

IN THE HIGH COURT OF JUDICATURE AT PATNA

(CIVIL WRIT JURISDICTION)

C.W.J.C. No. _____ of 2020

National Campaign Committee for Eradication of Bonded Labourers
(NCCEBL) and Another ...Petitioners

Versus

The State of Bihar and Ors. ...Respondents

Subject: - Public Interest Litigation

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(NCCEBL) and Another

...Petitioners

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The State of Bihar and Ors.

...Respondents

SYNOPSIS

This instant writ petition is being preferred for the grant of following reliefs:

- A. To issue a writ of certiorari or any other appropriate writ(s)/order(s) or direction(s) commanding the Respondents to thereby quashing the impugned notification dated 15.05.2020 issued by Respondent No. 1.

AND/OR

B. To pass any other order or direction which deems fit in the interest of justice, equity and good conscience.

Date of Events:

<u>Date</u>	<u>Event</u>
	The Factories Act, 1948 is meant to provide protection to the workers from being exploited by the business establishments.
26.12.1976	An explanation of the word Public Emergency was added in Section 5 of the Factories Act, 1976.
26.06.1979	Article 352 of the Constitution of India was amended by 44th Amendment and the words "Internal Disturbance" were deleted and substituted by the words "armed rebellion"
23.03.2020	Nationwide lockdown announced as a preventive measure against COVID 19 restricting any activity, including mobility across the nation.
15.05.2020	Gazette Notification No. No.-1/F1-103/2020, L.R.)-1218 issued by the Respondent no. 1 on

	by which various provisions relating to the weekly hours, daily hours, over time, interval for rest etc. of adult workers, under The Factories Act, 1948 shall be exempted under Clause (i) and (iii) of Sub-section (3) of Section 65, in exercise of the powers conferred by Section 5 and Section 65(2) of the abovementioned Act.

No action taken, hence this Writ Petition.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(CIVIL WRIT JURISDICTION)

C.W.J.C. No. _____ of 2020

In the matter of an application
under Article 226 of the
Constitution of India;

And

In the matter of:

**National Campaign Committee for Eradication of
Bonded Labourers (NCCEBL)**, Thorough its Convenor Nirmal
Gorana, Male, Aged about 38 years, S/o Mangi Lal Gorana, R/o
243, Main Road, Badarpur Village, Delhi

Aashray Mehnatkash Mazdoor Kaamgar Union Sangh,
Through its General Secretary Mr Ranjeet Kumar, Male,
Aged about 43 years, S/o Vijay Kumar having registered

office at Jamuna Ashram, Sinha Library Road, P.S
Kotwali, Patna 800001

...Petitioners

Versus

1. State of Bihar, Through its Chief Secretary, Main Secretariat, Patna – 800001.
2. Department of Labour Resources, Government of Bihar Through its Principal Secretary,
3. Department of Industries, Government of Bihar, Through its Principal Secretary, 2nd Floor, Vikas Bhawan, Bailey Road, Patna-800001
4. Union of India, Through its Secretary, Ministry of Labour and Employment, New Delhi

...Respondents

To,

The Hon'ble Mr. Justice Sanjay Karol, the Chief Justice of the High Court of Judicature at Patna and his companion Justices of the said Hon'ble Court.

The humble petition on behalf of the Petitioner above named.

MOST RESPECTFULLY SHEWETH :

1. This instance writ petition is being preferred in the public interest for the grant of following reliefs:

A. To issue a writ of certiorari or any other appropriate writ(s)/order(s) or direction(s) commanding the Respondents to thereby quashing the impugned notification dated 15.05.2020 issued by Respondent No. 1.

AND/OR

B. To pass any other order or direction which deems fit in the interest of justice, equity and good conscience.

2. That the instant petition is being preferred, among others to be urged at the bar, on the following:

Grounds:

- I. BECAUSE the impugned notification is issued while exercising powers under S. 5 and S. 65 (2) of The Factories Act, 1948 which confers upon the state the power to exempt the provisions of the Act only during public emergencies. No such emergency exists for invoking powers under S. 5.
- II. BECAUSE the ordinance is contrary to and directly conflicts with the Hours of Work

(Industry) Convention, 1919 (No. 1) of the International Labour Organization which has been ratified by India. The convention proclaims 48 hours work in a week.

III. BECAUSE the proposed changes shall be contrary to the constitutional principles. In particular Article 40 which states that it shall be the duty of the state to ensure 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 a vocations unsuited to their age or strength;

IV. BECAUSE the underlying objective of the Factories Act is to promote the health and welfare of the workers employed in factories. The impugned notification shall be against the spirit of the Act itself.

- V. BECAUSE extended work hours shall have the potential to affect both physical and mental well being of the workers. The possibility of work fatigue and stress shall be much higher and it would lead to lower quality of life for workers.
- VI. BECAUSE a 12 hour work-shift shall be grossly disadvantageous to women workers owing to their diverse responsibilities at work and home. Long working hours plus travel time shall compel many women workers to stay back home which shall eventually adversely affect their economic independence.
- VII. BECAUSE longer working shift shall effectively reduce the demand of labour. Consequently, there shall be a possibility of discrimination regarding employee choices and income distribution among workers.

3. That the instant writ petition is being filed as a Public Interest Litigation by Petitioner organizations and as such it has no vested interest and is not guided by self gain or of any other person/institution/body and there is no motive other than of public interest in filing the instant writ application. Petitioner No.1 i.e National Campaign Committee for Eradication of Bonded Labourers (NCCEBL), was formed with an objective to form a national network of social activists, lawyers and like minded people working on the issue of bonded labourers and other issues related to the labourers. It is an unregistered body. Since 2008 National Campaign Committee for Eradication of Bonded Labourers (NCCEBL) has been actively working in collaboration with various organisations from different parts of the country for rescuing and rehabilitation of bonded labourers and the issues related to the Informal sector workers and rescued

1000's of bonded labourers from different states of India. During COVID 19 Pandemic the organisation has been consistently working for welfare of Migrant Labourers and Marginalised Population, it has reached out to hundreds stranded migrant labourers with relief material like dry ration and cooked food. It has also facilitated bus services for stranded migrant workers. The Petitioner No. 2 organization is a registered Trade Union based in Patna and has been consistently working for the welfare of labourers and workers engaged in the informal sector for several years across the State of Bihar.

4. That the present Petition is being filed against Gazette Notification No. No.-1/F1-103/2020, L.R.)-1218 issued by the Respondent no. 1 on 15.05.2020 by which various provisions relating to the weekly hours, daily hours, over time, interval for rest etc. of adult workers, under The Factories Act, 1948 shall be exempted under Clause (i) and (iii) of

Sub-section (3) of Section 65, in exercise of the powers conferred by Section 5 and Section 65(2) of the abovementioned Act.

5. That by way of present petition the petitioner impugns notification issued by the Additional Chief Secretary, Government of Bihar wherein provisions related to working hours, daily hours, overtime etc of adult workers are revised.. The purported changes are not only detrimental to the interests of millions of labourers in Bihar but also against the settled principles of labour laws.

A true copy of Gazette
Notification dated
15.05.2020 vide
Notification No.
No.-1/F1-103/2020,
L.R.)-1218 is being
annexed herewith as

Annexure 1

6. The impugned notification has been issued by the Government of Bihar amid the ongoing lockdown which is in effect since 23.03.2020. By way of the notification the government has exempted all the registered factories from the provisions related to working hours, overtime, interval of rest etc as provided in Ss. 51, 54, 55, 56 and 59 of the Factories Act, 1948 for a period of 3 months. The notification reads as follows:

“_____

The 9th May 2020

No.-1/F1-103/2020, L.R.)-1218—Whereas, the Covid-19 Virus pandemic has deteriorated the industrial and economic activities in the State of Bihar and for providing impetus to the industrial and economic activities in the State, it is important to provide new opportunities for industrial investment in the State;

Now therefore, in exercise of the powers conferred by Section 5 and 65(2) of the Factories Act, 1948, the Government of Bihar hereby directs that all the factories registered under the Factories Act, 1948 shall be exempted under clause (i) and (iii) of sub-section (3) of Section 65 with the following conditions for 3 months from the date of publication of this notification in Bihar Gazette:-

(1.) No adult worker shall be allowed or required to work in a factory for more than twelve hours in any day and seventy two hours in any week.

(2.) The periods of work of adult workers in a factory each day shall be fixed that no period exceed six hours and that no worker shall work for more than six hours before he has had an interval for rest of at least 30 minutes.

*Over time wages shall be paid as provided
under section 59 of the Factories Act. 1948*

By the order of the Governor of Bihar

SUDHIR KUMAR,

Additional Chief Secretary to the Government.”

7. That the Factories Act, 1948 is meant to provide protection to the workers from being exploited by the greedy business establishment and it also provides for the improvement of working conditions within the factory premises. Hence, a beneficial construction should be given and the provision of the act should be so constructed/interpreted so as to achieve its objective, i.e. the welfare of the worker and their protection from exploitation and unhygienic working conditions in the factory premises.
8. That the provisions of the Factories Act, 1948 are applicable on all factories as defined under Section 2(m) and extends to the whole of India.

9. That Section 5 of The Factories Act, 1948 empowers the state governments on the grounds of “public emergency” to exempt factories from all or any of the provisions of the Act. “Public emergency” means “a grave emergency whereby the security of India or any part of the territory thereof is threatened, whether by war or external aggression or internal disturbances” i.e the State Governments to issue such notifications only in any case of ‘Public Emergency’ and not otherwise. The proclamation of public emergency under Article 352 of the Constitution of India is a condition precedent to issuance of any notification by the State Government exempting any factory from the provisions of the Factories Act, 1948. Since no proclamation of public emergency has been declared under Article 352 of the Constitution of India, the impugned notification is unsustainable in the eyes of law.

10. That the notification is brought by The State of Bihar for providing impetus to the industrial and economic activities in the State which has been deteriorated by the COVID 19 pandemic and to provide new opportunities for industrial investment in the State.
11. That the crisis due to COVID 19 is due to biological health hazard and surely not covered by the definition of Public Emergency under Section 5 of The Factories Act, 1948 under internal disturbance grounds which must affect security of India,
12. That Section 65(2)(3) empowers the State Governments to amend Sections 51-52, 54 and 56 subject to condition, viz (a) the total number of hours of work in any day shall not exceed 12; (b) the spread-over, inclusive of rest intervals, shall not exceed 13, (c) the total number of work hours in any week, including overtime, shall not exceed 60 hours. However, the said government notifications provide

for a total 72 hours in a week, which is in contravention with the law.

13. That COVID-19, at the most can be considered as a health hazard and surely doesn't fit within the definition of public emergency as stipulated under S. 5. Therefore the State of Bihar has clearly made a glaring mistake while interpreting internal disturbance.
14. That, apart from being ultra-vires, the impugned notification intends to take away certain beneficial provisions provided in the Factories Act. In particular the limit of weekly work hours has been increased to 72 hours from 48 hours.
15. That, the impugned notification is therefore not only arbitrary but also disproportionate as human labour cannot be calculated in mechanical terms. Working longer hours will mean greater stress and lower quality of life for workers.

16. That this notification is in contravention with the provisions of Article 39 (e) of the Constitution of India says 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.

17. That this notification is in contravention with the provisions of Article 43 A of the Constitution of India says that 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.

18. That India is a signatory to the International Labour Organisation's (ILO) convention of 1919 on working hours. Moreover, the impugned notification is contrary to and directly conflicts with the Hours of Work (Industry) Convention, 1919 (No. 1) of the International Labour Organization (ILO) which has been ratified by India. The convention proclaims 48 hours work in a week whereas the notification raises the time to 72 hours a week.

19. That on 22.05.2020 Chief of Freedom of Association Branch, International Labour Standards Department (NORMES), International Labour Organization, Geneva issued a letter to the Trade Union Centres, INTUC, AITUC, HMS, CITU, AIUTUC, TUCC, SEWA, AICCTU, LPF and UTUC in which it was assured that the Director General of the ILO has expressed his deep concern with regard to the ongoing situation and appealed the Prime Minister to send a clear message to the Central and the State

Governments to uphold country's international commitments and encourage social dialogue.

A true copy of the letter dated 22.05.2020 issued by the Chief of Freedom of Association Branch, International Labour Standards Department (NORMES), International Labour Organization, Geneva to the Trade Union Centres, INTUC, AITUC, HMS, CITU, AIUTUC, TUCC, SEWA, AICCTU, LPF and UTUC has been annexed herewith as

ANNEXURE-2

20. That, extended work hours will have the potential to affect both physical and mental well being of the workers. The possibility of work fatigue and stress will be much higher and it would lead to lower quality of life for workers. The involuntary compulsion to work for 12 hours in any day and 72 hours in any week may adversely affect the health of workers and it is mortiferous to those who are working in hazardous work environments.

21. That, a 12 hour work-shift shall be grossly disadvantageous to workers owing to their diverse responsibilities at work and home especially to women workers. Long working hours plus travel time may compel many women workers to stay back home which shall eventually adversely affect their economic independence.

22. That longer working shift may adversely reduce the demand of labour. Consequently, there may be a

possibility of discrimination regarding employee choices and income distribution among workers.

23. That the amendment in the labor law has been widely criticised and opposed by various trade unions. These amendments are against the working class which is already in deep distress owing to the COVID-19 lockdown. These draconian measures are not only to facilitate more brutal and cruel exploitation of workers without their rights for collective bargaining, dispute over proper wages, safety at work place and guarantee of social security etc, but also to throw them in to conditions of slavery, in the interests of more profiteering despite continuing economic slowdown. Women and vulnerable sections will be more exploited in terms of forced labour.”

Indian Laws:

24. **The Factories Act, 1948**

A. **Section 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 Act⁴[except section⁶⁷] 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.

B. **Section 65: Power to make exempting orders.**—(1) Where the State Government is

satisfied that, owing to the nature of the work carried on or to other circumstances, it is unreasonable to require that the periods of work of any adult workers in any factory or class or description of factories should be fixed beforehand, it may, by written order, relax or modify the provisions of section 61 in respect of such workers therein, to such extent and in such manner as it may think fit, and subject to such conditions as it may deem expedient to ensure control over periods of work.

(2) The State Government or, subject to the control of the State Government, the Chief Inspector may by written order exempt, on such conditions as it or he may deem expedient, any or all of the adult workers in any factory or group or class or description of factories from any or all of

the provisions of sections 51, 52, 54 and 56 on the ground that the exemption is required to enable the factory or factories to deal with an exceptional press of work.

(3) Any exemption granted under sub-section (2) shall be subject to the following conditions, namely:—

(i) the total number of hours of work in any day shall not exceed twelve;

(ii) the spread over, inclusive of intervals for rest, shall not exceed thirteen hours in any one day;

(iii) the total number of hours of work in any week, including overtime, shall not exceed sixty;

(iv) no worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter shall not exceed

seventy-five.

Explanation.—In this subsection “quarter” has the same meaning as in sub-section (4) of section 64.]

C. Section 51 of the Factories Act, 1948 stipulates that no adult worker shall be required or allowed to work for more than 48 hours in any week.

D. Subject to the provisions of Section 51. no adult worker shall be required or allowed to work in a factory for more than 9 hours in any day.

E. Section 56 stipulates the total spread-over time inclusive of rests should not be more than 10.5 hours in any day

F. Section 59 subject to Section 51 and 54 more hours worked(overtime) will be paid twice the ordinary wage rate.

24. That labour being on the Concurrent List under the Constitution of India (List III, Seventh Schedule), both the Centre and the State Governments can enact labour legislation, and a Central Act can be amended by a State vis-a-vis that particular State. Ordinarily, a State Government amendment of a Central Act, if it is in contradiction to the latter, will only come into effect if given assent of the President of India. However, the present amendments have been passed under Section 65(2) of the Factories Act, 1948, itself. This section empowers the State Governments to grant exemption from any or all of the provisions of Sections 51,52,54 and 56, to enable the factory or factories to deal with an exceptional press of work.

25. That even presuming the said changes in the Act, during the Pandemic Lockdown could be classified as “dealing with exceptional press of work”, the present Notification issued by the State Government has gone beyond the powers conferred under this section. Section

65(3) lays down a number of conditions for the granting of an exemption. Section 65 (3)(iii) prohibits the total number of hours of work in any week, including overtime, from exceeding 60. Thus, a 12 hour day can only be done thrice in a week. The State Notifications provide upto 72 working hours in a week i.e. 12 hours a day, 6 days a week.

26. The Bihar Shops and Establishment Act, 1953

Section 11. Spreading of periods of work.—The periods of work and intervals of rest of an employee in an establishment shall not be together spread over more than—

(i) in the case of child, eight hours in any day;

(ii) in the case of a young person, ten hours in any day;

(iii) in the case of any other employee, twelve hours in any day.

27. The Constitution of India

- A. That Part IV of Constitution of India, which is also known as “Directive Principles of State Policy” aims to work towards the welfare of its citizens.
- B. Article 42 directs the State to make provisions for securing “just and humane conditions of work and maternity relief”. It provided for the upliftment of the working conditions for workers and creating a suitable and human workplace.
- C. Article 43 directs the State shall endeavour to secure, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.
- D. Article 23 of the Constitution of India, which provides a “right against exploitation” prohibiting human trafficking, begar, and forced labour.
- E. In **People'S Union For Democratic Rights (PUDR) and Others vs Union Of India & Others AIR 1473, 1983 SCR (1) 456** the Supreme Court held that

laws protecting contract labour and inter-state migrant workmen were intended to ensure basic human dignity; violating these laws would violate the right to life under Article 21. Further, the Court held that “forced labour”, prohibited by Article 23, included not just physical force but also the threat of imprisonment or fine. The Hon’ble Supreme Court also noted that no one would willingly work for less than the minimum wage without some force or compunction — and that compunction could include hunger or poverty. Yet, rather than encouraging workers to return by securing wages and improving working conditions, the amendments introduced by the state are removing basic labour law protections. The Hon’ble Supreme Court held that “the word ‘force’ would mean any condition arising from the compulsion of economic circumstances which leaves no choice of alternatives to a worker. Thus, the suspension of

labour laws by the state reduces the bargaining power of labour, their right to negotiate and hence may turn them into Forced Labour. The Hon'ble Court held that the right against forced labour included the right to a minimum wage. It noted that often, migrant and contract labourers had "no choice but to accept any work that came [their] way, even if the remuneration offered... is less than the minimum wage". Consequently, the Hon'ble Court held that "the compulsion of economic circumstance which leaves no choice of alternatives to a person in want and compels him to provide labour or service" was no less a form of forced labour than any other, and its remedy lay in a constitutional guarantee of the minimum wage.

International Laws:

28. That the said notification is in contravention of the guideline mandated by Global and International Labour Organisation(hereinafter referred as ILO)

norms. The first convention that ILO adopted was the “Hours of the Work (Industry) Convention, 1919 (No.1)” which India ratified in 1921 and it proclaimed 48 hours of work in a week, defining a cardinal Labour Right.

29. That Article 2 (c) of the International Labour Organization’s (ILO) on Hours of Work says that where persons are employed in shifts it shall be permissible to employ persons in excess of eight hours in any one day and forty-eight hours in any one week, if the average number of hours over a period of three weeks or less does not exceed eight per day and forty-eight per week.
30. That Article 7 of the International Covenant on Economic, Social and Cultural Rights says that the Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

31. These amendments in labour laws are the spirit of the International Labour Organization's 'Employment and Decent Work for Peace and Resilience Recommendation, 2017'. It requires states to ensure marginalised groups "freely choose employment" while rebuilding after any disaster.

Supreme Court Cases

32. That in the case of Jolly Verghese vs. Bank of Cochin (1980) 2 SCC 360, the Hon'ble Supreme Court held that,

"...India is now a signatory to this covenant (ICCPR) and Article 51 C of the Constitution obligates the state to foster respect for international law and treaty obligations in the dealings of organized people with one another."

33. That in the case of Maganbhai Ishwarbhai Patel vs. Union of India (1970) 3 SCC 400, the Hon'ble Supreme Court held that,

“...A treaty really concerns the political rather than the judicial wing of the state. When a treaty or an award comes into existence, it has to be implemented and this can only be all the three branches of the Government to wit the Legislature, the Executive and the Judiciary, or any of them possess power to implement it. If there is any deficiency in the constitutional system it has to be removed and the state must equip itself with the necessary power.”

34. That in the case of T.V. Godavarman Thirumulpad vs. Union of India (2012) 4 SCC 362, the Hon’ble Supreme Court held that,

“...It is settled law that the provisions of treaties/conventions which are not contrary to municipal laws, be deemed to have been incorporated in the domestic laws.”

35. That the notification of the State Government is thus, absolutely illegal, being in violation of the various provisions of the Act and in breach of strictly binding Convention of the ILO.
36. That the petitioner has no other effective and efficacious remedy than to move to your lordships by way of filing this writ petition for redressal of the grievances.
37. That the petitioner has not moved earlier before this Hon'ble court in this matter.

It is, therefore, prayed that your Lordship may graciously be pleased to admit this application and issue RULE NISI calling upon the respondents to show cause as to why the relief sought for in paragraph 1 of this writ application may not be granted to the petitioners and after hearing the parties considering of the

show Cause if any and allow this writ
petition

AND/OR

Be pleased to pass such other order or
orders, writ or its direction or directions
as this Hon'ble Court may deem fit and
proper in the facts and circumstances of
the case for the ends of Justice.

And for this the petitioner shall ever pray.