Labour without welfare measures constitutes 'Forced Labour' under article 23 of Constitution plea In SC against dilution of Labour Laws

Akshita Saxena 20 May 2020 1:15 PM

A petition has been filed before the Supreme Court challenging the Constitutional validity of the notifications/ ordinances issued by various State Governments, suspending the operation of certain labour laws with respect to working hours, wages, and health and safety conditions. The PIL has been filed by a law student, Nandini Praveen through Advocate Nishe Rajen Shonker, assailing relaxation of labour laws in the states of Rajasthan, Gujarat, Punjab, Himachal Pradesh, and Uttara khand, Haryana, Madhya Pradesh, Uttar Pradesh, Goa and Assam, for having been issued without any authority of the law.

It is primarily contended that Central labour laws cannot be abridged by way of executive orders issued by the states. The Petitioner has thus sought quashing of the impugned laws to the extent they are violative of the Constitutional principles and strict implementation of the Central Laws such as the Industrial Disputes Act, 1947, the Factories Act, 1948, the Code of Wages Act, 2019 and all other laws on labour issues.

Not a Public Emergency under Factories Act

As per the Petitioner, the provisions of the Factories Act can be diluted only in case of public emergency, whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression of internal disturbance (in terms of Section 5 of the Factories Act). In this case however it is submitted that no such public emergency exists and therefore, judicial interference is warranted.

"In the case on hand there is no internal disturbance. The inconvenience caused to the public at large and the administration due to the strict lockdown guidelines imposed by the Central and state government cannot be termed as an internal disturbance. There is no situation of 'domestic chaos' as well. The security of the states is not being threatened. The current situation, allegedly the reason for the states to exempt factories from the purview of the Factories Act, cannot take the colour of security threat," the plea states.

It is further stated that the purpose of the Factories Act is not to deal with the economic impact over factories, created by the situations like pandemic. It was enacted "to consolidate and amend the law regulating labour in factories," as evident from the Preamble of the Act itself. "Therefore, the state governments cannot invoke Section 5 of the Factories Act in the guise of reviving the Industries hit by the lockdown in place at the cost of the lives of the workers," the Petitioner has contended.

Room for Exploitation of Labour

The plea states that if the labour laws remain suspended, labours will be put to sheer exploitation in terms of working hours, wages, health and safety conditions, every day. In this backdrop it is submitted that "the impugned laws are passed without adequate determining principle and are irrational. The

relaxation of labour welfare measures is disproportionate and excessive and are liable to be set aside under the manifest arbitrariness test."

Constitutes Forced Labour

The plea further states that the impugned laws, by suspending welfare and health measures of workers and by increasing work hours constitute forced labour, which is in violation of Article 23 of the Constitution. "Every form of forced labour 'beggar' or otherwise, is within the inhibition of Article 23 and it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by this Article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion," the plea states in light of the Supreme Court ruling in People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.

Affects Right to Health

It is also submitted, in light of the Supreme Court's verdict in Sunil Batra v. Delhi Administration, AIR 1978 SC 1675, that the right to health is a part of the right to life under Article 21 of the Constitution and the same cannot be diluted. It is further submitted that the Government is duty bound to secure the health and strength of workers and to secure just and humane conditions of work in terms of Article 39(e) and Article 42 of the Constitution, respectively.

Right to minimum wage

It is pointed out that certain states, such as the state of UP, have also abolished the provisions for payment of minimum wages, which is an integral part of right to life. Thus it is submitted that the impugned laws are violative of the principles laid down in Peoples Union for Democratic Rights v. Union of India 1982 AIR SC 1473, as also Articles 14, 15 and 21 of the Constitution.

Violation of International Laws

The Petitioner points out that the impugned laws are also in contravention of international framework on labour laws, such as the ILO Forced Labour Convention, 1930, International Covenant on Economic, Social and Cultural Rights, etc.

In this backdrop it is submitted,

"It is settled that "the provisions of the Treaties/Conventions which are not contrary to Municipal laws, be deemed to have been incorporated in the domestic law" as held in T.N. Godavarman Thirumulpad v. Union of India (2012) 4 SCC 362. Therefore, the impugned laws cannot violate international labour standards which India has ratified and made part of the municipal law."

Petition drawn by Advocates Aruna A., Thulasi K. Raj, Maitreyi S. Hegde, Laila Thasnim, Vinayak G. Menon and Kaleeswaram Raj.

A similar plea, seeking quashing of the government notifications issued for relaxation of labour laws, was moved before the Supreme Court last week. The said petition states that the notifications issued by States of Uttar Pradesh, Gujarat and Madhya Pradesh to relax provisions of labour laws are benevolent legislations which are intended to protect the "Oppressed Class" by the "Oppressor Class".