

**ODISHA HUMAN RIGHTS COMMISSION
TOSHALI BHWAN (2ND FLOOR),
SATYA NAGAR, BHUBANESWAR-751007**

O.H.R.C. CASE NO.213 OF 2014

Biswapriya Kanungo & another -

... Petitioners

ORDER

25th July, 2014

The petitioners, who are two advocates of Bhubaneswar and human rights activists, in their petition highlighted the torture meted out to one Sushanta Kumbhar, who had accompanied his father Santosh Kumar Kumbhar and mother Bhanumati to Kandarpalli in the district of Gulberga in Karnataka State to eke out their living by working in a brick kiln. It is said that the poor illiterate persons from Balangir migrate to different parts of India to work there as “Dadan” labourers (Bonded Labourers). The petitioners also highlighted the fact that the owner of the alleged brick kiln namely Lachhman Nayak assaulted the 10 year old boy Sushant Kumbhar, who was working in his ‘Itabhati’ in November,2013 with an iron rod for which the boy sustained fracture of his left hand but instead of taking the boy to a hospital, he was treated by local application of some herbals for which blisters developed affecting the entire hand and gangrene developed resulting in paralyzing the entire left hand. The boy returned back to his native village in Balangir district with his parents and with the assistance of a labour leader Sri Lalit Nayak of Balangir, he was removed to Burla Medical College & Hospital for his treatment and from Burla he was referred to SCB Medical College & Hospital, Cuttack for better treatment, where the doctors advised that the boy is required to undergo a series of surgeries including plastic surgery so that the functioning of the left hand can be restored to some extent. It is alleged that the District Administration, Balangir had only granted 10,000/- rupees to the parents of Sushant Kumbhar which is too meager to meet the costly

treatment. Accordingly, the petitioners, while approaching this Commission for directing a full inquiry into every aspect of the case, prayed to recommend for payment of adequate compensation, proper treatment and rehabilitating the victim child including rehabilitating his family and launching criminal prosecution against the persons involved in the brutal incident. It is also prayed that the Commission in exercise of its powers under Section 18(c) of the Protection of Human Rights Act, 1993 may recommend payment of interim compensation to the tune of one lakh rupees for meeting the medical expenses of the victim child.

On receipt of this complaint, report was called for from the Commissioner-cum-Secretary, Labour & ESI Department of Government of Odisha as well as from the Collector, Balangir so also from the Superintendent of Police, Balangir. The Collector, Balangir was also requested for grant of financial assistance to the victim in accordance with the policies and schemes of the Government and compliance report to be submitted.

The report of the Collector, Balangir dated 24.03.2014 reveals that the Superintendent of Police, Balangir, PD, DRDA, Balangir and Sub-Collector, Patnagarh were requested to enquire into the matter. The Superintendent of Police and District Labour Officer, Balangir, enquired into the matter. The inquiry report shows that as per the report of Santosh Kumbhar of Kadalimunda dated 16.01.2014 under Patnagarh Police Station limits, they had gone to Gulberga being allured by a labour broker namely Mohan Meher of Baghalabandh and Bhutulu Behera of Tikrapada on payment of 2000/- rupees instead of paying them 15,000/- rupees as advance. Besides that, Santosh Kumbhar was paid Rs.500/- per week towards food but his wife Bhanumati and minor son Sushant aged 10 years were subjected to hard labour without any food and were tortured and subjected to abuses and assault. Santosh Kumbhar also reported that his son Sushant was assaulted by Santosh Nayak during November, 2013, who happens to be the son of the brick kiln owner Sri Lachhman Nayak on the allegation that Sushant was not working sincerely. Due to such assault, Sushant sustained fracture of his left

hand but he was not allowed to be treated in a hospital but, however, one NGO and Labour Department of Karnataka Government rescued them from the clutches of the brick kiln owner and, accordingly, the injured accompanied by his father and mother, returned back to their village.

The Collector, Balangir reports that as per the investigation of the Patnagarh Police, it came to light that Sushant Kumbhar had sustained fracture of his left hand before going to Karnataka while playing "CHHUA GODA GODA" dashed against the wall of the toilet of his school for which Sushant sustained fracture of his left hand i.e. before his departure to Karnataka. The Collector, Balangir reports that Sushant was admitted into hospital on 07.01.2014 as per the report of the District Surgeon and Superintendent, District Hospital, Gulberga. The report of the Collector further reveals that Santosh Kumbhar was paid 2000/- rupees as financial assistance by the Sub-Collector, Patnagarh on 13.01.2014 from the Chief Minister's Relief Fund. Besides that he was paid 10,000/- rupees from the District Red Cross Fund for better treatment at Burla as the District Headquarters Hospital, Balangir referred the patient to Burla for better treatment. From Burla, he was referred to SCB Medical College & Hospital, Cuttack, where the victim boy was treated and series of operations were carried out on his left hand and finally he was discharged from SCB Medical College & Hospital, Cuttack on 04.03.2014. The entire expenses of the treatment along with medicines were borne by SCB Medical College & Hospital, Cuttack authorities including food expenses. It is specifically reported that after being discharged from SCB Medical College & Hospital, the victim arrived in his village on 07.03.2014 and now the victim boy is feeling better and continuing his studies in Class-V. The Collector also reports that the Asst. Labour Commissioner, Balangir has initiated legal action by filing prosecution against the 'Dadan' agent Mohan Meher and Bhutulu Behera and a case has been filed in the Court of SDJM, Patnagarh under Child Labour Act, 1986 and Inter-State Migrant Workmen Act, 1979. In connection with that case, Bhutulu Behera was arrested on 05.02.2014.

During investigation, it came to light that Bhutulu Behera has no license to deal with labourers.

The report of the Superintendent of Police, Balangir so also that of the Principal Secretary to Government, Labour and ESI Department dated 24.03.2014 are also in the line with that of the report of the Collector & District Magistrate, Balangir.

We have perused the report of the Labour Commissioner, Odisha addressed to the Under Secretary to Government, Labour & ESI Department, Odisha.

We have also seen the letter of the Commissioner of Labour, Government of Karnataka addressed to the Labour Commissioner, Odisha dated 14.02.2014. The said report of the Commissioner of Labour, Government of Karnataka reveals that the brick kiln located at Kandarpalli (Kodampalli) in Sedam Taluk, Gulberga District was inspected by a team of officials along with Labour Officer, Gulberga on 06.01.2014 and it was noticed that 26 bonded labourers including two child labourers were migrated from Odisha to Karnataka working in the said brick kiln. The report of the Labour Commissioner, Karnataka further reveals that at the time of inspection, two child labourers were found working in two brick kilns i.e. M/S. SBI Bricks Unit and M/S. RSR Bricks Unit and, accordingly, notes of inspection was prepared and served by the jurisdictional Labour Inspector, Sedam under the provisions of Child Labour (Regulation & Prohibition) Act, 1986 and cases have also filed against owners of the above brick kilns on 16.01.2014 in the Court of the JMFC, Sedam. One of the bonded child labourer namely Sushant Kumbhar aged about 12 years, son of Santosh Kumbhar was rescued and released by the Sub-Divisional Magistrate, Sedam from the bondage of the employer. Since the child was beaten up by steel rod by the owner resulting in fracture of left hand wrist, he was admitted to Government Hospital, Gulberga for treatment. The District Surgeon advised amputation of the lower elbow portion of the left hand but his parents requested the doctors to allow them to have the treatment of the child at Odisha. Hence, he was discharged by the

doctor and, accordingly, they returned back to their native place Kadalimunda in Balangir district of Odisha and two claim applications were filed under Section 15 of the Payment of Wages Act, 1936 for Rs.23,580/- each before the Labour Officer, Gulberga for non-payment of wages and the parents were advised to through a letter to seek compensation under the Employees Compensation Act, 1923. Further, action is taken to realise a sum of Rs.20,000/- from the offending employer as per the Supreme Court decision in M.C. Mehta Vrs. State of Tamilnadu and others.

In view of the letter of the Labour Commissioner, Karnataka, there was no reason for the functionaries of the State of Odisha not to come with clean hand and tried to bury the real facts under the carpet.

The Commission is shell-shocked and left with no other alternative than to express its deep anguish on the insensitiveness of the functionaries of the State which puts the Government into embarrassment unnecessarily. The matter should not have been left by the District Administration for inquiry to the lower ranks of the administration and to shirk its responsibilities.

Mr. Kanungo by placing reliance on the judgment of our own Hon'ble High Court as reported in (2014) 57 OCR 547 Abdul Rashid Vrs. State of Odisha & others, contended that when compensation is not fully available to the victim from the offender and other sources, the State should endeavour to provide financial compensation to victims, who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crime.

Mr. Kanungo also drew our attention to the Odisha Victim Compensation Scheme, 2012 which envisages that compensation is payable to victim of a crime in all cases irrespective of conviction or acquittal and the payment of compensation has to be worked out by an appropriate forum in accordance with the 2012 Scheme but pending such steps taken, interim compensation ought to be given at the earliest in any proceeding. Expanding the scope of Article 21, it has been held by our own Hon'ble High Court that providing compensation is not limited

when the State or its functionaries are guilty of an act of commission but also to rehabilitate the victim or his family, where crime is committed by an individual without any role of the State or its functionaries. Apart from the concept of compensating the victim by a way of public law remedy in writ jurisdiction, need was felt for incorporation of a specific provision for compensation by courts irrespective of the result of the criminal prosecution. By relaying on the ratio propounded by the Apex Court in *Shail Kumari Devi Vrs. Krishan Bhagwan Pathak* (2008) 9 SCC 632, it was highlighted that interim compensation ought to be paid at the earliest, so that immediate need of victim can be met. On an interim order being passed by the Court, the funds available with the District Legal Services Authorities, the same may be disbursed to the victims in the manner directed by the Court.

After giving our anxious hearing to the contentions raised by Mr. Kanungo, and when admittedly as per the report of the Labour Commissioner, Government of Karnataka, criminal prosecution has been launched under Section 15 of the Payment of Wages Act, 1936 before the Labour Officer, Gulberga, and when according to the report of the Principal Secretary to Government, Labour & ESI Department dated 24.03.2014, criminal prosecution has been launched against the Dadan agent Mohan Meher and Bhutulu Behera, Rabi Naik and Laxman Naik under Sections 342/374/323/325/506 of the IPC and under Section 25 of the Inter-State Migrant Workers(RE&CS) Act, 1973 and under Section 8(3) of the Child Labour (PLR) Act, 1986 and Section 25 Arms Act and when admittedly the boy requires financial assistance so also his parents being poor labourers, they also require to be rehabilitated by the District Administration. Even if accepting the report of the Collector & District Magistrate that all treatments were provided to the victim boy free of cost and the SCB Medical College authorities had borne the food expenses of the parents of the victim boy, that is not the end of the woes of the victim boy as he is required to undergo further surgeries and treatment for reconstruction of his left hand. For commuting to SCB Medical College & Hospital, Cuttack from a far off tribal dominated area in

Patnagarh Sub-Division of Bolangir district, journey expenses are also quite expensive and the poor labourers may not be in a position to bear the medical expenses besides their fooding etc.

Thus, for the trauma that the victim boy had undergone for no fault of him and when he was subjected to inhuman torture, to rehabilitate him and his parents, the Commission hope and believe that the State would be magnanimous in extending all financial and other supports not only to the victim boy but to his parents. Ours is a welfare State and the primary concern of the State is to look to the well being and welfare of its citizens for which different benevolent schemes have been enacted.

Thus, when the matters are pending before the judicial forums, without entering or transgressing into that arena and interfering with judicial proceedings and when the parents of the victim boy have been advised by the Commissioner of Labour, Karnataka to claim for compensation being preferred at an appropriate forum, not only in the State of Karnataka but also in pursuing the two prosecutions launched in Odisha i.e. in the Court of SDJM, Patnagarh, some more monetary help should have been extended to the parents of the victim boy and not a paltry sum of Rs.12,000/- as is reported by the Collector & District Magistrate, Balangir. Taking the entire gamut of the fact situation and taking into consideration the trauma and sufferings of the minor boy aged about 10 year, who has come from the marginalized section of the society and had gone out for earning his living by working in a brick kiln in a place far away from his native place, the Commission recommends the Government in Labour & ESI Department for providing financial assistance to the tune of Rs.50,000/- (Rupees fifty thousand) to the victim, besides what has already been paid, to add succor to the family members of the victim boy within the meaning of Section 18(c) of the Protection of Human Rights Act, 1993.

The Principal Secretary to Government, Labour & ESI Department is requested to arrange payment of the above monetary assistance to the

victim boy Sushant Kumbhar within four weeks of receipt of this order and report compliance to the Commission by 10.09.2014.

Besides the above, the Collector & District Magistrate, Balangir is to see that the victim's family is rehabilitated as per the provisions of the Bonded Labour System (Abolition) Act, 1976.

Besides that the Commission request the Collector & District Magistrate, Balangir, who is also the ex-officio Member of the District Legal Services Authority, Balangir to be in touch with the poor illiterate father of the victim and provide necessary assistance and relief to the victim with the active aid and assistance of the District Legal Services Authority as well as Taluk Legal Services Committee, Patnagarh as the case is pending in the Court of the SDJM, Patnagarh, where Taluk Legal Services Committee is in existence.

Before parting with the record, we would like to mention here that in the face of such clear cut findings during the enquiry by the Commissioner of Labour Government of Karnataka, we fail to understand why the functionaries of Government of Odisha have gone to great length in order to prove that the child had broken his hand before going to Karnataka. The Commission expresses its strong displeasure against such stand of the State Government officials. The supervising officials should also have looked into the various facts and reports on record before giving their considered opinion to the Commission. In stead of doing so, they have mechanically forwarded the report of the lower level functionaries , thereby betraying the same lack of sensitivity towards the problem of migrant labours.

The Collector, Balangir should specifically report whether steps have been taken to rehabilitate Santosh Kumbhar, Bhanumati Kumbhar and Susanta Kumbhar all of whom were declared as Bonded Labour and released by the Commissioner of Labour ,Government of Karnataka.

The pernicious practice of engaging Bonded Labours in various working places including brick kilns has been adjudicated upon by the Apex Court in a number of cases. In Writ Petition (Civil) No.3922 of 1985,

(Public Union for Civil Liberties –Vrs- State of Tamil Nadu and others), the Hon'ble Supreme Court have directed that fresh surveys be conducted periodically once in three years in all the State/UTs in accordance with the provisions of " the BLS(A) Act " and the responsibility of conducting such surveys has been entrusted to the District Level Vigilance Committees which should submit their report to the NHRC. It is not known to the Commission whether the above direction of the Hon'ble Supreme Court have been followed in letter and spirit by the District Administration of Balangir. The Commission, therefore, directs the Commissioner-Cum- Principal Secretary, Govt. Labour & ESI Department to make a presentation before the Commission on 10.09.2014 at 4 PM regarding the various steps taken by the Department highlighting inter-alia:-

- i) identification of the areas vulnerable to the practice of forced migration.
- ii) the measures taken to prevent such migration.
- iii) the measures taken to rehabilitate the freed bonded labourers and their children.
- iv) and the institutional arrangements both at the District Level and State Level in order to mitigate and prevent the practice through coordinated action among the different departments charged with the task of mitigating the multi dimensional aspects of poverty.

Put up on 10.09.2014 as ordered above.

SRI B.K. PATNAIK
MEMBER

JUSTICE B.K. MISRA
ACTING CHAIRPERSON

25th July, 2014