

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

SWP No. 1791/2013
IA No. 3573/2013
IA No. 2601/2013 in
CPSW No. 429/2014
CM No. 4958/2022

Sanjay Kumar

.....Appellant(s)/Petitioner(s)

Through: Mr. Karan Sharma, Advocate.

Vs

State of J&K and others

..... Respondent(s)

Through: Mr. Suneel Malhotra, GA.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER

01. The present case highlights the manner in which the practice of Forced Labour is prevalent in the country even after 75 years of independence and the helpless people similar to the petitioner continue to suffer the exploitation willingly.

02. Part III of the Constitution of India provides for the freedoms of which are guaranteed to every citizen of this country. The present case is specifically concerned with Article 14, Articles 21 and 23 of the Constitution of India, more particularly, Article 23. In the context of the facts of the present case, what is to be considered is that whether the payment of wages @ Rs. 500/- per year is another form of Forced Labour as barred by virtue of Article 23 of the Constitution of India or not.

03. The question of “other forms of Forced Labour” as finds place in Article 23 of the Constitution of India came up for consideration before the Hon’ble Supreme Court for the first time in the case of “People’s Union for Democratic Rights and Others v. Union of India and Others”; (1982) 3 SCC 235, wherein in the form of Public Interest Litigation, the plight of the workers engaged in the construction for the Asian Games, was highlighted before the Supreme Court. The contention before the Supreme Court was that the workers employed for constructions were being paid wages which were less than the minimum wages prescribed. The Supreme Court specifically considered the scope of Article 23 and recorded as under:-

“12. Article 23 enacts a very important fundamental right in the following terms:

“23. Prohibition of traffic in human beings and forced labour. - (1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.”

04. Now many of the fundamental rights enacted in Part III operate as limitations on the power of the State and impose negative obligations on the State not to encroach on individual liberty and they are enforceable only against the State. But there are certain fundamental rights conferred by the Constitution which are enforceable against the whole world and they are to be found *inter alia* in Articles 17, 23 and 24. The sweep of Article 23 is wide and unlimited and it strikes at “traffic in human beings and beggar and other similar forms of forced labour” wherever they are found.

05. The reason for enacting this provision in the Chapter on Fundamental Rights is to be found in the socio-economic condition of the people at the time when the Constitution came to be enacted. The Constitution-makers, when they set out to frame the Constitution, found that they had the enormous task before them of changing the socio-economic structure of the country and bringing about socio-economic regeneration with a view to reaching social and economic justice to the common man. Large masses of people, bled white by well-nigh two centuries of foreign rule, were living in abject poverty and destitution, with ignorance and illiteracy accentuating their helplessness and despair.

06. The society had degenerated into a status-oriented hierarchical society with little respect for the dignity of the individual who was in the lower rungs of the social ladder or in an economically impoverished condition. The political revolution was completed and it had succeeded in bringing freedom to the country but freedom was not an end in itself, it was only a means to an end, the end being the raising of the people to higher levels of achievement and bringing about their total advancement and welfare.

07. Political freedom had no meaning unless it was accompanied by social and economic freedom and it was therefore necessary to carry forward the social and economic revolution with a view to creating socio-economic conditions in which everyone would be able to enjoy basic human rights and participate in the fruits of freedom and liberty in an egalitarian social and economic framework. It was with this end in view that the Constitution-makers enacted the directive principles of state policy in Part IV of the Constitution setting out the constitutional goal of a new socio-economic order.

08. Thereafter, the Supreme Court proceeded to consider as to whether a person is said to be providing Forced Labour if he is paid less than the minimum wages for it and recorded as under:-

"14. Now the next question that arises for consideration is whether there is any breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Article 23 prohibits is "forced labour" that is labour or service which a person is forced to provide and "force" which would make such labour or service "forced labour" may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as "force" and if labour or service is compelled as a result of such "force", it would be "forced labour". Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly "forced labour". There is no reason why the word "forced" should be read in a narrow and restricted manner so as to be confined only to physical or legal "force" particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and everyone shall have the right to work, to education and to adequate means of livelihood.

The Constitution-makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is not unoften that in a capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word "force" must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is "forced labour" because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be "forced labour" and the breach of Article 23 is remedied. It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under Article 23."

09. Thereafter, the Supreme Court considered the obligations of the State in the event of a complaint being made against violation of fundamental rights enacted under Article 17 or Article 23 or Article 24 and recorded as under:-

"15. Before leaving this subject, we may point out with all the emphasis at our command that whenever any fundamental right which is enforceable against private individuals such as, for example, a fundamental right enacted in Article 17 or 23 or 24 is being violated, it is the constitutional obligation of the State to take the necessary steps for the purpose of interdicting such violation

and ensuring observance of the fundamental right by the private individual who is transgressing the same. Of course, the person whose fundamental right is violated can always approach the court for the purpose of enforcement of his fundamental right, but that cannot absolve the State from its constitutional obligation to see that there is no violation of the fundamental right of such person, particularly when he belongs to the weaker section of humanity and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him."

10. Thus, following the said judgment of the Supreme Court, I am of the firm view that the payment of wages at the rate of Rs. 500/- per year since the year 1998 till today to the petitioner was clearly a form of Forced Labour, which is prohibited under Article 23 of the Constitution of India. The petitioner was never in a position to bargain with the might of the State and continued to suffer the violation of a rights for a period of 14 years.

11. This Court being a custodian of the fundamental rights cannot shut its eyes to the injustice carried out against the petitioner by an act of the State, which claims to achieve socio economic equality as the cherished dreams of the Constitution.

12. So far as the nature of the right to livelihood and payment of wages is concerned, reference can usefully be made to the pronouncement of the Supreme Court in **AIR 1986 SC 180, "Olga Tellis v. Bombay Municipal Corporation"**.

In paragraph 32 of the aforesaid judgment, the Supreme Court was called upon to answer the question as to whether the right to life guaranteed under Article 21 of the Constitution of India includes the right to livelihood. In this behalf, in paragraph 32 of the judgment, the Supreme Court held as follows:

"32. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of

the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the villages that struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live : Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas J. in Baksey, (1954) 347 M.D. 442 that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in Munn v. Illinois (1877) 94 U.S. 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed."

13. It needs no elaboration that the fundamental right conferred by Article 23 is also enforceable against not only the State, but also against the whole world. This article is designed to protect the individual against any form of forced labour practiced by any person and has its genesis in the socio-economic conditions of the people at the time the constitution came to be enacted, with a view to ensure socio and economic justice to the large masses of people living in abject poverty, destitution and slavery. The economic deprivation itself places them at the bottom of the hierarchy of those marginalized reducing them to the

position of those having no kind of bargaining power or choice. The rights recognized and conferred under Article 23 are aimed at preventing exploitation of such marginalized persons with a view to imbuing charitarian values into society and ensuring human dignity and basic human rights of the people.

14. This Court vide order dated 20.04.2022 directed respondent No. 2-Director School Education, Jammu to release immediately the minimum wages in terms of Minimum Wages Act in favour of the petitioner forthwith, but till date the aforesaid order has not been complied with.

15. While passing the aforesaid order, this Court observed that it is shocking that the petitioner is working as Class-IV since 28.10.1998 as Waterman-cum-Sweeper in the Government Model Middle School, Mahanpur, on a meager amount of Rs. 500/- per year which is insufficient to cater the daily needs of the petitioner.

16. It is not so, even this Court vide order dated 02.09.2013, i.e. on the very first day of hearing, has directed the respondents to consider payment of wages as envisaged under Minimum Wages Act to the petitioner and the respondents, inspite of the aforesaid direction passed way back in 2013, have not implemented the same and this was precisely the reason that this Court vide order dated 20.04.2022 reiterated that the petitioner is entitled for the minimum wages in terms of Minimum Wages Act and, accordingly, a positive direction was issued to the Director School Education, Jammu to release immediately the minimum wages in terms of the Minimum Wages Act in favour of the petitioner.

17. The direction passed by this Court vide order dated 20.04.2022 was flouted with impunity and, accordingly, this Court vide order dated 25.05.2022 directed respondent No. 2-Director School Education, Jammu to remain present

before this Court on the date fixed to explain as to why the direction issued by this Court has not complied with and the order was communicated to the Director School Education, Jammu for compliance.

18. The direction which was passed by this Court on 20.04.2022 which is being flouted with impunity by respondent No. 2 and till date, the order to pay minimum wages to the petitioner has not been complied with, which tantamounts that the respondent No. 2 is in recurring contempt.

19. The order passed by this Court dated 20.04.2022 has assumed finality as according to the petitioner, the respondents have not assailed the same before any higher forum and the respondents have no other option but to implement the same in its letter and spirit.

20. This is a **sheer case of exploitation of a poor person by the respondents**, where the respondents are extracting the work from the petitioner since 1998 as on date and the petitioner is being paid Rs. 500/- per year which is insufficient to cater the daily needs of the petitioner and it shocks the conscience of the Court that a person even after 75 years of independence continues to suffer exploitation. The petitioner continues to be exploited by paying him a meager amount of Rs. 500/- as he is continuing uninterruptedly since 1998, the respondents were under a legal obligation to regularize his services or at least he should have been paid minimum of the wages as per direction of this Court.

21. In spite of the categorical direction issued by this Court on 20.04.2022 read with 25.05.2022, respondent No. 2 has neither complied with the aforesaid direction nor has appeared in person, which means that he is taking the Court orders casually and instead he has filed an application for seeking exemption which is declined keeping in view his conduct.

22. This is a fit case where rule can be framed against the respondent No. 2 as he is in recurring contempt and has flouted the orders passed by this Court with impunity and failed to appear before this Court in spite of categoric direction and his act, as such, is contemptuous. The stand taken by respondents while filing reply has been rejected by this Court vide order dated 20.04.2022 and respondents have no other option but to implement the same in its letters and spirit.

23. Before proceeding further in the matter, he is given final opportunity to comply the order passed by this Court on 20.04.2022 in its letter and spirit and file compliance report by or before the next date of hearing by paying him minimum of the wages besides explaining his conduct for not complying Court order dated 20.04.2022 and non-appearance.

24. Let respondent No. 2 shall appear in person along with the record of the list of contingent paid workers/local fund paid workers approved for regularization in terms of SRO-308 of 2008 of Jammu Division from 1998 till date as directed by this Court vide order dated 20.04.2022.

25. List for continuation on 26.09.2022.

26. Registry to forward this order to Director School Education, Jammu for his compliance.

(Wasim Sadiq Nargal)
Judge

Jammu
19.09.2022
Bunty