aspects of the law relating to bonded labour.

We think that not only the District Magistrate, but all of us, who come from privileged sections of society do need to fight an unconscious feudal bias deep within us, and to resist the tendency of identifying ourselves with the oppressor and the

exploiter, but we have also to develop a sensitivity and sympathy for the poor and the oppressed, whose situation was so poignantly described by Justice Bhagwati in the inimitable words quoted from *Neeraja Chowdhuri's* case at the beginning of this order.

Although it cannot be ruled out that some labourers may act in a mischievous manner and lodge a bonded labour complaint, if they are unwilling to work, even though they have taken a substantial advance from the employer, and there may be instances when because of labour shortage or competition in the business this advance may not have been given to tie down the labourer by way of a bonded debt by a particular contractor or to make the labourer work at below market rates in the area, but the advance was made only to ensure that the labourer worked for a particular employer without losing his freedom. But this fact also cannot be lost sight of that normally entire families migrate to distant places to work in brick fields or in quarry sites, or in other occupations as unorganized labour with no proper residence or drinking water facilities, and poor protection from the vagaries of weather, absence of medical care and denial of schooling to little children, only due to landlessness, hunger and acute poverty in their home areas. Rightly these migrations have been described to be in the nature of distress migrations.

There is a vast difference between the clout of the labourer who must work each day to survive and the might of the

employer, who can prevail over the unorganized labourer by denying him wages, evicting him from the homestead, abusing him or even resorting to violence against him. It is the fear of retaliation and violence and socio-economic dependence on the keepers of the bonded labour, that persons held in bondage rarely make bonded labour complaints or confirm allegations that they are being compelled to provide forced labour to their keeper when questioned by competent government functionaries. Very often the alternative to bondage before the labourer is stark hunger.

The 'bonded labour system' as defined in section 2(g) of the Bonded Labour (System) Abolition Act, 1976, shows that it is usually as a result of advances given by way of bonded debt that a debtor or his dependents or heirs are compelled to provide forced or partly forced labour to the creditor for a specified or unspecified period for no wage or for nominal wages, to forfeit their right to freely sell their labour in the market, change their employer or to move about freely in India. Therefore if any advance was given (as may have been done in this case), it may have actually been a bonded debt. Under section 15 of the Bonded Labour System (Abolition) Act, 1976 when a claim is raised by the debtor that a particular advance is a bonded debt the onus lies on the creditor to disprove this claim.

In this regard in *Bandua Mukti Morcha v Union of India and others*, AIR 1982 SC 802 (at 827) it has been appositely

observed: *"It would be cruel to insist that a bonded labourer in order to derive the benefits of this social welfare legislation, should have to go through a formal process of trial with the normal procedure for recording of evidence. That would be a totally futile process because it is obvious that a bonded labourer can never stand up to rigidity and formalism of the legal process due to his poverty, illiteracy and social and economic backwardness and if such a procedure were required to be followed, the State Government might as well obliterate this Act from the statute book. It is now statistically established that most of bonded labourers are members of Schedule Castes and Scheduled, Tribes or other backward classes and ordinary course of human affairs would show, indeed judicial notice can be taken of it, that there would be no occasion for a labourer to be placed in a situation where he is required to supply forced labour for no wage or for nominal wage, unless he has received some advance or other economic consideration from the employer and under the pretext of not having returned such advance or other economic consideration, he is required to render service to the employer or is deprived of his freedom of employment or of the right to move freely wherever he wants. Therefore, whenever it is shown that a labourer is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is therefore a bonded labourer: This presumption may be rebutted by the employer and also by the State Government if it so chooses but unless and until satisfactory material is produced for*

rebutting this presumption, the Court must proceed on the basis that the labourer is a bonded labourer entitled to the benefit of the provisions of the Act.” (Underlining ours)

It also cannot be ruled out that after the present petition was entertained in the High Court on 27.11.2011 and the order calling for a response from the respondents was passed on 7.12.11, the labourers were paid off part or the whole of their due wages, and allowed to go home on 9.12.11, so that they could be prevented from participating in the enquiry directed by the District Magistrate.

Only one worker Momeen (who may have himself been indebted to the employer) appeared when the inspection was carried out on 15.12.2011. In the absence of the complainants this Court has no way to ascertain at this stage whether the report of the Labour Enforcement Officer and Naib Tehsildar was completely fair and unbiased or whether some influence has been exercised by the brick-kiln owner to obtain the favourable report in the absence of the complainants.

No registers or documents maintained under any provision of law were produced before the inspecting team for substantiating the claim that the petitioners had been paid off their due amounts or that they had actually been paid remuneration @ Rs. 280 per 1000 bricks for the labour component in making the bricks.

The National Human Rights Commission, which has been

entrusted with the duty of being involved with the issue of bonded labour and of monitoring the bonded labour situation in the country by the Supreme Court in *Writ Petition (Civil) No. 3922 of 1985, PUCL v State of Tamil Nadu*, has rightly lamented the insensitivity and occasional complicity of government officials in its report on bonded labour titled "Know your Rights" by observing: "*Instead of acting promptly on such complaints and effecting the identification and release of bonded labourers, they are even found helping the keepers of bonded labourers to arrange the dispersal and disappearance of bonded labour after hurriedly settling their accounts.*"

That the conditions of employment with the employer were less than ideal in the present case was apparent from the fact that the brick-kiln had to be closed down once the petitioners left, when the enquiry team visited the work site. If the Labourers on the brick-kiln were being treated in a humane manner they were unlikely to have all left the premises causing the brick-kiln to shut down.

That a proactive role is cast on the District Magistrates is clear from section 11 of the Bonded Labour (Abolition) Act which provides that the District Magistrates or his nominated subordinate officers are to ensure the welfare of freed bonded labourers and their economic interests, so that they do not again lapse into debt bondage.

A dual duty is cast on the District Magistrates, not only to

rehabilitate bonded labourers after they have been identified and released, so that they are prevented from again lapsing into bondage, but he must give preventive relief to vulnerable classes of people, such as landless agricultural labourers or share croppers facing droughts, or bonded child labour in the sericulture processing, carpet-weaving industry or match and fire crackers industries or distress migrant labourers working in stone quarries, or brick-kilns or *beedi* manufacturing, or construction projects, or as gatherers of forest produce or in pisciculture etc. under contractors who advance bonded debts for exacting bonded labour.

There are a large number of welfare schemes for poverty alleviation at the Central and State levels for this purpose, such as the Central Ministry of Labour sponsored scheme of 1978 which provides Rs. 20,000 for the rehabilitation of the identified bonded labourer with a 50:50 contribution by the Centre and the State, or the Mahatma Gandhi National Rural Employment Guarantee Scheme. Other measures for preventing and rehabilitating bonded labour are stricter enforcement of the Minimum Wages, Payment of Wages and Contract labour(Regulation and Abolition) and Inter-State Migrant Workmen Acts wherever they are applicable and the obligations therein to maintain necessary records and registers, more comprehensive land reforms and distribution of surplus land, land development, provision of house sites and low cost dwelling units to the poor, improvement in the Public distribution System for distributing essential commodities to a targeted population, improvement of the

public health and State sponsored health insurance schemes, provision of micro-finance for vulnerable sections, assistance in setting up poultry, piggery, and dairy units, improvement in animal husbandry, horticultural and agricultural practices, training for acquiring new skills, provision of free primary education, and more widespread availability of special schemes for widows and old aged persons, providing rights for fishing in water bodies, for collecting and processing forest produce, or for surface mining and quarrying of minerals (especially minor minerals) which could be granted to self-help groups (*swayam sahayata samoohs*) of such labourers, and protection of civil rights.

Bonded labour offences have been made cognizable, though bailable under section 22 of the Bonded Labour Act. Under section 23 they are to be summarily tried by an Executive Magistrate who has been given the powers of a 1st or 2nd Class Judicial Magistrate, and extracting bonded labour from a person has been made punishable with imprisonment up to three years and fine up to Rs. 2000. Even giving a person a bonded debt invites the same punishment.

The Constitutional provisions for checking bondage and human trafficking also need mention.

Thus Article 23(1) of the Constitution prohibits any form of trafficking in human beings and forced labour, and the contravention of this prohibition has been made punishable in law.

Article 39(a) provides that men and women equally have a right to an adequate means of livelihood.

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

Article 42 casts a duty on the State to secure just and humane conditions of work and for maternity relief.

Article 43 enjoins a duty on the State to endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Apart from the Constitutional provisions, a few of the international safeguards for prohibiting human trafficking and bonded labour, are mentioned below.

According to the Forced Labour Convention of 1930 (No.29) [Article 2 (1)] – the term “forced or compulsory labour” means all work or service which is exacted from any person under the threat of any penalty and for which the said person

has not offered himself voluntarily. The ILO Convention states that member countries are to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. (India ratified the ILO Convention on Forced Labour (No.29) in 1953).

Article 4 of the Universal Declaration of Human Rights, 1948 states that "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."

The UN Supplementary Convention on the Abolition of Slavery (1956) defines debt bondage as "the status or condition arising from a pledge by a debtor of his personal service or those of a person under his control as a security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined."

In the ILO Report on Stopping Forced Labour (2001) – the term, bonded labour refers to a worker who rendered service under conditions of bondage arising from economic consideration, notably indebtedness through a loan or an advance. Where debt is the root cause of bondage, the implication is that the worker (or his dependents or heirs) are tied to a particular creditor for a specified or unspecified period until the loan is repaid.

We also find that District and *tahsil* (sub-divisional) level

Vigilance Committees have been constituted under section 13 of the Bonded Labour System (Abolition) Act, 1976 for identifying the bonded labourers in a district and for maintaining statistics and records and monitoring the interests of bonded labourers or freed bonded labourers. However although two of of the district and *tahsil* Vigilance Committee members are civil society social workers and three belong to the scheduled castes or tribes, but being the government or the D.M.'s nominees, they usually refrain from embarrassing the District Magistrate if he has taken the position that elements of debt bondage were absent in a particular case or that a particular area was bonded labour free. Unlike the D.M. they also lack executive powers and receive no financial support for transport or other work. Experience shows that district or sub-divisional vigilance committees have not been much better than government functionaries in tackling the problem of bonded labour. Even the local body *panchayat* members because of their position in the village feudal power structure usually support the keepers of bonded labour who are normally from a dominant caste.

A problem also arises because either the bonded labourer who is usually totally economically dependent on his employer is unwilling to maintain his claim of being held in bondage, when examined by the concerned Magistrate or other government functionary, because of the threats extended to him by his keeper, (and the local feudal structure that is usually supportive of the keeper) that the labourer and his family's

survival is not possible if he presses his complaint, and that he would be isolated after the DM or civil society supporter's departure from the scene. Also where distress migrant labourers (as may possibly have happened in the present case) leave the place voluntarily or forcibly, or after being handed out a pittance of their due wages, they are usually unavailable to press their complaint before the concerned Magistrate, hence we find that in the rarest case has any one been convicted or sent to jail for a bonded labour offence.

Government officials at the village level such as the *panchayat* secretary, or the revenue officials like the *lekhpal* or *patwari* or beat police personnel usually want to oblige the feudal power holders in the village, and are aligned with the dominant persons there, who may be the keepers of bonded labourers themselves. Besides they have other functions to perform and are not required to keep records regarding the situation of bonded labourers in the village. They also have a very servile attitude towards the DM or SDM, who may consider admission of debt bondage in his area a sign of his failure. Such *panchayat* secretaries, *patwaris* and *lekhpals* can therefore not be expected to be keen on forwarding bonded labour complaints to the competent Magistrates for inquiry or trial.

However para legals trained by the sub-divisional or district Legal Aid Services Authorities and panel and retainer lawyers, who are to be introduced to man the legal aid clinics which are to be set up in each village or cluster of villages, under the National Legal Services Authority (Legal Aid Clinics)

Scheme, 2010 and the National Legal Services Authorities (Legal Aid Clinics) Regulations 2011 in pursuance of section 12(b) of the Legal Services Authorities Act, 1987 which calls for providing free legal services to victims of trafficking in human beings or *begar* as referred to in Article 23 of the Constitution, would stand on a different footing. The said lawyers and para legals being under the supervision of the local and district judiciary and the Legal Services institutions would be relatively independent of the D.M. or the village power structure and would prove far more useful for pressing and pursuing debt bondage issues in the village. Once the legal aid clinics are set up and the paralegals and panel lawyers are available at the village, instant inquiries in matters of bondage can be conducted, even before the migrant bonded labourers leave for their original homes. As the Legal Aid Clinics Scheme and Regulations also speak of acquainting eligible persons at the grass roots level belonging to the Scheduled Castes and tribes or other backward classes and other socially and economically weak persons with their rights under various government welfare schemes, and visualize co-ordinating efforts with local civil society groups, using pre-litigation alternative dispute resolution methods, conducting Lok Adalats locally when a substantial number of persons who are seeking a similar kind of legal relief are identified, encouraging law students to survey the problems in the area and to provide legal reliefs with the aid of the paralegals. Utilization of such paralegals, legal aid lawyers and students would prove far more effective for tackling the problem of debt bondage and also for advancing the welfare

of the downtrodden sections of the people, which should be the concern of any sensitive and people oriented legal system.

This Court is however of the opinion that the directions of the National Legal Services Authority to the State Authorities to set up Legal Aid Clinics and appoint para-legals and panel lawyers for villages in accordance with its flagship Legal Aid Clinics scheme is not proceeding at the pace required and the matters need to be expedited.

We therefore direct the U.P. State Legal Services Authority to make sincere efforts to set up Legal Aid Clinics at the earliest, if possible within 4 months in all villages or clusters of villages as provided in the Legal Aid Clinics Scheme and to provide for paralegals, panel or retainer lawyers supervised by the sub-divisional or District Legal Services Authority to man the legal aid clinics in order to prevent debt bondage and to ensure access to the different government social welfare schemes, provision of minimum wages, land reforms and other poverty alleviation measures to members of the scheduled tribes and castes and other backward castes and other socially and economically deprived persons who are eligible for such reliefs under section 12 of the Legal Services Authorities Act.

We think that preference for starting the legal aid clinics scheme be given to villages in areas where a greater number of bonded or child labour or minimum wage complaints have been made, or villages with greater socio-economic backwardness, with feudal structures and inadequate land

reforms, degraded land, where there are a large number of unorganized and contract labour in stone quarrying, mining, gathering forest produce, or beedi, carpet, sericulture, pisciculture, fire crackers, pottery, brass, glass, bangle work, construction activities etc., poor condition of primary education, as these are the likely areas of concentration of bonded labour, and which are also the areas of greatest poverty and inequality calling for intervention on a priority basis.

The Chief Secretary, Principal Secretary Law, Principal Secretary Home, Social Welfare and Women and Child Development, Member Secretary, U.P. State Legal Services Authority, and District Legal Services Authorities, DGP, UP, Labour Commissioner, U.P., Divisional Commissioners, District Magistrates and Sub-divisional magistrates, and other concerned government functionaries and the police personnel from the concerned police station are expected to give complete support in this effort, and to ensure co-ordination of different departments and to issue suitable directions for checking bonded labour and for ensuring that the socio-economic issues of such vulnerable sections are addressed on a priority and comprehensive basis.

We find that in the cases of migrant bonded labourers, the bonded labourer may be from the same district or another district in the state, or he may be from another state. As after the bonded labour issue is raised usually the labourer voluntarily or forcibly goes back to his original home, and

consequently no complainant is left to prosecute the complaint, (as in the present case). We think that henceforth whenever the complaining bonded labour belongs to the same district or another district in U.P., the matter may also be referred for examination to the the State Human Rights Commission and whenever the aggrieved bonded labour originates from a district outside U.P., the matter may be referred for examination to the National Human Rights Commission. The said Commissions may take cognizance on the reference if they deem appropriate and issue directions or submit their report.

We also direct the D.M.s, DIGs/SSPs/SPs and District level Labour Commissioners of all districts to direct the subordinate officials and in-charges of the police stations concerned to initiate immediate action in the matters and to inform the District and Sub-divisional Legal Services Authorities which shall forthwith examine the complainants and investigate into the genuineness of the bonded labour complaints and give legal assistance to the bonded labourer complainants for following up the matter with the competent authorities irrespective of whether Legal Aid Clinics have been set up in that particular area.

We direct the Chief Secretary/Principal Secretary Home/Social Welfare, U.P., DGP, U.P., and Principal Secretary, Labour/Labour Commissioner U.P. and Member Secretary, U.P., Legal Services Authority, U.P., Lucknow to issue necessary directions for fulfilling the aforesaid objectives.

Let a copy of this order be sent within two weeks to the Chief Secretary, U.P., Director General of Police, U.P., Principal Secretary, Social Welfare, Women and Child Development, U.P., Principal Secretary, Home, U.P., Principal Secretary (Law) U.P., Principal Secretary, Labour, U.P., Labour Commissioner, U.P., Kanpur, Member-Secretary, National Legal Services Authority, New Delhi, State Legal Services Authority, U.P., National Human Rights Commission, New Delhi, U.P. State Human Rights Commission, Lucknow, all District Legal Services Authorities (District Judges), all Divisional Commissioners, District Magistrates, and DIG/SSP/SP in-charge of law and order in all districts in U.P., for further communication to their subordinate officials and compliance. Copy of the order may also be furnished to the learned Government Advocate within two weeks for compliance.

With these observations, the petition is finally disposed of.

Date: 5.1.2012

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