

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2192 of 1999

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Kailash Prasad son of Kalicharan Ram R/o Mohalla Ghagha Lane P.S. Khajekallar
District Patna.

.... Petitioner/s

Versus

1.Sub-Divisional Magistrate, Patna
2.The Inspector, appointed under 'The Child Labour (Prohibition and Regulation)
Act 1987 Patna City, Patna.
3.The State of Bihar through Labour Commissioner, Bihar, Secretariat, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : None.

For the Respondent/s : Mr. Pramod Kumar Sinha, AC to AAG-2

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 23-02-2015

Shivaji Pandey, J

No one appears on behalf of petitioner. However, counsel for the
State is present.

In this case, petitioner is challenging Memo No. 309 dated 24th
June 1997 passed by the Sub-divisional Magistrate, Patna City, under 'The Child
Labour (Prohibition and Regulation) Act 1986 (for short, the 'Act') whereby the
petitioner has been directed to deposit Rs.1,20,000/- in the District Child Labour
Rehabilitation and Welfare Fund in the account of the District Magistrate, Patna.

As per the claim of petitioner, the whole family members were/are
engaged in ancestral business of vermilion (Sindoor) and has claimed that no
child has ever been engaged in the work and wrongly received notice for
depositing the aforesaid amount by the impugned order.

Allegation has been made against the labour Inspector or his agent
they used to visit his residence demanding illegal gratification which the
petitioner did not oblige where upon notice in question was served upon the
petitioner.



It has further been submitted that the petitioner is doing the traditional business with the help of family members, hence the provisions of Sections 7, 8 and 9 of the Act does not apply, in view of provisions of Section 9(3) of the Act so much so it has been claimed that before giving direction to deposit the aforesaid amount no enquiry was conducted, no notice was ever served upon him, suddenly the impugned notice has been served asking him to deposit the aforesaid amount, there six children have been mentioned without any detail, such as, their fathers' name, their residence etc.

A counter affidavit has been filed in the present case and the State has justified the impugned notice and stated that every provision of the Act is applicable to the petitioner.

The Act has been legislated with an intent to prohibit the engagement of children in certain employment but having no prohibition in employment other than employment of establishment provided in part A and Part B of the Schedule.

'Child' has been defined in Section 2(ii) which means a person who has not completed his fourteen year of age.

'Family' has been defined in Section 2(v) of the Act which means 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.

Section-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.

Part-II of the Act prohibits employment of children in certain occupation and processes which has been dealt with in Section 3 of the Act whereas Part-III of the Act relates to regulation of conditions of work of children. Section 6 provides that 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 section 3 is carried on. Section 7 provides the hours and period of work and Section 8 deals with weekly holidays and Section 9 deals with power and functions of Inspector. In such view of the matter, the Legislature in its wisdom allowed the employment of children apart from mentioned in part A and B of the schedule.

The notice does not disclose whether petitioner’s business falls under the ‘family’ business with the aid of family members so much so the notice that has been served upon the petitioner without giving any notice and without holding enquiry so much that details of children mentioned in the notice are completely vague. In such view of the matter, the impugned notice for depositing Rs.1,20,000/- is hereby quashed.

In the result, this petition is allowed.

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(Shivaji Pandey, J)