

(2012) 10 DEL CK 0342

In the Delhi High Court

Case No : Writ Petition (C) 5944 of 2012 and CM. No. 12240-41 of 2012, CAV 961 of 2012 and W.P. (C) 6059 of 2012 and CM. No. 16373-74 of 2012

Sulabh International Social Service Organization APPELLANT

Vs

Regional Labour Commissioner (Central) and Others
 RESPONDENT
All India Institute of Medical Sciences Vs Vidya Nand Sharma
and Another

Date of Decision : 18-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 23
Contract Labour (Regulation and Abolition) Act, 1970 — Section 23, 24
Factories Act, 1948 — Section 7
Industrial Disputes Act, 1947 — Section 2(b), 2(e), 2(g), 2(i), 2(j)
Minimum Wages Act, 1948 — Section 2, 2(e), 2(g), 20, 20(2)

Citation : (2012) 10 AD 40 : (2013) 198 DLT 13

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Anurag Dubey, Mr. D.P. Pandey and Mr. Meenesh Dubey, in W.P. C 5944/2012 and CM. No. 12240-41/2012, CAV 961/2012 and Mr. Rajat Katyal and Mr. Sanjeev Joshi, for the Appellant; Sweety Manchanda, CGSC for Respondent No. 1, Mr. Vidya Nand Sharma, R2, Mr. Rajat Katyal and Mr. Sanjeev Joshi for R3 in W.P. (C) 5944/2012 and CM. No. 12240-41/2012, CAV 961/2012 and Respondent No. 1 in Person W.P. (C) 6059/2012 and CM. No. 16373-74/2012, Mr. Anurag Dubey, D.P. Pandey and Mr. Meenesh Dubey for R2, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.

CAV. No. 961/2012

Since the learned counsel has put appearance on behalf of the caveator, the caveat stands discharged.

CM. No. 12241/2012 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) Nos. 5944/2012 & 6059-6068/2012

1. The Sulabh International Social Service Organization, and the All India Institute of Medical Sciences, New Delhi, by way of the present petitions, are challenging the sustainability of the order dated 25.06.2012 passed by the Regional Labor Commissioner. Since all the petitions have arisen from the common order, therefore, this Court has decided to dispose of all the petitions by this common judgment. The facts of the Writ Petition (Civil) No. 5944/2012 would be discussed inter alia being the lead matter. The petitioner Sulabh International Social Service Organization, and respondent No. 3, Director All India Institutes of Medical Sciences, New Delhi, by way of different writ petitions, are challenging the sustainability of the order dated 25.06.2012 passed by the Regional Labor Commissioner. The Regional Labor Commissioner, being the Authority under the Minimum Wages Act, allowed the claim petition that has been filed by the respondent No. 2 u/s 20(2) of the Act. The Authority also held that the petitioner and the respondent No. 3 both are severally and jointly responsible for the payment of the claim.

2. Facts of this case are that the petitioner and respondent No. 3 entered into an agreement for deployment of the respondent No. 2 for employment of cleaning and sweeping at the premises of All India Institute of Medical Science, as such respondent No. 2 worked during the period from 25.01.2008 to 31.03.2010. Thereafter, the respondent No. 2 filed a writ petition before this Court for the payment of minimum wages. The same was disposed of by the order dated 17.02.2010, whereby the respondent No. 2 was directed to approach the appropriate Forum. Accordingly, the respondent No. 2 preferred a claim application before the Authority under the Minimum Wages Act; same has been allowed by the impugned order.

3. The moot question for the consideration in these writ petitions is that whether the alleged volunteers, deployed through the petitioner, namely Sulabh International Organization, are entitled to get the minimum wages under the Minimum Wages Act.

4. The petitioner Sulabh International has relied upon the judgment delivered in Writ Petition No. 3408/1989 by the High Court of Patna, wherein the said Court observed as under:

The Petitioner establishment has set up lavatories and bathrooms, the construction being of very simple in nature for the use of the public which need not be cleaned by the scavenger nor does it require carrying of any night soil on" anyone"s head. Further, the jobless scavengers or other persons rendered without employment are now being imparted vocational training in centers which may help them to find jobs. For this purpose it has a large number of volunteers

who are paid small sums of money as pocket money for their pocket expenses. It is true that in every case of industry, the element of profit and loss need not be there yet as I read the aforesaid decision of the Supreme Court, the definition cannot be extended to a purely voluntary organization like the Petitioner establishment which is working for public good and in the interest of the weaker Section of the society.

5. Adopting the observation made in the above judgment, Mr. K.T.S. Tulsi, learned Senior Advocate appearing on behalf of the petitioner contends that the impugned order is illegal, since there is no relationship of employer and employee which is a prerequisite for the application of the Minimum Wages Act. He pointed out that the object of the establishment is to liberate the scavengers from the sub human occupation; and is a voluntary philanthropic organization carrying out its activities on "no profit and no loss basis". Secondly, the petitioner has relied upon a circular dated 03.04.2001 issued by Jt. Labor Commissioner, New Delhi wherein the application of Labor Laws has been excluded qua petitioner establishment. The said circular is reproduced as under:

GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI

LABOUR DEPARTMENT

15-RAJPUR ROAD: DELHI-110054

No. 1: 1291

Dated: 03.04.2001

CIRCULAR

Hony. Chairman, M/S Sulabh International Social Service Organisation, RZ-83, Mahavir Enclave Palam, Dabri Marg, New Delhi-110045, has applied that the provisions of labour laws are not applicable on their organization on the basis of the following grounds:-

- a) That it is a Society registered under the Societies Registration Act, 1860.
- b) That it is voluntary philanthropic organization.
- c) That it is carrying out its activities on "No Profit and No Loss" basis.
- d) That it was considered as not an "Industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947 by the Hon"ble High Court of Patna and the same was accepted by the Hon"ble Supreme Court of India.
- e) That the Government of Orissa, Karnataka and Andhra Pradesh considering that it was neither an "Industry" nor a "Commercial Establishment" issued instructions to their officers not to enforce the labour laws and keep the above said judgments in view, while dealing with the said organization.
- f) That that Government of Bihar also accorded exemption to it, from

applicability of the provisions of the "Shop & Establishment Act", as applicable in their State.

After the examination of above application, it appears that the above said organization is a non-profit voluntary social organization and is carrying out its activities on "No Profit and No loss" basis for the welfare of the humanity and as such is neither an industry nor an Establishment. Hence, all the subordinate offices in different States have been instructed to keep the above in view, while dealing with the above said organization for the purpose of enforcement of labour laws.

Hon"ble High Court of Patna in the matter of M/s Sulabh International V/s. State of Bihar & Ors. held vide their judgment dated 09.02.1990 that the Petitioner management/organization, i.e., M/s Sulabh International Social Service Organization is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. Hon"ble Supreme Court of India vide order dated 17.02.1994 and 20.03.1996 dismissed Civil Appeal and Review Petition in the matter of "Bhartiya Sulabh Sauchalaya Karamchari Sang vs. Sulabh International & Ors", thereby upholding the same view as decided by the Hon"ble High Court of Patna.

The Govt. of Orissa, Karnataka, Andhra Pradesh & Govt. of Bihar issued circulars/ instructions to their subordinate officers to enforce the labour laws in view of above said judgments. Copies of the above said judgments and relevant circulars as issued by different State Governments are enclosed for ready reference.

The Metropolitan Magistrate, Delhi has also decided on 22.03.1997 that the provisions of Minimum Wages Act are not applicable to the said Organization. Copy of the said judgment is also enclosed. Hence, in such circumstances all the Branch Officers of the Department while dealing with the above said Organization are hereby instructed to keep the above facts and judgments in view for the purpose of enforcement of labour laws and for compliance of the above said judgments in letter and spirit.

(V. KUMAR)

Jt. Labour Commissioner

6. The respondent No. 3 Director, All India Institute of Medical Sciences is the petitioner in the Writ Petitions No. 6059/2012, 6060/2012, 6061/2012, 6062/2012, 6063/2012, 6064/2012, 6065/2012, 6066/2012, 6067/2012 & 6068/2012 challenging the same on the preposition that the relationship between the petitioner herein and the respondent No. 2 is not established as "employer" and "employee" as is defined in the Minimum Wages Act. Therefore, the respondent No. 3 contends that the application of the provisions of the Minimum Wages Act would not arise; and is not liable under the Act to pay the minimum wages to the respondent No. 2. The respondent No. 3 also sought to the notice that the non existence of relationship as "employee and employer"

between the petitioner and the respondent No. 2 would render that the impugned order is void ab initio.

7. The Authority under the Act has taken note of the pleadings and framed the following issues, namely,

(i) Whether the Minimum Wages Act, 1948 is applicable only to "industry", "establishment" and "enterprise", and not to voluntary social service organization of charitable and philanthropic nature.

(ii) Whether AIIMS or Sulabh International should be deemed to be the employer under the Act having responsibility to pay minimum wages.

(iii) Whether the persons associated with Sulabh International are "employees" within the meaning under the Act.

(iv) Whether exemption of employer from liability in certain cases u/s 23 applies to claim cases.

(v) Whether the Hon'ble Patna High Court's order in CWJC No. 3408 of 1989 has a bearing on this case.

On the issues mentioned above, the learned Authority held that the petitioner and the respondent No. 3 are covered under the definition of "employer" as defined in Section 2(e) of the Act since the respondent No. 2 was deployed or employed by the respondent No. 3 through the petitioner. Therefore, the Authority has reached to the conclusion that the petitioner and the respondent No. 3 are employers for the purpose of determining the liability under the Minimum Wages Act. Moreover, it also considered the fact that the duty which was performed by the respondent No. 2 was the scheduled employment which is defined in Section 2(g) of the Minimum Wages Act and the Central Government has fixed minimum rate of wages vide notification No. S.O. 1994(E) dated 7.08.2008.

8. As regards the contentions based on the judgment of Patna High Court in Writ Petition No. 3408/1989, the Authority under the Minimum Wages Act has pointed out that the said judgment was not applicable in the issue of payment of Minimum Wages Act. It was also differentiated on the aspect of the issues, as in the above said judgment the issue was the construction of "latrines and urinals" by the Petitioner for the use of the public which was held to be not "industry" whereas, the issue involved in the claim application was sweeping and cleaning in the establishment of the respondent No. 3 by the petitioner in the capacity as a contractor or an outsourced agency. Accordingly, the Authority under the Act allowed the claim application that has been filed by the respondent No. 2.

9. It is important to note that the Authority has come to a specific conclusion that the Patna High Court judgment is not applicable in the present case, wherein the above said circular of labor department is also based on the above said judgment. Importantly, the petitioner also strongly relies upon the dictum of W.P.

No. 3408/1989 of Patna High Court. In this context, it may be relevant to reproduce the relevant paragraphs of the said judgment as under:

6. Concluding, therefore, I have no hesitation in holding, firstly, that the so-called union is entirely spurious. It has no sanctity of law nor does it represent anyone who can be treated to be a workman of the Petitioner establishment. In fact, it is a self-styled union of certain persons whose motive is not only laudable but entirely mala fide. I have also no hesitation in holding that this was a case, primarily, in which no reference should have been made merely on the basis of a solitary material that is the notification recognizing the Union. In the light of the subsequent notification as contained in Annexure 4, the authorities should have been well advised to examine, before making a reference, whether the Union making the demand was a union sanctified by law and really represented the workmen of the petitioner-establishment which situation was subsequently brought in to light resulting in the issuance of Annexure 4. Even if, I were to assess me that the State government was right in making the reference of registration alone, once it has come to light that the Union whose President has made the demand, is not a Union created in accordance with law and it does not consist of the persons who are the workmen of the Petitioner establishment, then also the reference and the consequential proceeding cannot be allowed to stand. I have, therefore, no hesitation in quashing the entire reference thus rendering the consequential award a nullity.

7. Having held as above, the second point whether the petitioner- establishment is an industry or not become entirely academic because even if it was held to be an industry, the initiation of the proceeding itself being bad and it being not established that the demand has been made by or on behalf of an for a workman of the petitioner-establishment, no award could be made against the petitioner-establishment and the demand made in annexure 3 could not be entertained. I, however, would like to express my opinion succinctly in regard to this point also. Undoubtedly, the law has completely been crystallized by the decision of the Supreme Court reported in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, relating to types of establishments that come within the definition set out in Section 2(j) of the Act. The definition in Section 2(j) of the Act of the word "Industry" has been given a wide meaning embracing within its ambit a large number of organizations which would come within the nature of the Institution set out but is essential in every case where the question is raised whether an establishment is an industry within the meaning of Section 2(j) of the Act that certain relevant factual data have to be found. If an establishment is undoubtedly an industry established for the purpose of business, trade, undertaking manufacture or calling of employers and it includes the calling, services, employment, handicraft, or industrial occupation or avocation of workmen, that being an establishment of undoubted has in regard to its character of being an industry then much ado is not required for applying the provisions of the Industrial Disputes Act in all its aspect. The problem arises only when an establishment by the very nature of its creation, extent and its purpose

for which it was established cannot ex facie be described as an Industry then it can only be brought in to the ambit of the definition of Section 2(J) of the Act on the basis of ascertainable facts brought about by detailed inquiry in an award proceeding or at the level of the State Government making the reference. The onus would lie on the so called workmen to bring on the record, cogent and relevant materials to show that not only they are the members of such establishment but also that the organization is in fact functioning in the manner which brings it within the definition of "industry". In the instant case, apart from the bye laws and the audit report of the management and four witnesses examined by the workmen, nothing has been brought on the record to show the manner in which really the Petitioner establishment is functioning. In fact, the Petitioner establishment claim to be a voluntary organization of social workers who have gathered together to work on a project by which apart from others the harizans could be relieved from performing the inhuman duties of carrying night soil on their heads. The other purposes for the establishment of the Petitioner - organization have been set out in the aims and objects and appear primarily to render certain specific benefits for the member of the public in various spheres of everyday life. For these purposes, the Petitioner establishment has been set up which is technically described as "Sulabh Sauchalaya". The Petitioner establishment has set up lavatories and bathrooms, the construction being of very simple in nature for the use of the public which need not be cleaned by the scavenger nor does it require carrying of any night soil on anyone's head. Further, the jobless scavengers or other persons rendered without employment are now being imparted vocational training in centers which may help them to find jobs. For this purpose it has a large number of volunteers who are paid small sums of money as pocket money for their pocket expenses. It is true that in every case of industry, the element of profit and loss need not be there yet as I read the aforesaid decision of the Supreme Court, the definition cannot be extended to a purely voluntary organization like the Petitioner establishment which is working for public good and in the interest of the weaker Section of the society unless relevant facts are proved. In my view, it is incorrect to say on the basis of the aims and objects of the organization that these cannot be accomplished by voluntary workers. The aims and objects of any establishment are always extensive and goes even beyond the actual work that the establishment undertakes. The ipse dixit of four workmen all of whom claim to be no longer in service of the establishment and the aim and objects can hardly justify the inference that the establishment is an industry. Much more than this was needed to be proved.

8. I have, therefore, no hesitation in holding that there was no sufficient evidence on record to hold that the petitioner-establishment is an industry within the meaning of Section 2(J) of the Act and the decisions of the Supreme Court.

10. The reading of the foregoing paragraphs in the said judgment makes it clear that the issue was not the application of the payment of Minimum Wages Act; but the Industrial Disputes Act. Two issues were involved, primarily the scope of

the definition of industrial dispute as defined in Section 2(k) of the Industrial Disputes Act, and the Court ruled that the dispute which was referred was not an industrial dispute since; it was not referred by the workmen in the establishment. Secondly, on the issue whether the petitioner herein, namely, Sulabh International is an industry or not, the Patna High Court held that, being a purely voluntary organization, working for the public good and for the benefit of weaker Sections in the society the definition of "industry" could not extent to the petitioner.

11. It is legally fundamental to note that the reasoning of the judgment flows from the provisions of the Industrial Disputes Act; not from the Minimum Wages Act. Significantly, the existence of the petitioner as a voluntary organization is different from as compared to deployment of persons as volunteers through the petitioner. In the latter category the petitioner stands in the different footing as compared to the former; that is as an employer. Therefore, the learned Authority under the Minimum Wages Act opined that the said judgment has no bearing in the issue involved.

12. One of the most important aspects for consideration is that the respondent No. 2 was serving the petitioner as a volunteer; not as an employee. Therefore, the contention was that the existence of "employee- employer" relationship is a sine quo non for the application of the Minimum Wages Act. The root of this proposition was based on the agreement executed between the petitioner and respondent No. 3 as exhibited as annexure P-3 in Writ Petition No.-6059/2012. The first party in the agreement was the respondent No. 3 whereas the petitioner was second party. For the proper evaluation of the said aspect, it is convenient to reproduce the relevant terms and conditions in the said agreement as under:

The agreement between First Party and Second Party witnesseth as per terms and conditions set forth hereunder.

1. The Second Party will have to provide adequate voluntary social workers for cleaning. The timing of the deployment of the voluntary social workers would be according to the needs of the Dr. BRAIRCH, AIIMS, Ansari Nagar.

2. No refuse/garbage will be dumped by the voluntary social workers in the open trenches, hedge.

3. Removal of the dead body of Dogs/Cats/Rats/Monkeys etc. within two hours after receiving the complaint without fail.

4. Second Party shall provide the House Keeping services on all calendar days Sundays including Gazetted Holidays i.e. the timing of the deployment of the staff would be according to the needs of the Dr. BRAIRCH, AIIMS, Ansari Nagar.

5. The Second Party shall provide 10 Nos. of Sulabh voluntary social workers and one supervisor to cope with work load of sanitation throughout the period of agreement. In case, the number of Sulabh voluntary social workers engaged, is found less while inspection by any Executive Officer of the Center, proportionate

charges will be deducted after discussion with Second Party the as per charges specified in Annexure-I. The Executive Officer of this Contract shall be Asstt. Admn. Officer AIIMS (as nominee of Dr. BRAIRCH, AIIMS, Ansari Nagar).

6. The Second Party shall maintain the complaint book for different areas, which will be made available to the supervisory staff. The Second Party will use the manpower only at the places wherever authorized.

7. The Second Party shall provide two sets of Apron including Dr. BRAIRCH, AIIMS to its voluntary social workers and ensure that they shall wear it while on duty and maintain them clean.

8. That the voluntary social workers deputed by the Second Party shall not be below the age of 18 years.

9. The voluntary social workers deputed by the Second Party should not interfere with the duties of workers of the First Party.

10. The Second Party shall ensure and guarantee the conduct, behavior and honest of the voluntary social workers deputed by them. In case of any misconduct or any other damage or theft of the property of the First Party, the Second Party shall be responsible for all such losses or damages after it is established by holding proper enquiry that the voluntary social workers deputed by the Second Party are responsible for these.

11. The voluntary social workers engaged by the Second Party shall be of good character and sound health. And should be medically fit and this may be checked by Senior Residents Dr. BRAIRCH, AIIMS, Ansari Nagar.

12. In the event of any loss to the Dr. BRAIRCH, AIIMS on account of negligence of voluntary social workers, Second Party shall make good the loss sustained by the Dr. BRAIRCH, AIIMS, Ansari Nagar either by the replacement or on payment of adequate compensation which will be decided by the Joint Committee of both the parties after holding necessary enquiry.

13. The First Party shall not be responsible for the payment of honorarium to the voluntary social workers engaged by the Second Party and shall ensure timely payment to them.

14. The Second Party shall provide voluntary social workers as per approved terms and conditions. The same shall be monitored by Sr. Sanitation Officer/ Representative of the Dr. BRAIRCH, AIIMS, Ansari Nagar and if the strength is found less, proportionate recovery will be made.

15. The Second Party will have to produce the monthly bill along with the certificate of satisfactory performance from the Sr. Sanitation Officer/Sanitation Inspector to the submitted on the 8th of every calendar month for verification by the Executive Officer and same shall be paid within 10 days by the First Party.

16. Second Party shall not appoint any Sub-contractor/Agent to carry out any

obligations under the awarded period of work.

17. The First Party shall provide the quality cleaning material to the Second Party as per requirement at its cost, but the Second Party shall make this demand in advance so that work does not suffer.

18. The Second Party Dr. BRAIRCH, AIIMS, Ansari Nagar shall not be responsible for any compensation which may be required to be paid to the voluntary social workers of the Second Party consequent upon any injury/mishap.

19. The Second Party shall be responsible to the Head of the Dr. BRAIRCH, AIIMS, Ansari Nagar or any office authorized by him/her for execution of day to day work of the campus.

The Security instructions/orders issued by the Dr. BRAIRCH, AIIMS, Ansari Nagar from time to time shall also be followed by the Second Party and voluntary social workers.

20. The First Party reserves the rights to award the area for cleaning, dusting etc. out of various buildings/locations and can any time withdraw some areas or add some additional areas from the contract without assigning any reason after giving one month's notice.

21. The contract can be terminated by the First Party Dr. BRAIRCH, AIIMS, Ansari Nagar by giving one month's notice. The Second Party can also terminate the contract by giving one month's notice.

22. No voluntary social workers of the Second Party shall stay in the campus beyond prescribed duty hours. While going out of the Dr. BRAIRCH, AIIMS, Ansari Nagar, Second Party will go through the check by security at various exits of the Dr. BRAIRCH, AIIMS, Ansari Nagar.

23. It is further agreed that there would be absolutely no scope of escalation payable by the First Party on account of increase in honorarium of voluntary social workers unless mutually agreed to.

24. It is agreed that in case the Second Party fails to perform any of the terms and conditions of this agreement or commits any breach in contract, the First Party may cancel the contract after giving reasonable opportunity and if found unsatisfactory then by giving one month notice in writing to the Second Party.

25. That the Second Party shall issue the identity card to each of the voluntary social worker engaged as associate member for entry into the work place of AIIMS premises.

26. That in case of any dispute between the parties aforesaid in respect of this agreement, the matter shall be referred to a mutually agreed upon Arbitrator by the First Party and Hony., Asstt. Director of the Second Party and the decision of the Arbitrator so appointed shall be final and binding on both the parties.

27. The rates terms and conditions as per annexure I, II & III to this agreement

will form an integral part of this agreement.

13. Indisputably, the above said contract establishes the fact that the respondent No. 2 was deployed in the premises of respondent No. 3 for the employment of cleaning through the petitioner. It is true that the contract entered between the parties refers the respondent No. 2 as "voluntary social worker". Despite of this reference as a voluntary social worker, the respondent No. 2 has filed claim petition under the Minimum Wages Act; and therefore, the Authority under the Act, held that the respondent No. 2 is not a volunteer.

14. Moreover, it is legally significant to note and examine the nature and scope of the above contract in the light of observations made by the Supreme Court in People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, . The relevant paragraph is reproduced as under

20. Now the next question that arises for consideration is whether there is 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. 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 wage 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 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 force 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 "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 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 rigor 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 socio-economic justice for all and every one 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 often that in capitalist society economic circumstance exerts 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 constructed to include not only physical or legal force but also force arising from the compulsion of economic circumstance 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 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. It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under Article 23.

15. Article 23 of the Constitution enacts a very important fundamental right in the following terms:

Article 23 : Prohibition of traffic in human beings and forced labour-

(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this Article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any

of them.

16. The challenge herein is not about the enforceability of the said contract; but the nature and scope of the same is to be examined in the light of Article 23 of the Constitution, with the findings as regards the different forms of forced labour as held in Peoples Union for Democratic Rights and Ors vs. Union of India (supra) for culling out the stand of the respondent No. 3 and the petitioner. In the light of the above, the deployment of respondent No. as a social worker is a new method of forced labour in the society, which needs to be curbed. The reading of the terms and conditions of the said contract in terms with Article 23 would establish the fact that, the respondent No. 2 was working as an "employee" not as a "volunteer"

17. It is also pertinent to examine the said contract with the provisions of the Minimum Wages Act.

18. Section 25 of the Minimum Wages Act reads as follows;

25. Contracting out.- Any contract or agreement, whether made before or after the commencement of this Act, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act.

19. Therefore, the contract entered between the petitioner and the respondent No. 3, would not disentitle the claim of the respondent No. 2 as an employee for minimum wages under the Minimum Wages Act.

20. This Court in judgment delivered on 24.02.2010 in Writ Petition No. 3785/2007 held as under:

16 The object and policy of the Legislature in enacting the Minimum Wages Act is to prevent exploitation of the workers and, for that purpose, it aims at fixation of minimum wages which the employer must pay. The Legislature undoubtedly intended to apply the Act to those industries or localities in which by reason of causes such as unorganized labour or absence of machinery for regulation of wages, the wages paid to workers were, in the light of the general level of wages, and subsistence level, inadequate. Conditions of labor vary in different industries and from locality to locality, and the expediency of fixing minimum wages, and threats thereof depends largely upon diverse factors which in their very nature are variable and can properly be ascertained by the Government which is in charge of the administration of the State. It is to carry out effectively the purpose of this enactment that power has been given to the appropriate Government to decide, with reference to local conditions, whether it is desirable that minimum wages should be fixed in regard to any scheduled trade or industry, in any locality, and if it be deemed expedient to do so, the rates at which the wages should be fixed in respect of that industry in the locality

21. In order to protect the interest of the employees, the scope under the

Minimum Wages Act is in wider perspective than the Industrial Disputes Act. The Minimum Wages Act "Section 2 defines as follows;

(e) "employer" means any person who employs whether directly or through another person or whether on behalf of himself or any other person one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act and includes except in sub-Section (3) of Section 26

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person named under clause (f) of sub-Section (1) of Section 7 of the Factories Act 1948 (63 of 1948) as manager of the factory;

(ii) in any scheduled employment under the control of any government in India in respect of which minimum rates of wages have been fixed under this Act the person or authority appointed by such government for the supervision and control of employees or where no person or authority is so appointed the head of the department;

(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act the persons appointed by such authority for the supervision and control of employees or where no person is so appointed the chief executive officer of the local authority;

(iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person responsible to the owner for the supervision and control of the employees or for the payment of wages;

22. Whereas the Industrial Disputes Acts, Section 2(g) defines employer:

(g) "Employer" means--

(i) in relation to an industry carried on by or under the authority of any department of 3*[the Central Government or a State Government], the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;

23. It is important to note that the definition of employer in the Minimum Wages Act prescribes that "any person who employees" falls under the category of employer wherein the definition of the employer in the Industrial Disputes Act is solely based on the definition of industry. Therefore, both the petitioner and the respondent No. 3 qualifies the test to be called as employer as per the provisions of Minimum Wages Act. In the light of the above discussions, the relationship of the petitioner and respondent No. 3 with respondent No. 2 is established as employer and employee. Respondent No. 2 is entitled to get the minimum wages

as per the scheme of the Constitution of India as well as the object of the Minimum Wages Act, 1948. Accordingly, interference under Articles 226 and 227 of the Constitution of India is not warranted.

24. Mr. Tulsi, learned Senior Advocate has further submitted that since there is no relationship of employer and employee and the petitioner being the voluntary organization, therefore, Section 2 (j) of the Industrial Disputes Act, 1947 cannot be applied on such organization.

25. He has relied upon a case of Rattiram and Others Vs. State of Madhya Pradesh, (2012) 4 SCC 516 , wherein while relying upon the case of Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., , the Supreme Court has held that a pronouncement of law by a Division Bench or a smaller number of Judges, and in order that such decision would be binding. It has been held as under:-

26. In Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., , the Constitution Bench, speaking through R.S. Pathak, CJ, has held thus:- (SCC p. 778, para 28)

"28. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court."

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28. In Chandra Prakash v. State of U.P., (2002) 10 SCC 710 : 2003 SCC (L&S) 808, a subsequent Constitution Bench reiterated the view that had already been stated in Raghubir Singh (supra).

29. Thus viewed, Bhooraji (supra) was a binding precedent, and when in ignorance of it subsequent decisions have been rendered, the concept of per incuriam would come into play.

26. He has further relied upon the judgment of Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others, , wherein the Supreme Court has observed as follows:-

14. The other limb of the argument of counsel for the appellants relates to the manner in which the High Court disposed of the matter. It was said that a decision of this Court has been disregarded and a binding decision of a co-ordinate Bench of the same Court has been ignored.

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18. It would be difficult for us to appreciate the judgment of the High Court. One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-judge court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no

declared principle to be found, no rule and no authority. The judicial decorum and legal propriety demand that where a learned Single Judge or a Division Bench does not agree with the decision of a Bench of co-ordinate jurisdiction, the matter shall be referred to a larger Bench. It is a subversion of judicial process not to follow this procedure.

27. The learned senior counsel has further referred the order dated 27.11.2003 passed by this Court in Crl. Miscellaneous (Main) Nos. 3822, 2933 to 2936, 3820-3821 of 2002 filed by the M/s Sulabh International and Another against the order of Labour Enforcement Officer (C), Delhi 3, wherein this Court has also relied upon the judgment of the Patna High Court and held that there is no relationship of master and servant between the petitioner and the persons being the voluntary services.

28. The aforesaid order was challenged by the Government of NCT of Delhi by way of an SLP (Crl.) No. 1693/2006 dated 23.02.2007, wherein the Supreme Court has passed the following order:-

The question as to whether a public utility service, which is allegedly carried on by a Society on "no profit no loss basis", would be an industry within the meaning of the provisions of the Industrial disputes Act, 1947, being pending decision before a seven Judge Bench in State of U.P. vs. Jai Bir Singh, (JT 2005 (5) SC 170), we are of the opinion that the matter should be referred to a larger bench.

The parties are given liberty to mention the matter before Hon"ble the Chief Justice or File an appropriate application for tagging this case with Jai Bir Singh (supra).

Let the records be placed before Hon"ble the Chief Justice of India for passing appropriate orders.

29. The Coordinate Bench of this Court on 16.11.2009 in Crl. M.C. No. 3884/2009 passed the order as follows:-

Mr. Tulsi, learned Senior Advocate appearing for the petitioner submits that the petitioner is a voluntary social organization engaged in the work of constructing and maintaining lavatories and has been carrying on its activity on no profit and no loss basis for the welfare of the humanity. Mr. Tulsi has drawn attention of this court to the Circular No. 1291 dated 3.4.2001 issued by the GNCT, whereby the Labour Department has notified all the Branch Officers of the Department that provisions of labour law would not be application to the petitioners. Mr. Tulsi also draws attention of the court to the order dated 27.11.2003 passed by this court in Crl. Mis. (M) Nos. 3822/2002, 2933/2002, 2934/2002, 2935/2002, 2936/2002, 3820/2002 and 3821/2002 and the order of the Division Bench of Patna High Court in W.P.(C) no. 3408/89. Based on the said submissions, Mr. Tulsi submits that provisions of Sections 23 and 24 of the Contract Labour (R & A) Act cannot be invoked by the trial court against the petitioner.

In Crl. M.A. No. 13582/2009, the Trial Court proceedings were stayed till the next date of hearing.

30. On the same issue whether the petitioner is an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 and whether the Industrial as well as Labour Laws are applicable to the organization, on 07.03.2011, this Court in Crl. M.C. No. 3884/2009 passed the following order:-

Short question for determination in this petition is whether or not the petitioner Sulabh International is an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act and whether the industrial as well as labour laws are applicable to the organization.

I have been informed that aforesaid legal issue is pending consideration of a Larger Bench of Supreme Court and the finding of the Supreme Court will obviously impact the decision on this petition. Thus, decision on the petition is deferred. The petition is, accordingly, consigned sine die with the observation that either of the parties may get it revived after the decision of the Supreme Court on the issue.

31. Mr. Mukul Gupta, learned Senior Advocate, who argued the petitions filed by the All India Institute of Medical Sciences has joined hands with Mr. Tulsi, learned Senior Advocate on the legal issue and has further added that the respondents have neither challenged the agreement nor the Memorandum of Understanding entered into between the Sulabh International and the All India Institute of Medical Sciences. There is no evidence on record that the respondent was employed by either of the organizations mentioned above and the impugned decision is without application of mind and without any basis. Therefore, the same has to be set aside.

32. Before the learned Authority under the Minimum Wages Act, 1948 and Regional Labour Commissioner (Central), New Delhi and before this Court the same issue was raised that the petitioner is not an industry and the provisions of Minimum Wages Act, 1948, are not applicable to them as it is a voluntary social service organization of charitable and philanthropic nature, working on no profit and no loss basis. Therefore, it is neither an establishment nor an employer. It is further submitted that the persons associated with Sulabh International are not employees or workers, but are associate members of Sulabh International, rendering their voluntary social services for the upliftment of scavengers. The object of the associate members of Sulabh International is to render social service and not to attain personal benefits, and also because they are not rendering any services for the organization but are using the organization to coordinate and guide their activities along with the activities of other similarly minded social workers to help them attain their goal of social welfare, therefore, no wages/salaries are payable to these volunteers.

33. On the minimum wages, the learned Authority framed an issue that "(i) Whether the Minimum Wages Act, 1948 is applicable only to "industry",

"establishment" and "enterprise", and not to voluntary social service organization of charitable and philanthropic nature.

34. On the issue framed above, the learned Authority has held that the Minimum Wages Act, 1948 is applicable to a scheduled employment in respect of which minimum rates of wages have been fixed by the appropriate Government as is evident from a reading of the definition of "employer" and "employee" under Sections 2(e) and 2(i) respectively of the Act. The "Appropriate Government" as defined u/s 2(b) of the Act in respect of AIIMS is the Central Government. The employment of sweeping and cleaning is a scheduled employment u/s 2(g) of the act and the Central Government has fixed minimum rates of wages for the said employment vide Notification No. S.O. 1994 (e) dated 7.8.2008. There is no reference in the Act to terms like "industry", "establishment" and "enterprise" nor is there any mention even by implication that the Act applies only to them.

35. On the contrary, while defining the term "employer" u/s 2(e) of the Act, the Act has made clear that it is applicable to scheduled employments carried on in a factory, scheduled employments under the control of any Government in India, scheduled employments under any local authority and scheduled employments in any other case.

36. There is no direct or indirect mention in the Act that the scheduled employment has to be carried on by an industry. The Act applied to an employment which is scheduled irrespective of who carries on that scheduled employment.

37. On the issue No. (ii) Whether AIIMS or Sulabh International should be deemed to be the employer under the Act having responsibility to pay minimum wages, the learned Authority has held that Section 2(e) of the Act defined "employer" as

any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and-----.

38. It is recorded in the impugned order that in the instant case, the so called volunteers have been deployed in the scheduled employment of sweeping and cleaning by Sulabh International directly. It is also not in dispute that they have been deployed by AIIMS though Sulabh International in said scheduled employment. Therefore, both having satisfied the definition of "employer" are jointly and severally responsible for payment of minimum wages to the employed or deployed. In this case, AIIMS as employer can in no case escape the responsibility of payment of minimum wages to the employed as the amount paid by it to the Sulabh International for the purpose of payment to the employed is less than the minimum rates of wages fixed by the Government.

39. On issue No. (iii) Whether the persons associated with Sulabh International

are "employees" within the meaning under the Act, the learned Authority has relied upon a case decided by Jharkhand High Court titled Robert Toppo Vs. State of Jharkhand, wherein it has been observed that "there is no provision in the Act or in the Rules that any "shramdan" should not be treated as labour."

40. The learned Authority has observed that the Sulabh International may be a voluntary organization, but it does not necessarily mean that the persons deployed in it are all volunteers. The very fact that the persons employed or deployed by Sulabh International have claimed the minimum wages under the Act by filing their claims establishes that they are not volunteers. Had they been volunteers, why would they claim minimum wages? Therefore, the petitioner is treating the employed persons as volunteers only with a view to depriving them of minimum wages so that either or both of them gain out of this system.

41. On the issue whether the judgment of the High Court of Patna, as mentioned above, has a bearing on the issue raised in the instant claims, the learned Authority has held as under"-

An examination of the judgment dated 9.2.1990 of Hon"ble Patna High Court in C.W.J.C. No. 3408 of 1989 reveals that the Hon"ble Court in that judgment held Sulabh International not to be "industry" within the meaning of section 2(j) of the Industrial Disputes Act, 1947. As it has already been discussed in the foregoing paragraph that the application of Minimum Wages Act, 1948 has nothing to do with "industry" and that the act is applicable to scheduled employments under the act irrespective of whether it is carried on by an industry or not, the judgment appears to have no bearing on this case. The contention of the O.P. No. 2 that the Hon"ble High Court held that Sulabh International not being an industry, no industrial as well as labour laws can be made application to the organization is totally out of place and misquoted. The Hon"ble High Court never ruled that no labour laws could be applied to Sulabh International

Further, it may be added that the case examined by the Hon"ble High Court is that of construction of latrines and urinals by Sulabh for the use of the public which was held to be not "industry" whereas the case under this claim application is sweeping and cleaning in the establishment of AIIMS by Sulabh in the capacity as a contractor or an outsourced agency.

42. I note that the learned Authority under the Minimum Wages Act has considered each and every aspect raised by the petitioners including the judgment dated 27.11.2003 of this Court passed in Crl. Misc. (M) Petition No. 3821/2002. The relevant portion reads as under:-

i) The Petition No. 3821 of 2002 has been filed as prosecution complaint against Sulabh International u/s 22A of the Act whereas the instant claim application has been filed u/s 22(2) of the Act. Both the cases do not stand in the same footing.

ii) The maximum fine u/s 22A is only Rs. 500/-(Rupees Five Hundred only) whereas the compensation u/s 20 can go up to ten times of the amount short

paid without any higher limit.

iii) The complaint u/s 22A has been filed by an inspector under the Govt. of NCT whereas this application u/s 20(2) has been filed by the employee himself. Therefore, it is likely that the persons associated with the complaint u/s 22A were volunteers, but the aggrieved person filing the claim case himself u/s 22(2) could certainly not be a volunteer.

iv) The judgment of the Hon "ble High Court has inter-alia taken in to consideration a circular bearing No. 1291 dated 3.4.2001 issued by the Labour Department of Govt. of NCT of Delhi to the effect that Sulabh International is neither an industry nor an establishment. But no such circular has been issued by the central government.

v) Sulabh International not being an establishment under the Shops and Establishment Act as decided by various High Courts, the minimum rates of wages fixed by the government of NCT of Delhi in respect of all shops and establishments under the Minimum Wages Act, 1948 might not be applicable to Sulabh International. But no such stipulation exists in the jurisdiction of the central government. "Sweeping and Cleaning" itself is a scheduled employment in respect of which minimum rates of wages have been fixed by the central government under the Minimum Wages Act, 1948.

vi) The Hon "ble Court did nowhere categorically rule that the Minimum Wages Act, 1948 did not apply to Sulabh International.

43. The learned Authority after dealing with all the issues framed have finally opined as under:-

It goes without saying that the O.P.s have caused considerable hardship to the applicant-employee by not paying him his rightful dues. Considering the plight of the low paid applicant-employee, enormous suffering caused to him over a very long period of time and above all the provisions of Minimum Wages, Act, 1948 providing for compensation up to ten times of the amount short paid, I am of the considered opinion that the ends of justice shall be met if compensation equivalent to five times of the amount short paid to the applicant i.e. (Rs. 61765 X 5 = 308825/- (Rupees Three lakh eight thousand eight hundred twenty five only) is also paid to the employee over and above the amount short paid. Thus a total amount of Rs. 3,70590/- (Rupees Three lakh seventy thousand five hundred ninety only) is required to be paid to the applicant-employee.

As already discussed, both the O.P. Nos. 1 i.e. All India Institute of Medical Sciences and O.P. No. 2 i.e. Sulabh International being "employer" under the Act are severally and jointly responsible for payment of minimum wages to the applicant-employee. It is, therefore, decided in the interest of equity, fairness and reasonableness that the amount required to be paid to the applicant-employee should be borne equally by the O.P. No. 1 and O.P. No. 2. Accordingly, I direct that an amount of Rs. 185295/- (Rupees one lakh eighty five thousand

two hundred ninety five only) be paid by the O.P. No. 2 i.e. Sulabh International to the applicant-employee.

I further direct that the amount as awarded above have to be deposited with the authority through demand drafts drawn in favour of the applicant-employee payable at New Delhi within 10 days from the date of receipt of this order.

44. After hearing the learned counsel for the petitioner, it is emerged that the issue decided by the Patna High Court was that whether the petitioner was an industry under the Industrial Disputes Act and the same issue again framed by this Court, as mentioned above. While relying upon the judgment of Patna High Court, the same view had been taken by this Court also. However, neither this Court nor the Patna High Court, as strongly relied upon by the petitioner, has decided the issue on the Minimum Wages Act. The petitioner may not be an "industry" under the Industrial Disputes Act, 1947, and may be a "voluntary organization", but the issue in hand is whether for the services rendered for the petitioner, would come in purview of the Act and deployed persons would be entitled for minimum wages, it is entitled to pay the minimum wages or not.

45. The petitioner organization has entered into a Memorandum of Understanding, as mentioned above, by which the services were rendered to the All India Institute of Medical Sciences. The poor people from the lower strata of the society have been engaged for this purpose and they were given the wages less than the minimum wages prescribed under the Minimum Wages Act. The organization may be a voluntary, but a poor person who has to fill his belly as well dependent's members of the family cannot afford to be a volunteer. A person who has acquired the minimum requirement in the life may do some voluntary service for a day or a two or maximum for a week but not on a permanent basis. The respondent No. 2 is a person whose survival depends upon whatever given/paid by the employer or who is taking his services. If he works voluntary even for a day, his whole family would be starving. Therefore, such a person cannot work voluntary even for a day. One cannot expect he would be a volunteer for months and years together.

46. I am conscious that against the judgment of the Patna High Court, the Union of India filed an SLP before the Supreme Court, which was dismissed as withdrawn and thereafter a review was filed and the same was also dismissed. Therefore, no decision has been taken by the Supreme Court on the merits and the matter has been referred to the Larger Bench, which is still pending.

47. I have no hesitation to say that on one side the petitioner is working for a noble cause, on the other hand, by way of giving the colour of voluntary services, it is exploiting the poor people.

48. I am conscious that the view taken by this Court was different from the issue in hand, therefore, there is no question of per incuriam and the violation of law of precedent. This Court would have been gone wrong if the same issue has been decided by this Court and the contrary view is taken in the present case.

49. The issue in the instant petitions is not res integra as the same has been decided in Peoples Union for Democratic Rights and Ors vs. Union of India(supra), wherein it has been held 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 wages for the labour or service provided by him. In view of that it is held 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.

50. Section 25 of the Minimum Wages Act provides that any contract or agreement, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act.

51. Moreover, Section 2(e) of the Minimum Wages Act provides that the employer means any person who employs whether directly or through another person or whether on behalf of himself or any other person one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act. Therefore, finding no discrepancy in the impugned order, I confirm the same. The present petitions, being without merits, are dismissed. No order as to costs.

CM. No. 12240/2012 (for stay)

With the disposal of the petition itself, the instant application has become infructuous. The same is disposed of accordingly.