

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4554 OF 1983.

Dist. Ahmednagar

1. Ahmednagar Zilla Shet Majoor Union, )  
a trade Union registered under the )  
Trade Unions Act, having its office )  
at Trade Union Centre, Behind )  
Railway Station, Shrirampur, Dist. )  
Ahmednagar through its General )  
Secretary Shri B.R. Bawke. )
2. Shri Haribhau Kisen Gaikwad, )  
At & Post : Takli Bhan, )  
Tal; Shrirampur, Dist. Ahmednagar. )
3. Shri Nivrutti Tukaram Gaikwad, )  
At & Post : Malunje Budruk, )  
Tal : Shrirampur, Dist. Ahmednagar. ) .... Petitioner

Versus

1. State of Maharashtra )
2. The Collector for the time being )  
of the District of Ahmednagar, at )  
Present Shri Anilkumar Lakhina, )  
Ahmednagar. )
3. The Tahsildar for the time being of )  
Shrirampur Tahsil, Dist. Ahmednagar )  
Shri Suttapa Laxman Rethe ) .... Respondents.

Smt. Indira Jaising and Shri Anand Grovar  
for the Petitioners.

Shri A.V. Savant, Advocate General with  
Shri M.F. Saldanha, A.G.P. for the Respondents.

CORAM: DHARMADHIKARI & KANTHARIA JJ.

19th/20th September 1984

Oral Judgement (Per Dharmadhikari J.)

1. Petitioner No.1 is a Trade Union registered under the Trade Unions Act, 1926. The Union has as its members agricultural workers employed in the District of Ahmednagar. Petitioners Nos.2 and 3 are agricultural Labourers in Shrirampur Tahsil of Ahmednagar District and they work on Employment Guarantee Scheme works since last many years. In this petition, the petitioners have mainly challenged the provisions of section 7(2)(vii) of the Maharashtra Employment Guarantee Act, 1977 and have prayed for a declaration that the provision in section 7(2) (vii) to the extent it provides for payment of total wages for EGS work equal to the minimum wage for the agricultural labourer in the Lowest Zone fixed by the State Government from time to time is ultra vires of Articles 14 and 23 of the Constitution of India. That the task rates which are fixed for EGS works by Government Resolution, dated 18-3-1983 are not fixed as per the provision in section 7(2) (vii) of the Act and, therefore, the said rates fixed by the - Government Resolution, dated 22-4-1981 should be uniformly increased by at least 50% in view of the increase by 50% in the minimum wage for agricultural labourers. The petitioners have then prayed for a declaration that the sum of rupee one fixed as an

unemployment allowance under section 8(4) of the Act is violative of Art. 21 of the Constitution of India and should be re-fixed to enable the bare survival of the workmen who are not provided with work under the EGS.

According to the petitioners, this unemployment allowance should be on par with the minimum wage for agricultural worker fixed for the respective zones or that it should at least bear a rational relation with the minimum wage. The petitioners have also prayed for a direction to the Collector, respondent No.2, to pay to 242 workmen, who were not provided employment under the Employment Guarantee Scheme, an unemployment allowance for the relevant period.

2. It is an admitted position that the task rates were fixed for the first time for EGS works by Government Resolution dated 14-2-1975. These task rates were revised by Government Resolution, dated 3-3-1976. Obviously, this was under the Scheme known as Maharashtra Employment Guarantee Scheme. Thereafter in the year 1977 the Maharashtra Employment Guarantee Act came to be enacted. Government Notification fixing the minimum wage for the agricultural labour in the different zones was issued on 28-10-1978. Though the present enactment was enacted in the year 1977, it was published in the Maharashtra Government Gazette on 3-10-1978 and came into force with effect from 26-1-1979. On 22-4-1981 the Planning Department of the Government of Maharashtra fixed the schedule of rates for EGS works. Thereafter on 31-1-1983 the Government of Maharashtra issued a notification revising the minimum rates of wages for agricultural workers. By this notification the minimum rates of wages were fixed zonewise, the and the minimum wage for unskilled employees in the Lowest Zone, that is Zone Four is fixed at Rs. 6.00 per day. On

18-3-1983 the Government of Maharashtra revised the task rates. It is than the case of the petitioners that in Shrirampur Tahsil in all 242 workmen submitted their applications to the Tahsildar to provide them with work. However, these workmen were provided work only for 9 days. They again approached the Collector of Ahmednagar to provide them work, but no work was provided to them, nor was unemployment allowance paid. Therefore, according to the petitioners, their unemployment allowance is wrongfully withheld by the respondents.

3. Smt. Indira Jaising, the learned Counsel appearing for the petitioners, contended before us that so far as section 7(2) (vii) of the Act, which provides for fixation of uniform schedule of rates for all the zones in the State, with a view to enable the workers only to earn the minimum wage fixed for the lowest zone is concerned, it is wholly discriminatory. This in substance, amounts to forced labour within the meaning of Article 23 of the Constitution of India. According to the learned Counsel, the workers employed on the EGS works in Zones I, II or III are entitled to get the wages at least on par with the minimum wage fixed for the respective zones for agricultural worker. There is no warrant, nor is there any rational reason for providing a ceiling that such a worker should get the wages equal to the minimum wage for the lowest zone only. Such a provision which provides for the payment of wages lower than the minimum wage fixed for the Zone concerned is violative of Article 23 of the Constitution of India and is, therefore, ultra vires. According to Smt. Indira Jaising, the provisions of section 7 clearly show that the legislature wanted to



link the payment of wages to the workers employed on the EGS works with minimum wage for agricultural labour. Once the wage payable to such a worker is linked with the minimum wage, then it should logically follow that the workmen is entitled to get the minimum wage for the zone concerned, viz, the zone in which he is working on the EGS work. In support of her contention, she has placed strong reliance upon the decision of the Supreme Court in Sanjit Roy vs. State of Rajasthan, A.I.R. 1983 S.C. 328 and the decision of the Kerala High Court, In the matter of : Prison Reforms Enhancement of wages of Prisoners etc.. A.I.R. 1983 Kerala 261 as also an unreported decision of this Court in Writ Petition No. 2279 of 1983, Madan and Other vs. State, decided by the Nagpur Bench of this Court on 13-1-1984. It was then contended by the Learned Counsel that the unemployment allowance provided under section 8(4) of the Act is wholly arbitrary and has no nexus with the object sought to be achieved by the Act. By guaranteeing the right to employment, the State has guaranteed the right to live. Therefore, if no employment is provided, then the quantum of unemployment allowance should be such that the person should be able to make a bare living. Since the minimum wage for agricultural workers is a bare subsistence level wage, the quantum of unemployment allowance should be equal to the agricultural minimum wage of the respective zone, or it should at least bear a rational relation with the same. Keeping unemployment allowance at the level of Re. 1.00 violates the right to live guaranteed under Art 14 21 of the Constitution as well as the object of the Employment Guarantee Act.

4. On the other hand, it is contended by Shri Saldanha, the learned A.G.P. appearing for the respondents, that the provisions of section 7(2) (vii) of the Act are not ultra vires of the provisions of Article 14 or Article 23 of the Constitution. It is also not correct to say that the legislature has accepted the principle of linking the wages fixed under the Minimum wages Act for agricultural workers. By enacting section 7(2) (vii) of the Maharashtra Employment Guarantee Act, the legislature has only provided for a method or basis for fixing the schedule of the rates for workers under the Employment Guarantee Scheme. The employment provided under the Act stands on a different footing and is in a class by itself. The form of employment provided by the Act is not akin to the employment under the Minimum Wages Act. In this context he has placed reliance upon the submissions made by the respondents in paras 3, 3a, 3b and 4 of the affidavit filed by the Deputy Secretary, Planning Department, which read as under :-

"3. With reference to paragraph 8 of the petition, I deny that the scale of payment as provided for is discriminatory or that the last zone provisions in section 7(2)(vii) of the Act is ultra vires the provisions of the Article 14 as well as Article 23 of the Constitution of India. I say that the petitioner has incorrectly contended that the legislature has accepted the principle of linking wage on EGS works to minimum rate of wages fixed under the Minimum Wages Act for agricultural workers, By enacting Section 7(2) (vii) of the M.E.G.Act 1977 the Legislature has only provided a method for fixing the schedule of rates for works under EGS. I submit that the petitioners

are wrong in contending that the provisions or principles of the M.W. Act could be invoked while dealing with the payments that are made by the Government under the M.E.G. Act. I say that the employment provided under the scheme is not formal employment, in as much as employment is provided not because the Government is in need to employ labour but with a view to secure them the right to employment provided under the Constitution. I say that there is neither any formal contract nor any agreement under the scheme. The workers desirous of rendering unskilled manual work seek employment under the EGS and they are provided employment. No responsibility is cast on them to work every day for any minimum time and report regularly for work even for a minimum number of days. I further say that in such a scheme there is a need to ensure that the employment provided does not compete with the employment available elsewhere and normally the labourers come for employment under EGS as a last choice. Therefore, I say that this scheme is a welfare measure for rural unemployed and no source of perennial remunerative employment for them. The employment under the EGS is thus a class by itself and cannot be compared with employment in usual sense. In these circumstances, it is inevitable for the Government to provide that the wage rates under such a programme are uniform all over the State. Therefore, unified wage structure has been prescribed under the scheme. Had this wage structure varied from region to region it would have resulted in migration of labour. I also say that the employment provided under the scheme cannot be considered as employment in agriculture. The on-form

activities are not taken up under the scheme that the petitioners are wrong in contending that the principles underlying the Minimum Wage Act, should be invoked while dealing with the payments that are made under the scheme.

3a. I also submit that it is necessary to distinguish as far as possible employment concerning two classes of individuals. First class will consist of persons who are able to secure employment in the economy, for example, in agricultural operation, other plan, non-plan works etc. Here the employer has need of the Labourer who offers employment and the labourer accepts the same. No doubt, in this class of persons the operation of minimum wage - appropriate to that activity is relevant. The EGS is not designed for this class of persons at all. It is designed to the other class of persons who for some reason or another are unable to get the formal employment elsewhere and hence, the State has made a standing offer of providing employment to them through this scheme. It is important to bear in mind that in such cases the State has no need of the labourer. If the labourer designed to abstain from duty, he is free to do so and in fact the State as the non-formal employer in this case would have absolutely no objection for the same. It would, therefore, be clear that the wages earned by Labourers in these two classes can be different since the distinction is reasonable and hence 7(2) (vii) of EGS Act 1977 does not violate Article 14 of the Constitution. This does not also violate Article 23 of the Constitution because in case of a private employer the benefit under payment of wages accrues to him directly and in case of EGS the benefits do not accrue to the

State but accrue to the Society as a whole.

3b. It may be argued that though the wages earned by the labourers are decided by the work output, it is possible that in a given situation they may earn less than the minimum wage if only for the reason that their output has been less than the average. In such a case it would otherwise be open to the employer to remove the labourer from his employment. Under the EGS this is not possible because the labourer is governed by the statutory guarantee of employment. It is therefore inherent in the scheme itself that recognition is accorded to the existence of the above two classes of labourers which is able to get employment and also to give output with whatever norms the employer may have explicitly or implicitly in mind and the other class which is not able to secure such employment elsewhere. Here again it is submitted that the distinction is relevant.

4. I further say that the petitioners have totally overlooked the other facilities given to the workers on the work site. This includes provisions for drinking water shed, provision of cretches, first aid facilities etc. which enable the workers to enhance their capacities to earn on the scheme while wages are linked to out turn of work. Besides, ex-gratia payment is also given in case of injury or death of the person. The ex-gratia payment is also given to the women labourers towards maternity and also the male and women labourers towards sterilization. The expenditure incurred on extending these facilities to the workers also will have to be taken into account while considering fairness or otherwise

of wages paid on EGS work. Therefore I submit that a challenge of the petitioners on the ground that the provisions of the Section 7(2)(iii) of the MEG Act, 1977 are ultra vires to the Constitution is unsustainable."

5. So far as the quantum of unemployment allowance is concerned, it is contended by Shri Saldanha that the allowance fixed under section 8(4) is the minimum. This fixation should be viewed in the proper context, viz. that Government is doing its utmost to provide for some form of employment to the persons residing in the rural areas when such employment is not ordinarily available to them. They are being paid unemployment allowance as and when Government is unable to provide employment. Unemployment allowance is payable only for short periods and only in those cases where in spite of best efforts, Government is still not able to provide employment. While evaluating the merits of a welfare scheme, the criteria of adequate compensation or remuneration cannot be applied. Therefore, it cannot be said that the unemployment allowance fixed under section 8(4) of the Act is any way arbitrary or unreasonable.

6. So far as payment of unemployment allowance to 242 workers is concerned, it is contended by Shri Saldanha that from the affidavit filed by the Tahsildar as well as the Nayab Tahsildar, it is quite obvious that these workers had not filled the forms properly. For some time they could not be provided with work, as the works had stopped due to the agitation of the farmers. In other cases work could not be provided because of paucity of raw materials and, therefore, it is not correct to say

that these 242 workers were wrongfully deprived of their right to employment under the Act or their unemployment allowance was wrongfully withheld by the respondents.

20th September 1984

7. For properly understanding the controversy raised in this petition, it will be worth while if a reference is made to the relevant provisions of the Act. The preamble of the Act reads thus:-

"WHEREAS it is expedient to make effective provision for securing the right to work laid down in article 41 of the Constitution of India by guaranteeing employment to all adult persons who volunteer to do unskilled manual work in rural areas in the State of Maharashtra;

AND WHEREAS it is necessary to engage such adult persons on works which would bring into being durable assets for the benefit of the community and the economy;

AND WHEREAS it is further necessary to provide for continuing employment of surplus rural manpower in cottage, village and small industries and in agro-industries;

AND WHEREAS it is also necessary to make certain supplemental, incidental and consequential provisions; It is hereby enacted.. .. ."

Then by section 2, the various terms and phrases used in the enactment are defined. The term "productive works" is defined to mean -

"Any works which, in the opinion of the State Government, will directly or indirectly contribute to the increase of production, or the absence of which will inhibit the increase of production."

By section 2(j) the import of "rural areas" is defined. Then comes section 3 which guarantees employment to adult persons in the rural areas. The said section reads as under:-

"3. Every adult person in the rural areas in Maharashtra shall have a right to work, that is, a right to get guaranteed employment for doing unskilled manual work and receive wages therefore weekly or in any case not later than a fortnight, in accordance with the provisions of this Act and the Scheme made thereunder.

Explanation: A work shall be regarded as unskilled, if any adult person, without any special training, can normally be expected to do it and which is so classified in the Scheme."

Then comes the crucial section viz. section 7, which reads thus:-

"7(1) For the purpose of giving effect to the employment guarantee mentioned in section 3,



the State Government shall prepare a Scheme for providing employment to all adult persons residing in the rural areas, who volunteer to do unskilled manual work, subject to the conditions laid down by or under this Act or in the Scheme.

(2) The Scheme shall have the following essential features :-

(i) Only productive works shall be taken up under the Scheme.

Provided that if, in the opinion of the State Government, it is necessary to provide employment in any area on any works to meet the conditions created by natural calamities like heavy rains, floods, earthquakes, droughts, scarcity or cyclones, the State Government may permit such works being taken up under the Scheme for such temporary period as the State Government may, from time to time, decide,

(ii) The works taken up under the Scheme shall be in the rural areas; it shall, however, be lawful for the State Government to direct that certain categories of works may be taken up in areas other than rural areas.

(iii) Every Collector shall be asked to prepare blue prints of the works to be taken up under the Scheme in the District. Such blue prints shall be prepared by him as a part of the District plan, but be based on the Panchayat Samiti area development plans prepared with a view to give employment guarantee to all adult

persons for unskilled manual work and to make use of natural resources, actual or potential, which are readily available in the respective Panchayat Samiti areas. The Collector shall place the blue prints for approval before the District Level Committee, which shall give its approval after taking into consideration the views of the Panchayat Samiti Level Committees.

(iv) In order to anticipate the demand for manual work, a manpower budget for the District shall be prepared, so that it may be possible to plan the works to be taken up under the Scheme, taking into account the spatial distribution of unemployment over the District.

(v) The Scheme may also provide, as far as possible, for the training and upgradation of the skills of the unskilled labour.

(vi) The wages shall be directly with the quality and quantity of work.

(vii) The wages shall be paid according to the schedule of rates, which shall be fixed by the State Government for different types of works, from time to time. The schedule of rates shall be so fixed that a person working diligently for 7 hours a day would normally get a total wage equal to the minimum wage for agricultural labourer for the lowest zone fixed by the State Government, from time to time. In areas, which are affected by natural calamities like heavy rains, floods, earthquakes, droughts, scarcity or cyclones, wages may be paid on such works, at such daily rates and for such temporary period, as the State Government may direct.

(viii) It shall be open for the Samiti Officer to direct any person who volunteers for employment under the Scheme to do work of any type permissible under the Scheme.

(ix) All works taken up under the Scheme shall be executed departmentally and not through any contractor :

Provided that, skilled items of works such as gorge filling where it is absolutely necessary, and wate-weir component of work of percolation and minor irrigation tanks, may be executed on the basis of a piece rate system but the wages payable to unskilled labour shall be in accordance with the tasks prescribed under the Scheme.

(x) When works are taken up under the Scheme on private Lands, which will directly benefit the holders of the lands, then, notwithstanding the fact that under the provisions of any other law, or any executive orders, for the time being in force such holders are entitled to a subsidy in respect of such works, a subsidy under the Scheme, at such rates as may be prescribed, shall be financed from the Employment Guarantee Fund.

(xi) The works taken up under the Scheme shall be so organised by the Collector that the normal agricultural operations in the District are not adversely affected and that a balance is maintained between the principle of guaranteed work with minimum wages on one side and the requirements of labour for

agricultural operations, as well as the requirements of labour for the implementation of the regular plan and non-plan works of the State Government on the other side.

(xii) The State Government shall provide in the Scheme for a periodical inspection of the works taken up under the Scheme to ensure proper quality of the works as well as to ensure that the total wages paid for the completion of any work are commensurate with the quality of the work done.

(xiii) The State Government shall provide in the Scheme for the appointment of an Audit Squad to conduct periodical audit of the expenditure incurred under the Scheme.

(xiv) If any personal injury is caused to any person employed under the Scheme by accident arising out of and in the course of his employment, he shall be entitled, free of charge, to such medical treatment as is admissible under the Scheme, and where hospitalisation is necessary, the State Government shall arrange for such hospitalisation including accommodation, treatment and diet. During the period he is undergoing treatment in the hospital, he shall be entitled to daily wages at the rate of half of the minimum wages referred to in clause (vii). In case of death of such person, an ex-gratia payment of rupees five thousand shall be made to his legal heirs in the manner laid down in the Scheme. In case of disablement, such person shall be entitled to such ex-gratia payment as may be determined in accordance with the Scheme, but the amount of such payment shall not exceed five thousand rupees.

(xv) Subject to the rules made in this behalf, the State Government shall ordinarily provide all kinds of tools and implements and gun powder required for any work and where tools and Implements are not so provided and are brought by the person concerned he shall be paid such hire charges as may be prescribed.

(xvi) The State Government shall, as far as possible, undertake comprehensive land development programmes on water-shed basis. Such works shall, as far as possible, be provided within a radius of five kilometres from the village of the workers engaged on such works.

(3) The Scheme shall provide for the registration of the names and addresses of persons who volunteer to work under the Scheme. Such registration shall be done at the headquarters of the Gram Sevak or the Talathi, as the State Government may specify, within whose jurisdiction the village where the person resides is situated.

(4) The Scheme so prepared shall be published in the Official Gazette, and a summary thereof shall also be published in such local newspapers, having wide circulation in each District, as the State Government may determine.

(5) Until the Scheme is prepared and published under this section, the Employment Guarantee Scheme of the State Government in operation immediately before the date of commencement of this Act shall be deemed to be the Scheme made and published under this Act."

Section 7A makes provision for permission to remain absent and for ex-gratia payment in cases of maternity and sterilization operations and of accidents to accompanying children etc. Then comes section 8 which lays down the conditions applicable for guaranteed employment to adult persons in rural areas.

8. If the said section 7 is read as a whole, it is quite clear that it provides for the preparation and publication of the Scheme. Under the scheme. Under the scheme of this section, the Collector has to prepare a blue print of the works to be taken up under the Scheme in the District. By sub-section (vii) a provision is made for payment of wages according to the schedule of rates which is to be fixed by the State Government for different types of works, from time to time. This schedule of rates shall be so fixed that a person working diligently for 7 hours a day would normally get a total wage equal to the minimum wage for agricultural labourer for the lowest zone fixed by the State Government from time to time. The main challenge in this Writ Petition is to the last portion of this section which lays down that a person working diligently for 7 hours a day would get the total wage equal to the minimum wage for the agricultural labourer for the lowest zone only. According to Smt. Indira Jaising, even if a person is working on the works carried out in the higher zone, still he is being paid the minimum wage for the lowest zone, and not at the rate of the minimum wage fixed for the zone concerned, This, in substance, means that though a person is working in the higher zone, still he will be paid the wage less than the

minimum wage fixed for the zone concerned and this practically amounts to forced labour within the meaning of Article 23 of the Constitution and is also violative of Article 14 of the Constitution. In support of this contention, she has placed strong reliance upon the decision of the Supreme Court in AIR 1983 S.C. 328: Sanjit Roy vs. State of Rajasthan. In our opinion, there is much substance in this contention.

9. The contention raised by the respondents that the wages fixed under the Maharashtra Employment Guarantee Act has no linkage with the minimum wage, is wholly unfounded. In this context, reference could usefully be made to the report of the Study Committee on Employment Conditions of Agricultural Labour in Maharashtra State (With reference to Minimum Wage - July 1973). After accepting the well-known principle that the statutory minimum wage is primarily an instrument of social protection for workers, in Chapter VIII, para 8.07, this is what the Committee has observed:-

"8.07 Link with guaranteed employment scheme wage:

There should be some vital link between the minimum wage of agriculture labourers and wages under Employment Guarantee Scheme. Three different views were expressed before the Committee namely (1) Minimum wage for agricultural labour should be more than Employment Guarantee Scheme Wage, (2) Minimum wage should be on par with Employment Guarantee Scheme Wage and (3) Minimum wage should be lower than Employment Guarantee Scheme Wage. The Committee is of the opinion that it should be

on par with the wage for agricultural labour in the third Zone and should be uniform throughout Maharashtra State in rural areas i.e. Rs. 2-50. The duration of agricultural season in third Zone is very small and the work under the Employment Guarantee Scheme is not likely to be provided in the villages. If the labourers get the same wage in the village itself, they will be reluctant to go out. In other Zones such difficulty will not arise.

The agricultural operations are seasonal in nature. The labourer should get guaranteed wage throughout the year on account of employment in agriculture during season and employment under guaranteed scheme any time in the year. Where the nature of work is such that it is not measurable quantitatively the worker must get the minimum wages, in both the cases. There should be no ceiling limit in the case of piece-rated measurable jobs. Even under employment guarantee scheme as such ceiling would mean indirectly ceiling on work itself. Provision of section 15 of Minimum Wages Act may also be made applicable to minimum wage under the guaranteed scheme with suitable modifications.

The Committee has taken into consideration these factors and is of opinion that finding work around the year will go in some way at least to ease out the situation of agricultural wages besides resisting the pressure of surplus persons on agriculture. For this the State will have to invest more funds in the rural areas."



10. Apart from this Committee Report, there is internal evidence available in section 7 itself which shows that the legislature intended to link the wages fixed under the Maharashtra Employment Guarantee Act with wages fixed under the Minimum Wages Act. Though persons might be working on different works or projects, where the minimum wage for the workers working on such works or projects may be at a higher level, the Guarantee Act has chosen to link up the wages under the Employment Guarantee Act with the minimum wages fixed for the agricultural labourers. The reason seems to be obvious, From the preamble of the Act, it is quite clear that this piece of legislation is enacted to make effective provision for securing the right to work by guaranteeing employment to all adult persons who volunteer to do unskilled manual work in the rural areas. Therefore, employment to the adult persons who volunteer to do unskilled manual work in the rural areas is the basis and foundation of this Act. Such work shall, as far as possible, is to be provided within a radius of five kilometres from the village of the worker. The guarantee under the Act is restricted to providing unskilled work. Therefore, the wage structure under the Act is linked with the minimum wage payable to an agricultural worker. Once it is accepted or held that the wages fixed under the Employment Guarantee Act are linked with the minimum wage for agricultural labourers, then the only question that will require consideration in this Writ Petition is to find out as to whether it is fair to pay the total wage equal to the minimum wage for agricultural labourers for the lowest zone, though the person is provided employment in the areas covered by the higher zone.

11. In our view, the controversy raised before us is wholly covered by the decision of the Supreme Court in Sanjit Roy's case (AIR 1983 SC 328). In that case, after making a reference to the earlier decision in People's Union for Democratic Rights vs. Union of India, AIR 1982 SC 1473, Bhagwati J. observed as follows:-

" I must, therefore, hold consistently with this decision that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the meaning of the words 'forced labour' and attracts the condemnation of Article 23. Every person who provides labour or service to another is entitled at the least to the minimum wage and if anything less than the minimum wage is paid to him he can complain of violation of his fundamental right under Article 23 and ask the Court to direct payment of the minimum wage to him so that the breach of Art.23 may be abated.

4. If this be the correct position in law, it is difficult to see how the constitutional validity of the Exemption Act in so far as it excludes the applicability of the Minimum Wages Act, 1948 to the workmen employed in famine relief works can be sustained. Article 23, as pointed out above, mandates that no person shall be required or permitted to provide labour or service to another on payment of anything less than the minimum wage and if the Exemption Act,

by excluding the applicability of the Minimum Wages Act, 1948, provides that minimum wage may not be paid to a workmen employed in any famine relief work, it would be clearly violative of Article 23. The respondent however contended that when the State undertakes famine relief work with a view to providing help to the persons affected by drought and scarcity conditions, it would be difficult for the State to comply with the labour laws, because if the State were required to observe the labour laws, the potentation of the State to provide employment to the affected persons would be crippled and the State would not be able to render help to the maximum number of affected persons and it was for this reason that the applicability of the Minimum Wages Act 1948 was excluded in relation to workmen employed in famine relief work. This contention, plausible though it may seem is, in my opinion, unsustainable and cannot be accepted. When the State undertakes famine relief work, it is no doubt true that it does so in order to provide relief to persons affected by drought and scarcity conditions, but nonetheless, it is work which enures for the benefit of the State representing the society and if labour or service is provided by the affected persons for carrying out such work, there is no reason why the State should pay anything less than the minimum wage to the affected persons. It is not as if a dole or bounty is given by the State to the affected persons in order to provide relief to them against drought and scarcity conditions nor is the work to be

carried out by the affected persons worthless or useless to the society so that under the guise of providing work what the State in effect and substance seeks to do is to give a dole or bounty to the affected persons. The Court cannot proceed on the basis that the State would undertake by way of famine relief, work which is worthless and without utility for the society and indeed no democratic State which is administered by a sane and sensible Government would do so because it would be sheer waste of human labour and resource which can usefully be diverted into fruitful and productive channels leading to the welfare of the community and creation of national asset or wealth. It is difficult to appreciate why the State should require the persons to provide labour or service on work which is of no use to the society, instead of simply distributing dole or bounty amongst the affected persons. There is no reason why the State should resort to such a camouflage. The presumption therefore must be that the work undertaken, by the State by way of famine relief work is useful to the society and productive in terms of creation of some asset or wealth and when the State exacts labour or service from the affected persons for carrying out such work, for example, a bridge or a road, which has utility for the society and which is going to augment the wealth of the State, there can be no justification for the State not to pay the minimum wage to the affected persons. The State cannot be permitted to take advantage of the helpless condition of the affected persons and exact labour or service from them on payment of less than the minimum wage. No work of utility and value can be allowed to be constructed on the blood and sweat of

persons who are reduced to a state of helplessness on account of drought and scarcity conditions. The state cannot under the guise of helping these affected persons exact work of utility and value from them without paying them the minimum wage. Whenever any labour or service is taken by the State from any person, whether he be affected by drought and scarcity conditions or not, the State must pay, at the least, minimum wage to such person on pain of violation of Article 23 and the Exemption Act in so far as it excludes the applicability of the Minimum Wages Act, 1948, to workmen employed on famine relief work and permits payment of less than the minimum wage to such workmen, must be held to be invalid as offending the provisions of Article 23. The Exemption Act cannot in the circumstances be relied upon by the Respondent as exempting it from the liability to pay minimum wage to the workmen engaged in the construction work of Madanganj Harmara Road."

Pathak J. preferred to rest his decision on the ground that there is a breach of Article 14 of the Constitution. This is what the learned Judge observed in para 10 of the judgment:-

"10. The circumstances that employment has been given to persons affected by drought and scarcity conditions provides only the reason for extending such employment. In other words, the granting of relief to persons in distress by giving them employment constitutes merely the motive for giving them work. It cannot affect their right to what is due to every worker in the course of such employment. The rights of all the workers will be the same, whether they are drawn from an area affected by drought and scarcity conditions

come from elsewhere. The mere circumstances that a worker belongs to an area affected by drought and scarcity conditions can in no way influence the scope and sum of those rights. In comparison with a worker belonging to some other more fortunate area and doing the same kind of work, is he less entitled than the other to the totality of those rights ? Because he belongs to a distressed area, is he liable, in the computation of his wages, to be distinguished from the other by the badge of his misfortune ? The prescription of equality in Article 14 of the Constitution gives one answer only, and that is a categorical negative. It is urged for the Respondents that employment is provided to all able-bodied inhabitants of the area as measure of relief in their distress and it has been considered desirable to provide employment to all, even though at a wage below the prescribed minimum wage, than to provide employment to some only at the prescribed minimum wage. The argument evidently proceeds on the assumption that the wages are drawn from a fund too limited to provide for payment of a minimum wage to all. I see no justification for proceeding on that assumption. When the State employs workers for doing work needed on its development projects, it must find funds for such projects. And the fund must be sufficient to ensure the prescribed minimum wage to each worker and this is particularly so having regard to the concept of a 'minimum wage'. It seems to me that by prescribing the criterion which it has, the Public Works Department has effected an invidious discrimination bearing no reasonable nexus to the

object behind the employment."

Following this decision of the Supreme Court, the Division Bench of this Court in Madan and Others vs. State of Maharashtra (W.P. No. 2879/1983, decided on 13-1-1984) has held that under the Guarantee Act, the State Government has no choice but to fix the rates as per the Minimum Wages Act. Thus there can be no point of time when the payment can be less than that.

12. Therefore, if the payment of wages less than the minimum wage attracts the condemnation of Art. 23 of the Constitution, then the minimum wage must be of the zone in which the worker is employed and has earned his wage. Payment of minimum wage fixed for the lowest zone to a person who has earned higher wages, as he was employed on works carried out in the higher zone, will also attract condemnation of Art. 23 of the Constitution. It is well-known that the statutory minimum wage is primarily an instrument of social protection for workers. As observed by the Supreme Court in The Kamani Metals and Alloys Ltd. vs. The Workmen AIR 1967 SC 1175,

"It sets the lowest limit below which wages cannot be allowed to sink in all humanity."

Therefore, payment of minimum wages lower than the rate fixed for the zone concerned will be inhuman and will, therefore, be hit by Art. 23 of the Constitution. Therefore, we have no hesitation in holding that the last part of Section 7, viz. sub-clause (2) (vii) which provides for payment of total wage equal to the minimum wage for agricultural

labourer for the lowest zone to a worker employed and working in a higher zone will be ultra vires as it is violative of Art. 23 of the Constitution of India. Therefore, reading the section properly and in its proper perspective, it will mean that the schedule of rates shall be so fixed that a person working diligently for 7 hours a day would normally get a total wage, equal to the minimum wage for agricultural labourer fixed by the State Government for the zone concerned.

13. We are inclined to take this view for one more reason. From the various orders issued by the Government from time to time and incorporated in the "Employment Guarantee Scheme - A Compendium of Orders", it is quite clear that the works which are being carried out under the Scheme, such as deepening of the community wells, road construction, construction of roads in hilly and inaccessible areas, Nala building, afforestation, approach roads, community water projects are productive works. From the preamble and other provisions of the Act, it is clear that the works which are undertaken under the Scheme would be such, which will bring into being durable assets for the benefit of the community and the economy. As a matter of fact, the minimum wage for the workers who are normally engaged to carry out these works is much higher than the wage fixed for agricultural labourer. To that extent, the workers doing the same work under the Employment Guarantee Scheme are already placed at a disadvantageous position. Therefore, paying the worker less than the minimum wage fixed for the agricultural labourer for the zone concerned, will obviously amount to double



disadvantage. Therefore, taking any view of the matter, the worker working on the Employment Guarantee Scheme is entitled to get at least the minimum wage fixed for agricultural labourer for the zone concerned.

14. In this view of the matter, the various contentions raised by the respondents about the nature of the employment and the motive behind it, become wholly irrelevant. As held by the Supreme Court in Sanjit Roy's case, the motive for giving work cannot affect the workers' right to what is due to them in course of such employment. It is also not correct to say that no responsibility is cast on these workers to work every day for any minimum time and report regularly for work even for a minimum number of days. Rule 6 of the rules prescribes the procedure for making application for employment. Such an application is to be made in Form 4, which in terms requires that the applicant should give an undertaking that he will work for a continuous period of at least 30 days on the work assigned. It is needless to say that he will be bound by the discipline and the rules of the employment. The fear of migration is also unfounded. The minimum wages are fixed Zone-wise because the cost of living and other conditions vary from zone to zone. Therefore by migration the person will not be benefited as the cost of living will be at a higher level. Section 8 lays down the conditions for the guaranteed employment. These conditions will also work as check on migration and manipulations. Other facilities provided to the workmen under section 7A or other welfare Schemes are part of the duty imposed upon the Welfare State by Directive Principles of State Policy and, therefore, on that count the worker cannot be deprived of his right to Minimum Wage,

15. Once this principle is accepted, then it goes without saying that under the Act, the revision of wages must be in tune with the revision in the minimum wages. As observed by the Father of the Nation, Mahatma Gandhi, in whose name we swear:

"In reality, the toiler is the owner of what he produces. Kisan or the peasant, whether as a landless labourer or labouring proprietor, comes first. He is the salt of the earth which rightly belongs or should belong to him. Where there are landless labourers, their wages should be brought to a level that would ensure a decent living, which should mean balanced food, dwelling houses and clothing which should satisfy health requirements."

This very principle is accepted as a guideline for fixing the wage structure or minimum wage (see U. Unichovi and others Vs. State of Kerala, AIR 1962 SC 12). Therefore, the wages to be fixed under the Employment Guarantee Act must also be revised in tune with the revision in the minimum wage, obviously from time to time as and when the occasion arises.

16. Having dealt with section 7(20(vii)) of the Act, we will now take up for consideration the second challenge in the petition which relates to the unemployment allowance paid under section 8 of the Act. Section 8 generally provides for the conditions applicable for guaranteed employment to adult persons in rural areas. Sub-section (4) with which we are concerned, reads as under:-

"(4) If within 15 days of the receipt of the letter for employment under the Scheme by the Saniti Officer or by the Gram Sevak or the Talathi, as the case may be, the State Government is nable to provide employment to such person under the Scheme, in the manner mentioned in sub-section (3), the person shall be entitled to receive from the Employment Guarantee Fund an unemployment allowance at such rate as may be fixed by the State Government from time to time, but not less than Re.1 per day."

We are informed that in spite of the mandate of this sub-section, the State Government has not fixed any unemployment allowance and, therefore, allowance is being paid at the minimum rate i.e. rupee one per day. Thus, the minimum has become the maximum. Unemployment allowance is being paid subject to the conditions laid down in section 8, as a last resort. In substance, it is a subsistence or survival allowance. Therefore, it cannot fall down the bare starvation level. The Study Committee on the Employment Conditions of Agricultural Labour in Maharashtra State, while fixing the minimum wage for agricultural labourers, has observed in its Report, in para 8.9 of Chapter VIII as under:-

"8.9 Formula .. ..

(i) An average working man requires at least 2000 to 2200 calories for which 625 grams of staple food is a necessity. We are assuming

a family of 3½ units i.e. husband, wife and three children. Their requirements would be 2187 and a half grams. This would be the staple food requirement of the average family. We considered whether it would be possible to work out average total budget of such a family taking these staple food requirements as the base. Normally, we are advised that staple food requirements are 40% to 50% of the total budget working on this basis of 40% which is in favour of workers the total budget would come to 5,468 grams of jowar. Making some allowance for one weekly holiday, we can safely assume that a poor worker's family budget would be 6000 to 6400 grams. This concession is also in consideration of the fact that we cannot assume always that there are two earning workers in a family. But normally the 6 kg. should be earned by two persons. We were advised that 3 kg. can be assumed as the daily wages in kind for an adult. Wages for men and women should be taken as equal. Taking all facts into consideration some experts and social workers advised us to fix the wage at 4 kg. not without justification.

Paying capacity cannot altogether be ruled out as a factor in this case. We have, therefore, assessed minimum wage in kind as follows:-

Three kgs. for third Zone; three and half kgs. for second Zone and four kgs. for first Zone.

We have recommended a little higher wage than the exact calculation according to formula suggested for third Zone; still higher for second Zone and still higher for first Zone i.e. Rs. 2.50, 3.00 and 3.50 respectively. According to evidence of trade union leaders, economists and judicial experts these rates are on lower side. They have proposed Rs. 4 or 5 looking to the practical side of the question. The Committee hopes that the level of rates will go up when ruling prices of food grains also move up. The wages must be revised as soon as there is a rise in the procurement and issue price of Jowar. We do not consider necessary to link this minimum wage with consumer price index because so far the State has not evolved any such pattern for rural areas."

Therefore, according to the Committee, the staple food requirement of an average family is 40 to 50% of the budget. The Committee accepted 40% as the working basis. Taking any view of the matter, it can safely be said that a person will require for bare survival one-third of the minimum wage fixed. As observed by Mahatma Gandhi:-

"The present pressing problem is how to

find work and wages for the millions of villagers who are becoming increasingly pauperised. They are becoming poorer economically, mentally and morally. They are fast losing the will to work, to think, and even to live. It is living death that they are living. We have to make a choice between India of the villages, that are as ancient as herself, and India of the Cities which are a creation of foreign domination. Today cities dominate and drain the villages so that they are exhumbling to ruin. .. .. Exploitation of villages is itself organised violence. If we want "Swaraj" to be built on non-violence, we shall have to give to villages their proper place. ... In India we have got many millions of people who have to be satisfied with one meal a day and that meal consisting of a Chapati, containing no fat in it and a pinch of salt. You and I have no right to anything that we really have until these many millions are clothed and fed."

Mahatma Gandhi believed in the message of Khadi and Village Industries which, according to him, was the real insurance against famine and unemployment. However, in tune with modern trend, the State of Maharashtra has enacted the present enactment for achieving the

same object. Unemployment allowance payable under sub-section (4) of section 2 is in the nature of an insurance or a minimum guarantee. Under section 3 every adult person in the rural area in Maharashtra has a right to work, that is a right to get guaranteed employment for doing unskilled manual work and to receive wages therefore. If the state Government is unable to provide employment to such a person, then alone he is entitled to receive an unemployment allowance. In substance, it is an insurance against starvation and unemployment. Therefore, fixation of unemployment allowance must have some relevance to the survival level. Rupee one is fixed as the lowest minimum and unfortunately it is being treated as the maximum. It is less than a beggar's income. In this context, Smt. Indira Jaising has drawn our attention to the Report on the Sixth Five Year Plan 1980 - 1985, at page 51, Poverty and Employment, Para 3-62 which reads as under:-

"3-62. The Sixth Plan places a very high priority on the alleviation of poverty. For an assessment of the problem and for setting targets a quantitative index for poverty was formulated in the report of the "Task Force on Projections of Minimum Needs and Effective Consumption Demand" set up by the Planning Commission in 1977, where poverty line is defined as the mid-point of the monthly

per capita expenditure class having a daily calorie intake of 2400 per person in rural areas and 2100 in urban areas. In 1979-80 prices, the all-points are Rs. 76 in rural areas and Rs. 83 in urban areas."

17. In our opinion, the fixation of unemployment allowance at the proper level is also necessary to assure the right to live with human dignity and freedom from exploitation. In Bandhua Mukti Morcha vs. Union of India and Ors. A.I.R. 1984 S.C. 802, the Supreme Court has observed:-

"It is the fundamental right of every one in this country, assured under the interpretation given to Article 21 by the Court in Frances Mullin's case (AIR 1980 SC 849) 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 39 and Articles 41 and 42 .. .. .

Therefore, the unemployment allowance should be so fixed so as to ensure living, at least at a starvation level. It is no doubt true that such an unemployment allowance will have to be uniform. Since the wage to be fixed under the Act is linked with the minimum wage for agricultural labourer, in our opinion, the fixation of the unemployment allowance should also have some relevance to this minimum wage. We can only suggest



certain guidelines. It could be 33 per cent to 40 per cent of the average minimum wage of all the zones or at least one-third of the minimum wage of the lowest zone. Though it was intended by Smt. Indira Jaising that we should ourselves fix this unemployment allowance, in our opinion, this task cannot be undertaken by the Court and must be left to the Government. An uniform payment of unemployment allowance throughout the State would obviously be desirable, lest there will be a charge of discrimination. This is not a wage paid for the work done. It is being paid as an allowance. Under section 8(4) the State Government is empowered to fix the rate of unemployment allowance from time to time. This power is coupled with duty. The legislature has only prescribed the lowest limit. But that does not mean that the State Government without any application of mind can sit tight over the matter. It is really regrettable that all these years the State Government has not done anything and is only paying rupee one per day which is the lowest limit. Therefore, we direct the State Government to exercise its power under section 8(4) of the Act and fix the unemployment allowance according to law.

18. However, we can appreciate that the Government is bound to take some time for fixing the unemployment allowance. Until then it will be unjust to continue the present situation i.e. payment of rupee one per day which is less than the dole. There must, therefore,

be an ad hoc arrangement. Considering the material placed before us and the minimum wages notification fixing minimum wage for the agricultural labourers for the lowest zone, we think that as an ad hoc measure we can safely fix Rs. Two per day as a reasonable unemployment allowance, subject, of course, to alteration later, when as a result of further study and research Government is able to decide the question. This ad hoc fixation by us will apply prospectively, since it involves financial implications and we are inclined to fix 2nd October 1984, the Gandhi Jayanti Day, as the date from which this enhanced ad hoc unemployment allowance will come into force.

19        The last contention raised before us by Smt. Indira Jaising was about the non-payment of unemployment allowance to 242 workers referred to in para 13 of the petition. It appears that during the period of 30.9.1983 to 3.1.1984, but for giving them employment for 90 days, these 242 workers were not provided work in spite of their applications and, therefore, were entitled to get unemployment allowance at the rate of rupee one per day. In reply to the averments made in the petition Shri. Chaudhari, Tahsildar of Shrirampur, District Ahmednagar, has stated that since these employees had not complied with the necessary technicalities, their claims could not be considered. Similar is the statement made by Shri. Kane, Naib Tahsildar. Thus,

there seems to be some dispute about the entitlement itself. We are surprised as to why the applications filed by the workmen or the villagers were not considered expeditiously. The delay in scrutinising the applications and paying the unemployment allowance will defeat the very purpose of the Act. If the unemployment allowance is not paid expeditiously, then the persons who claim the benefit of it will not be able to survive. It involves a question of their life and death. Therefore, we direct the respondents to make the necessary payment to the persons eligible, out of the persons whose list is placed before us, within one month from today, obviously in accordance with law. We are really surprised that in the affidavit filed in reply, microscopic technical objections are being raised for defeating the claims of these villagers for payment of the unemployment allowance. To defeat the claims of eligible persons on technicalities will again defeat the very purpose of the Act. In this context, it is pertinent to note that under the rules a provision is made for registration of the names of employment seekers and a procedure is also provided. Under rule 5 which deals with registration, an application for registration could also be oral. Simplicity of procedure is the essence of the Scheme. Employment is normally provided within the radius of five kilometres from the village of the workers engaged on such works. Therefore, obviously the forms in the language of

of the residents should also be available within the radius of five kilometres. It is needless to say that they should be as simple as possible and should be in the language of the region. Arrangement for payment of the unemployment allowance should also be made in the village itself or at a place which is at a reasonable distance.

20. A grievance is made that the implementation of the whole Scheme is so faulty that beneficiaries never get benefit of it. In support of this contention, the learned Counsel for the petitioners has produced before us a Report of a High Power Committee appointed by the Government under the chairmanship of Shri. R.S. Gavai, to enquire into the instances of irregularities, malpractices and corruption in the execution of the Scheme in Dhulia District. According to the learned Counsel, the position all over the State is the same. This seems to be the reason that by insertion of section 6A, the Commissioner of the Division or other officer not below the rank of Assistant Commissioner is empowered to supervise and review implementation of the Scheme in each Division. The Act also provides for the constitution of State Councils and District level Committee etc. However in our view, this will not serve the purpose. In this context we cannot do better than to draw the attention of the Government towards the observations of the Supreme Court in Neeraja Chaudhary