

Mukesh Advani vs State Of Madhya Pradesh on 2 May, 1985

Equivalent citations: 1985 AIR 1363, 1985 SCR SUPL. (1) 126, AIR 1985 SUPREME COURT 1363, 1985 LAB. I. C. 1895, (1985) 2 LAB LN 275, 1985 (3) SCC 162, 1985 SCC (L&S) 665

Author: D.A. Desai

Bench: D.A. Desai, A. Varadarajan

PETITIONER:

MUKESH ADVANI

Vs.

RESPONDENT:

STATE OF MADHYA PRADESH

DATE OF JUDGMENT 02/05/1985

BENCH:

DESAI, D.A.

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VARADARAJAN, A. (J)

CITATION:

1985 AIR 1363

1985 SCR Supl. (1) 126

1985 SCC (3) 162

1985 SCALE (1) 981

ACT:

Social Action Litigation-Exploitation of the workmen from Tamil Nadu by the Mines contractors deprecated-Need for the State protection of the poor and needy laborers who are unable to negotiate on terms of equality, reiterated-Constitution of India, 1950. Articles 38, 41, 42, 43, Bonded Labour System (Abolition) Act, 1974-Minimum Wages Act, 1948, Payment of Bonus Act, 1965.

HEADNOTE:

Pursuant to an investigative report in the "Indian Express" dated September 14, 1982, one of the advocates practising in the Supreme Court addressed a letter to one of the Judges of the Supreme Court depicting the horrid plight of bonded labour from Tamil Nadu working in the stone quarries at Raisen in Madhya Pradesh. It was alleged: (a) Everyone recruited were paid a reimbursible advance of Rs.

1,000/- but the method of accounting is so manipulated that the debt instead of getting wiped out, increased in geometrical proportion and no workmen can have the employment until the entire debt repaid which is beyond the reach of the workmen; (b) The working conditions were bad. There was no weekly holiday. Sanitary conditions were in deplorable state. The workmen were not paid any wages during rainy seasons, since the mines were shut off; (c) Not a single legislation enacted for the welfare of labour is implemented or respected and (d) Due to the inaction of the Labour Department of the Centre and the State like absence of a notification specifying minimum wages for the labour force employed in the mines, resulting in poultry and meagre payment there is naked and unabashed exploitation of workmen. The report called for by the Supreme Court from the District Judge Bhopal confirmed the said allegations and further revealed that (a) on a complaint preferred 48 labourers were released by the Labour Department of Madhya Pradesh; (b) a complaint has been lodged with the police under the Bonded Labour System (Abolition) Act, 1976; (c) two or three cases against the Contractors were instituted in fact and the said cases were pending; (d) the piece-rate method of paying wages for digging a standard 'Khanti' has resulted sometime to no payment at all for both the male and female labour employed; (e) a team of police force arrived from Tamil Nadu and liberated the workmen and repatriated them to Tamil Nadu and (f) the newspaper publicity had a very salutary and desired effect in as much as various contractors have given up efforts to recover the advances which was a good achievement.

The State of Madhya Pradesh admitted the findings of the District Judge, Bhopal and pointed out that in respect of flagstone mines, the appropriate Government is the Central Government under the payment of

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Bonus Act, 1965 and the Minimum Wages Act, 1948. The Tamil Nadu Government have clarified as to how the labourers were duped and taken to Madhya Pradesh and confirmed the release of the labourers by their State Police.

The Court in the circumstances directed the Union of India as appropriate Government to issue a preliminary notification under section 5 of the Minimum Wages Act, 1948 setting out its proposal for information of persons likely to be affected thereby and specifying a date not less than two months from the date of the Notification on which proposals will be taken into consideration. The Union of India accordingly issued necessary notification dated March 24, 1982 and October 31, 1983 setting out the minimum piece rate of wages for various occupations in flagstone mines.

Disposing of the petition, the Court

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HELD: 1. Undoubtedly, mines have to work in larger public and national interest. Therefore, in the very nature

of things, there will be contractors and the workmen. Contractor as is his wont, to augment his profit which motivates him to take contract and who is not shown to be altruistic, is bound to exploit the workmen. The notorious method of exploitation is, pay as much less as possible despite all pretensions of Minimum Wages and Payment of Wages Act, take work for longer hours, prohibited by beneficent statutes like the Mines Act, the Factories Act and like statutes. Both these when jointly practised enlarges the profit. The law is that no employer can pay less than the minimum wages. But this remains a paper promise unless an effective implementation machinery not overawed by these wealthy and generally unscrupulous contractors who can spread their tentacles over officials is set up. [133 H; 134 A-B; D]

(The court expressed the hope that such a machinery would be set up jointly by the Union of India and the Government of the State of Madhya Pradesh.) [134 E]

2. The State in discharge of its obligation under Articles 38, 41, 42 and 43 must extend the umbrella of protection to these poor and needy and unprotected workmen who are unable to negotiate on terms of equality and who may accept any terms to stave off hunger and destitution. It is the State which must interpose between these two unequals to eschew exploitation. [134 B-C]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 1232 of 1982. Under Article 32 of the Constitution of India. Mukesh Advani Petitioner. (Not present) A.V. Rangam, Ravindra, Bana, A.K. Sanghi, Ms. H. Khatun and R.N. Paddar for the Respondent.

The Judgment of the Court was delivered by DESAI, J. One Mukesh Advani, Advocate practising in this Court addressed a letter to one of the Judges of this Court on September, 23, 1982 annexing thereto a cutting from the 'Indian Express' dated September 14, 1982 depicting the horrid plight of the bonded labour working in stone quarries at Raisen in Madhya Pradesh.

Broadly stated the allegations were that the contractors who operate the mines recruit labour force from Tamilnadu. Everyone recruited to work was paid roughly an advance of Rs. 1,000 and then brought to work at the mines. This amount of Rs. 1,000 reimbursible by deductions spread over from month to month from the wages payable to the bonded labourers, but the method of accounting is so manipulated that the debt of Rs. 1,000 is never wiped out, and on the contrary it increases by geometrical proportion. The workman goes deeper into the mire of indebtedness with the result that the octopus hold of the contractor becomes all enveloping and the workmen becomes a bonded labour. The working conditions, to say the least, were of the 18th century vintage. There is no weekly holiday. Sanitary conditions are in deplorable state. During the rainy season the operation of the mines is shut off and consequently the workmen are not paid wages. Not a single legislation

enacted for the welfare of labour is implemented or respected. No workman can leave the employment until the entire debt is repaid which is beyond the reach of the workmen. The only way to escape the clutches of the contractor is for the workman to change the master who by a paper advance pays off the former contractor and the cycle is repeated. It was alleged that the functionaries of the Labour Department of the Centre and the State by sheer inaction if not active collaboration on their part help in exploitation of the labour. It was specifically alleged that in the absence of a notification specifying minimum wages for the labour force employed in the mines the payment is pittance and meagre and there is naked and unabashed exploitation of workmen.

As part of social action litigation this letter was treated as a writ petition under Art. 32 of the Constitution and by the Order dated October 7, 1982 notice was ordered to be issued to the Deputy Commissioner/Collector, Bhopal. The District Judge Bhopal was directed to proceed to the site of stone quarries at Raisen and ascertain the existence of bonded labour and to submit a detailed report of the working conditions in the mines. A further direction was given that the District Judge may take assistance of Mr. N.K. Singh who had exposed and portrayed the plight of the bonded labour in the 'Indian Express'. The Committee for Implementing Legal Aid Schemes was directed to deposit Rs. 1,000 with the Registrar of the Supreme Court to meet the expenses of the District Judge in carrying out his assignments.

Pursuant to the aforementioned order, the District Judge submitted a detailed report in which it was pointed out that the labour force recruited from Tamil Nadu had made a complaint on May 24, 1980 to the Secretary, Labour Department, Government of Madhya Pradesh that the quarry contractor (Abdul Rehman) was giving inhuman treatment to Tamil labourers working in Surai mines. This complaint was forwarded to the Superintendent of Police, Raisen to enquire into the matter. He submitted a report that 48 workmen from Tamilnadu have been released and they have returned to Tamilnadu. On September 8, 1980 a written report was lodged at Police Station by seven workmen six of whom were from Tamilnadu, in which it was alleged that the quarry contractor (Hamid Khan) was harassing them by making a claim that each one had to repay Rs. 15,000 to Rs. 16,000 towards the advances taken by them. It was not possible to ascertain how this huge amount was worked out. One additional complaint was that the workmen were paid less than what was agreed at the time of recruitment and that whenever a voice of protest was raised the workmen were physically be laboured. It was alleged that their movements were circumscribed and that they were not free to leave the employment or to move away from the habitat. In short they lived a captive life. The District Judge pointed out that on this complaint an offence was registered at the Police Station under Bonded Labour System (Abolition) Act, 1976. At the time of the report, the case was pending. The dilemma which the District Judge faced in the course of enquiry was vividly described when he pointed out that when the workman is taken into confidence and is assured of protection he gives out a story of harassment and torture by the quarry contractor but when officially questioned he is afraid of making necessary disclosures. But apart from this dichotomy, the District Judge noticed that Labour Enforcement Officer instituted two cases against the quarry contractor for recovery of Rs. 11,000 and odd for short payment and at the time of the report the cases were pending.

The District Judge further pointed out that there is a piece rate method of paying wages. The piece rate ranges from Rs. 10 to Rs. 20 for a standard 'Khanti' which is of the size 10'x10'x1' (depth). A pair

consisting of a male and a female is assigned to a 'Khanti' and after a hard-day's toil the average earning ranges between Rs. 5 to Rs. 10 per day out of which unauthorized and impermissible deductions are made leaving the workman very little to survive. The chances of not earning anything even after a hard day's work were very high in as much as after the 'Khanti' is dug, the flagstone appears and that stone is to be cut nicely into slabs of specified sizes. If the slabs are not properly severed from the stone, the workman is not paid anything. The total earning also depends upon the number of slabs cut by the workman. The rate is usually around Rs. 2 per cubic foot. Though the Labour Department was of the view that unofficially a workman could earn Rs. 650 per fortnight, in practice this, was shown to be a paper figure.

On the enquiry by the District Judge, the contractor admitted that advance payment is made to every workman and it is recovered by deduction from the wages earned by each workman at the time of payment.

It also transpired that workmen from Tamilnadu were so harassed that on a complaint received by the Tamilnadu Government, a team of the police force arrived from Tamilnadu, liberated the workmen and repatriated them to Tamilnadu.

The District Judge also found that restraints were put on the workmen leaving the job but once a quarry contractor on being subjected to detailed enquiry, gave up any claim to recover the advances made by him, the restraints disappeared with the result that according to the District Judge, at the relevant time of the enquiry, there was no bonded labour.

The District Judge concluded that the newspaper publicity had a very salutary and desired effect in as much as various contractors have given up efforts to recover the advances and according to the District Judge it was a good achievement. A note of caution is sounded that if the appropriate follow-up action is not taken by the District Vigilance Committee and District Magistrate to ensure that quarry contractors who were then making an oral announcement of giving up of advances debts of the workmen without executing documents evidencing valid discharge, a sinister attempt may be made to go back upon discharge of debts and one may return to square one.

The District Judge also pointed out that there is total absence of implementation of the labour laws applicable to these quarries. It was pointed out that as the Central Government is the appropriate Government it has appointed only one inspector for II districts with the result that provisions of several laws beneficial to workmen are flouted with impunity. A glaring case pointed out was that provisions of the Payment of Bonus Act, 1965 would apply to some of the quarries proprio vigore but there is no whisper of its implementation.

The District Judge concluded that the follow-up action as indicated by him will relieve harassment of workmen and ameliorate the working conditions.

The State of Madhya Pradesh in its counter-affidavit broadly admitted the findings of the learned District Judge and it is pointed out that in respect of flagstone mines, the appropriate Government is the Central Government. It was also pointed out that the Central Government has taken no steps to

prescribe minimum wages under the Minimum wages Act.

As the report of the District Judge showed that the workmen who were complaining of harassment and torture were already released and discharged and at the relevant time there was no bonded labour the Court concentrated on giving direction for taking suitable steps for implementation of the labour laws. In this connection the Court gave high priority to the statutory prescription of minimum wages that the quarry contractor would be bound to pay and which would also simultaneously provides shield against unauthorised deductions or exploitation by paying less than the minimum. With this end in view the Court directed by its order dated November 23, 1982 to serve notices of the petition on the State of Tamil Nadu and the Union of India.

One Thirumati J. Anjani Dayanand, Commissioner and Secretary, Social Welfare Department, Government of Tamilnadu filed an affidavit in response to the notice issued by this Court. The recitals therein are blood- curdling. It was pointed out that instances of kidnapping families of gullible illiterate rural poor from various parts in Tamilnadu to Madhya Pradesh under the guise of providing them lucrative employment on attractive remuneration and then unlawfully confining them as bonded labour in Raisen and other districts in Madhya Pradesh came to the notice of Tamilnadu Police. A police team thereupon from Pudukottai visited Raisen and rescued 11 persons including 5 females during July. 1982. The police found that the workmen were held in bondage and that there was no adequate provision for food and shelter and that they were forcibly detained and effectively prevented from communicating with their relations by tampering with their mails. The police staff which went to enquire in the matter received hostile treatment from the quarry contractors. Another police team visited Raisen on August 20, 1982 and rescued 20 persons including 8 females belonging to 6 families from the quarries in Raisen district. It transpired that one A.L. Subramaniam and Chokkalingam of Tamilnadu, assisted by his relations and in collusion with quarry contractors systematically carried on this trade of enticing gullible poor people drawing rosy picture of employment and then torturing them by exploiting them. Ultimately a team of two police Inspectors, 3 sub-inspectors, 2 head-constables and 2 police constables from the Crime Branch, C.I.D. assisted by Armed Escort Party from Madurai were deputed with a demi- official letter from the Deputy Inspector General of Police, C.I.D. Crime Branch Madras to his counterpart in Madhya Pradesh seeking assistance to break this cell of slavery. We need not further describe the gory details but ultimately it was pointed out that after these workmen were released it transpired that the inhuman quarry contractors had bled them white. Being victims of total exploitation, the Chief Minister of Tamilnadu sanctioned a sum of Rs. 1,000 per family for the rehabilitation and till the date of the affidavit, Rs. 63,000 were spent in this behalf.

By our order dated February 18, 1983 the Union of India was directed to come out with proposals setting out concrete steps to prescribe minimum wages on piece rate basis for various occupations in flagstone mines and also suggest effective steps for improving the life-style of workmen working in these mines, as also the machinery for effective implementation.

As the progress was analogous to slow-motion news, Mr. K. G. Bhagat, Additional Solicitor General of India appeared and assured us that Union of India would extend all co- operation to help the workmen and take up necessary follow- up steps.

As the thing moved very slowly, the Court directed Union of India as appropriate Government to issue a preliminary notification under Sec. 5 of the Minimum Wages Act, 1948 setting out its proposal for information of persons likely to be affected thereby and specifying a date not less than two months from the date of the notification on which proposals will be taken into consideration.

After taking a number of adjournments, one Bishamber Nath, Under Secretary to the Government of India in the Department of Labour filed his affidavit in reply on behalf of the Union of India specifically stating therein that the question of issuing of notification under Sec. 5 is under active consideration by the Ministry of Labour and Rehabilitation, Department of Labour. It was further pointed out that as minimum wages are likely to be piece rate wages, it may become necessary to appoint a Committee or pre- publication of the proposals. It was stated that some data has to be collected and for this purpose on a priority basis a team of officers is being sent to Raisen to collect the required information. When the matter came up before this court on September 26, 1983, Mr. Gujral, learned counsel who appeared on behalf of the Union of India made a statement that a preliminary notification would be issued by the end of the first week of November, 1983. The Union of India did take the promised action and a preliminary notification dated October 31, 1983 was placed on record. The schedule to the notification sets out minimum piece rate of wages for various occupations in flagstone mines. On April 16, 1980, a copy of the notification dated March 24, 1982 issued by the Government of India, Ministry of Labour and Rehabilitation specifying the minimum wages for various occupations in flagstone mines was submitted to the Court. There ends the first step to be taken as part of a vigorous campaign to eschew exploitation by person who on account of money power exploit the poor and the needy. This is not the end of the journey. It is just a beginning.

This petition must now stand disposed of because the report of the District Judge referred to in the earlier part of this judgment clearly shows that there is no bonded labour working in flagstone mines at Raisen.

Undoubtedly, mines have to work in larger public and national interest. Therefore, in the very nature of things, there will be contractors and the workmen. Contractor as is his wont, to augment his profit which motivates him to take contract and who is not shown to be altruistic, is bound to exploit the workmen. The notorious method of exploitation is, pay as much less as possible despite all pretensions of Minimum Wages and Payment of Wages Act, take work for longer hours, prohibited by beneficent statutes like the Mines Act, the Factories Act and like statutes. Both these when jointly practised enlarges the profit. The State in discharge of its obligation under Arts. 38, 41, 42 and 43 must extend the umbrella of protection to these poor and needy and unprotected workmen who are unable to negotiate on terms of equality and who may accept any terms to stave off hunger and destitution. It is the State which must interpose between these two unequals to eschew exploitation.

As a first step, the notification prescribing minimum wages has been issued. The law which need not be restated is that no employer can pay less than the minimum wages. But this remains a paper promise unless an effective implementation machinery not overawed by these wealthy and generally unscrupulous contractors who can spread their tentacles over officials, is set up. We conclude with a

hope that such a machinery would be set up jointly by the Union of India and the Government of the State of Madhya Pradesh. With these observations, the petition stands disposed of. S.R.