

PETITIONER:
BANDHUA MUKTI MORCHA

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 21/02/1997

BENCH:
K. RAMASWAMY, S. SAGHIRAHMAD

ACT:

HEADNOTE:

JUDGMENT:
O R D E R

This writ petition under Article 32 of the Constitution has been filed by way of public interest litigation seeking issue of a writ of mandamus directing the Government to take steps to stop employment of children in Carpet Industry in the State of Uttar Pradesh; to appoint a Committee to investigate into their conditions of employment; and to issue such welfare directives as are appropriate for total prohibition on employment of children below 14 years and directing the respondent to give them facilities like education, health, sanitation, nutritious food, etc.

The main contention of the petitioner-group is that employment of the children in any industry or in a hazardous industry, is violative of Article 24 of the Constitution and derogatory to the mandates contained in Article 39(e) and (f) of the Constitution read with the Preamble. Pursuant to the filing of the writ petition, this Court appointed Prem Bhai and others to visit factories manufacturing carpets and to submit their findings as to whether any number of children below the age of 14 years are working in the carpet industry etc. The Commissioner submitted his preliminary report. Subsequently, by Order dated August 1, 1991, this Court appointed a Committee consisting of Shri J.P. Vergese, Ms. Gyansudha Mishra and Dr. K.P. Raju to go around Mirzapur area and other places where carpets are being weaved to find out whether children are being exploited and to submit a comprehensive report. In furtherance thereof, a comprehensive report was submitted on November 18, 1991. The matter was heard and arguments were concluded. The judgment was reserved by proceedings dated October 18, 1994. Since the judgment could not be delivered, matter was directed to be posted before a Bench consisting of S. Saghir Ahmad, J. We have heard the counsel on both sides.

The primary contention by the petitioner on behalf of the children below the age of 14 years, is that the employment of children by various carpet weaver in Varanasi, Mirzapur, Jaunpur and Allahabad area is violative of Article 24. The report of the Committee discloses the enormity of the problem of exploitation to which the children are subjected. Children ranging between 5 to 12 years having

been kidnapped from the Village Chhichhori (Patna Block, District Palamau in Bihar) in January and February, 1984 in three batches and were taken to village Bilwari in Mirzapur District of U.P. for being engaged in carpet weaving centres. They are forced to work all the day. Virtually, they are being treated as slaves and are subjected to physical torture revealed by the presence of marks of violence on their person. The Commission/Committee visited 42 villages and found in all 884 looms engaging 42% of the work force with the children below the age of 14 years. The total number of children are 369; 95% of them are of tender age ranging between 6 to 11 years and most of them belong to the Scheduled Castes and Scheduled Tribes. Despite Pursuasion, they could not be released and continue to languish under bondage. The Commission visited several villages, personally contacted the parents of the children in different places and found that the children were taken against their wishes and are wrongfully forced to work as bonded labour in the carpet industries. They have furnished the list of carpet industries where the children were found engaged. The question, therefore, is: whether the employment of the children below the age of 14 years is violative of Article 24 and whether the omission on the part of the State to provide welfare facilities and opportunities deprives them of the constitutional mandates contained in Articles 45, 39(e) and (f), 21, 14 etc.?

Child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. Every nation, developed or developing, links its future with the status of the child. Childhood holds the potential and also sets the limit to the future development of the society. Children are the greatest gift to the humanity. Mankind has best hold of itself. The parents themselves live for them. They embody the joy of life in them and in the innocence relieving the fatigue and drudgery in their struggle of daily life. Parents regain peace and happiness in the company of the children. The children signify eternal optimism in the human being and always provide the potential for human development. If the children are better equipped with a broader human output, the society will feel happy with them. Neglecting the children means loss to the society as a whole. If children are deprived of their childhood - socially, economically, physically and mentally - then the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and goods citizenry. The founding fathers of the Constitution, therefore, have bestowed the importance of the role of the child in its best for development. Dr. Bhim Rao Ambedkar, was for a head of his time in his wisdom projected these rights in the Directive Principles including the children as beneficiaries. Their deprivation has deleterious effect on the efficacy of the democracy and the rule of law.

Article 39 (e) of the Constitution enjoins that the State shall direct its policy towards securing the health and strength of workers, men and women; and the children of tender age will not be abused; the citizens should not be forced by economic necessity to enter avocations unsuited to their age or strength. Article 39(f) enjoins that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and the childhood and youth are protected against exploitation and against moral and material abandonment. Article 45 mandates

that the State shall endeavour to provide free and compulsory education for all children until they complete the age of 14 years. The period often years provided therein has lost its relevance since as on date, more than 78 million out of 405 million children, 78% of them are employed between the age of 5 to 14 years without any basic and elementary education, healthy, access to nutrient food and leisure. Article 24 of the Constitution prohibits employment of the children in factories etc. so that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Article 21 mandates that no person shall be deprived of his life or personal liberty except according to the "procedure established by law" which this Court has interpreted to mean "due process of law". The bare of the poverty is the root of the child labour and they are being subjected to deprivation of their meaningful right to life, leisure, food, shelter, medical aid and education. Every child shall have without any discrimination on the ground of cast, birth, colour, sex, language, religion, social origin, property or birth alone, in the matter of right to health, well being, education and social protection. Article 51-A enjoins that it shall be the duty of every citizen to develop scientific temper, humanism and the spirit of inquiry and to strive towards excellence in all spheres of individual and collective activities so that the nation constantly rises to higher levels of endeavours and achievement. Unless facilities and opportunities are provided to the children, in particular handicapped by social, economic, physical or mental disabilities, the nation stands to lose the human resources and good citizen. Education eradicates illiteracy and means to economic empowerment and opportunity to life of culture. Article 26(1) of Universal Declaration of Human Rights assures that everyone has right to education which shall be free, at least at the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made available and higher education shall equally be accessible to all on the basis of merit. Education enables development of human personality and strengthens the respect for human right and fundamental freedoms. It promotes understanding, tolerance and friendship among people. It is, therefore, the duty of the State to provide facilities and opportunities to the children driven to child labour to develop their personality as responsible citizens.

Due to poverty, children and youth are subjected to many visible and invisible sufferings and disabilities, in particular, health, intellectual and social degradation and deprivation. The Convention on the Rights of the Child which was ratified by the Government of India on November 20, 1989 recognised the rights of the child for full and harmonious development of his or her personality. Child should grow up in a family environment, in an atmosphere of happiness, love and understanding. The child should be fully prepared to live an individual life in society. Article 3 provides that in all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be the primary consideration. Article 27(1) provides that the State parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Article 28 provides thus:

"1. State Parties recognise the

right of the child to education, and with a view to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of needs;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. State Parties shall promote and encourage international co-operation in matter relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods in this regard. Particular account shall be taken of the needs of developing countries."

Article 31(1) recognises the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. Article 32() which is material for the purpose of this case reads as under:

"1. States Parties recognize the right of the child to be protected 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.

2. States Parties shall take legislative, administrative, social

and educational measure to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments. States Parties shall in particular.

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article."

Article 36 states that State parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare. No doubt, the Government, while ratifying the Convention with a reservation of progressive implementation of the governance, reminded itself of the obligations undertaken thereunder, but they do not absolve the State in its fundamental governance of the imperative of Directive Principles of the Constitution rendering socio-economic justice to the child and their empowerment, full growth of their personality - socially, educationally and culturally - with a right to leisure and opportunity for development of the spirit of reform, inquiry, humanism and scientific temper to improve excellence - individually and collectively.

In *Maharashtra State Board of Secondary and Higher Education vs. K.S. Gandhi* [(1991) 2 SCC 716], right to education at the secondary stage was held to be a fundamental right. In *J.P. Unnikrishnan vs. State of Andhra Pradesh* [(1993) 1 SCC 642], a Constitution Bench has held education up to the age of 14 years to be a fundamental right; right to health has been held to be a fundamental right; right to potable water has been held to be a fundamental right; meaningful right to life has been held to be a fundamental right. The child is equally entitled to all these fundamental rights. It would, therefore, be incumbent upon the State to provide facilities and opportunity as enjoined under Article 39(e) and (f) of the Constitution and to prevent exploitation of their childhood due to indigence and vagary. As stated earlier, their employment - either forced or voluntary - is occasioned due to economic necessity; exploitation of their childhood due to poverty, in particular, the poor and the deprived sections of the society, is detrimental to democracy and social stability, unity and integrity of the nation.

Various welfare enactments made by the Parliament and the appropriate State Legislatures are only teasing illusions and a promise of unreality unless they are effectively implemented and make the right to life of the child driven to labour a reality, meaningful and happy. Article 24 of the Constitution prohibits employment of the child below the age of 14 years in any factory or mine or in any other hazardous employment, but it is a hard reality that due to poverty child is driven to be employed in a factory, mine or hazardous employment. Pragmatic, realistic and constructive steps and actions are required to be taken to enable the child belonging to poor, weaker sections, Dalit and Tribes and minorities, enjoy the childhood and develop its full blossomed personality - educationally, intellectually and culturally - with a spirit of inquiry,

reformation and enjoyment of leisure. The child labour, therefore, must be eradicated through well-planned, poverty-focussed alleviation, development and imposition of trade actions in employment may drive the children and mass them up into destitution and other mischievous environment, making them vagrant, hard criminals and social risk etc. Therefore, while exploitation of the child must be progressively banned, other simultaneously alternatives to the child should be evolved including providing education, health care, nutrient food, shelter and other means of livelihood with self-respect and dignity of person. Immediate ban of child labour would be both unrealistic and counter-productive. Ban of employment of children must begin from most hazardous and intolerable activities like slavery, bonded labour, trafficking, prostitution, pornography and dangerous forms of labour and the like.

Illiteracy has many adverse effects in a democracy governed by rule of law. A free educated citizen could meaningfully exercise his political rights, discharge social responsibilities satisfactorily and develop spirit of tolerance and reform. Therefore, education is compulsory. Primary education to the children, in particular, to the child from poor, weaker sections, Dalits and Tribes and minorities is mandatory. The basic education and employment-oriented vocational education should be imparted so as to empower the children with these segments of the society to retrieve them from poverty and, thus, develop basic abilities, skills and capabilities to live meaningful life for economic and social empowerment. Compulsory education, therefore, to these children is one of the principal means and primary duty of the State for stability of the democracy, social integration and to eliminate social tensions.

In *M.C. Mehta vs. State of Tamil Nadu & Ors.* [(1996) 6 SCC 756], this Court has considered the constitutional perspectives of the abolition of the child labour and the child below 14 years of age in the notorious Sivakasi Match industries. It has mentioned in para 12 of the judgment the number of total workers and the child workers employed in the respective industries in the country. It has surveyed various enactments which prohibit employment of the child; the details thereof are not necessary to be reiterated. In para 27, it has noted the causes for failure to implement the constitutional mandate and has given various directions in that behalf. We, therefore, reiterate the directions given therein as feasible inevitable. We respectfully agree with them and reiterate the need for their speedy implementation.

We are of the view that a direction needs to be given that the Government of India would convene a meeting of the concerned Ministers of the respective State Governments and their Principal Secretaries holding concerned Department, to evolve the principles of policies for progressive elimination of employment of the children below the age of 14 years in all employments governed by the respective enactments mentioned in *M.C. Mehta's* case; to evolve such steps consistent with the scheme laid down in *M.C. Mehta's* case, to provide (1) compulsory education to all children either by the industries itself or in co-ordination with it by the State Government to the children employed in the factories, mine or any other industry, organised or unorganised labour with such timings as is convenient to impart compulsory education, facilities for secondary, vocational profession and higher education; (2) apart from education, periodical health check-up; (3) nutrient food

etc.; (4) entrust the responsibilities for implementation of the principles. Periodical reports of the progress made in that behalf be submitted to the Registry of this Court. The Central Government is directed to convene the meeting within two months from the date of receipt of the order. After evolving the principles, a copy thereof is directed to be forwarded to the Registry of this Court.

Shri Rakesh Dwivedi, learned Additional Advocate General of U.P. and Shri B.B. Singh, learned counsel for the State of Bihar, have taken notice on behalf of the States of Uttar Pradesh and Bihar respectively. They are directed to obtain the copy of the judgment and send the same to the respective States and to ensure implementation of directions issued by this Court from time to time to implement the welfare measures envisaged in the above orders until the principles and policies to be evolved in the aforesaid conference and implemented throughout the country.

Post this matter after three months.

The writ petition is, accordingly, disposed of subject to the above directions.

REPORTABLE-426/97 SECTION-PIL

SUPREME COURT OF INDIA

No:F.3/Ed.B.J./103/97

New Delhi

Date : 3.5.97

CORRIGENDUM

This Court's Order in W.P.(C) No.12125 of 1984 Bandhua Mukti Morcha v. Union of India & Ors.

(Dated : 21.2.1997)

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NO. 11643 OF 1985

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