

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WP(C).No. 19751 of 2009 (L)

PETITIONER(S) :

- 1. R.A.GOWRI PARVATHY, AGED 46 YEARS,
W/O. S.U.ANANTHAKRISHNAN, PROPRIETRIX,
HOTEL ARYAAS, XXI/546A, HOSPITAL ROAD,
NEAR MUNICIPAL BUS STAND, THRIPIUNITHURA,
REP. BY POWER OF ATTORNEY HOLDER, MUTHUKRISHNAN,
S/O.LATE KUMARA SWAMI, ROYAL GARDENS, JASMINE 7-D,
REFINERY ROAD, TRIPUNITHURA.**
- 2. MUTHUKRISHNAN, AGED 53 YEARS,S/O.LATE KUMARA SWAMI,
ROYAL GARDENS-JASMINE 7-D, REFINERY ROAD, TRIPUNITHURA.**

BY ADV. SRI.VARGHESE C.KURIAKOSE

RESPONDENT(S) :

- 1. UNION OF INDIA, REP. BY SECRETARY,
MINISTRY OF HUMAN RESOURCE, NEW DELHI.**
- 2. STATE OF KERALA, REP. BY SECRETARY,
MINISTRY OF LABOUR, TRIVANDRUM.**
- 3. THE ASST. LABOUR OFFICER,
FIRST CIRCLE, ERNAKULAM.**

*** ADDITIONAL R4 & R5 IMPEADED**

- 4. DR.BEENA RANI, ASST. SURGEN,
GOVT. TALUK HOSPITAL, TRIPUNITHURA.**
- 5. DR.SUJIT HARSHAN,
DENTAL CIVIL SURGEN, (MEDICAL AUTHORITY),
GENERAL HOSPITAL, ERNAKULAM.**

*** ADDITIONAL R4 & R5 ARE IMPEADED AS PER ORDER DATED 28.07.2009 IN
I.A.NO.9380 OF 2009.**

**R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 & R3 BY GOVERNMENT PLEADER SRI.MANOJ.P.KUNJACHAN
R4 BY ADV. SRI.P.MURALEEDHARAN
R5 BY ADV. SRI.P.K.MANOJKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1: TRUE PHOTOSTAT COPY OF THE TRANSFER CERTIFICATE.
- EXHIBIT P2: TRUE PHOTOSTAT COPY OF THE ORDER PASSED BY THE CHILD WELFARE COMMITTEE RELEASING THE BOND.
- EXHIBIT P3: TRUE PHOTOSTAT COPY OF THE CERTIFICATE ISSUED BY GENERAL HOSPITAL, ERNAKULAM IN PROOF OF THE AGE.
- EXHIBIT P4: TRUE PHOTOSTAT COPY OF THE SHOWCAUSE NOTICE ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P5: TRUE PHOTOSTAT COPY OF THE WRITTEN OBJECTION SEEKING TIME TO PRODUCE DOCUMENTS.
- EXHIBIT P6: TRUE PHOTOSTAT COPY OF THE ORDER NO.684/2009 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONERS.
- EXHIBIT P7: TRUE PHOTOSTAT COPY OF OBJECTION DATED 03.07.2009 SUBMITTED BY THE PETITIONERS.

RESPONDENT(S)' EXHIBITS :

- EXHIBIT-R3(A): TRUE COPY OF THE CERTIFICATE.
- EXHIBIT-R3(B): A TRUE COPY OF THE ORDER OF CHILD WELFARE COMMITTEE.
- EXHIBIT-R4(A): TRUE PHOTOCOPY OF ACCIDENT REGISTER CUM WOUND CERTIFICATE SERIAL NO.741 DATED 26.06.2009 ISSUED BY THE ADDITIONAL 4TH RESPONDENT.
- EXHIBIT-R4(B): TRUE PHOTOCOPY OF PAGES 274 TO 276 OF BOOK "PRACTICAL FORENSIC MEDICINE".

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J.

W.P.(C) No. 19751 of 2009 (L)

Dated this the 28th day of July, 2015

J U D G M E N T

The petitioners in the above case are aggrieved with Ext.P6. Ext.P6 was an order directing deposit of Rs.20,000/- before the District Labour Officer for an alleged offence under the Child Labour (Prohibition and Regulation) Act, 1986 (for brevity the 'Act of 1986').

2. De hors the declared position that fine can be imposed only against a convicted person under the Act, the learned counsel appearing for the petitioner would submit that, in fact, no offence is made out and no proceedings are taken for prosecution under the Act of 1986, as is evident from the facts of the case, which is admitted by the Government in its counter affidavit.

3. The facts needed to be noticed are that the petitioners are running a hotel at Tripunithura and inspection was conducted therein and four persons,

employed therein, were found to be below the age of 14 and proceedings were initiated under the Act of 1986. The alleged children, working in the hotel, were produced before a Medical Doctor and three of them were found by the Doctor to be above the age of 14. Though the doctor's certificate is not produced, proceedings were eventually taken only for employment of one particular person by name Raja @ Gangaraj, as is evidenced from Ext.P4. It was with respect to that offence that deposit of Rs.20,000/-, in lieu of fine, was directed to be made. The order issued pursuant to the show cause notice at Ext.P4 is produced at Ext.P6 which is assailed herein.

4. The counter affidavit filed by the learned Government Pleader shows that, later on, the petitioners had produced a translation of transfer certificate in O.P. No.443/2009 before the Child Welfare Committee, Ernakulam, with respect to the person, whose employment was allegedly said to be in violation of the provisions of the

Act of 1986 and show cause notice was issued at Ext.P4 and orders passed at Ext.P6. The Child Welfare Committee, even according to the Government, had been convinced of the fact that the said person was also above 14 years. The transfer certificate and the bond executed for Rs.10,000/- is also said to have been released on 4.7.2009, subsequent to Ext.P6 order.

In such circumstance, no case for penalty exists and Ext.P6 would stand set aside. Writ petition is allowed.

Sd/-
K.VINOD CHANDRAN,
JUDGE