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The Final Blow

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ABSTRACT

The workmen were the most affected class during the outbreak of Corona virus. They were deprived of food, shelter and employment and underwent untold miseries at unprecedented scale. They were battered in all respects – physically, mentally and financially. They suffered severe blows to their health. At this important juncture, when a healing hand was required to be extended to them, many state governments came out with statutory notifications or other instruments relaxing the applicability of labour laws for different periods. One such provision was forcible working (as opposed to voluntary) for twelve hours in place of normal eight hours working day. This paper examines the legal validity of notification issued under section 5 of the Factories Act, 1948 whereby the compulsory working hours for workmen were increased from eight to twelve.

I. INTRODUCTION

During these COVID times and because of abrupt lock down announced by the Prime Minister, huge numbers of migrant labour and their families were seen moving from their working places to their respective villages. Having lost their Jobs and with no money left in their pockets to sustain themselves and their families, they were left with no alternative than to move back to their native places. At the same time, other factory workers and agricultural labour was also similarly affected. There was one similarity between all these classes of workers and that was that they had no jobs and no money left for their sustenance and their physical and mental health was badly affected. In this scenario when some moral and monetary support was required to be given to them, various governments came up with amendment in labour laws and one of them was compulsory increase of working hours from 8 hours to 12 hours a day. In other words, a final blow was given to them, where they were not even left with a redressal mechanism. This paper examines the legal validity of statutory notifications issued under section 5 of Factories Act 1948.

II. HISTORICAL BACKGROUND OF LAW PERTAINING TO WORKING HOURS

During British rule the tea gardens were mainly owned and managed by the British. In order to

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have an uninterrupted working process consistent with imperial practices of the British, The Bengal Regulations VII 1819 were enacted, which provided for a five year contract of employment between workers and the owner. The desertion from employment was made punishable.

Later, the Transport of Native Labourers' Act, 1863 was enacted which authorised detaining the workers in the district of employment and imprisoning them for six months for violation.

Bengal Act VI of 1865 authorised the deployment of Special Emigration Police to put the workers under detention and bring them back to the area of employment.

Factory workers were also put to sixteen hours of work a day. With the widespread struggles of workers, The Factories Act 1911 was enacted, which reduced the working shift to twelve hours.

There were consistent struggles by the workers against colonial industrialists for better working conditions. It also became a part of national freedom struggle. The Royal Commission of Labour was appointed in the year 1935 and as a result thereof a number of changes were recommended. The Government of India Act 1935 also ensured representation of Indians in legislation.

Consequently, humane changes were made in labour laws which were reflected in various laws enacted by the Parliament including the Factories Act 1948.

III. STATUTORY PROVISIONS RELATING TO WORKING HOURS AND RELAXATION THEREOF

Section 51 of Factories Act fixes the working hours in a week at 48 hours. It reads

51. Weekly hours .-No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.

Similarly, section 54 prescribes a limit on daily working hours which cannot exceed 9 hours. It lays down:

54. Daily hours .-Subject to the provisions of section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day:

Provided that, subject to the previous approval of the Chief Inspector, the daily maximum hours specified in this section may be exceeded in order to facilitate the change of shifts.

The worker is required to be given rest of half an hour after he has worked for five hours as per Section 55 of Factories Act:

55. Intervals for rest .- [(1)] The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

(2) The State Government or, subject to the control of the State Government, the Chief Inspector, may, by written order and for the reasons specified therein, exempt any factory from the provisions of sub-section (1) so however that the total number of hours worked by a worker without an interval does not exceed six.

Now many State Governments have relaxed this provision so as to increase compulsory working to twelve hours a day. Some of the State Governments like Himachal Pradesh and Rajasthan have done it with double overtime wages and others like Gujrat without double wages. The notification has been issued under section 5 of the Factories Act, which reads as:

5. Power to exempt during public emergency .-In any case of public emergency the State Government may, by notification in the Official Gazette, exempt any factory or class or description of factories from all or any of the provisions of this Act [except section 67] for such period and subject to such conditions as it may think fit:

Provided that no such notification shall be made for a period exceeding three months at a time.

Explanation .-For the purposes of this section "public emergency" means a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance.

Necessary conditions required to be fulfilled for exercise of this provision increasing the working hours are twin:

- a. There must exist a grave emergency whereby security of India is threatened by war, external aggression or internal disturbance.
- b. Any executive order issued under the provisions of Factories Act has to correspond to the fundamental rights contained in Part III and Directive Principles contained in Part IV of Constitution of India.

IV. CONSTITUTIONAL PROVISIONS RELATING TO SECURING EQUITABLE AND HUMANE CONDITIONS FOR WORKMEN

Article 21 of the Constitution is fountain head of all the rights. From the day of enactment of the Constitution, the scope of Article 21 has seen consistent expansion. The right to life includes right to healthy working environment, right to food, right to work, right to livelihood and right to shelter with a reasonably decent environment to live in. It reads as:

Article 21. Protection of life and personal liberty. - No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 21 has been interpreted by the apex court to include healthy working environment, livelihood, food, clothing and shelter.

In CESC Ltd. v. Subhash Chandra Bose² the Supreme Court deliberated upon the healthy working environment for the workmen and held:

“Article 39(e) of the Constitution enjoins the State to direct its policies to secure the health and strength of workers. The right to social justice is a fundamental right. Right to livelihood springs from the right to life guaranteed under Article 21. The health and strength of a worker is an integral facet of right to life. The aim of fundamental rights is to create an egalitarian society to free all citizens from coercion or restrictions by society and to make liberty available for all. Right to human dignity, development of personality, social protection, right to rest and leisure as fundamental human rights to common man mean nothing more than the status without means. To the tillers of the soil, wage earners, labourers, wood cutters, rickshaw pullers, scavengers and hut dwellers, the civil and political rights are ‘mere cosmetic’ rights. Socio-economic and cultural rights are their means and relevant to them to realise the basic aspirations of meaningful right to life. The Universal Declaration of Human Rights, International Convention on Economic, Social and Cultural Rights recognise their needs which include right to food, clothing, housing, education, right to work, leisure, fair wages, decent working conditions, social security, right to physical or mental health, protection of their families as integral part of the right to life. Our Constitution in the Preamble and Part IV reinforces them compendiously as socio-economic justice, a bedrock to an egalitarian social order. The right to social and economic justice is thus a fundamental right.

In **Olga Tellis v. Bombay Municipal Corp.**³ the Supreme Court held the right to livelihood to be a part of right to life under Article 21 of the Constitution. It held:

“Right to life under Article 21 includes right to livelihood and so if deprivation of livelihood is effected without reasonable procedure established by law, it would be violative of Article 21. That is but one aspect of right to life. An equally important facet of that right to livelihood is — 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 of his right to

² (1992) 1 SCC 441

³ (1985) 3 SCC 545

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.”

In **Shantistar Builders v. Narayan Khimalal Totame**⁴ a Bench of three Judges included the right of reasonable accommodation with a decent environment in the sweep of right to life. According to the learned judges:

“The right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body, for a human being it has to be a suitable accommodation which would allow him to grow in every aspect — physical, mental and intellectual..... It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation.”

The right to food was again reiterated to be a fundamental right in **Swaraj Abhiyan v. Union of India**⁵:

“There is undoubtedly a distinction between a statutory obligation and a constitutional obligation but there can be no doubt that the right to food is actually a constitutional right and not merely a statutory right.”

How Directive Principles of State Policy are fundamental in governing the country

The Directive Principles of State Policy are contained in Part IV of the Constitution. They are strictly not enforceable in the Court but have been held to be fundamental in governance of the country. It would be relevant to have a look at appropriate provisions.

Article 37 and 38 state:

37. Application of the principles contained in this Part. - The provisions contained in this Part shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

38. State to secure a social order for the promotion of welfare of the people. - [(1)] The

⁴ (1990) 1 SCC 520

⁵ (2016) 7 SCC 498

State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

[(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

These provisions remained part of deliberations in case titled **Ramlila Maidan Incident, In re**⁶ wherein Supreme Court observed:

“While these are the guaranteed fundamental rights, Article 38, under the directive principles of State policy contained in Part IV of the Constitution, places a constitutional obligation upon the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice—social, economic and political—shall inform all the institutions of the national life. Article 37 makes the directive principles of State policy fundamental in the governance of the country and provides that it shall be the duty of the State to apply these principles in making laws.”

Similarly Article 39 enjoins upon the State to direct its legislative exercise to secure, inter alia, health and strength of workers and prevent their exploitation. It states:

39. Certain principles of policy to be followed by the State. - The State shall, in particular, direct its policy towards securing-


- (a) That the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) That there is equal pay for equal work for both men and women;
- (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;

⁶ (2012) 5 SCC 1

- (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.

This important provision also remained subject matter of judicial pronouncements and its importance was underlined in following cases:

***In Lala Ram v. Union of India*⁷ the Court held :**

“A welfare State denotes a concept of Government, in which the State plays a key role in the protection and promotion of the economic and social well being of all of its citizens, which may include equitable distribution of wealth and equal opportunities and public responsibilities for all those, who are unable to avail for themselves, minimal provisions for a decent life. It refers to “greatest good of greatest number and the benefit of all and the happiness of all”. It is important that public welfare be the commitment of the State, where the State is a welfare State. A welfare State is under an obligation to prepare plans and devise beneficial schemes for the good of the common people. Thus, the fundamental feature of a welfare State is social insurance. Anti-poverty programmes and a system of personal taxation are examples of certain aspects of a welfare State. A welfare State provides State-sponsored aid for individuals from the cradle to the grave. A welfare State is one, which seeks to ensure maximum happiness of maximum number of people living within its territory. A welfare State must attempt to provide all facilities for decent living, particularly to the poor, the weak, the old and the disabled i.e. to all those, who admittedly belong to the weaker sections of society. Articles 38 and 39 of the Constitution of India provide that the State must strive to promote the welfare of the people of the State by protecting all their economic, social and political rights. These rights may cover, means of livelihood, health and the general well-being of all sections of people in society, specially those of the young, the old, the women and the relatively weaker sections of the society. These groups generally require special protection measures in almost every set up. The happiness of the people is ⁸ the ultimate aim of a welfare State, and a welfare State would not qualify as one, unless it strives to achieve the same.”

Again in *Tatoba Bhau Savagave v. Vasantrao Dhindiraj Deshpande*⁸, the Court said:

⁷ (2015) 5 SCC 813

⁸ (2001) 8 SCC 501

“there can be no gainsaying the fact that while interpreting a beneficial legislation like the Act under consideration, the directive principles of State policy contained in Article 38 and clauses (b) and (c) of Article 39 of the Constitution should be uppermost in the mind of a Judge”

In **Samatha v. State of A.P.**⁹ the Court laid stress upon protection of weaker sections of society:

“Social justice enjoins the Court to uphold the Government’s endeavour to remove economic inequalities, to provide decent standard of living to the poor and to protect the interests of the weaker sections of the society so as to assimilate all the sections of the society in a secular integrated socialist Bharat with dignity of person and equality of status to all.”

Article 42 and 43 of the Constitution again lay stress upon humane conditions of work and ensuring a decent standard of life. These read:

42. Provision for just and humane conditions of work and maternity relief. - The State shall make provision for **securing just and humane conditions of work** and for maternity relief.

43. Living wage, etc., for workers. - The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

While commenting upon the provisions of Minimum Wages Act in **Y.A. Mamarde v. Authority**¹⁰, the Court observed:

The Act which was enacted in 1948 has its roots in the recommendation adopted by the International Labour Conference in 1928. The object of the Act as stated in the preamble is to provide for fixing minimum rates of wages in certain employments and this seems to us to be clearly directed against exploitation of the ignorant, less organised and less privileged members of the society by the capitalist class. Under our present Constitution the State is now expressly directed to endeavour to secure to all workers (whether agricultural, industrial or otherwise) not only bare physical subsistence but a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure. This Directive Principle of State Policy being

⁹ (1997) 8 SCC 191

¹⁰ (1972) 2 SCC 108

conducive to the general interest of the public and, therefore, to the healthy progress of the nation as a whole, merely lays down the foundation for appropriate social structure in which the labour will find its place of dignity, legitimately due to it in lieu of its contribution to the progress of national economic prosperity.

Part IV of the Constitution lays down a series of provisions for improving the standard of living for all. Article 47 reads as:

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.

In *Vincent Panikurlangara v. Union of India*¹¹ while emphasizing upon the importance of good health and right to live with human dignity conferred by Articles 21, 39, 41 and 42, the court said:

“A healthy body is the very foundation for all human activities. That is why the adage “Sariramadyam Khaludharma Sadhanam”. In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health.”

The Court quoted from a paragraph in *Bandhua Mukti Morcha v. Union of India*¹² (1984) 3 SCC 161:

“It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullin case to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39¹⁷⁴ and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of the workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State — neither the

¹¹ (1987) 2 SCC 165

¹² (1984) 3 SCC 161

Central Government nor any State Government — has the right to take any action which will deprive a person of the enjoyment of these basic essentials.”

The Court also emphasized upon the importance of Directive Principles, saying, “It does not mean that directive principles are less important than fundamental rights or that they are not binding on the various organs of the State.”

Emphasising upon the importance of public health, the Court reiterated, “As pointed out by us, maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority — perhaps the one at the top.”

V. INTERPRETATION OF STATUTORY PROVISIONS IN ACCORDANCE WITH CONSTITUTIONAL PROVISIONS

All statutory provisions are required to be interpreted in accordance with the Constitution. The benevolent provisions contained therein form a guide as to how a proper meaning is to be given to the Statute. The Apex Court in *Pradip Kumar Maity v. Chinmoy Kumar Bhunia*¹³, (2013) 11 SCC 122 observed:

“The Constitution of India is the grund norm, demanding meticulous allegiance from all other laws. Statutes, Central/parliamentary or of State Legislatures, must mandatorily comply with our Constitution. Executive orders or administrative instructions cease to have legal efficacy the moment they are contrary to their superiors i.e. the Constitution, a statute, or any delegated legislation in the form of rules or regulations. This is also referred to as “dominion paramountcy” by some courts.”

International Conventions

Internationally, eight hours work a day is considered as standard norm. India happens to be signatory to 39 conventions under International Labour Organisation which are in force at present. As per Article 2 of Hours of Work (Industry) Convention, 1919 the normal working hours cannot exceed eight hours in a day and forty eight hours in a week. Traditionally and legally, all international treaties and conventions are binding upon signatory nations.

Analysis of notifications increasing the working hours in the light of aforesaid grounds:

¹³ (2013) 11 SCC 122

The notification is bad for two reasons:

1. Section 5 of the Factories Act does not authorise relaxation or increase in working hours in the existing factual conditions.
2. Every Statutory provision is to be interpreted in consonance with the Constitutional provisions which mandate creation of humane working conditions for workmen and ensuring a reasonably decent life.

VI. CONCLUSIONS

Let us examine both of these points for arriving at a conclusion:

1. Section 5 authorises the State Governments to exempt any factory from all or any provisions of the Act in case of public emergency. The term “public emergency” has also been defined which means a grave emergency whereby the security of India is threatened by any of these means – war, external aggression or internal disturbance. The power under section 5 has been exercised without citing any reason by Government of Himachal Pradesh. Since this notification has come during COVID times, it is reasonable to think that it has been issued to continue working of factories for longer period of time. But law mandates the creation of humane conditions for workmen and they cannot be forced to work for twelve hours a day. The term “where security of India is threatened” cannot be expanded to COVID times, where the workmen have already been battered the most – emotionally, health wise and financially.
2. Article 21 of Constitution grants the workmen fundamental right to healthy working environment, livelihood, food and a reasonably decent place to live in, which the State could not secure to them. Chapter IV of the Constitution mandates that the State is required to take into account Directive Principles of State Policy in governing the country. This chapter requires the State to make provisions for their health, employment, shelter, a dignified way of life and especially health and strength of workers, and see that they are not forced by economic necessity to enter avocations unsuited to their age or strength, creation of just and humane working conditions and ensuring a living wage, good conditions of work, a decent standard of life and full enjoyment of leisure and social and cultural opportunities. This is the mandate of law. Now the present notification relaxing the provisions of Factories Act and forcing them to work for twelve hours, reduces the workers to most inhuman existence which was never envisaged by the Constitution makers. The notification is not only illegal but also is a mirror as to how these governments look upon the workers, denying them what is due to them.
