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M.C. MEHTA

v.

STATE OF TAMIL NADU AND ORS.

OCTOBER 31, 1990

B

[RANGANATH MISRA, CJ. AND M.H. KANIA, J.]

Constitution of India: Articles 39(f) & 45: Children employees of match factories of Sivakasi—Safety and well being of—Directions regarding.

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In terms of Article 39(f) of the Constitution childhood and youth are to be protected against exploitation and given facilities to develop in a healthy manner. In terms of Article 45 they are meant to be subjected to free and compulsory education until they complete the age of 14 years. Economic necessity, however, forces grown up children to seek employment.

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The petitioner assailed the employment of children in match factories in the respondent State by way of public interest litigation. The manufacturing process in such factories is hazardous one so much so that almost every year, notwithstanding improved techniques and special care taken accidents including fatal cases occur. Working conditions involve health hazards too.

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Disposing of the writ petition, the Court,

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HELD: 1. Employment of children within the match factories directly connected with the manufacturing process upto final production of match sticks or fireworks should not at all be permitted. They can, however, be employed in the process of packing which should be done in an area away from the place of manufacture to avoid exposure to accident. [520D-G]

G

2. They should be given at least 60 per cent of the prescribed minimum wage for an adult employee in the factories doing the same job. [521A]

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3. Under the Factories Act, there is a statutory requirement for providing facilities for recreation and medical attention. The respondent State is directed to enforce these two aspects so that the basic requirements are attended to. Attention may also be given to ensure

provision of a basic diet to these children during the working period with a view to ensuring sound physical growth. Facilities for general education as also job oriented education should be made available to them and the school time should be so adjusted that employment is not affected. [521G-H] A

4. The State shall take appropriate steps in the matter of creating the welfare fund and finalising the method of contribution and collection thereof by 1st January, 1991 so that the consolidated money would be available for implementing welfare schemes. [521E-F] B

5. The State shall also ensure that every employee working in these match factories is compulsorily insured for a sum of Rs.50,000. The premium for the insurance policy should be the liability of the employer to meet as a condition of service. [522A-B] C

6. A committee consisting of the District Judge of the area, the District Magistrate of the District, a public activist operating in the area, a representative of the employees and local labour officer to oversee all the directions of the Court. [522D] D

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 465 of 1986.

(Under Article 32 of the Constitution of India) E

Petitioner in person.

V. Krishnamurthy for the Respondents.

The following Order of the Court was delivered: F

This petition under Article 32 of the Constitution has been brought before this Court by way of a Public Interest Litigation and is connected with the problem of employment of children in Match factories of Sivakasi in Kamaraj District of Tamil Nadu State. On notice the State has filed its return. G

Sivakasi has been the traditional centre for manufacture of match boxes and fire works for almost the whole country and a part of its output is even exported. From the affidavit of the State it appears that as on December 31, 1985, there were 221 registered match factories in the area employing 27338 workmen of whom 2941 were H

A children. We would have been happy to have updated particulars but for disposal of this case total figure and the proportion between adult workmen and children perhaps may be taken as the foundation.

B The manufacturing process of matches and fireworks is hazardous one. Judicial notice can be taken of the fact that almost every year, notwithstanding improved techniques and special care taken, accidents including fatal cases occur. Working conditions in the match factories are such that they involve health hazards in normal course and apart from the special risk involved in the process of manufacturing, the adverse effect on health is a serious problem. Exposure of tender aged to these hazards requires special attention.

C It is a fact that the problem has been in existence for over half a century, if not earlier, and no appropriate attention has been focussed on it either by the Government or the public. We are, therefore, thankful to Mr. Mehta for having brought this matter before the Court for receiving judicial consideration.

D We are of the view that employment of children within the match factories directly connected with the manufacturing process up to final production of match sticks or fireworks should not at all be permitted. Article 39(f) of the Constitution provides that 'the State should direct its policy towards securing 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.'

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F The spirit of the Constitution perhaps is that children should not be employed in factories as childhood is the formative period and in terms of Article 45 they are meant to be subjected to free and compulsory education until they complete the age of 14 years. The provision of Article 45 in the Directive Principles of State Policy has still remained a far cry and though according to this provision all children up to the age of 14 years are supposed to be in school, economic necessity forces grown up children to seek employment.

G Children can, therefore, be employed in the process of packing but packing should be done in an area away from the place of manufacture to avoid exposure to accident. We are also of the view and learned counsel on both sides have agreed that minimum wage for child labour should be fixed. We take note of the fact that the tender

H hands of the young workers are more suited to sorting out the

manufactured product and process it for the purposes of packing. We are, therefore, of the opinion that in consideration of their special adaptability at least 60% of the prescribed minimum wage for an adult employee in the factories doing the same job should be given to them. Our indicating the minimum wage does not stand in the way of prescription of a higher rate if the State is satisfied that a higher rate is viable.

It is necessary that special facilities for providing the quality of life of children should be provided. This would require facility for education; scope for recreation as also providing opportunity for socialisation. Facility for general education as also job oriented education should be available and the school time should be so adjusted that employment is not affected.

We are happy to notice that the learned counsel for the State of Tamil Nadu has suggested the creation of a Welfare Fund to which the registered match factories can be asked to contribute. Government can decide as to whether contribution should be at a fixed rate per factory or made commensurate to the volume of production. Learned counsel for the State of Tamil Nadu has agreed that the State would be ready to contribute a matching grant to the Fund and even if necessary, a little more funds could be provided so that facilities for education and recreation can be provided for the children working in the factories we direct that the State of Tamil Nadu shall take appropriate steps in the matter of creating the welfare fund and finalising the method of contribution and collection thereof so that the welfare fund may be set up by 1st January, 1991. The matching contribution by the State can be put into the fund by the end of the financial year 1990-91 so that the consolidated money would be available for implementing welfare scheme.

Under the Factories Act there is a statutory requirement for providing facilities for recreation and medical attention. The State of Tamil Nadu is directed to enforce these two aspects so that the basic requirements are attended to. We have been told by learned counsel for the State that mobile medical vans have been provided by UNICEF and are regularly coming to the area. He has told us further that four mobile vans are likely to be provided. The State is directed to take immediate steps to ensure provision of additional facilities on this score. Attention may be given to ensure provision of a basic diet during the working period and medical care with a view to ensuring sound physical growth. We are of the opinion that compulsory insu-

- A** rance scheme should be provided for both adult and children employees taking into consideration the hazardous nature of employment. The State of Tamil Nadu shall ensure that every employee working in these match factories is insured for a sum of Rs.50,000 and the Insurance Corporation, if contacted should come forward with a viable group insurance scheme to cover the employees in the match factories of Sivakasi area. The premium for the group insurance policy should be the liability of the employer to meet as a condition of service.
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- Though we are disposing of this petition with these directions we are cognizant of the position that all the problems relating to employment of children are not covered by the present directions. We leave it open either to Mr. Mehta or some other agency to move the Court as and when necessary for further order.
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- We require that there shall be a committee to oversee all our directions and it shall consist of the District Judge of the area, the District Magistrate of Kamaraj district, a public activist operating in the area, a representative of the employees and local labour officer. The State of Tamil Nadu is directed to deposit Rs.3,000 in the Registry of this Court within four weeks for being given to Mr. Mehta for meeting his expenses.
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P.S.S.

Petition disposed of.