LABOURERS WORKING ON SALAL HYDRO-PROJECT

v.

STATE OF JAMMU & KASHMIR AND OTHERS

March 2, 1983

[P. N. BHAGWATI, R. S. PATHAK AND AMARENDRA NATH SEN, JJ.]

Labour Laws—Benefits and facilities provided for workmen under Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; Contract, Labour (Regulation and Abolition) Act, 1970; Minimum Wages Act, 1948—Prohibition of child labour in construction work under Art. 24 of Constitution—Implementation of.

On the basis of a news item that migrant workmen employed in the Salal Hydro Electric Project were being denied the benefits of various labour laws, the Peoples' Union for Democratic Rights addressed a letter to an Hon'ble Judge of the Court requesting that the same be treated as a writ Petition and justice be done to the workmen. The request was acceded to and in compliance with a direction made, the Labour Commissioner, Jammu, visited the site of the project, ascertained the position and submitted two reports which disclosed *inter alia* that the project was being carried out by the Government of India. The petition was heard on the basis of the reports made and the affidavits in reply filed by the Union of India pursuant to the directions made in that behalf.

The National Hydro Electric Power Corporation which had bean entrusted with the execution of the work relating to the project was carrying out certain portions of the work through workmen directly employed by it and had entrusted the remaining portions to several contractors. The contractors, in their turn, were doing a part of the work given to them through workmen directly employed by them while the remaining part had been allotted by them to sub-contractors. The Contract Labour (Regulation and Abolition) Act, 1970 being applicable to the establishments pertaining to the project work, the Executive Engineers of the National Hydro Electric Power Corporation having supervision and control over the respective establishments were registered as principal employers and the contractors to whom different portions of the work were entrusted for execution were licensed by the licensing officers appointed by the Central Government but the sub-contractors did not hold any licence. The sub-contractors were being called 'piece-wagers' with a view to circumvent the provisions of the Act.

The workmen employed on the project were mostly drawn from other states. There was no uniform pattern of employment but so far as Oriya workmen were

concerned they were usually recruited by *khatedars* from their villages in Orissa and given advances before being taken to the project site. Some Bihari workmen were also found to have received such advances. The contractors and 'piece-wagers' had not provided rest rooms, canteens and washing facilities to the workmen employed by them. The 'piece-wagers' were making payments to workmen like Oriya labourers who were employed in groups, through *khatedars* and there were complaints of deductions on account of advances made to them, messing charges, etc., although the muster rolls did not reflect the deductions. Payments of wages made by 'piece-wagers' were not being supervised by any authorised representative of the principal employers or of the Central Government and almost fifty per cent of over-time wages earned by workmen was being taken away by *khatedars*. The provisions of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 conferring benefits and advantages on workmen were not being implemented. No weekly off day was being allowed in respect of workmen employed by 'piece-wagers. Some minors were also found employed on the project site. The minimum wage fixed for workmen employed on the project was found to be a rupee less than that fixed by the State Government for workmen employed in the construction industry.

Allowing the petition,

HELD: The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 was enacted with a view to eliminating abuses to which workmen recruited from one State and taken for work to another State were subjected by the contractors, *sardars* or *khatedars* recruiting them. The Act and the rules framed thereunder came into force with effect from October 2, 1980 and became applicable to the establishments pertaining to the project work. The Central Government ought to have enforced the provisions contained in ss. 12 to 16 and also those relating to registration of principal employers] and licensing of contractors at least from June, 1982 when the various authorities contemplated under the Act were appointed. The stand taken by the Central Government that the workers had gone to Salal Project for work on their own and therefore, strictly speaking, they were not migrant workmen, cannot be accepted as valid. Oriya workmen recruited by *khatedars* from their villages in Orissa and brought to the project site for work are Inter-State migrant workmen within the meaning of s. 2 (e) of the Act.

[480-H; 481-F; 482 A-E]

2. Not only a contractor but also a sub-contractor who comes within the definition of the term 'contractor' in s. 2 (c) of the Contract Labour (Regulation and Abolition) Act, 1970 is bound to obtain a licence under sub-s. (1) of s. 12 thereof before he can undertake or execute any work through contract labour. Sections 16 to 21 of the Act readwith rs. 41 to 62 provide for making various facilities available to workmen employed by contractors for securing their health and welfare and 'piece-wagers' or sub-contractors who are 'contractors' within the meaning of s. 2 (c) cannot escape their obligations under these provisions by not applying for a licence under sub-s. (1) of s. 12. In fact, if sub-contractors under

take or execute any work through contract labour without obtaining a licence under sub-(1) of s. 12, they would be guilty of a criminal offence punishable under s. 23 or s. 24. [483 G; 484 B-D]

3. Sub s. (2) of s. 21 of the Contract Labour (Regulation and Abolition) Act, 1970 requires that every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amount paid as wages in such manner as may be prescribed and under sub-s. (3) of s. 21 it is the duty of the contractor to ensure that disbursement of wages is made in the presence of the authorised representative of the principal employer. Wages due to workmen employed by the 'piece-wagers' or sub-contractors must be paid directly to the workmen without the intervention of *khatedars*, and no deductions can be made from the wages on account of any advances alleged to have been made by the *khatedars* to the workmen. [487 C-F]

Peoples' Union for Democratic Rights & Ors. v. Union of India & Ors. (Asiad workers' Case) [1983] 1 S.C.R. 456, referred to.

4. Under Art. 24 of the Constitution no child below the age of 14 years can be employed in 'construction work' which has been declared to be a hazardous employment in the *Asiad Workers' case.* This constitutional prohibition must be enforced. The children of construction workers living at or near the project site should be given facilities for schooling and this may be done either by the Central Government itself or if the Central Government entrusts the project work or any part thereof to a contractor, necessary provisions to this effect may be made in the contract with the contractor. [485 G-H; 486 D-G]

Asiad Worker's Case, referred to.

5. There can be no doubt that the minimum rates of wages fixed by the Central Government include the element of weekly day of rest and that no extra wages are legally payable to the workmen for the weekly off days. The complaint made is not that extra wages are not being paid for the weekly off days but that weekly paid off days are not being given to the workmen, meaning thereby that the workmen are required to work even on their weekly paid off days. These complaints have to be remedied by the Central Government by taking appropriate action and the only way in which this can be done effectively is by carring out periodically detailed inspections. [488 G-H; 489 A-B]

The following directions were made by the Court:

(i) The Central Government will at once proceed to identify inter-state migrant workmen employed in the project work and adopt necessary measures for ensuring to them the benefits and advantages provided under the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. [482- F]

(ii) The Central Government will take immediate steps for ensuring that 'piece-wagers' or the sub-contractors do not execute any portion of the project

work without obtaining a licence under sub-s. (1) of s. 12 of the Contract Labour (Regulation and Abolition) Act, 1970 and that they carry out their obligations under that Act and Rules framed thereunder. It will also take immediate steps for ensuring that canteens, rest rooms and washing facilities are provided by the contractors and 'piece-wagers' or sub-contractors to the workmen employed by them in accordance with the requirements of ss. 16, 17 and 18(c) read with rs. 41 to 50 and 57. [484 D-G; 485 D-E]

(iii) The Central Government will tighten up its enforcement machinery and ensure that thorough and careful inspections are carried out by fairly senior officers at short intervals with a view to investigating whether the labour laws are being properly observed, particularly in relation to the workmen employed either directly or through *khatedars* by the contractors as well as the 'piece-wagers' or sub-contractors. The Central Government must also strictly enforce the requirement that payment of wages particularly to workmen employed either directly or through *khatedars* by the 'piece-wagers' or sub-contractors is made in the presence of an authorised representative appointed by the National Hydro Electric Power Corporation or the Central Government and wages are paid directly to the workmen without the intervention of *khatedars* and free from any deductions whatsoever, except those authorised by law. When payment of over-time wages is made to the workmen, the Central Government must ask its authorised representative to check-up with reference to the over-time work done by the workmen, whether they are receiving the full amount of over-time wages due to them or any part of it is being taken away by the *khatedars*. [489 D-H, 490 A-C]

(iv) The Central Government will take note of the anomalous situation in which a workman employed in the Salal Project is getting a minimum wage of only Rs. 9/- per day because it is a work which is being carried out by the Central Government whereas a workman employed in construction industry in the State of Jammu and Kashmir would be entitled to Rs. 10/- per day. [490 F-H, 491 A]

(v) The Central Government will file an affidavit setting out the steps taken by it in respect of directions (i) to (iii) above within one month from the date of the judgment. [485 E; 490 C-D]

ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 1179 of 1982.

(Under Article 32 of the Constitution of India)

Govind Mukhoty for the Petitioner.

Altaf Ahmed, Girish Chandra and *Miss A. Subhashini* for the Respondents.

The Judgment of the Court was delivered by

BHAGWATI, J. The issue of Indian Express dated 26th August 1982 carried a news item that a large number of migrant workmen from different States including the State of Orissa were working on the Salal Hydro Electric Project in difficult conditions and they were denied the benefits of various labour laws and were subjected to exploitation by the contractors to whom different portions of the work were entrusted by the Central Government. The People's Union for Democratic Rights thereupon addressed a letter to Mr. Justice D.A. Desai enclosing a copy of the news report and requesting him to treat the letter as a writ petition so that justice may be done to the poor labourers working in the Salal Hydro Electric Project. The letter was placed before a Bench of this Court and it was treated as a writ petition and by an order dated 10th September, 1982 this Court directed that the Union of India, the State of Orissa, the Labour Commissioner, Orissa at New Delhi, the State of Jammu and Kashmir and the Labour Commissioner (J & K) should be shown as respondents to the writ petition and issued notice to the Union of India, the State of Orissa and the Assistant Labour Commissioner, Orissa at New Delhi to show cause against the writ petition. This Court also directed the Labour Commissioner, Jammu to visit the site of the Salal Hydro Electric Project and ascertain (i) whether there are any bonded labourers employed on this project and if so, to furnish their names; (ii) whether there are any migrant workers who have come from other States; (iii) what are the conditions in which the workers are living; and (iv) whether the labour laws enacted for their benefit are being observed and implemented. Pursuant to this order made by the Court, the Labour Commissioner Jammu visited the site of the Salal Hydro Electric Project and made an interim report on 11th October, 1982 and this was followed by a final report dated 15th October, 1982. The writ petition thereafter came up for hearing on 3rd November 1982 and on that date, the Court pointed out that the Secretary, Union of India, Ministry of Home Affairs, the State of Orissa, the Labour Commissioner Orissa at New Delhi, the State of Jammu and Kashmir and the Labour Commissioner (J & K) had already been impleaded as respondent Nos. 1 to 5 but since the reports made by the Labour Commissioner, Jammu disclosed that the Salal Hydro Electric Poject was being carried out by the Government of India, the Court directed that the Union of India in the Labour Ministry as also the Chief Labour Commissioner (Central) may also be added as respon-

dents Nos. 6 and 7 to the writ petition and that notice of the writ petition shall go immediately to them alongwith copies of the two reports. The Court also directed that the Union of India and the Chief Labour Commissioner (Central) should file their affidavit or affidavits within two weeks from the date of the order dealing with the various averments made in the two reports of the Labour Commissioner, Jammu and particularly the final report made by him, since the final report disclosed *prima facie* that there were certain violations of labour laws committed by the Central Government and the contractors. The Court also directed following its decision given on 18th September 1982 in *People's Union for Democratic Rights* v. *The Union of India*[1] that "the Union of India and the Chief Labour Commissioner (Central) shall ensure that hereafter minimum wage is paid directly by the Central Government or the contractors as the case may be, to the workmen employed by them without the intervention of any sub-contractors or jamadars or khatedars and without any deduction whatsoever except such as may be authorised statutorily. The reference to sub-contractors in this order will be confined only to those sub-contractors who have not been licenced under the Contract Labour (Regulation and Abolition) Act 1956 because if any such sub-contractors have been licenced, they would fall within the definition of contractor and would therefore be liable for payment of minimum wage directly to the workers without any deduction. The Union of India and the Chief Labour Commissioner (Central) will also, in the meanwhile, ensure that sections 16 to 19 of the Contract Labour (Regulation and Abolition) Act, 1956 read with the relevant rules made under that Act are complied with, as the same are mandatory and the Central Government is the appropriate authority to enforce the provisions of those sections." It appears that the Union of India and the Chief Labour Commissioner (Central) were not able to file their affidavit or affidavits within the time granted to them with the result that the time had to be extended twice and ultimately an affidavit dated 14th December, 1982 was made by one H.S. Raju, Deputy Secretary to the Government of India in the Ministry of Labour and Rehabilitation and it was filed in court on behalf of the Union of India. It was on the basis of the two reports made by the Labour Commissioner, Jammu and the affidavit in reply filed by H.S. Raju on behalf of the Union of India alongwith certain other documents produced at the hearing that the writ petition was argued before us.

(1) [1983] 1 S.C.R. 456.

The Salal Hydro Electric Project is a power project undertaken by the Government of India with a view to increasing the generation of electric power in the country by utilising the waters of river Chenab. It is a gigantic project located near village Salal in Jammu and the Government of India has entrusted it to the National Hydro Electric Power Corporation for execution on 'agency basis'. There are certain portions of the work in connection with the Project which are being executed by the National Hydro Electric Power Corporation itself through workmen directly employed by it, while certain other portions of the work are entrusted to contractors of whom the principal four are Hindustan Construction Company Limited, Gammon India Limited, T.R. Gupta Private Ltd. and Asia Foundation Construction Company. These contractors in their turn are doing a part of the work entrusted to them through workmen directly employed by them while a part of the work has been allotted by them to sub-contractors described as 'piece wagers'. The workmen employed by the National Hydro Electric Power Corporation, the contractors and the sub-contractors are mostly from other States such as U.P., Bihar and Orissa. There is no uniform pattern of employment in regard to these workmen but so far as Oriya workmen are concerned, they are usually recruited by khatedars from their villages in Orissa and given advances before being taken for work. So also some Bihari workmen were found by the Labour Commissioner (J & K) to have received such advances before coming to the project site. Now the Contract Labour (Regulation and Abolition) Act 1970 (hereinafter referred to as Contract Labour Act) being applicable to the establishments pertaining to the project work, the Executive Engineers of the National Hydro Electric Power Corporation having supervision and control over the respective establishments are registered as principal employers and the contractors to whom different portions of the work are entrusted for execution are licensed under the provisions of that Act. Since the project work is being carried on by or under the authority of the Central Government, the Central Government is the appropriate Government in relation to the establishments pertaining to the project work and the contractors are licensed by the Licensing Officers appointed by the Central Government. The sub-contractors to whom different portions of the work are entrusted by the contractors, however, do not hold any licence, through they fall within the definition of the word 'contractor' in clause (c) of section 2 of the Contract Labour (Regulation and Abolition) Act 1970 and it is pre-

A cisely in order to circumvent the provisions of the Contract Labour (Regulation and Abolition) Act, that they are called 'piece wagers' instead of sub-contractors. The project work is thus carried out by workmen employed by the National Hydro Electric Power Corporation or by contractors licensed under the provisions of the Contract Labour (Regulation and Abolition) Act or by sub-contractors who B are euphemistically described as 'piece wagers';

The question raised in this writ petition is whether the workmen employed in the project work are ensured the rights and benefits provided to them under various labour laws such as Contract C Labour (Regulation and Abolition) Act, 1956, the Minimum Wages Act, 1948 and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. So far as the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service Act, 1979 (hereinafter referred to as the Inter State Migrant Workmen Act) is concerned, the final report of the D Labour Commissioner (J & K) clearly shows that its provisions have not beeen implemented at all and the workmen are denied many of the benefits and advantages provided under it. This statement in the final report of the Labour Commissioner (J&K) is not denied on behalf of the Union of India in the affidavit in reply made by H.S. Raju, Deputy Secretary to the Government of E India, Ministry of Labour and Rehabilitation and the only explanation offered is that the Inter State Migrant Workmen Act though passed in 1979 did not come into force until 2nd October 1980 and the relevant notifications appointing various authorities under that Act were issued only in June, 1982 and that was the reason why "no action could be taken by the officers of CIRM earlier". F It is also averred in the affidavit in reply that "most of the workers from other States have gone to Salal Project for work on their own and are therefore strictly speaking not migrant workmen" within the meaning of the definition of that term contained in the Inter State Migrant Workmen Act. We do not think that this justification G given in the affidavit in reply for not ensuring the benefits and facilities provided under the Inter State Migrant Workmen Act to atleast some of the workmen and particularly Oriya workmen can be accepted as valid. It is clear from the Statement of Objects and Reasons that the Inter State Migrant Workmen Act was enacted H with a view to eliminating abuses to which workmen recruited from one State and taken for work to another State were subjected by the contractors, sardars or khatedars recruiting them. The mal-

practices indulged in by the contractors, sardars or khatedars in regard to workmen recruited by them for work outside their State may be found briefly summarised as follows in the Statement of Objects and Reasons :

> "Though the Sardars promise at the time of recruitment that wages calculated on piece rate basis would be settled every month, the promise is not usually kept. Once the worker comes under the clutches of the contractor, he takes him to a far-off place on payment of railway fare only. No working hours are fixed for these workers and they have to work on all the days in a week under extremely bad working conditions. The provisions of the various labour laws are not being observed in their case and they are subjected to various malpractices."

It was felt that since Inter State migrant workmen are generally illiterate and unorganised and are by reason of their extreme poverty, easy victims of these abuses and malpractices, it was necessary to have a comprehensive legislation with a view to securing effective protection to Inter State migrant workmen against their exploitation and hence the Inter State Migrant Workmen Act was enacted. This Act received the assent of the President on 11th June, 1979 but it was brought into force only on 2nd October 1980 by a notification issued under section 1 sub-section (3). The Inter State Migrant Workmen (Regulation of employment and Conditions of Service) Rules 1980 (hereinafter referred to as the Central Inter State Migrant Workmen Rules) were also made by the Central Government and brought into force with effect from 2nd October 1980. But, unfortunately, though the Inter State Migrant Workmen Act and the Central Inter State Migrant Workmen Rules came into force from 2nd October, 1980, the bureaucratic apparatus for implementing the provisions contained in the Act and the Rules was not set up by the Central Government for a period of more than 20 months and it was only in the month June, 1982 that the Central Government appointed various authorities such as Registered Officers, Licensing Officers and Inspectors. Even so we fail to see why the obligations of contractors set out in section 12 and wages, welfare and other facilities provided in sections 13 to 16 of the Inter State Migrant Workmen Act could

not be made available to Inter State migrant workmen employed in the project work and the Central Government as the appropriate Government could not enforce the same from and after 2nd October 1980. When the Act and the Rules came into force with effect from 2nd October, 1980, the provisions contained in s. 12 and ss. 13 to 16 became clearly applicable to the establishments pertaining to the project work and there was no justification for the Central Government to delay any longer the implementation of these provisions in, so far as Inter State migrant workmen were concerned. The Central Government in any event ought to have enforced the provisions relating to registration of principal employers and licensing of contractors as also the provisions set out in s. 12 and ss. 13 to 16 from June, 1982 when the various authorities contemplated under the Act were appointed by the Central Goverment. We do not think the Central Government can escape its obligation to enforce the provisions of the Inter State Migrant Workmen Act on the plea that there are no Inter State migrant workmen employed in the project work. The final report of the Labour Commissioner (J & K) clearly shows that Oriya workmen employed on the project site were recruited by khatedars from their villages in Orissa and brought to the project site for work and they would clearly be Inter State migrant workmen within the definition of that term in clause (e) of section (2) of the Inter State Migrant Workmen Act. We would therefore direct the Central Government to take immediate steps for enforcement of the provisions of the Inter State Migrant Workmen Act in regard to Inter State migrant workmen employed in the project work. The Central Government will at once proceed to identify 'Inter State migrant workmen' from amongst the workmen employed in the project work and adopt necessary measures for ensuring to them the benefits and advantages provided under the Inter State Migrant Workmen Act. We would like the Central Government to file an affidavit within one month from today setting out what steps have been taken for securing implementation of the provisions of the Inter State Migrant Workmen Act at the project site, whether the executive engineers of the Central Government or the National Hydro Electric Power Corporation have been registered as principal employers under section 4 and the contractors, sub-contractors or 'piece wagers', khatedars and sardars have been licensed under section 8, whether the contractors and sub-contractors or piece wagers are carrying out the obligations imposed upon them under section 12 and whether wages and allowances stipulated in sections 13, 14 and 15 and other facilities provided in section 16 are being

made available to the inter state migrant workmen employed in the project work. A

That takes us to the question whether the provisions of the Minimum Wages Act and the Contract Labour Act are being followed in relation to the workmen employed on the project site. But before we consider this question, we may point out that, in regard to the suggestion made in the writ petition that there are amongst the Oriya workmen bonded labourers who are forced to provide labour by the khatedars who have recruited them, the final report of the Labour Commissioner (J & K) points out that "by and large there is no evidence of any worker having been detained and not allowed to go home against his wish" and "there is no bonded labourer in the project whether the employment is direct or through the contrators or sub-contractors". We must therefore proceed on the basis that there is no violation of the provisions of the Bonded Labour System (Abolition) Act, 1976. But so far as the Minimum Wages Act and the Contract Labour Act are concerned, the report of the Labour Commissioner (J and K) does reveal that there are violations of the provisions of these two statutes. Section 2 clause (c) of the Contract Labour Act defines "contractor" in relation to an establishment, to mean "a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and *includes a "sub-contractor."* (emphasis supplied). Section 12 sub-section (1) then proceeds to enact that with effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer. It is therefore clear that not only a contractor but also a sub-contractor who comes within the definition of the term 'contractor' in section 2 clause (e) is bound to obtain a licence under section 12 sub-section (1) before he can undertake or execute any work through contract labour. Now according to the final report of the Labour Commissioner (J & K), the contractors at the project site have undoubtedly obtained the requisite licence under section 12 sub-section (1) but the 'piece wagers' who are really nothing but sub-contractors, have not cared to obtain such licence and yet they have undertaken and are executing portions of the project work entrusted to them by the contractors, through work B C D E F G H

men employed by them either directly or through khateders. This is clearly in violation of the prohibition enacted in section 12 sub-section (1). It is obvious that the object of the 'piece wagers' or the sub-contractors in not applying for a licence under section 12 sub-section (1) is to evade their obligations under seections 16 to 21 read with Rules 41 to 62 of the Contract Labour (Regulation and Abolition) Central Rules, 1971 (hereinafter referred to as the Contract Labour Central Rules) and to render these provisions difficult of application in relation to them. Sections 16 to 21 read with Rules 41 to 62 provide for making various facilities available to workmen employed by contractors for securing their health and welfare and 'piece wagers' or sub-contractors who are 'contractors' within the meaning of that term in section 2 clause (c) cannot escape their obligations under these provisions by not applying for a licence under section 12 sub-section (1). In fact, if sub-contractors undertake or execute any work through contract labour without obtaining a licence under section 12 sub-section (1), they would be guilty of a criminal offence punishable under section 23 or section 24. We would therefore direct the Central Government as the enforcing authority to take immediate steps for ensuring that the 'piece wagers' or sub-contractors do not execute any portion of the project work without obtaining a licence under sec. 12 sub-section (1) and that they carry out their obligations under sections 16 to 21 read with Rules 41 to 62. Of course, if the contractors who have employed 'piece wagers' or sub-contractors have provided the facilities set out in sections 16 to 21 read with Rules 41 to 62 not only to the workmen employed directly by them but also to the workmen employed by the 'piece wagers' or sub-contractors, nothing more may remain to be done by the 'piece wagers' or sub-contractors. But there can be no doubt that the 'piece wagers' sub-contractors are equally responsible for implementing the provisions contained in these sections. The Central Government will in the report to be submitted by it on or before state whether the 'piece wagers' or sub-contractors have obtained the requisite licence under section 12 sub-section (1) or they are executing the portion of the project work entrusted to them without obtaining such licence and whether the provisions set out in sections 16 to 21 read with Rules 41 to 62 are being implemented in relation to the workmen employed by the 'piece wagers' or sub-contractors.

The final report of Labour the Commissioner (J&K) also points out that whereas the National Hydro Electric Power Corporation

has provided canteens and rest rooms to its workmen as required by sections 16 and 17 of the Contract Labour Act and Rules 41 to 50 of the Contract Labour Central Rules, the contractors and 'piece wagers' or sub-contractors have not provided such canteens and rest rooms in breach of their obligations under these provisions. It is also mentioned in the final report of the Labour Commissioner (J & K) that adequate washing facilities are not provided at work sites, though there is clearly an obligation on the contractors and 'piece wagers' or sub-contractors to do so under clause (c) section 18 read with Rule 57. The Central Government has, in the affidavit in reply made on its behalf by H. S. Raju stated rather half heartedly that facilties for canteens are reasonably made but conceded that "as canteens provided by the contractors are not of the prescribed specifications action has been taken by the Regional Labour Commissioner for prosecution of the contractors for their failure to provide canteens with specified specifications". We would therefore direct the Central Government to take immediate steps for ensuring that canteens, rest rooms and washing facilities areprovided by the contractors and 'piece wagers' or sub-contractors to the workmen employed by them in accordance with the requirements of sections 16, 17 and 18, clause (c) read with Rules 41 to 50 and 57 and the Central Government will make a report to this Court on or before 30th April, 1983 setting out what steps have been taken for securing implementation of these provisions and whether these provisions have been complied with by the contractors and 'piece-wagers' or sub-contractors.

So far as medical facilities are concerned, we are glad to know that according to the final report of the Labour Commissioner (J & K), adequate medical care is provided to the workmen employed on the project site. It is pointed out in the final report of the Labour Commissioner (J & K) that some minors were found to have been employed on the project site but the explanation given was that "these minors accompany male members of their families on their own and insist on getting employed". This Court has pointed out in its judgment in the *Asiad Workers case*(1) that construction work is a hazardous employment and therefore under Article 24 of the Constitution, no child below the age of 14 years can be employed in construction work. We are aware that the problem of child labour is a

(1) [1983] 1 S.C.R. 456.

A difficult problem and it is purely on account of economic reasons that parents often want their children to be employed in order to be able to make two ends meet. The possibility of augmenting their meagre earnings through employment of children is very often the reason why parents do not send their children to schools and there are large B drop outs from the schools. This is an economic problem and it cannot be solved merely by legislation. So long as there is poverty and destitution in this country, it will be difficult to eradicate child labour. But even so an attempt has to be made to reduce, if not eliminate the incidence of child labour, because it is absolutely essential that a child should be able to receive proper education with a view C to equipping itself to become a useful member of the society and to play a constructive role in the socio-economic development of the country. We must concede that having regard to the prevailing socio-economic conditions, it is not possible to prohibit child labour altogether and in fact, any such move may not be socially or economically acceptable to large masses of people. That is why Article 24 D limits the prohibition against emplyoment of child labour only to factories, mines or other hazardous employments. Clearly, construction work is a hazardous employment and no child below the age of 14 years can therefore be allowed to be employed in construction work by reason of the prohibition enacted in Article 24 and this constitutional prohibition must be enforced by the Central Govern- E ment. The Central Government would do well to persuade the workmen to send their children to a nearby school and arrange not only for the school fees to be paid but also provide, free of charge, books and other facilities such as transportation. We would suggest that whenever the Central Government undertakes a construction project which is likely to last for some time, the Central Government should F provide that children of construction workers who are living at or near the project site should be given facilities for schooling and this may be done either by the Central Government itself or if the Central Government entrusts the project work or any part thereof to a contractor, necessary provisions to this effect may be made in the G contract with the contractor.

That takes us to the question whether wages are being paid to the workmen in accordance with the provisions of the relevent statu- H tes. The final report of the Labour Commissioner (J&K) agrees that there is hardly any irregularity in so far as payment of wages to the

workmen employed by the National Hydro Electric Power Corporation and the contractors is concerned but points out that in case of workmen employed by the 'piece wagers' or sub-contractors, payment of wages is made directly only to those workmen "who are employed individually" and to other workmen, like Oriya labourers who are employed in groups, wages are paid through khatedars and in this latter case, there are complaints of deductions by khatedars on account of advances made to the workmen in their native places, messing charges etc., though "the muster rolls prepared and maintained do not reflect the deductions." Now this Court has held in *Asiad Workers case* (supra) that the minimum wages must be paid to the workmen directly without any deductions save and except those authorised by the statute. Wages due to the workmen employed by the 'piece wagers' or sub-contractors must therefore be paid directly to the workmen without the interventation of khatedars, and no deductions can be made from the wages on account of any advances alleged to have been made by the khatedars to the workmen. If there are any advances repayable by the workmen to the khatedars or any messing charges are to be paid, they may be paid by the workmen to the khatedars after they receive the full amount of wages due to them from the 'piece wagers' or sub-contractors. But on no account can any deductions be made from such wages and they must be paid to the workmen directly without the intervention of any middleman. Moreover, section 21 sub-section (2) of the Contract Labour Act requires that every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amount paid as wages in such manner as may be prescribed and under sub-section (3) of section 21, it is the duty of the contractor to ensure that disbursement of wages is made in the presence of the authorised representative of the principal employer. It is stated in the final report of the Labour Commissioner (J&K) that this statutory obligation under sub-sections (2) and (3) of section 21 is also not carried out and so far as the workmen employed by the 'piece wagers' or sub-contractors are concerned, payment of wages to them is not supervised by any authorised representative of the contractors or the National Hydro Electric Power Corporation or the Central Government nor is the payment of wages made in the presence of such authorised representative and the workmen are left to the mercy of the 'piece wagers' or sub-contractors and their staff. This statement is, of course, disputed in the affidavit in reply filed on behalf of the Central Government but we have our own doubts

A whether this denial is well founded. If the requirement of sub-sections (2) and (3) of section 21 is strictly carried out and payment of wages to the workmen employed by the 'piece wagers' or sub-contractors is made in the presence of an authorised representative of the National Hydro Electric Power Corporation of the Central Government, there is no reason why the workmen should complain to the B Labour Commissioner (J&K) in regard to payment of wages because in that event they would be receiving their full wages directly from the 'piece wagers' or sub-contractors without the intervention of khatedars and free from any deductions whatsoever. Moreover it C is also pointed out by the Labour Commissioner (J&K) in his final report that over-time wages earned by workmen are not received by them in their entirety and almost 50 per cent is taken away by khatedars but the muster sheets do not reflect the correct position and "are treated as mere formality". The Central Government has not dealt specifically with this complaint in its affidavit in reply beyond D merely denying that over-time wages are not paid. It may be noted that this complaint has been made by the Labour Commissioner (J&K) after making a full and detailed enquiry from the workmen employed by the 'piece wagers' or sub-contractors and there is no reason why these workmen should have given false information to the Labour Commissioner (J&K) or the Labour Commissioner (J&K) should have made a statement in his final report which E was not borne out by the enquiry made out by him. The Labour Commissioner (J&K) also states that according to the information gathered by him from the workmen, he found that no weekly off day is allowed to the workmen "except in case of labour directly employed by the National Hydro Electric Power Corporation or other contractors". The Central Government in its affidavit in F reply has denied that the workmen are not being granted weekly off day with wages and pointed out that the minimum rates of wages fixed by the Central Government are inclusive of the element of weekly day of rest and no extra wages are legally payable to the workmen under the Mininum Wages Act. Now there can be no doubt that the minimum rates of wages fixed by G the Central Government include the element of weekly day of rest and that no extra wages are legally payable to the workmen for the weekly off days. But the complaint made in the final report of the Labour Commissioner (J & K) is not that extra wages are not

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being paid to the workmen for the weekly off days but that weekly paid off days are not given to the workmen, meaning thereby that the workmen are required to work even on their weekly paid off days. These complaints have to be remedied by the Central Government by taking appropriate action and the only way in which this can be done effectively is by carrying out periodically detailed inspections and insisting that every payment of wages must be made by the 'piece-wagers' or sub-contractors in the presence of the authorised representative of the National Hydro Electric power Corporation or of the Central Government. The Central Government has averred in its affidavit in reply that its officers are regularly carrying out inspections and it has given various dates on which such inspections were carried out during the year 1982. The particulars of inspections given by the Central Government would show that during a period of 12 months, only four inspections were carried out in case of three contractors, two inspections in case of one contractor and one inspection each in case of three other contractors. We find it difficult to accept that these inspections carried out by the officers of the Central Government were adequate. It is necessary to carry out more frequent inspections and such inspections have to be detailed and thorough, for then only it will be possible to ensure scrupulous observance of the labour laws enacted for the benefit of workmen. We would therefore direct the Central Government to tighten up its enforcement machinery and to ensure that thorough and careful inspections are carried out by fairly senior officers at short intervals with a view to investigating whether the labour laws are being properly observed, particularly in relation to workmen employed, either directly or through khatedars, by the contractors as well as the 'piece wagers' or sub-contractors'. The Central Government must also strictly enforce the requirement that payment of wages particularly to workmen employed either directly or through khatedars by the 'piece wagers' or sub-contractors is made in the presence of an authorised representative appointed by the National Hydro Electric Power Corporation or the Central Government and wages are paid directly to the workmen without the intervention of khatedars and free from any deductions whatsoever, except those authorised by law. It is not enough merely to go periodically and examine the muster rolls or muster sheets showing payment of wages, because even where wages are paid through khatedars and deductions are made, the muster rolls or muster sheets would invariably show payment of

A full wages and would not reflect the correct position. The Central Government must ensure, and that is the direction we give, that every payment of wages, whether it be normal wages or over-time wages, shall be made directly to the workmen, without any deductions in the presence of an authorised representative of the National Hydro Electric Power Corporation or the Central Government. When payment of B overtime wages is made to the workmen, the Central Government must ask its authorised representative to check up with reference to the overtime work done by the workmen, whether they are receiving the full amount of over-time wages due to them or any part of it is being taken away by the khatedars. This evil can to a large extent be eliminated if payment of over-time wages is made directly to the workmen C instead of routing it through the khatedars. The Central Government will promptly carry out these directions which are being given by us and will make a report to this Court on or before 30th April, 1983, setting out what steps it has taken for carrying out these directions and how far they have been implemented. It is only if the officers D of the National Hydro Electric Power Corporation and the Central Government are sensitive to the misery and suffering of workmen arising from their deprivation and exploiation that they will be able to secure observance of the labour laws and to improve the life conditions of the workmen employed in such construction projects.

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There is also one other matter to which our attention has been drawn by the Labour Commissioner (J & K). He has F pointed out in his final report that the National Hydro Electric Power Corporation as also the contractors and 'piece wagers' or sub-contractors are paying to the workmen employed by them wages at the rate of Rs. 9 per day, whereas the minimum wage payable to workmen in the construction industry as per the notification issued by the State of Jammu & Kashmir is Rs. 10 per day. G The result is that whereas a workman employed in construction industry in the State of Jammu & Kashmir would be entitled to a minimum wage of Rs. 10 per day a workman employed in the Salal Project which is being carried out in the State of Jammu & Kashmir would be getting only Rs. 9 per day because it is a work H which is being carried out by the Central Government. This is a

rather anomolous situation to which we may draw the attention of the Central Government. A

We accordingly adjourn this writ petition to 6-5-1983. We shall take it up for further hearing after we have received the report from the Central Government in acordance with the directions given in this judgment. B

H.L.C *Petition allowed.*