PETITIONER:
SANJIT ROY

Vs.

RESPONDENT:
STATE OF. RAJASTHAN

DATE OF JUDGMENT20/01/1983

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
PATHAK, R.S.

CITATION:
1983 AIR 328 1983 SCR (2) 271
1983 SCC (1) 525 1983 SCALE (1)38

ACT:
Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964, Section 3, Constitutional validity of-Constitution of India, Articles 14 and 23 and the Minimum Wages Act, 1968-"minimum wage" What is ? explained.

HEADNOTE:
The respondent State in the public Works Department has engaged a large number of workers for the construction of Madanganj Harmara Road, close to Tilonia village with a view to providing relief to persons affected by drought and scarcity conditions. The workers employed in this construction work are divided into gangs of 20 persons or multiple thereof and for each gang one muster roll is maintained. The work done by each gang is measured every fortnight and payment is made by the Public Works Department to the Mate who is the leader of the gang according to the work turned out by such gang during each fortnight. The Public Works Department has fixed a certain norm of work to be turned out by each gang before the workmen belonging to such gang can claim the minimum wage of Rs. 7 per day with the result that if any particular gang turns out work according to the norm fixed by the Public Works Department, the Mate would be paid such amount as would be on distribution give a wage of Rs. 7 per day to the workmen constituting such gang, but if less work is turned out by such gang, payment to be made to the mate of such gang would be proportionately reduced and in that event, the wage earned by each member of such gang would fall short of the minimum wage of Rs. 7 per day. Further, this system of proportionate distribution of the wages adopted without any visible principle or norm enabled a workman who has put in less work to get more payment than the person who has really put in more work. Hence the public interest writ petition filed by the Director of the Social Work and Research Centre, complaining violation of the provisions of the Minimum Wages Act, 1948, Articles 14 and 23 of the Constitution, and the vires of section 3 of the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964.
Allowing the Petition, the Court
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HELD: 1. 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
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fundamental right under Article 23 and ask the court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated. [280 D-F]

2: 1. The constitutional validity of the Exemption Act in so far as it excludes the applicability of the Minimum Wages Act 1948 providing that minimum wage may not be paid to a workman employed in any famine relief work, cannot be sustained in the face of Article 23. Article 23 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. 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.

[280 F-G, 282 B-C]

2: 2. 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, none-the-less 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, the State cannot pay anything less than the minimum wages to the affected persons. It is not as if 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 dole or bounty to the affected persons. The State cannot be permitted to take advantage of the helpless condition of the affected persons and extract 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. [281 B-E, H, 282 A]

2: 3. In the instant case, the Notification issued under the Minimum Wages Act, 1948 makes it clear that the minimum wage of Rs. 7 is fixed per day and not with reference to any particular quantity of work turned out by the workmen during the day. The Notification does not empower the employer to fix any particular norm of work to be carried out by the workman with reference to which the minimum wage shall be paid by the employer. The minimum wage is not fixed on piece rate basis, so that a particular minimum wage would be payable only if a certain amount of work is turned out by the workman and if he turns out less work, then the minimum wage payable would be proportionately reduced. Here the minimum wage is fixed at Rs. 7 per day and that is the minimum wage which must be paid by the employer to the workman so long as the workman works throughout the working hours of the day for which he can lawfully be required to work. The employer may fix any norm he thinks fit specifying the quantity of work which must be turned out by the workman during the day, but if the workman does not

turn out work in conformity with such norm, the employer cannot pay him anything less than the minimum wage. If the norm fixed by the employer is reasonable and the workman does not turn out work according to such norm, disciplinary action may be taken against the workman and in a given case he must even be liable to be thrown out of employment, but he cannot be paid less than the minimum
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wage, unless, of course, the minimum wage fixed by the Notification under the Minimum Wages Act 1948 is correlated with the quantity of work to be turned out by the workman. Otherwise, it would be the easiest thing for the employer to fix an unreasonably high norm which a workman working diligently and efficiently during the day cannot possibly reach and thereby deprive the workman of the minimum wage payable to him. [283 B-G]

Peoples Union for Democratic Rights & Other v. Union of India &. Others [1983]1 S.C.R. 456 followed.

PER PATHAK, J.

1. The workers employed in the construction of the Madanganj Harmara Road as a measure of relief is a famine stricken area are entitled to a minimum wage of Rs. 7 per day, and that wage cannot be reduced by reference to the Rajasthan Famine Relief Works Employees (Exemption and Labour Laws) Act 1964, because in so far as the provisions of s. 3 of that Act countenance a lesser wage they operate against Article 14 of the Constitution and are, therefore, void.[286 D-E]

2:1. 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. [286 C-D]

2:2 The circumstance 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 area affected by drought and scarcity conditions or come from elsehwere. The mere circumstance 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, he is not less entitled than the other to the totality of those rights nor liable to be distinguished from the other by the badge of his misfortune. [285 E-G]

2: 3. 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". Therefore, the argument that the wages are drawn from a fund too limited to provide for payment of a minimum wage to all is not justified. [286 B-C]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 6816 of 1981.

(Under Article 32 of the Constitution of India.)

Kapil Sibal for the Petitioner.
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B.D. Sharma for the Respondent.

The following judgments were delivered

BHAGWATI, J. The petitioner is the Director of a social action group called Social Work and Research Centre operating in and around Tilonia village in Ajmer district of the State of Rajasthan. The Social Work and Research Centre is duly registered society and since February 1972, it has been actively engaged in the work of upliftment of Scheduled Castes and Scheduled Tribes in different areas and particularly in and around Tilonia village. It operates through various groups and the present writ petition has been filed by the petitioner for the purpose of remedying gross violations of the Minimum Wages Act, 1948 which have been discovered by one such group. These violations, according to the petitioner, have been taking place in the following circumstances and they need to be redressed through judicial intervention. The Public Works Department of the State of Rajasthan is constructing Madanganj Harmara Road close to village Tilonia and according to the State Government, it is a part of famine relief work undertaken with a view to providing relief to persons affected by drought and scarcity conditions. The State Government in the Public Works Department has engaged a large number of workers for construction of this road and they include women belonging to Scheduled Castes. It is common ground that the minimum wage for a construction worker in Rajasthan is Rs. 7 per day and it was asserted on behalf of the petitioner and not disputed on behalf of the State Government that the Notification fixing the minimum wage of Rs. 7 per day does not specify any particular quantity of work to be turned out by the worker in order to be entitled to this minimum wage. Now the practice followed by the Public Works Department for engaging workers for the construction work is to issue an identity card to every resident in the famine affected area who registers himself with the Halka patwari and the identity card would show the number of members in the family of the card-holder including males, females and children. Every resident in the famine affected area would be entitled to be employed in the famine relief work undertaken by the State Government on production of the identity card. This way a large number of workers including women belonging to Scheduled Castes are engaged in the construction work of the Madanganj Harmara Road. The workers employed in this construction work are divided into gangs of 20 persons or multiple

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thereof and there is a separate muster roll for each such gang and the work done by it is measured every fortnight and payment is made by the Public Works Department to the Mate who is the leader of the gang according to the work turned out by such gang during each fortnight. The Public Work Department has fixed a certain norm of work to be turned out by each gang before the workmen belonging to such gang can claim the minimum wage of Rs. 7 per day with the result that if any particular gang turns out work according to the norm fixed by the Public Works Department the Mate would be paid such amount as would on distribution give a wage of Rs. 7/- per day to the workmen constituting such gang, but if less work is turned out by such gang, payment to be made to the mate of such gang would be proportionately reduced and in that event, the wage earned by each member of such gang would fall short of the minimum of Rs. 7 per day. The petitioner has stated in the writ petition that as a consequence of this practice followed by the Public Works Department workmen belonging to most of the gangs receive a

wage very much less than the minimum wage of Rs. 7 per day as illustrated by a few instances set out in Annexure I to the writ petition. The petitioner has also averred that even within the gang itself, deferential payments are made to the workmen without any visible principle or norm and it is not uncommon that a worker who has put in full day's work throughout the period of the fortnight, may get less than the minimum wage of Rs.7/- per day, while a worker who has put in much less work may get more than the proportionate wage due to him. This system of payment adopted by the Public Works Department created considerable discontent amongst the women workers belonging to Scheduled Castes who were engaged in this construction work and on 21st August 1981 about 200 to 300 such women workers approached the Social Work and Research Centre seeking advice as to what course of action should be adopted by them for the purpose of eliminating differential payments in wages and securing payment of minimum wage of Rs. 7 per day for each worker. Mrs. Aruna Roy, the Development Coordinator of the Social Work and Research Centre thereupon contacted Shri Atul Gupta, Asstt. Collector and both of them immediately proceeded to the site of the construction work. On their arrival at the site, an impromptu meeting took place where the women workers gave vent to their grievances which included inter alia complaint in regard to the "wide difference in respect of payments made by Mates to several gangs for the same category
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of work performed" and pointed out that "differentials in payments also existed between the women workers working in the same gang and performing the same category of work." Since these differential payments in wages were made by the Public Works Department to the gangs allegedly on the basis of the quantity of work turned out by each such gang and, according to the petitioner, there were even within the gang itself, differentials in payment of wages to the workers resulting in perpetuation of inequality, the petitioner in his capacity as Director of the Social Work and Research Centre filed the present writ petition challenging the system of payment of wages to the workers and seeking a writ of mandamus directing the State Government to "comply with the prescribed rates of minimum wages under the Minimum Wages Act, 1948 as applicable in the State of Rajasthan."

When the writ petition reached hearing before us, the State Government produced the Rajsthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964 (hereinafter referred to as the Exemption Act) and relying upon this statute, the State Government contended that since the construction work of Madangang Harmara Road was a famine relief work, the Minimum Wages Act, 1948 was not applicable to employees engaged on this construction work by reason of section 3 of this Act. The Exemption Act is a Rajasthan statute enacted on 7th September 1964 and it is deemed to have come into force with effect from 1st July 1963. Section 2 clause (b) of this Act defines "famine relief works" to mean "works already started or which may hereafter be started by the State Government to provide relief to persons affected by drought and scarcity conditions" and "Labour Law" is defined in section 2 clause (c) to mean "any of the enactments as in force in Rajasthan relating to Labour and specified in the Schedule".The Minimum Wages Act, 1948 is one of the enactments specified in the Schedule to the Exemption Act. Then section 3 of the Exemption Act proceeds to enact that "Notwithstanding.....any such law." Section 4 of the Exemption Act excludes the jurisdiction of courts and

provides that "no court shall take cognizance of any matter in respect of an employees of famine relief works under any Labour Law", which includes the Minimum Wages Act 1948. Now if the Exemption Act were a valid piece of legislation, it is obvious that no workman employed in a famine relief work would be entitled to complain that he is paid less than the minimum wage because the applicability of the Minimum Wages Act, 1948 would be
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excluded by reason of section 3 of the Exemption Act and the women workers engaged in the construction work of Madanganj Harmara Road would have to be content with whatever wage is paid to them even though it be less than the minimum wage of Rs. 7 per day and their only complaint which would then survive would be that there is discrimination by reason of differential payment of wages to workmen doing the same quantity of work. The petitioner therefore sought leave to amend the writ petition by including a challenge to the constitutional validity of the Exemption Act and on such leave being granted, the petitioner filed an amended writ petition in this Court. The principal grounds on which the constitutionality of the Exemption Act was challenged were based on Articles 14 and 23 of the Constitution. I am, for reasons which I shall presently state, of the view that the challenge under Article 23 is well founded and it is therefore not necessary to investigate the facts relating to the violation of Article 14 and I accordingly propose to confine my judgment only to a consideration of the attack based on Article 23. If the Exemption Act is unconstitutional on the ground that it violates Article 23, it would be out of the way so far as the claim of the workmen for the minimum wage of Rs. 7 per day is concerned and the only question then would be whether the workmen are entitled to the minimum wage of Rs. 7 per day in any event or any deduction can be made from such minimum wage on the ground that the workmen have not turned out work according to the norm set down by the Public Works Department.

This Court had occasion to consider the true meaning and effect of Article 23 in a judgment given on 18th September 1982 in writ petition No. 8143 of 1981-Peoples Union for Democratic Rights and Ors. v. Union of India and Ors. (1) The Court pointed out that the constitution makers, when they set out to frame the Constitution, found that the practice of 'forced labour' constituted an ugly and shameful feature of our national life which cried for urgent attention and with a view to obliterating and wiping out of existence this revolting practice which was a relic of a feudal exploitative society totally incompatible with new egalitarian socio-economic order which "We the people of India" were determined to build, they enacted Article 23 in the Chapter on Fundamental Rights. This Article, said the Court, is intended to eradicate the pernicious
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practice of 'forced labour' and to wipe it out altogether from the national scene and it is therefore not limited in its application against the State but it is also enforceable against any other person indulging in such practice. It is designed to protect the individual not only against the state but also against other private citizens. The Court observed that the expression "other similar forms of forced labour" in Article 23 is of the widest amplitude and on its, true interpretation it covers every possible form of forced labour begar or otherwise and it makes no difference whether the person forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour

supplied by a person would be hit by this Article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion and the same would be the position even if forced labour supplied by a person has its origin in a contract of service. The Court then considered whether there would be any breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it and observed:

"It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under the law to receive. What Article 23 prohibits is 'forced labour' that is labour or service which a person is forced to provide and 'force' which would make such labour or service 'forced labour' may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be forced exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force'and if labour or service is compelled as a result of such

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'force',it would be 'forced labour'. Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly 'forced labour'. There is no reason why the word 'forced' should be read in a narrow and restricted manner so as to be confined only to physical or legal 'force' particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socioeconomic justice for all and everyone shall have the right to work, to education and to adequate means of livelihood. The constitution makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the constitution must be interpreted in a manner which would advance the socio-economic

objective of the Constitution. It is not unoften that in a capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word 'force' must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is 'forced

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labour' because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view 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 scope and ambit of the words 'forced labour' under Article 23, Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be 'forced labour' and the breach of Article 23 is remedied."

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 Article 23 may be abated.

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 workman 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

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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 laws, the potential 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 relies work it is no doubt true that it does so in order to provide relief to persons affected by drought and scarcity conditions but none the less 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 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 wear. It is difficult to appreciate why the State should require the affected 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 which 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 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 carring out such work, for example, a bridge or a road, which has utilised 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 minimum wage to the affected persons. The State cannot be permitted to take advantage of the

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helpless condition of the affected persons and extract 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 extract 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.

We must then proceed to consider whether on the facts the labour provided by the workers employed in the construction work of Madanganj Harmara Road could be said to be 'forced labour on the ground that they received wage less than Rs.7 per day. Now it was not disputed on behalf of the respondent that the wage paid to a gang of workmen depended upon the work turned out by a particular gang and if it was less than the norm fixed by the Public Works Department, the wage earned by each member of the gang would fall short of the minimum wage of Rs. 7 per day. But the argument was that this did not involve any breach of Article 23 because if any particular gang turned out work according to the norm fixed by the Public Works Department, the amount paid to the Mate of the gang was enough to give to each workman, on distribution, the minimum wage of Rs. 7 per day, and it was only if less work was turned out by the gang that the workmen would receive less than the minimum wage of Rs. 7 per day and this result would ensue not on account of any default on the part of the respondent but entirely because of the lethargy of the workmen constituting the gang. The workmen, said the respondent, could always earn the minimum wage of Rs. 7 per day by turning out work according to the norm fixed by the Public Works Department but if they did not do so and in consequence received less than the minimum
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wage of Rs. 7 per day the respondent could not be held responsible for breach of the fundamental right conferred under article 23. This argument does, at first blush, appear to be attractive, but a closer scrutiny will reveal that it is unfounded. If we look at the Notification issued under the Minimum Wages Act 1948 fixing the minimum wage of Rs. 7 per day for workmen employed in the construction work, it will be obvious that the minimum wage is fixed per day and not with reference to any particular quantity of work turned out by the workman during the day. Nor does the Notification empower the employer to fix any particular norm of work to be carried out by the workman with reference to which the minimum wage shall be paid by the employer. The minimum wage is not fixed on piece rate basis, so that a particular minimum wage would be payable only if a certain amount of work is turned out by the workman and if he turns out less work, then the minimum wage payable would be proportionately reduced. Here the minimum wage is fixed at Rs. 7 per day and that is the minimum wage which must be paid by the employer to the workman so long as the workman works throughout the working hours of the day for which he can lawfully be required to work. The employer may fix any norm he thinks fit specifying the quantity of work which must he turned out by the workman during the day, but if the workman does not turn out work in conformity with such norm, the employer cannot pay him anything less than the minimum wage. If the norm fixed by the employer is reasonable and the workman does not turn out work according to such norm, disciplinary action may be taken against the workman and in a given case he may ever be liable to be thrown out of employment, but he cannot be paid less than the minimum wage, unless, of course, the minimum wage fixed by the Notification under the Minimum Wages Act 1948 is co-related with the quantity of work to be turned out by the workman. Otherwise, it would be the easiest thing for the employer to fix an unreasonably high norm which a workman working diligently and efficiently during the day cannot possibly reach and thereby deprive the workman of the minimum wage payable to him. There can therefore be no doubt that in the present case the respondent was not entitled to pay less than the minimum

wage to the workman belonging to a gang on the ground that such gang turned out work less than the norm fixed by the Public Works Department.

I must therefore hold that each workman employed in the construction work of Madanganj Harmara Road was entitled to
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receive the minimum wage of Rs. 7 per day from the respondent and the respondent was not entitled to reduce the wage payable to the workman below the minimum of Rs. 7 per day on the ground that the gang of which the workman was a member had turned out work less than the norm fixed by the Public Works Department. I would accordingly direct the respondent to pay to each workman employed in the construction work of Madanganj Harmara Road the difference between the minimum wage of Rs. 7 per day and the actual wage paid during the period that the workman provided labour on this construction work. I do not think it should be difficult for the State to carry out this direction since the workman employed on this construction work are all residents of the surrounding area and the muster roll maintained by the Public Works Department would give the particulars of such workmen. I would direct that the arrears of difference between the minimum wage of Rs. 7 per day and the actual wage disbursed shall be paid by the respondent to the workmen within two months from today and a report to that effect shall be submitted by the respondent to this Court on or before 30th April, 1983 setting out particulars of the payments made and the names of the workmen to whom such payments are made. I would also direct that the State shall hereafter pay to each workman employed in any famine relief work including the construction work of Madanganj Harmara Road, minimum wage for the labour provided in such construction work and no deduction in the minimum wage shall be made on the ground that the work turned out by such workman is less than the norm fixed by the Public Works Department, unless and until a notification is issued under the Minimum Wages Act 1948 co-relating the minimum wage with a particular quantity of work to be turned out by the workman.

Since the petitioners have succeeded in the writ petition, the respondent will pay the costs of the writ petition to the petitioners.

PATHAK J. I agree with the order proposed by my learned brother. But while he has found substance in the contention that the case is one of "forced labour" within the meaning of Art. 23 of the Constitution, I prefer to rest my decision on the ground that there is a breach of Art. 14 of the Constitution.

It appears that in order to provide relief to persons affected by drought and scarcity conditions in the area, employment has been offered in the construction of the Madanganj Harmara Road
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Payment of wages for the day is determined by the Public Works Department on the basis of a standard norm of work, the wage for completing the daily standard norm being fixed at Rs. 7. It may be noted that the minimum wage prescribed under the Minimum Wages Act, 1948 in respect of such work is also Rs. 7 per day. The Public Works Department has declared that if the quantum of work turned out during the day is less than the fixed standard norm the workers will be paid a mere proportionate amount of the wage of Rs. 7 per day, that is to say they will be entitled to a reduced wage only. Sanction for not adhering to the prescribed minimum wage of Rs. 7 per day and making payment of a lesser wage has been

drawn from s. 3 of the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964, which in provides, inter alia, that the Minimum Wages Act, 1948 will not apply to famine relief works or the employees thereof. The Minimum Wages Act being thus out of the way, it is open to the Public Works Department to prescribe whatever wages norms it considers appropriate for payment to persons, employed by way of relief, who are affected by drought and scarcity conditions. It is apparent that in the matter of wages such persons have been treated as a class different from that to which workers from other areas belong. While the latter are entitled under the Minimum Wages Act to the prescribed minimum wage, the former must be content with a lesser wage if the work turned out is less than the norm. To my mind, there is no justification for such discrimination.

The circumstance 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 or come from elsewhere. The mere circumstance that a worker belongs to an area effected 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 Art,

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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-bodies inhabitants of the area as a 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.

In my judgment, the workers employed in the construction of the Madanganj Harmara Road as a measure of relief in a famine stricken area are entitled to a minimum wage of Rs. 7 per day, and that wage cannot be reduced by reference to the Rajasthan Famine Relief Works Employees (Exception from Labour Laws) Act, 1964 because in so far as the provisions of s. 3 OF that Act countenance a lesser wage they operate against Art 14 of the Constitution and are, therefore, void.

S.R. Petition allowed.

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