

Supreme Court of India

Public Union For Civil Liberties vs State Of Tamil Nadu And Ors on 15 October, 2012

Author: K S Radhakrishnan

Bench: K.S. Radhakrishnan, Dipak Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 3922 OF 1985

PUBLIC UNION FOR CIVIL LIBERTIES .. Petitioner
Versus
STATE OF TAMIL NADU & ORS. .. Respondents

J U D G M E N T

K. S. Radhakrishnan, J.

1. Through this Public Litigation, the petitioner has brought to the notice of this Court tell-tale miseries of bonded labourers in our country and their exploitation and the necessity of identifying and checking the practice of bonded labour in this country and to rehabilitate those who are victims of this practice.

2. This Court, while interpreting the provision of the Bonded Labour System (Abolition) Act, 1976, (for short the BLS (A) Act) in the light of the constitutional provision like Article 23, The Minimum Wages Act 1948, Contract Labour (Regulation and Abolition) Act 1970, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979, The Mines Act 1952 gave various directions including the setting up of Vigilance Committees, District Magistrates, etc. for the purpose of identifying and freeing bonded labourers and to draw up a scheme or programme for a better and more meaningful rehabilitation of the freed bonded labourers and to ensure implementation of the BLS (A), Act, 1976. In *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161, *Neerja Chaudhary v. State of M.P.* (1984) 3 SCC 243 this Court took the view that failure to rehabilitate freed bonded labourers would violate Articles 21 and 23 of the Constitution. In *P. Sivaswamy v. State of Andha Pradesh* (1988) 4 SCC 466 this Court held that the grant of financial assistance by the States of Rs.738/- per family of the released bonded labourers was inadequate for rehabilitation. Court held that the States, employers have a duty to rehabilitate the released bonded labourers.

3. This Court, dealing while dealing with this case, passed an interim order dated 13th May, 1994, (reported in (1994) 5 SCC 116) and gave various directions which are as under:

(1) To identify the bonded labourers and update the existing list of such bonded labourers as well as to identify the villages where this practice is prevalent.

(2) To identify the employers exploiting the bonded labourers and to initiate appropriate criminal proceedings against such employers.

(3) To extinguish/discharge any existing debt and or bonded liability and to ensure them an alternative means of livelihood.

(4) To appoint an independent body such as a local non-political social action group to collect independent information and details of

(a) the prevalence of the exploitative practice of bonded labour and

(b) employers or their agents perpetrating the wilful violation of the law by encouraging and abetting the practice of bonded labour.

(5) To provide employment to such bonded labourers as agricultural workers at the prescribed minimum wage rate and/or provide the landless bonded labourers with agricultural land, with a view to ensure an alternative means of livelihood.

(6) To provide adequate shelter, food, education to the children of the bonded labourers and medical facilities to the bonded labourers and their families as part of a rehabilitation package.

(7) To ensure

(a) regular inspection by the Labour Commissioner concerned to keep the contractors who have in the past employed bonded labourers under watch,

(b) setting up of Vigilance Committees in each district,

(c) the District Magistrates concerned to send quarterly reports to the Supreme Court Legal Aid Committee or to any Commissioner appointed by the court for this purpose,

(d) the setting up of rural credit facilities such as grameen banks, cooperatives etc. from which short-term interest free loans can be availed without security, since the root cause of bonded labour seems to be the lack of availability of funds (credit through an institutional network).

(8) To initiate criminal prosecution against the contractors/employers or their agents who engage bonded labour and employ children below the age of 14 without adequate monetary compensation by paying wages below the minimum wage rate, as prescribed under the Minimum Wages Act.

(9) To initiate criminal prosecution against those employers, contractors or their agents who make part payment of wages by way of Khesri dal which is known to cause permanent disability lathyrates.

2. With specific reference to the State of Madhya Pradesh, this Hon'ble Court gave the following additional directions:

(i) To provide data to this Hon'ble Court in respect of prosecutions launched against various employers already identified in proceedings before this Hon'ble Court as having employed bonded labourers in the context of Harwaha System.

(ii) To investigate and provide data to this Hon'ble Court in respect of the fate of those bonded labourers identified and allegedly freed from the Harwaha System.

(iii) To report the present extent of cultivation of Khesri dal within Rewa and Satna districts as well as such other districts in which it may also be cultivated.

(iv) To report the steps taken by the State Government to prohibit the cultivation and consumption of Khesri dal.

(v) To report the fate of persons already identified as suffering from lathyrism and the steps taken by the State Government to provide free medical aid and facilities to such persons.

(vi) To provide the steps taken, if any, for the rehabilitation of bonded labourers freed from the Harwaha System and the rehabilitation of persons suffering from lathyrism within the State of Madhya Pradesh.

3. All the State Governments should issue directions forthwith to the Collector and District Magistrate of each district for making the necessary compliance. We also direct that all the State Governments would file a detailed report supported by an affidavit of a Senior Officer indicating the manner and the extent to which these directions have been complied with and also indicating therein the programme drawn up for full implementation of these directions. The report of the State Governments should also contain the detailed information required to be furnished in accordance with these directions. These reports be filed by each State Government by the end of August 1994. The matter be listed in the first week of September 1994.

4. The Registry to ensure that a copy of this order is made available to each State Government through their standing counsel, in addition to Mr Kapil Sibal, Senior Advocate and the other learned counsel appearing in these matters.

4. The National Human Rights Commission (for short the NHRC) has been entrusted with the responsibility of monitoring and over-seeing the implementation of its directions as well as provisions of the BLS (A) Act in all the States and Union Territories vide this Courts order dated 11.05.1997. The Expert Group constituted by the NHRC submitted its Action Taken Report (ATR) on 6.6.2001 and this Court vide order dated 5.5.2004 reported in Public Union for Civil Liberties v. State of Tamil Nadu & Ors. (2004) 12 SCC 381 gave the following directions:

1. All States and Union Territories must submit their status report in the form prescribed by NHRC every six months.
2. All the State Governments and Union Territories shall constitute Vigilance Committees at the district and sub-divisional levels in accordance with Section 13 of the Act, within a period of six months from today.
3. All the State Governments and Union Territories shall make proper arrangements for rehabilitating released bonded labourers. Such rehabilitation could be on land-based basis or non-land basis or skilled/craft-based basis depending upon the choice of bonded labourer and his/her inclination and past experience. If the States are not in a position to make arrangements for such rehabilitation, then it shall identify two philanthropic organisations or NGOs with proven track record and good reputation, with basic facilities for rehabilitating released bonded labourers within a period of six months.
4. The State Governments and Union Territories shall chalk out a detailed plan for rehabilitating released bonded labourers either by itself or with the involvement of such organisations or NGOs within a period of six months.
5. The Union and State Governments shall submit a plan within a period of six months for sharing the money under the modified Centrally Sponsored Scheme, in the case where the States wish to involve such organisations or NGOs.
6. The State Governments and Union Territories shall make arrangements to sensitise the District Magistrate and other statutory authorities/committees in respect of their duties under the Act.

5. The NHRC later submitted yet another report on 10.8.2009 highlighting the remedial steps to be taken for eradication of bonded labour and child labour in the country. The NHRC in its report stated that its officials had been conducting detailed reviews on the status of the implementation of the Act in the various States/Union Territories (UTs). The report stated that these reviews were forwarded by the NHRC to the respective States/UTs for the necessary follow up action, and they were required to submit ATR to the NHRC. The NHRC has stated as follows:

ATRs have been received from most of the State Governments but as they were incomplete they had to be returned for clarification and furnishing additional information before they could be accepted by the Commission. These States are being reminded and this will continue till follow up action is completed. Repeat visits to a few States (Orissa, M.P., Chattisgarh, Jharkhand, Punjab, Rajasthan, Karnataka and Bihar) have to be undertaken as the track record of compliance with the directions issued by the Commission is considered to be unsatisfactory by these States.

6. A review noticed that the States/UTs were supposed to receive assistance to the tune of Rs.2 Lakh per district once every 3 years for conducting surveys. However surveys had been conducted only a few States, that too in respect of only a few selected areas. Further, it was also noted that in many instances bonded labourers were found and reported, the district administration had relented and dropped the cases. The NHRC in its report cited the instances of Tamil Nadu to the following effect:

.. to illustrate, in Tamil Nadu, 25000 cases out of 38,886 (cases of) bonded labourers identified were dropped leaving only 13,886 bonded labourers;

.. in Malkangiri district (which falls in the KBK region) a survey was conducted in 2001-02 with the help of NGOs (where) 707 bonded labourers were identified but (the) district administration dropped 688 cases leaving only 19 bonded labourers to be release.

7. The NHRC further states that Investigation/inquiry into specific complaints about bonded labourers were generally left by the States/UTs to be undertaken by the field officers of very low ranks who lack both professionalism as well as sensitivity to conduct such inquires and even existence of bonded labourers were detected in the States/UTs, States/UTs permitted compromise or settlement though the Act itself does not contemplate such a measure. The NHRC noted with concern that though one of the modes of identifying and detecting existence of bonded labour was conducting raids on households and workplaces, this however, had not been taken recourse to by most States, except the State of Maharashtra. The NHRC in its report stated that even though the guidelines on the methodology of identification of bonded labourers formulated by Shri S.R. Shankaran, Chairman of the Expert Group constituted in the year 2001-02 had been circulated to all the States/UTs but there was no evidence on the ground of them being adopted and implemented. The report further pointed out that according to the Ministry of Labour the following features came out clearly in the reports received from the States:

a) No fresh surveys are being conducted in the States. Wherever surveys have been conducted in the last few years, no bonded labourers could be found.

b) Whereabouts of about 20,000 bonded labourers are reported to be untraced. Registers about bonded labourers identified, released and rehabilitated are not being maintained as required under Rule 7 of the BLS (A) rules.

c) Budget provisions are not being made on the ground that there are no bonded labourers.

d) All the Union Territories have been reporting that they have no Bonded labourers.

8. The NHRC accordingly requested this Court to give the following directions to the States/UTs:

a) Periodical conduct of survey in the affected areas is one of the measures which would source eradication of bonded labour system in compliance with the BLS (A)

Act. Section 14(e) of the Act casts a statutory responsibility on the Vigilance Committees constituted in each district such surveys. It suggested that fresh survey be conducted by all States and repeated once in three years.

b) The constitution of Vigilance Committees in all States at district and sub-divisional level was a necessary step in the process of properly conducting surveys. Further these committees should be reconstituted once every 2 years.

c) Since there was a need for a proper methodology for conducting such surveys it also suggests that the Guidelines issued by Shri S.R. Shanakaran, Chairman of the Expert Committee constituted by the NHRC be adopted with suitable modifications to suit local conditions.

d) While disposing of cases under the BLS (A) Act the trying Magistrate should have recourse to the summary procedure as laid down in Section 21(2) of the Act in all cases brought before him.

e) It was also suggested that to make the rehabilitation package under the Centrally Sponsored Scheme more meaningful, there was a need for it not to be confined to the limit of Rs.20,000, at which it stands at present.

9. This Court, vide its order dated 9.7.2010, directed all the States/UTs to file their response to the NHRCs report. The States/UTs were required to respond at least on the following aspects:

a) When was the last bi-annual report by the concerned State/UT submitted to the NHRC?

b) When was the last survey, as stipulated under the Act undertaken by the State/UT?

c) Whether the Vigilance Committee for the implementation of the Act has been constituted in all the districts in the States/UTs?

10. This Court vide its order dated 1.10.2010, following the note submitted by the amicus curiae on 27.9.2010, directed the Union of India to submit the data as to the amount which the Centre is releasing to the States/UTs and whether they were, in fact, using the amount for the purpose for which they were released.

11. In pursuance to that order, the Union of India filed its affidavit on 16.12.2010. It was noticed that only five states had, till then, furnished utilization certificates to the Union of India indicating utilization of central funds for survey. This Court, then, passed an order on 16.12.2010 directing the Union of India to call for the utilization certificates from all the States. Union of India later in its affidavit on 25.4.2011 stated that the Ministry of Labour and Employment has provided Rs.494 lakhs as Central Assistance for conducting surveys to the various State Governments during the periods from 2001-2001 to 2009-2010. The Affidavit revealed that, in majority of the States, no

surveys have been conducted after the year 2002-2003, namely, Punjab, Rajasthan, Karnataka, Orissa, Bihar, Jharkhand, Arunachal Pradesh, Chhattisgarh, Uttrakhand. It was stated that only a handful of States have conducted surveys in subsequent years, and that in many instances, the Survey Reports were still awaited.

12. This Court then passed an order dated 25.4.2011 directing the States of Haryana and Andhra Pradesh to explain what steps they have taken to implement the provisions of 1976 Act. Noticing that those States were not taking effective steps, this Court passed another order dated 26.8.2011 directing them to submit their Accounts to the Ministry of Labour, Government of India with regard to disbursement of amounts by Central Government for survey and rehabilitation of bonded labour. The responses from those States are far from satisfactory.

13. The NHRC submitted its revised report dated 3.9.2011 before this Court. We notice that the response from the States to the said report is also not satisfactory. The revised report of the NHRC reiterated that the analysis of the half yearly report sent by the States/UTs reveals the following aspects:

- (i) The reports appear to have been prepared in a very casual and stereotype manner.
- (ii) They contain mostly nil information as far as conducting fresh surveys for identification of bonded labourers is concerned.
- (iii) In some States like UP nearly 700 released bonded labourers have been awaiting rehabilitation for years due to no provision of funds in the budget needed for rehabilitation.
- (iv) The outcome of legal and penal action against the offending employers or bonded labour keepers is nil.
- (v) Not a single case has been reported so far which goes to show that an offending employer had been convicted by way of imprisonment.
- (vi) It is almost confirmed beyond doubt that (a) efforts at identification of bonded labourers through fresh surveys are lackadaisical and the outcome of such surveys is nil (b) there is inordinate delay in securing rehabilitation of released labourers and
- (c) the penalties awarded are not proportional to the judicial severity of the crime.

14. The NHRC further stated that while examining about 400 cases, only in one case, the Commission found that the ground level situation confirmed to fulfillment of all requirements under the Minimum Wages Act, that the employer paid wages according to the law and has not detained anyone. Report states that workmen are usually recruited to brick kilns by middlemen on payment of an advance or other allurements, but at the close of the brick kilns operations, the advances paid at the time of recruitment are adjusted with wages due to the workmen in an arbitrary manner, to

the disadvantage of the worker. It is unnecessary to dilate the matter further. Suffice it to say that on 30.6.2011, in all 2780 cases involving about 1 lakh bonded labourers have been registered in the Commission and presently 841 cases are under consideration of the Commission. The NHRC also specifically brought to the knowledge of this Court, two specific complaints, which are pending for compliance before the Government of Andhra Pradesh and with the Governments of West Bengal, Jharkhand, Bihar and NCT of Delhi. The NHRC has sought proper directions from this Court so that the concerned States would take steps for reporting compliance to NHRC at the earliest. It is useful to refer to the situations in the States of Andhra Pradesh, West Bengal, Jharkhand, Bihar and NCT of Delhi, which are as follows:

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22. The first complaint is with respect to the State of Andhra Pradesh and pertains to the plight of labourers working in stone quarries on National Highway No. 9 at a distance of about 22 kms from Vijaywada. The issue was brought to light in 2005. However, despite repeated efforts when no results were forthcoming, the NHRC constituted a team to interact with the labourers and submit a detailed report. The team accordingly submitted its report confirming the allegation that as many as 5000 quarry workers at the time of the visit [i.e.30.06.09 to 5.07.09] were living and working under conditions of debt bondage. Pursuant to the report even though the Chief Secretary appeared in person before the Commission on 5.10.09 and gave an assurance about the implementation of labour laws and provision of basic facilities, till date that action on the part of the State Government and the District Administration, Krishna remains incomplete and the State Government is seeking time again and again.

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23. The second complaint of then NHRC pertains to the plight of bonded children from West Bengal, Jharkhand and Bihar working under bonded conditions in certain Zari Factories of Kotlamubarakpur Police Station area of Delhi had been released and rescued through raids no steps have been taken by the administration of NCT of Delhi for issue of release certificates to the victims and for their rehabilitation. Instead of handing over the release certificates to the victims, these were sent to the Resident Commissioners of the three originating States namely West Bengal, Jharkhand and Bihar. The NHRC has further pointed out that in the process more than 2 years lapsed and the children who were supposed to have been rehabilitated by now could not be rehabilitated due to acts of negligence both of the part of Government of NCT of Delhi [as] also [the] Government[s] of Bihar, West Bengal and Jharkhand. Even though the complaint dates back to 2005 and proceedings were initiated by the NHRC in 2006, till date there is no confirmation from the States concerned as to whether all the 129 working children who were rescued and released from work in the Zari making units of NCT of Delhi have been fully rehabilitated.

15. Shri A.K. Ganguly, learned senior counsel who assisted the Court as Amicus Curiae, submitted that in the light of the NHRC report dated 10.8.2009 and the affidavits filed by the States/UTs and the Union of India and subsequent revised report of NHRC dated 3.9.2011, it is imperative that certain directions are to be issued to the various States/UTs for proper implementation of the provisions of the 1976 Act.

16. After hearing the amicus curiae and other learned counsel appearing in these proceedings and also taking note of the previous orders passed by this Court, we are inclined to give the following directions, apart from the directions already issued:

1) Fresh surveys be conducted periodically once in three years in all the States/UTs in accordance with the provisions of the Act and the revised report, the findings of the survey should be made a part of a computerized data base available on the websites of all concerned.

2) The responsibility of conducting the surveys is on the District Level Vigilance Committees and Sub Divisional Vigilance Committees of the States/UTs and such committees should submit their reports to the NHRC. This should be done in every three years and Committees also should be reconstituted in every three years.

3) Bonded labour, it may be noticed, is rampant in brick kilns, stone quarries, crushing mines, beedi manufacturing, carpet weaving, construction industries, agriculture, in rural and urban unorganized and informal sector, power looms and cotton handlooms, fish processing etc. The Vigilance Committees are directed to give more attention to these areas and take prompt action in case violation is noticed.

4) Large numbers of children are working as domestic help in the urban, town and rural areas with no chance to go to schools even though the education from standard I to VIII is compulsory under the Right of Children to Free and Compulsory Education Act, 2009. Local Panchayats and local bodies should identify such children and ensure that they get proper education. We are not unmindful of the fact that in some households they treat the domestic help just like their children and give food, clothing and education but they are exception.

5) Many of the States/UTs reporting NIL status with respect to existence of Bonded labourers. This might be due to the faulty methodology adopted by them for conducting such surveys. Guidelines on the methodology of identification of bonded labourers formulated by Shri SR Shankaran, Chairman of the Expert Group constituted by the NHRC be followed and implemented by all the States/UTs with suitable modifications to suit local conditions.

6) All the States/UTs should calculate firm requirements of fund for rehabilitation of freed bonded labourers and steps be taken to enhance the rehabilitation package from the present limit of Rs.20,000.

7) The District Magistrates are directed to effectively implement Sections 10, 11 and 12 of the Act and we expect them to discharge their functions with due diligence, with empathy and sensitivity, taking note of the fact that the Act is a welfare legislation.

8) The District Magistrate and the State Government / UTs would see that the Minimum Wages Act, the Workmen Compensation Act, the Inter- State Migrant Workmen Act, Child Labour (Prohibition and Regulation) Act are also properly and effectively implemented.

9) Directions are issued to all Gram Panchayats, local bodies to report, in case they come across any case of bonded labour, to the District Magistrate who will take appropriate follow up action under the Act.

10) The States of Andhra Pradesh, West Bengal, Jharkhand, Bihar and the NCT of Delhi are directed to ensure compliance with orders passed by the NHRC as highlighted in its revised report.

11) The States and the Union Territories should continue to submit 6 monthly reports to NHRC.

12) All the States / UTs to constitute Vigilance Committee, if not already constituted within six months.

17. This Court has already given various directions in its order dated 5.5.2004 passed in Public Union for Civil Liberties v. State of Tamil Nadu and Others (2004) 12 SCC 381, authorizing the NHRC to monitor the implementation of the provisions of the 1976 Act which we re-iterate and direct NHRC to effectively monitor and implement the provisions of the Act. The orders passed by this Court, time to time, in writ petitions are to be duly complied with the NHRC, Union of India, States and UTs.

18. The Writ Petition is accordingly disposed of so as to enable the NHRC to take appropriate steps and effectively supervise for carrying out the directions issued by this Court and the provision of BLS (A) Act. If the States/UTs are not implementing the directions given by this Court, NHRC is free to move this Court for further orders. We record our deep appreciation to the efforts made by learned senior counsel Shri A.K. Ganguli and for sparing his valuable time for a public cause. This Court is deeply indebted to him which we place on record.

.J (K. S. RADHAKRISHNAN) ..J.

(DIPAK MISRA) New Delhi, October 15, 2012