

M.C. Mehta vs State Of Tamil Nadu And Others on 10 December, 1996

Equivalent citations: AIR 1997 SUPREME COURT 699, 1996 (6) SCC 756, 1997 AIR SCW 407, 1997 LAB. I. C. 563, 1997 (1) UJ (SC) 243, (1997) 1 JT 286 (SC), (1997) 29 ALL LR 440, 1997 (1) SCC 733, 1997 LAB LR 97, 1997 UJ(SC) 1 243, (1997) 3 GUJ LR 2306, (1998) 1 KANT LJ 582, (1997) 2 LAB LJ 724, (1997) 1 LAB LN 12, (1997) 1 CURLR 198, (1997) 2 BLJ 155, (1997) 1 SUPREME 207, 1997 SCC (L&S) 49

Bench: Kuldip Singh, B.L. Hansaria, S.B. Majmudar

PETITIONER:

M.C. MEHTA

Vs.

RESPONDENT:

STATE OF TAMIL NADU AND OTHERS

DATE OF JUDGMENT: 10/12/1996

BENCH:

KULDIP SINGH, B.L. HANSARIA, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T HANSARIA, J.

"I am the child.

All the world waits for my coming. All the earth watches with interest to see what I shall become. Civilization hangs in the balance, For what I am, the world of tomorrow will be. I am the child.

You hold in your hand my destiny. You determine, largely, whether I shall succeed or fail, Give me, I pray you, these things that make for happiness. Train me, I beg you, that I may be a blessing to the world".

Manie Gene Cole It may be that the aforesaid appeal lies at the back of the saying that "child is the father of man". To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned.

2. Our Constitution makers, wise and sagacious as they were, had known that India of their vision would not be a reality if the children of the country are not nurtured and educated. For this, their exploitation by different profit makers for their personal gain had to be first indicted. It is this need, which has found manifestation in Article 24, which is one of the two provisions in Part IV of our Constitution on the fundamental right against exploitation. The farmers were aware that this prohibition alone would not permit the child to contribute its mite to the nation building work unless it receives at least basic education. Article 45 was therefore inserted in our paramount parchment casting a duty on the state to endeavour to provide free and compulsory education to children. (It is known that this provision in Part V of our Constitution is, after the decision by a Constitution Bench of this Court in *Unni Krishnan, 1993-1 SCC 645*, has acquired the status of a fundamental right). Our Constitution contains some other provisions also to which we shall advert later, desiring that a child must be given opportunity and facility to develop in a healthy manner.

3. Despite the above, the stark reality is that in our country like many others, children are exploited a lot. Child labour is a big problem and has remained intractable, even after about 50 years of our having become independent, despite various legislative enactments, to which we shall refer in detail subsequently, prohibiting employment of a child in a number of occupations and avocations. 3A. In our country, Sivakasi was one taken as the worst offender in the matter of violating prohibition of employing child labour. As the situation there had become intolerable, the public spirited lawyer, Shri MC Mehta, thought it necessary to invoke this court's power under Article 32, as after all the fundamental right of the children guaranteed by Article 24 was being grossly violated. He, therefore, filed this petition. It once came to be disposed of by an order of October 31, 1990 by nothing that in Sivakasi, as on December 31, 1985, there were 221 registered match factories employing 27,338 workmen of whom 2941 were children. The Court then noted that the manufacturing process of matches and fireworks (for the manufacture of which also Sivakasi is a traditional centre) is hazardous, giving rise to accidents including fatal cases. So, keeping in view the provisions contained in Article 39(f) and 45 of the Constitution, it gave certain directions as to how the quality of life of children employed in the factories could be improved. The court also felt the need of constituting a committee to oversee the directions given.

4. Subsequently, suo moto cognizance was taken in the present case itself when news about an "unfortunate accident", in one of the Sivakasi cracker factories was published. At the direction of the Court, Tamilnadu Government filed a detailed counter stating, inter alia, that number of persons to die was 39. The Court gave certain directions regarding the payment of compensation and thought

that an advocates committee should visit the area and make a comprehensive report relating to the various aspects of the matter, as mentioned in the order of August 14, 1991. The committee was to consist of (1) Shri R.K. Jain, a senior advocate; (2) Ms. Indira Jaisingh, another senior advocate; and (3) Shri KC Dua, Advocate.

5. The committee has done a commendable job. It submitted its report on 11.11.91 containing many recommendations, the summer of which is to be found at pages 24-25 of the report, reading as below:-

(a) State of Tamilnadu should be directed to ensure that children are not employed in fire works factories.

(b) The children employed in the match factories for packing purposes must work in a separate premises for packing.

(c) Employers should not be permitted to take work from the children for more than six hours a day.

(d) Proper transport facilities should be provided by the employers and State Govt. for travelling of the children from their homes to their work places and back.

(e) Facilities for recreation, socialisation and education should be provided either in the factory or close to the factory.

(f) Employers should make arrangements for providing basic diets for the children and in case they fail to do so, the Government may be directed to provide for basic diet - one meal a day programme of the State of Tamilnadu for school children may be extended to the child worker.

(g) Piece-rate wages should be abolished and payment should be made on monthly basis. Wages should be commensurate to the work done by the children.

(h) All the workers working in the industry, whether in registered factories or in unregistered factories, whether in cottage industry or on contract basis, should be brought under the Insurance Scheme.

(i) Welfare Fund - For Sivakasi area, instead of present committee, a committee should be headed by a retired High Court Judge or a person of equal status with two social workers, who should be answerable either to this Hon'ble Court or to the High Court as may be directed by this Hon'ble Court.

Employers should be directed to deposit Rs.2/- per month per worker towards welfare fund and the State should be directed to give the matching contribution. The employers of all the industries, whether it is registered or unregistered, whether it is cottage industry or on contract basis, to

deposit Rs.2/- per month per worker.

(j) A National Commission for children's welfare should be set up to prepare a scheme for child labour abolition in a phased manner. Such a Commission should be answerable to this Hon'ble Court directly and should report to this Hon'ble Court at periodical intervals about the progress.

6. We put on record our appreciation for the commendable work done by the committee.

7. There is an affidavit of the president of the All India Chamber of Match Industries, Sivakasi, on record which contains its reaction to the recommendations of Committee. It is not necessary to deal with this affidavit. Objection to the Committee's recommendations was also filed by the President of Tamilnadu Fireworks and Amorce Manufactures Association. We do not propose to traverse this affidavit as well. Both of these contain general statements and denial of what was found by the Committee.

8. For the sake of completeness, it may be stated that there are on record various report relating to working conditions etc. of child labour at Sivakasi. First of these reports is of a Committee which had been constituted by the Labour Department by the Tamilnadu Government vide its GO MS. dated 19.3.34, under the Chairmanship of Thiru N Haribhaskar. The report of the Committee is voluminous, as it runs into 181 pages and contains a number of annexures. The Committee reviewed the working conditions and measures taken to mitigate the sufferings of the child labour and has made various recommendations in Chapter XI of its report. We also have a work of collector of Kamarajar District titled "Integrated Project for the Betterment of Living Conditions of Women and Children Employed in Match Factories in Sivakasi area." This work is of October 1985. There is yet another report dealing with the causes and circumstances of the fire explosions which had taken place on 12.7.91 at Dawn Amorce Fireworks Industries and it contains remedial measures. The final report relating to Sivakasi workers is of 30th March, 1993 this relates to elimination of child labour in the match and firework industries in Tamilnadu. The representatives of the Department of Labour & Employment, Social Welfare and Education had prepared this report in collaboration with UNICEF and it speaks of "A proposed strategy framework."

9. The Government of India as well has been apprising itself about the various aspects relating to child labour in various industries. A 16 member committee had come to be set up by a resolution of the Labour Ministry dated 6/7 February, 1979 under the chairmanship of Shri M.S. Gurupadaswamy. The Committee submitted its report on 29.12.79 and made various recommendations which are contained in Chapter V. The Labour Ministry, had subsequently surveyed the problem of child labour departmentally, as a part of the observance of International Child Year Programme. The report (dated 24.6.81) mentions about the survey conducted in certain organised and unorganised sector of industries. It contains an account of employment, wages and earnings, working conditions and welfare activities relating to child labour both in organised and unorganised sectors. Chapter III of the report contains the conclusions, of which what has been stated in para 4.5 deserves to be noted. The same is as below:-

Extreme poverty, lack of opportunity for gainful employment and intermittancy of income and low standards of living are the man reasons for the wide prevalence of child labour. Though it is possible to identify child labour in the organised sector, which form a minuscule of the total child labour, the problem relates mainly to the unorganised sector where utmost attention needs to be paid.

The problem is universal but in our case it is more crucial.

Magnitude of the problem.

10. Sivakasi has ceased to be the only centre employing child labour. The malady is no longer confined to that place.

11. A write-up in Indian Express of 25.10.1996 has described Bhavnagar as another Sivaskasi in making, as that town of about 4 lakh population has a t least 13,000 children employed in 300 different industries. The problem of child labour in India has indeed spread it fang far and wide. This would be apparent from the chart which finds place in the commendable work of a social anthropologist of United Nations Volunteer, Neera Burra, published under the title "Born to Work : Child Labour in India", as at pages XXII to XXIV of the book. It is useful to extract that chart. It is a below:-

Industry f	Location	Total Workers	Child Workers	Percentage o Child Workers to total workers		

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Slate pencil Mandsaur, 12,000 1000 8.3 Madhya Pradesh Slate Markapur, 15,000 app.3750 25 Andhra Pradesh Diamond-cutting Surat, Gujarat 100,000 15,000 15 Agate-cutting Cambay, Gujarat 30,000 not known - Gem Polishing Jaipur, Rajasthan 60,000 13,600 22.6 Powerloom Bhiwandi, Maharashtra 300,000 15,000 5 Cotton hosiery Tiruppur, 30,000 8,000 33.3 Tamilnadu Carpet weaving Mirzapur-Bhadohi 200,000 150,000 75 Uttar Pradesh Carpet weaving Jammu & Kashmir app. 400,000 100,000 25 Carpet weaving Rajasthan 30,000 12000 40 Lock-making Aligarh, 80,000, 7,000 8.7 Uttar Pradesh 90,000 10,000 11.1 Pottery Khurja, 20,000 5,000 25 Uttar Pradesh Brass Ware Moradabad, 150,000 40,000, 26.6, Uttar Pradesh 45,000 30.0 Match Sivakasi, not known 45,000 -

Glass	Tamilnadu Firozabad,	200,000	50,000	25
Silk and silk products	Uttar Pradesh Varanasi,	11,900	4,409	37
Textile	Uttar Pradesh Varanasi,	3,512	1,108	31.5
Knives	Uttar Pradesh Rampur,	not known	3,000	-
Handicrafts	Uttar Pradesh Jammu & Kashmir	90,000	26,478	29.42
Silk weaving	Bihar	not known	10,000	-
Brocade and Zari industry	Varanasi and other centres, Uttar Pradesh	not known	300,000	-
Brick-kilns	West Bengal	not known	35,000	-
Beedi	India	3,275,000	3,275,00	10
Circus industry	40 major circuses			12% of the entire labour strength
Handloom and Handicraft Industry	Jammu & Kashmir	116,000	28,348	25

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(Source material omitted)

11. According to the 1971 census 4.66 per cent of the child population in India consisted of working children. In absolute numbers, the 1971 census put the figure at 10.7 million working children. On the basis of National Sample Survey 27th round (1972-73) the number of working children as on March, 1973 in the age group of 5-14 years' may be estimated at 16.3 million and based on the 32 round at 16.25 million on 1st March, 1978 (14.68 million rural and 1.57 million urban). According to 1981 census the figure has gone to 11.16 million working children. As estimated by the Planning Commission on 1st March, 1983, there would be 15.70 million child laborers, (14.03 rural and 1.67 urban) in the age group of 10-14 years' and 17.36 million in the age group of 5-14 years'. The National Sample Survey Organisation estimates the number at 17.58 million in 1985. None of the official estimates included child workers in the unorganised sector, and therefore, are obviously gross under estimates.

Estimates from various non-governmental sources as to the actual number working children range from 44 million to 100 million.

(Figures of 1981 census have been quoted because the report relating to 1991 census has not yet been made public. It is understood that the same is under publication).

12. The aforesaid profile shows that child labour by now is an all-India evil, though its acuteness differs from area to area. So, without a concerted effort, both of the Central government and various State governments, this ignominy would not get wiped out. We have, therefore, thought it fit to travel beyond the confines of Sivakasi to which place this petition initially related. In our view, it would be more appropriate to deal with the issue in wider spectrum and broader perspective taking it as a national problem and not appertaining to any one region of the country. So, we would address ourselves as to how we can, and are required to, tackle the problem of child labour, solution of which is necessary to build a better India.

Constitution Call

13. To accomplish the aforesaid task, we have first to note the constitutional mandate and call on the subject, which are contained in the following articles:

"24. Prohibition of employment of children in factories, etc.- No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. 39(e). that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength:

39(f). that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

41. Right to work, to education and to public assistance in certain cases.- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

45. Provision for free and compulsory education for children.-

The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

14. Of the aforesaid provisions, the one finding place in Article 24 has been a fundamental right ever since 28th January, 1950. Article 45 too has been raised to high pedestal by Unni Krishnan, which

was decided on 4th February, 1993. Though other articles are part of directive principles, there are fundamental in the governance of our country and it is the duty of all the organs of the State (Article 37) to apply these principles. Judiciary, being also one of the three principal organs of the State, has to keep the same in mind when called upon to decide matters of great public importance. Abolition of child labour is definitely a matter of great public concern and significance.

International commitment

15. It would be apposite to apprise ourselves also about our commitment to world community. For the case at hand it would be enough to note that India has accepted the Convention on the Rights of the Child, which was concluded by the UN General Assembly on 20th November, 1989. This Convention affirms that children's rights require special protection and it aims, not only to provide such protection, but also to ensure the continuous improvement in the situation of children all over the world, as well as their development and education in conditions of peace and security. Thus, the Convention not only protects the child's civil and political rights, but also extends protection to child's economic, social, cultural and humanitarian rights.

16. The Government of India deposited its instrument of accession to the above-mentioned conventions on December 11, 1992 with the United Nations Secretary-General. That instrument contains the following declaration "While fully subscribing to the objectives and purposes of the Convention, realising that certain of the rights of the child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international co-operation;

recognising that the child has to be protected from exploitation of all forms including economic exploitation; nothing that for several reasons children of different ages do work in India;

having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India-the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a), in accordance with its national legislation and relevant international instruments to which it is a State Party."

17. Article 32 of which mention has been made in the instrument of accession reads as below :

"1. States Parties recognise 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 measures 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."

Statutory provisions

18. We may now note as to how the problem of child labour has been viewed by our policy makers and what efforts have been made to take care of this evil. We have shown our concern in this sphere ever since the International Labour Organisation, set up in 1919 under the League of Nations, had felt that there should be international guidelines by which the employment of children under a certain age could be regulated in industrial undertakings. It, therefore, suggested that the minimum age of work be 12 years. The same required ratification by the Government of British India; and during the Legislative Assembly debates, the question of raising the minimum age from 9 to 12 years had created a furore. The Hon'ble Sir Thomas Holland had said in the Legislative Assembly in February 1921 that if the minimum age were raised, the same would upset the organisational set-up of most textile mills which were the principal employers of children. On the other hand, there were those who felt that the answer to the problem lay in compulsory primary education. The House ultimately was divided with 32 members voting for raising the minimum age to 12 and 40 voting against it. The Assembly, therefore, recommended to the Governor-General-in-Council that the Draft Convention should be ratified with certain observations.

19. May it be stated that the International Labour Organisation has been playing an important role in the process of gradual elimination of child labour and to protect child from industrial exploitation. It has focused five main issues :-

1. Prohibition of children labour.
2. Protecting child labour at work.
3. Attacking the basic causes of child labour.
4. Helping children to adapt to future work.
5. Protecting the children of working parents.

Till now 18 Conventions and 16 recommendations have been adopted by the ILO in the interest of working children all over the world.

20. To continue our narration of steps taken here, a Royal Commission on Labour came to be established in 1929 to inquire into various matters relating to labour in this country. The report came to be finalised in 1931. It brought to light many inequities and shocking conditions under which children worked. The Commission had examined to conditions of child labour in different industries and had found that children had been obliged to work any number of hours per day as required by their masters. It was also found that they were subject to corporal punishment. The Commission had felt great concern at the placing of children by parents to employers in return for small sums of money; and as this system was found to be indefensible it recommended that any bond placing a child should be regarded as void.

21. The recommendations of the Commission came to be discussed in the Legislative Assembly and the Children (Pleading of Labour) Act, 1933 came to be passed, which may be said to be the first statutory enactment dealing with child labour. Many statutes came to be passed thereafter. As on today, the following legislative enactments are in force prohibiting employment of child labours in different occupations :

(i) Section 67 of Factories Act, 1948:

"Prohibition of employment of young children- No child who has not completed his fourteenth year shall be required or allowed to work in any factory."

(ii) Section 24 of Plantation Labour Act, 1951:

"No child who has not completed his twelfth year shall be required or allowed to work in any plantation".

(iii) Section 109 of Merchant Shipping Act, 1951:

"No person under fifteen years of age shall be engaged or carried to sea to work in any capacity in any ship, except-

(a) in a school ship, or training ship, in accordance with the prescribed conditions; or

(b) in a ship in which all persons employed are members of one family; or

(c) in a home-trade ship of less than two hundred tons gross; or

(d) where such person is to be employed on nominal wages and will be in the charge of his father or other adult near male relative."

(iv) Section 45 of Mines Act, 1952:-

(i) "No child shall be employed in any mine, nor shall any child be allowed to be present in any part of a mine which is below ground or in any (open cast working) in

which any mining operation is being carried on.

(2) After such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, no child shall be allowed to be present in any part of a mine above ground where any operation connected with or incidental to any mining operation is being carried on."

(v) Section 21 of Motor Transport Workers Act, 1961:-

"No child shall be required or allowed to work in any capacity in any motor transport undertaking."

(vi) Section 3 of Apprentices Act, 1961:-

Qualifications for being engaged as an apprentice:- A person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he-

(a) is not less than fourteen years of age, and

(b) satisfies such standards of education and physical fitness as may be prescribed:

Provided that different standards may be prescribed in relation to apprenticeship training in different designated trades and for different categories of apprentices.

(vii) Section 24 of Beedi and Cigar Workers (Conditions of Employment Act, 1966:-

"Prohibition of employment of children-No child shall be required or allowed to work in any industrial premises."

(viii) Child Labour (Prohibition and Regulation) Act, 1986. (Act 61 of 1986).

(ix) Shops and Commercial Establishment Acts under different nomenclatures in various States.

22. The aforesaid shows that the legislature has strongly desired prohibition of child labour. Act 61 of 1986 is, ex facie, a bold step. The provisions of this Act, other than Part III, came into force at once and for Part III to come into force, a notification by the Central Government is visualised by section 1(3), which notification covering all classes of establishments throughout the territory of India was issued on May 26, 1993.

23. Section 3 of this Act has prohibited employment of children in certain occupations and processes. Part A of the Schedule to the Act contains the names of the occupations in which no child can be employed or permitted to work; and in Para B names on some processes have been mentioned in which no child can be employed or permitted to work. It would be profitable to quote

Parts A and B of the Schedule which read as below:

Part A Occupations Any occupation connected with -

(1) transport of passengers, goods or mails by railway; (2) cinder picking, clearing of an ash pit or building operation in the railway premises; (3) work in a catering establishment at a railway station involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train; (4) work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines; and (5) a port authority within the limits of any port.

Part B:

Processes (1) Bidi-making.

(2) Carpet-weaving.

(3) Cement manufacture, including bagging of cement. (4) Cloth printing, dyeing and weaving. (5) Manufacture of matches, explosives and fire-works. (6) Mica-cutting and splitting. (7) Shellac manufacture.

(8) Soap manufacture.

(9) Tanning.

(10) Wool-cleaning.

(11) Building and construction industry.

24. Section 14 of the Act has provided for punishment upto 1 year (minimum being 3 months) or with fine upto Rs.20,000/- (minimum being ten thousand) or with both, to one who employs or permits any child to work in contravention of provisions in section 3. Even so, it is common experience that child labour continues to be employed. As to why this has happened despite the Act of 1986, has come to be discussed by Neera Burra, in her afore-mentioned book at pages 246 to 230 of the 1995 edition. It has been first pointed out that the occupations and processes dealt by the Act are same about which the repealed statute (Employment of Children Act, 1938) had mentioned, except that in Part B, one process has been added- the same being "building and construction industry". According to Neera, there are a number of loopholes in the Act which has made it "completely ineffective instrument for the removal of children working in industry". One of the clear loopholes mentioned is that children can continue to work if they are a part of family of labour. It is not necessary for our purpose to go into other infirmities pointed out. Nonetheless, it deserves to be pointed out that the Act does not use the word "hazardous" anywhere, the implication of which is the children may continue to work in those processes not involving chemicals. Neera has tried to

show how impracticable and unrealistic it is to draw a distinction between hazardous and non-hazardous processes in a particular industry. The suggestion given is that what is required is to list the whole industry as banned for child labour, which would make the task of enforcement simpler and strategies of evasion more difficult.

Failure : causes

25. We have, therefore, to see as to why is it that child labour has continued despite the aforesaid statutory enactments. This has been a subject of study by a good number of authors. It would be enough to note what has been pointed out in "Indian Child Labour" by Dr. J.C. Kulshreshtha. This aspect has been dealt in Chapter II. According to the author, the causes of failure are : (1) poverty; (2) low wages of the adult; (3) unemployment; (4) absence of schemes for family allowance; (5) migration to urban areas; (6) large families; (7) children being cheaply available; (8) non-existence of provisions for compulsory education; (9) illiteracy and ignorance of parents; and (10) traditional attitudes. Nazir Ahmad Shah has also expressed similar views in his book "Child Labour in India". In the article at pages 65 to 68 of 1993(3) SCJ (Journal Section) titled "Causes of the exploitation of child labour in India", Dr. Amar Singh and Raghuvinder Singh, who are attached to Himachal Pradesh University, have taken the same views.

26. Of the aforesaid causes, it seems to us that the poverty is basic reason which compels parents of a child, despite their unwillingness, to get it employed. The Survey Report of the Ministry of Labour (supra) had also so stated. Otherwise, no parents, specially no mother, would like that a tender aged child should toil in a factory in a difficult condition, instead of it enjoying its childhood at home the paternal gaze.

What to do?

27. It may be that the problem would be taken care of to some extent by insisting on compulsory education. Indeed, Neera thinks that if there is at all a blueprint for tackling the problem of child labour, it is education. Even if it were to be so, the child of a poor parent would not receive education, if per force it has to earn to make the family meet both the ends. therefore, unless the family is assured of income allude, problem of child labour would hardly get solved; and it is this vital question which has remained almost unattended. We are, however, of the view that till an alternative income is assured to the family, the question of abolition of child labour would really remain a will-o'-the wisp. Now, if employment of child below that age of 14 is a constitutional indication insofar as work in any factory or mine or engagement in other hazardous work, and if it has to be seen that all children are given education till the age of 14 years in view of this being a fundamental right now, and if the wish embodied in Article 39(e) that the tender age of children is not abused and citizens are not forced by economic necessity to enter avocation unsuited to their age, and if children are to be given opportunities and facilities to develop in a healthy manner and childhood is to be protected against exploitation as visualised by Article 39(f), it seems to us that the least we ought to do is see to the fulfillment of legislative intendment behind enactment of the Child Labour (Prohibition and Regulation) Act, 1986. Taking guidance therefrom, we are of the view that the offending employer must be asked to pay compensation for every child employed in

contravention of the provisions of the Act a sum of Rs.20,000/-; and the Inspectors, whose appointment is visualised by section 17 to secure compliance with the provisions of the Act, should do this job. The inspectors appointed under section 17 would see that for each child employed in violation of the provisions of the Act, the concerned employer pays Rs.20,000/- which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund. The liability of the employer would not cease even if he would desire to disengage the child presently employed. It would perhaps be appropriate to have such a fund district wise or area wise. The fund so generated shall form corpus whose income shall be used only for the concerned child. The quantum could be the income earned on the corpus deposited qua the child. To generate greater income, fund can be deposited in high yielding scheme of any nationalised bank or other public body.

28. As the aforesaid income could not be enough to dissuade the parent/guardian to seek employment of the child, the State owes a duty to come forward to discharge its obligation in this regard. After all, the aforementioned constitutional provisions have to be implemented by the appropriate Government, which expression has been defined in section 2(i) of the Act to mean, in relation to establishment under the control of the Central Government or a railway administration or a major port of a mine or oil field, the Central Government, and in all other cases, the State Government.

29. Now, strictly speaking a strong case exists to invoke the and of an Article 41 of the Constitution regarding the right to work and to give meaning to what has been provided in Article 47 relating to raising of standard of living of the population, and Articles 39(e) and (f) as to non-abuse of tender age of children and giving opportunities and facilities to them to develop in healthy manner, for asking the State to see that an adult member of the family, whose child is in employment in a factory or a mine or in other hazardous work, gets a job anywhere, in lieu of the child. This would also see the fulfillment of the wish contained in Article 41 after about half a century of its being in the paramount parchment, like primary education desired by Article 45, having been given the status of fundamental right by the decision in Unni Krishnan. We are, however, not asking the State at this stage to ensure alternative employment in every case covered by Article 24, as Article 41 speaks about right to work "within the limits of the economic capacity and development of the State". The very large number of child-labour in the aforesaid occupations would require giving of job to very large number of adults, if we were to ask the appropriate Government to assure alternative employment in every case, which would strain the resources of the State, in case it would not have been able to secure job for an adult in a private sector establishment or, for that matter, in a public sector organisation. <??>, we are not issuing any direction to do so presently. Instead, we leave the matter to be sorted out by the appropriate Government. In those cases where it would not be possible to provide job as above-mentioned, the appropriate Government would, as its contribution/grant, deposit in the aforesaid Fund a sum of Rs.5,000/- for each child employed in a factory or mine or in any other hazardous employment.

30. The aforesaid would either see an adult (whose name would be suggested by the parent/guardian of the concerned child) getting a job in lieu of the child, or deposit of a sum of Rs.25,000/- in the Child Labour Rehabilitation-cum- Welfare Fund. In case of getting employment for an adult, the parent/guardian shall have to see that his child is spared from the requirement to

do the job, as an alternative source of income would have become available to him.

31. To give shape to the aforesaid directions, we require the concerned States to do the following :-

(1) A survey would be made of the aforesaid type of child labour which would be completed within six months from today.

(2) to start with, work could be taken up regarding those employment which have been mentioned in Article 24, which may be regarded as core sector, to determine which the hazardous aspect of the employment would be taken as criterion. The most hazardous employment may rank first in priority, to be followed by comparatively less hazardous and so on. It may be mentioned here that the National Child Labour Policy as announced by the Government of India has already identified some industries for priority action and the industries so identified are as below :-

The match industry in Sivakasi, Tamil Nadu The diamond polishing industry in Surat, Gujarat. The precious stone polishing industry in Jaipur, Rajasthan.

The glass industry in Firozabad, Uttar Pradesh. The brass-ware industry in Mirzapur-Bhadohi, Uttar Pradesh.

The lock-making industry in Aligarh, Uttar Pradesh. The state industry in Markapur, Andhra Pradesh. The slate industry in Mandasaur, Madhya Pradesh. (3) The employment to be given as per our direction could be dovetailed to other assured employment. On this being done, it is apparent that our direction would not require generation of much additional employment. (4) The employment so given could as well be the industry where the child is employed, a public undertaking and would be manual in nature inasmuch as the child in question must be engaged in doing manual work. The understanding chosen for employment shall be one which is nearest to the place of residence of the family.

(5) In those cases where alternative employment would not be made available as aforesaid, the parent/guardian of the concerned child would be paid the income which would be earned on the corpus, which would be a sum of Rs.85,000/-

for each child, every month. The employment given or payment made would cease to be operative if the child would not be sent by the parent/guardian for education. (6) On discontinuation of the employment of the child, his education would be assured in suitable institution with a view to make it a better citizen. It may be pointed out that Article 45 mandates compulsory education for all children until they complete the age of 14 years; it is also required to be free. It would be the duty of the Inspectors to see that this call of the Constitution is carried out. (7) A district could be the unit of collection so that the executive head of the district keeps a watchful eye on the work of the Inspectors. Further, in view of the magnitude of the task, a separate cell in the Labour Department of the appropriate Government would be created. Monitoring of the scheme would also be necessary

and the Secretary of the Department could perhaps do this work. Overall monitoring by the Ministry of Labour. Government of India, would be beneficial and worthwhile.

(8) The Secretary to the Ministry of Labour, Government of India would apprise this Court within one year of today about the compliance of aforesaid directions. If the petitioner would need any further of other order in the light of the compliance report, it would be open to him to do so.

(9) We should also like to observe that on the directions given being carried out, penal provision contained in the aforesaid 1936 Act would be used where employment of a child labour, prohibited by the Act, would be found. (10) Insofar as the non-hazardous jobs are concerned, the Inspector shall have to see that the working hours of the child are not more than four to six hours a day and it receives education at least for two hours each day. It would also be seen that the entire cost of education is borne by the employer.

32. The task is big, but not as to prove either unwieldy or burdensome. The financial implication would be such as to prove a damper, because the money after all would be used to build up better India. In this context, it is worth pointing out that covertly as such has not stood in the way of other developing countries from taking care of child labour. It has been pointed out by Myron Weiner (at page 4 of 1991 Edition) of his book "The Child and the State in India" that India is a significant exception to the global trend toward the removal of children from the labour force and the establishment of compulsory, universal primary school education, as many countries of Africa like Zambia, Ghana, Ivory Coast, Libya, Zambia, Zimbabwe, with income levels lower than India, have done better in these matters. This shows that has caused the problem of child labour to persist here is really not dearth of resources, but lack of real zeal. Let this not continue, Let us all put our head and efforts together and assist the child for its good and greater good of the country.

33. The writ petition is disposed of accordingly.

34. We part with the fond hope that the closing years of the twentieth century would see us keeping the promise made to our children by our constitution about a half-century ago. Let the child of twenty-first century find himself into that "heaven of freedom" of which our poet laureate Rabindranath Tagore has spoken in Gitanjali.

35. Let a copy of this judgment is to be sent to Chief Secretaries of all the State Governments and union Territories; so also to the Secretary, Ministry of Labour, Government of India for their information and doing the needful.