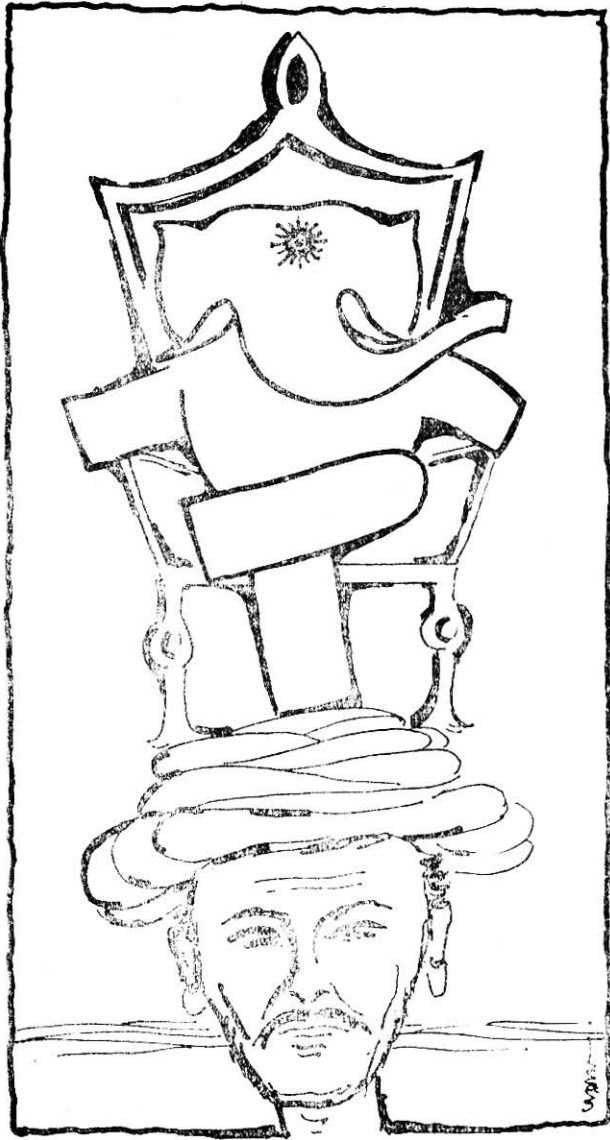


**THE OTHER FACE OF**



**A  
S  
I  
A  
D  
8  
2**

**PEOPLES UNION FOR DEMOCRATIC RIGHTS**

People's Union For Democratic Rights (PUDR) till recently known as People's Union For Civil Liberties and Democratic Rights (PUCL & DR), came into existence during the Emergency. It is one of the few civil rights organisations in the country that has pursued its tasks despite fluctuations in the political environment and changes of Government.

Though a Delhi based organisation, PUDR has helped to strengthen the civil rights movement outside Delhi. During the course of last five years it has investigated and highlighted the assault on democratic rights of agricultural labourers and peasants of Telengana and Patna, industrial workers of Faridabad and Modinagar, miners of Chattisgarh, Muslims in Aligarh, Harijans in Bilaspur, slum dwellers in Delhi, political activists of Tamilnadu and Delhi, artists of Kerala and Adivasis of Adilabad and Singbhum. PUDR has also provided legal assistance to political prisoners and filed petitions concerning the Disturbed Area Act, amendments to Rape Bill, and other issues of public interest.

PUDR is a small organisation with limited resources, attempting to focus on the violation of democratic rights irrespective of the party in power. For strengthening its movement, PUDR need and deserves active support from the conscious public.



## TO APPU

“Dear Appu  
‘dear’ you are  
but remember  
your opulence  
your grandeur  
that rests on  
the breaking backs of  
the toiling labourers  
will stink of  
the miserable lives of  
the nameless labourers  
now sent into oblivion”

## CONTENTS

	<i>Page No.</i>
I. Introduction	3
II. Contract labour and Asiad '82	8
III. Extracts from Supreme Court Order	15
IV. Extract from The Ombudsmen's Report	17
V. Extracts from Supreme Court Judgement	25

## Introduction

“Where, the evening that the Wall of China was finished  
Did the masons go ? Great Rome  
Is full of triumphal arches. Who erected them ?”

— Bertolt Brecht :

‘Questions from a worker who reads.’

The workers who erected the walls and arches, the stadia and the halls, the hotels and flyovers of the most expensive sporting event in India's history— ASIAD-82, have gone back to their villages. But they have left behind them a bitter story of inhuman sufferings. Neither the sportsmen who are gathering from all over Asia in Delhi, nor the audience who are watching their performance in the various stadia, are aware of the plight of the 125,000 odd workers, without whose sweat and blood the prestigious games would not have been possible.

The pages that follow provide a documentary glimpse into the untold and sordid story that lies behind ASIAD-82 which has cost the country Rs. 361 crores (according to the government's own admission)-an amount that could have provided for the construction of houses for about 4 million of the 14.5 million landless labour households who would need housing assistance by March 1985; or for special nutrition and midday meals for over 30 million children during the 1980-85 Sixth Plan period; or for permanent sports facilities like swimming pools and gymnasiums in our 100 odd universities or other educational institutions, the lack of which forces our youth to lag behind in the field of games and sports.

Since 1951, when the first Asian Games were held at the National Stadium at New Delhi when only 600 sportsmen participated in six events, much water has flown down the Yamuna. Over the years more and more Indians have been reduced to poverty. Today, in 1982, when about 5,000 athletes from all over Asia and a host of foreign delegates and dignitaries are being housed in newly built palatial five-star hotels in Delhi, more than half of our population remain below poverty line. Hungry workers are breaking out in strikes in different parts of the country demanding higher wages and better living conditions. Reeling under the burden of external

debt of about Rs. 15,000 crores, we are importing again a Giant Score Board and a Subsidiary Score Board for ASIAD-82 at a cost of about Rs. 9 million. To hide the economic and political crises at home and increase prestige abroad, ASIAD-82 is being used with great skill to entertain the thousands of foreigners and rich Indians who are crowding the capital, with a splendour that is strutting in an unwitting parody of another sporting event held exactly 46 years ago in another country by an oppressive ruling class to impress the world—the 1936 Berlin Olympics under Hitler's patronage!

The labourers who worked on the ASIAD-82 sites—both the stadia and the infrastructure like flyovers and hotels—were recruited by agents of construction contractors from backward villages of Orissa, Bihar, West Bengal, Madhya Pradesh, Andhra Pradesh and Rajasthan. Working at a feverish pace, often far beyond the working hours fixed by laws, without the minimum daily wages due to them, living in hovels, their children dying of malnutrition and they themselves frequently becoming victims of accidents, these labourers were forced to complete the ASIAD projects in time by November 19, the birthday of Prime Minister Indira Gandhi, when the games are inaugurated by her. *The terrible working and living conditions to which these workers were subjected to, were first brought to public notice by a fact-finding team of the People's Union for Democratic Rights (PUDR) which visited some of the major sites in July and August 1981, and interviewed the workers as well as their employers. The team's report which is the first document in the present collection revealed how almost all the major laws were being violated by the contractors, right in the heart of the Indian capital and under the nose of the Union government.*

The PUDR followed this up by filing a writ petition before the Supreme Court on November 16, 1981, by way of public interest litigation in order to ensure observance of the provisions of various labour laws in relation to the workers employed in the construction work of the ASIAD-82 projects. *Admitting the writ petition on May 11, 1982, Justice P.N. Bhagwati and Justice Baharul Islam directed the Union Government, the Delhi Development Authority and the Delhi Administration—the three concerns which had appointed the contractors for the ASIAD construction work—to ensure the payment of minimum*

*wages and provision of other facilities to the workers under the various laws.* The judges also appointed three ombudsmen (experienced persons authorized to inquire into and pronounce upon grievances of citizens against public authorities)—the first time in the judicial history of India—for protecting the interests of the workers and ensuring observance of the laws. They were requested to visit the major sites of the construction work and submit weekly reports to the Supreme Court relating to cases of violation of the laws. In the present booklet, extracts from the May 11 Supreme Court order are followed by relevant quotations from the reports of the three ombudsmen.

It will be found that the ombudsmen in their reports confirmed almost all the findings of the PUDR by citing cases of large-scale violation of labour laws by the various agencies engaged in construction work on ASIAD sites. Although the ombudsmen were visiting the spots at a time (June and July, 1982) when “most work on these construction sites has been completed and a very big number of unskilled migrant labourers have already left the site” and when following the May 11 Supreme Court order labour inspectors had started supervising the work, they found that the contractors were still bypassing the laws with impunity, that they were preventing the workers from reporting their misery to the ombudsmen and that they were attempting to hide major accidents. They found that at least 100 major accident cases had been treated at one nursing home alone during the 18-month period ending July 1982.

This booklet ends with extracts from the historic judgment on the PUDR writ petition delivered by the Supreme Court on September 18, 1982 which castigates the Union Government, the Delhi Development Authority (DDA) and the Delhi Administration for allowing the contractors to cheat and ill-treat the workers violating not only the labour laws, but also the provisions of the Indian Constitution. We have included extensive quotations from the judgment since we feel that it has several important implications for both the democratic rights movement and workers struggles all over India. *First*, Justice P.N. Bhagwati and Justice Baharul Islam have rejected attempts by the three respondents—the Union Government, DDA and the Delhi Administration to—scuttle the writ petition by questioning the locus standi of the petitioners—the PUDR. They

have reiterated the earlier Supreme Court judgement by asserting that any member of the public may move the court for judicial redress of legal injury or wrong suffered by the poor who cannot afford to approach the Court. This enables any civil liberties activist or group to take up the cause of victims of economic and social oppression and approach the court. *Secondly*, they have recommended suitable amendment of the existing laws to ensure that children under the age of 14 years are not employed in the construction industry. *Thirdly*, they have extended the scope of the Fundamental Rights of the Constitution to the living and working conditions of labourers. They have ruled that under Article 21 of the Constitution, labourers can assert their right to "live with basic human dignity" and demand suitable wages and other facilities to ensure the protection of that right.

In a bid to expand the reach and ambit of Article 23, they have pronounced that when a worker provides labour to another for remuneration which is less than the minimum wage it falls within the scope and ambit of the words 'forced labour' under Article 23, and hence such a worker is entitled to come to the court for enforcement of his fundamental right under Article 23. *Fourthly*, they have laid the blame squarely on the shoulders of the Union Government, the DDA and the Delhi Administration for the ill treatment of the ASIAD workers—in the face of determined efforts by the above three respondents to shirk the responsibility.

It is a pity that the Supreme Court order (May 11, 1982) and the judgment (September 18, 1982) came too late to benefit the majority of the labourers who worked on the ASIAD sites—yet another instance of the dilatory process of the judicial system in India !

It is significant that all through the hearing of the PUDR writ petition before the Supreme Court, *the authorities represented by the above three respondents tried their best to frustrate the efforts of the PUDR to gain judicial redress for the ASIAD workers by raising objections of a technical nicety and even going to the extent of denying responsibility and glossing over blatant violations of labour laws.* Besides trying to nip in the bud the writ petition by questioning the locus standi of the PUDR, they took the stand that the workmen whose rights were said to have been violated were employees



of the contractors and not of the Union of India, DDA or Delhi Administration, and hence no writ petition could lie against the latter. They further sought to contend that no breach fundamental rights was occurring through the violations of the labour laws. Even when they launched prosecutions against the errant contractors, the magistrates let them off by imposing fines of paltry amount—a fact that prompted the Supreme Court judges to censure the magistrates. *All these are alarming symptoms of the government's determination to suppress attempts to highlight the plight of exploited workers and deny them the rights granted under the laws and the Constitution, and to protect the guilty employers.* It is this which compelled the two Supreme Court judges to comment that the objections were raised by the Union Government, the DDA and the Delhi Administration “With a view to shutting out an inquiry by this court into the violations of various laws alleged in the writ petition.” Reminding the government of its duty, the judges said: “The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioner who brings the public interest litigation before the court. The State or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority.”

With the publication of this booklet we hope that the long struggle to win legal redress for the ASIAD workers—represented by the PUDR findings, their confirmation by the ombudsmen appointed by the Supreme Court, and ending with the Supreme Court's judgment directing the Union Government to meet the workers' demands—would encourage the trade union and social welfare organizations to rally the labourers of the unorganized sector to fight for their legitimate rights. The Supreme Court judgment, which goes a long way in protecting these rights, should provide them with the necessary weapon in their struggle. We end with the earnest hope that those who will follow Bipu Kirtaniya, Suraj Mani and Babu Lal—the workers from the far flung villages of India who came to Delhi and were bled white while building the

ASIAD structures, and whose plight is described in the following pages—will get a better deal in future.

## II

### Contract Labour and Asiad 82

The ambitious and glamorous construction for ASIAD-82 is being carried out at a feverish pace at the cost of the minimum rights and social security measures to which labourers are entitled under the ILO conventions and the Indian government's own laws.

A team of the People's Union for Democratic Rights, (PUDR) which carried out a survey of the different sites of ASIAD-82 from July 30 to August 10, found that contractors employed by the government to build the stadia, flyovers, hotels, village complex and other associated constructions are violating with impunity almost all the laws at every stage, beginning from recruitment of labourers, through their period of service down to the last moment when a sick or injured worker is left without payment and medical relief. Government officials, aware of what is happening, are turning a blind eye to cases of gross violation, eager as they are to complete the construction by any means by November 1982 - the Prime Minister's birthday - when the ASIAD games will be inaugurated. In the process, the toiling workers are being denied the rights guaranteed under such important laws as the Minimum Wages Act, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, Bonded Labour system (Abolition) Act and the standing rules that bind the contractors to provide minimum facilities for construction workers.

#### Recruitment and Wages

Labourers working at the ASIAD-82 sites are not directly recruited by the contractors, but are enlisted by 'jamadars' who either go to villages to recruit them, or collect them from among the migrants who come to Delhi. Our inquiries revealed that all the workers were getting less than the minimum daily wages fixed and in some cases were leading a life of bondage - tied to the 'jamadar' during the entire period of work, without any right to quit and join some other work. The minimum wage for an unskilled worker is

Rs. 9.25 daily, but as per the current price index (January 1981) it is Rs. 11.25. In all the sites, workers are getting Rs. 8, or even less, since they have to part with the rest of their dues as commission to the 'jamadar'. Following are a few glaring instances :

1. There are about 300 men and women working on the building of the flyover at the Moolchand intersection - a Rs. 2.5 crore project undertaken by a Calcutta-base firm. The Director of the firm-Central Concrete and Allied Products (Pvt) Ltd - Mr. Asamanja Mitra told us that an unskilled labourer gets around Rs.11 to 12 and a skilled worker Rs.25 a day. But the workers had a different story to tell. We met some workers from Bhawanipatra, Orissa, who had come in a batch of 55, and work under a jamadar called Amarnath Rauth. Each of them gets 7 kilos of rice and Rs.2.80 for vegetables a week. Besides, each receives a monthly salary of Rs. 110. The Jamadar often deducts a full day's wage if he is "not satisfied" with the work.

2. In Talkatora, where the controversial swimming pool is being constructed (it was first supposed to be a covered pool, but since the design was found to require modifications, at a later stage, plans for a covered pool were given up in mid-way, and now it has been decided to have it as an open pool) we met workers who were required to do at least half-an-hour's overtime without any extra payment. There are cases of harassment of individual workers also. Bipu Kirtaniya of Calcutta is right now working under a contractor for the last eight days. But his pay is not yet settled. He was brought by another contractor, but since the latter did not pay what he promised, he stopped working for him after 2½ months. As a result, this original contractor deducted the train fare from Bipu's salary.\* Given free travel facilities while proceeding to Delhi, (jamadar' bears the expenses of travel) the worker has to refund the money to the jamadar if he resigns before the stipulated period of work, or goes on leave.

---

\*Earlier, Bipu, who is a skilled labourer, worked for another 'jamadar'—Nathuram—for 17 days at the rate of Rs. 17 per day. But till now he has not been paid that amount.

3. A case of bonded labour came to our notice in the Moolchand flyover construction site. About 100 labourers have been brought by one jamadar here from Orissa, who assured them that they would be sent to Iraq or Iran after the stipulated period of one year (by which period, the flyover is expected to be complete). Each of them is paid 75 paise for vegetables per day and given some rice. Jamadar Chakra Raut, who has recruited and brought these workers to Delhi under the condition that they will have to work for a year before being sent to Iran, let fall the hint during conversation with us that he was paying the workers according to the Orissa Dadan Act - a hangover from the colonial days - under which the employer gives some money in advance to the worker and extracts from him as much labour as possible in lieu of the advance.

4. We overheard some comments by the workers which gave us an idea of the terms of employment. "We work while there is work. No work means no pay," said Adhir Biswas from 24-Parganas. We learnt that sometimes when the construction firm runs out of raw materials, or there is rain, there is no work. "We are not allowed to form a union which could voice our grievances," Biswas added, suggesting that he is conscious of the workers' rights under the Constitution, but is helpless to do anything.

From a study of the recruitment position, we came to the conclusion that the workers are invariably lured from their villages by the 'jamadars' with stories of better prospects in Delhi, and once coming here, they find themselves at the mercy of the 'jamadars', unable to return to their homes. Sometimes, they are even left in the lurch. Suraj Mani, a Kole tribal woman, came with her husband and three children from Nayna, Mayurbhanj. The jamadar who brought them disappeared after sometime, and they were left with no money and no job in the city. Some of the labourers working at the ASIAD sites came to Delhi originally as members of the kisan rally organized by the Congress (I) some months ago, but were left behind by the organizers. Without any money to return to their villages, they were forced to work at the sites to earn enough to go back.

### **Migrant labour**

Almost all the labourers are migrants - recruited from Bihar, Orissa, Bengal, Tamilnadu, Andhra Pradesh, Madhya Pradesh and

Rajasthan. Most of them are from the backward districts of these states and are mainly landless and poor peasants. Large families to feed, unproductive lands, poor wages, lack of employment were the main reasons for their agreeing to come to Delhi to work at the ASIAD sites. A large number of these migrants are tribal people from Kalahandi, Mayurbhanj and Keonjhar districts of Orissa and Singhbhum of Bihar.

Under the Inter-State Migrant Workmen (regulation of Employment and Conditions of Service) Act, such migrant labourers are entitled to certain benefits. At almost all the ASIAD sites we visited, the workers were being denied benefits like "displacement allowance" which is equal to fifty percent of the monthly wages payable to him or Rs.75 whichever is higher, to be paid to the migrant workman at the time of recruitment by the contractor suitable residential accommodation during their period of employment; prescribed medical facilities free of charge, and regular payment of minimum wages.

The recent floods in north India have led to an increase in the influx of migrant labourers. According to one labour contractor, people are coming in batches almost every day and moving from one site to another in search of jobs. Many of these migrants are being treated like shuttlecocks by the authorities. A typical case is that of Bhawani Mistri, who entered India from the then East Pakistan in 1964 moved from one refugee camp to another in Mana and Hosangabad, MP, and then to Kagaznagar, Andhra Pradesh. On falling ill and quitting one camp, his ration card was cancelled. He came to Delhi to present his case before the rehabilitation office people, who sent him to Bastar camp, from where he was sent back to Delhi for further clarification. Finally, he has landed up as a labourer in one of the ASIAD sites.

### **Living conditions**

Both under the Inter-state Migrant Workmen Act and under the standing regulations, contractors are required to provide suitable residential accommodation for the labourers.

What is the state of accommodation for the labourers at the ASIAD sites? Here are a few instances.

At the Talkatora site, we saw some tents, each accommodating four to six people. We found the tents in a pretty bad shape and the workers told us that they leak during the rains, as a result it is difficult to cook and keep the food in a safe place, and even to sleep.

At the Moolchand flyover site, 7×5 metre sheds, without any electricity or any other facilities, provide shelter to the workers.

Hovels, tents, and jhuggies are the usual types of accommodation provided to the workers. The attitude of the authorities came out clearly from the comments of Mr. Asamanja Mitra, the director of the Calcutta-based firm which is working on the Moolchand flyover. When we drew his attention to the Jhuggies, he said : "Slums are a part and parcel of our society. We cannot do without them."

The sanitary conditions are even worse. At Talkatora, there are no proper water facilities. A ring of one thick (1.5" diameter) pipe supplies water to the whole area. There are no latrines, and the workers use the adjoining forest for relieving themselves. In the Moolchand flyover site, there are six latrines. But two are locked for the officials, one belongs to a sub-contractor, and the remaining 3 are expected to be shared by 300 workers. As for drinking water, there are two hand pumps which pour out filthy water drawn from the nearby nullah. One death has been reported from the site, due to contaminated water.

### **Medical facilities**

Given such unhygienic living conditions and lack of proper sanitary facilities, the risk of diseases is pretty high among the workers. Yet, inspite of standing rules which enjoin upon the employer to give free medical treatment to the workers, we found hardly any sign of medical facilities during our inspection of the sites. One death of a worker from Orissa, due to water contamination has been reported from the Moolchand flyover site.

Workers at a public sector hotel site near Ashoka Hotel had a pathetic tale to tell us. Babu Lal, Banshi, Bhopali - all from Bolangir in Orissa - narrated to us the plight of their families who have been suffering from blood dysentery and rendered incapable of

working, which means they are not getting any pay. The doctor who comes in the evening gave them a few tablets which have not cured them. The doctor has now asked them to buy medicines from outside, which they cannot afford.

Madan of Sarsa, Bihar had the same story to tell. He showed us his bandaged swollen left hand which he hurt while lifting an iron bar. The doctor gave him some tablets and bandaged his hand. But it has swollen further. Madan said : "Doctor sahb kahate hain injection bahar se kharidna hoga". But where will he get the money to buy injections.

In the Asian Games Village complex, Ghanashyam a young labourer from Numeti village of Saharsa in Bihar, now working on the construction of the prestigious Cultural Centre, told us that the inmates of his jhuggi were ill, and had to pay from their own pocket for their treatment. If one remembers that their wages are on a daily basis and that they miss their wages if they do not work on any particular day, one can understand how difficult it is for them to forego their daily wages if they fall ill, and in addition to pay for their treatment.

### **Safety standards**

Maintenance of proper safety standards at construction sites is an obligation enjoined upon employers by the law. But accidents due to negligence on the part of the contractors are quite frequent at the ASIAD sites.

One worker at the Hotel Samrat site, adjacent to Ashoka Hotel sustained serious injuries in the head when the portion of a wall collapsed and he was buried in the debris. Another man got his fingers crushed in a cement mixer. Workers complained that they did not get any compensation for the injuries and the days they cannot work due to the accidents. At the Asian Games Village complex, it was reported to us that a month ago a labourer died while digging at the site. No wooden shutters were provided, as a result of which the earth caved in killing the labourer.

### **Women and children**

The plight of women and children working at the sites is worse. At some sites like the flyover near Minto Road, women are

getting Rs. 7 each as daily wages, the remainder of their dues appropriated by the jamadar. This is a gross violation of the Equal Remuneration Act, 1976 which prohibits discrimination in payments on the ground of sex, as also of the ILO Equal Remuneration Convention (No. 100) which has been ratified by the Indian Government.

Although child labour is prohibited, we saw a number of children aged between 10 and 14, employed at the Talkatora site. Ram is a 10-year old boy from Bihar. He does not know how much he will be paid for his work. Fifteen-year old Pachamuthu from Tamilnadu came with his friends, and is working at the flyover near Minto Road. He is paid Rs. 8 daily. A Junior Engineer of the NDMC who is supervising the work said : "We employ children when we fall short of hands or when the work has to be completed by a given date". Yet, the Employment of Children (Amendment) Act, 1979 prohibits the employment of children in construction work.

Women labourers with children face an up hill task, having to work for regular hours at the sites and looking after the children at the same time. We were therefore quite pleasantly surprised to see a signboard bearing the inscription 'creche' at the main entrance of the construction site of the Cultural Centre in the Asian Games Village complex, opposite Gulmohar Park. Happy to have discovered at least one place where the authorities have shown concern for the children, we walked in, but found to our disappointment an ordinary office room with no sign of any children around. On inquiry we found the whole thing was a big joke. To impress Mrs. Gandhi, who apparently came to visit the project sometimes ago, the 'creche' sign was put up by the enterprising contractor, obviously as an advertisement of his concern for the children of the labourers. Till the day of our visit (August 6) the concern has not been translated into a real 'creche'. We however saw one 'creche' operating in the other part of the village complex, where the residential units were being constructed. Run by a voluntary organisation, the Delhi Council of Child Welfare, it looks after 150 to 200 children everyday, and is situated in one corner of one of the newly built houses. We heard that there was another 'creche' nearby. But then, one must admit that two creches are hardly enough for a construction site where thousands are working.



## Recommendations

On the basis of the findings of our random survey of the different ASIAD-82 construction sites, we urge the Government to immediately institute a system of regular inspection of service conditions of labourers working at the sites, and ensure the provision of the benefits that are due to them under the existing laws.

We strongly feel that to start with, labourers should be directly recruited by the contractors under the supervision of the Government, or by the Government itself, so as to prevent the exploitation by the 'jamadar'. The wages in such case should be handed over directly to the workers, instead of any 'jamadar'.

Top in the list of priorities should be immediate provision of better living quarters and proper sanitary facilities for the labourers.

Setting up of medical clinics at every site is a must. Along with this, regular supervision should be carried out to see to it that contractors are observing the minimum safety rules.

We hear that the Government is spending Rs. 700/-crores on ASIAD-82 which is meant to be the biggest sporting event in the country's history and boost the country's image abroad. Without going into the question whether when half of our population is living below the poverty line, such an ambitious and expensive project should have been undertaken with the inevitable consequence of higher taxes and soaring prices to meet the cost, we can at least expect the authorities to ensure the payment of minimum wages and the provision of medical facilities and social security to the poor workers who are being made to toil hard to complete the construction at a break-neck speed. Otherwise, the prancing baby elephant Appu, the mascot of the ASIAD-82, may well turn out to be a mad elephant crushing under his feet the labourers who with their blood and sweat are making ASIAD-82 possible.

### III

**Extract from the order admitting the PUDR writ petition delivered by Justice P. N. Bhagwati and Justice Baharul**

**Islam of the Supreme Court (W.P. No. 8143 of 1981, People's Union for Democratic Rights and others—petitioners V. Union of India and others—respondents), dated May 11, 1982.**

“We allow the writ petition and direct that the Union of India, the Delhi Administration and the Delhi Development Authority do take the necessary steps for enforcing observance of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, the Minimum Wages Act, 1948, the Equal Remuneration Act, 1976, the Employment of Children Act 1938 and the Inter—State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 by the contractors engaged in the construction work of the Indoor Stadium at Indraprastha Estate, Asian Village Complex at Siri Fort Road, Swimming Pool at Talkatora Garden, Fly-overs at Indraprastha Estate, Moolchand Hospital, Oberoi Hotel and Lodi Road and the Hotel Project near Ashoka Hotel and for this purpose, carry out weekly inspections *and if any violations of the provisions of these statutes are noticed, then immediately file prosecutions against the defaulting contractors.* The Union of India, the Delhi Administration and the Delhi Development Authority are also directed to ensure that the minimum wage is paid by the contractors directly to the workers without the intervention of the Jamadars and if any commission has to be paid to the Jamadars, the contractors may pay it to the Jamadars without deducting any part of it from the minimum wage payable to the workers and the contractors shall not employ any children below the age of fourteen years in the construction work and shall provide all the facilities and conveniences which are required to be provided under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979...”

We would also like to appoint two independent institutions to act as ombudsmen for protecting the interests of the workers and ensuring observance of the Contract Labour (Regulation and Abolition) Act, 1970, the Minimum Wages Act, 1948, the Equal Remuneration Act, 1976, the Employment of Children Act, 1938 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 by the contractors. We would therefore request Shri Walter Fernandes and Shri Alfred D'souza,

Directors, Indian Social Institute, Lodi Road, N. Delhi—110003 and Shri Das Gupta, Director, Peoples Institutes for Development and Training, New Delhi—110016, to visit the sites of the construction work carried on in respect of the following projects, namely, Indoor Stadium at Indraprastha Estate, Asian Village Complex at Siri Fort Road, swimming pool at Talkatora Garden, Fly-overs at Indraprastha Estate, Oberoi Hotel, Mool Chand Hospital and Lodi Road and the hotel project near Ashoka Hotel and make close and detailed enquiries of the workmen for the purpose of ascertaining whether the provisions of the above mentioned statutes are being implemented and observed by the contractors.’

#### IV

#### **Extracts from the Reports of the Ombudsmen Relating to Violations of Labour Laws by Contractors at Asiad Sites**

##### 1. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, Sections 13 to 17 :

“Indraprastha Sports Complex...Labour employed at the site come from U.P., Bihar, Rajasthan, Orissa and Kerala. ...Since most of the labourers are from outside the state they come under the purview of Inter State Migrant Labour Act of 1979. But provisions of this act were not incorporated in the original agreement between individual contractor and the DDA. The reason for this omission was the fact that the act came into operation in 1980 and engineers drawing up contracts were not familiar with the act and its provisions.” (From the report, dated June 14, 1982).

“Many workers said that they were brought by a jamadar from their village in Madhya Pradesh or Rajasthan but were not given any displacement or journey allowance. The Jamadar only “advanced” the amount required for the journey and food, and some of them viewed the daily commission to the jamadar as repayment of this debt. Also the jamadar stated that the commission they were deducting was repayment of the amount they had spent on their journey. ...No displacement allowance was given...”

“...Some of the workers we interviewed said that they have

to pay the doctor at the dispensary for his services, and that they get only first aid at the St. John's Ambulance Centre. One woman said that she had to pay Rs. 20 to the doctor (who, the contractors and officials claimed, was giving free service and was paid by the DDA or contractors). But since the child did not get cured, she had to take the child to Shankarpur and spend all her savings of Rs. 300 on treatment..."

"...Some of the workers claimed that there have been many fatal accidents, the latest being on 18th June....The workers claimed that it was difficult for them to know the details because the contractors ordinarily removed the bodies from the site immediately and tried to hush up the matter. It was reported by some that due to fear of accidents and low salary, some skilled workers have left the place in search of jobs elsewhere..."

"...The two injured persons and their companion described the accident of 18th June. It is the result of a beam collapsing. One person died on the spot and the other two were admitted to the AIIMS. Harshi (S/o Ram Narayan) is from Jaipur district and his age is estimated to be about forty years. Though the contractors and the senior DDA official had said that they had only minor injuries, the hospital records show that Harshi has broken both bones of the left leg and has fractured the 8th rib on the left side...Harshi's leg will remain in plaster for at least eight weeks. The doctors stated that he will need another month after that to be able to move about freely and will not be able to do heavy work for about three months after that.... Harshi told us that he has five children in his village (Shekपुरa) of Jaipur district. Till the accident caused by the collapse of a beam, he was borrowing and eating and now he does not have any money..."

"...We interviewed several staff members of Jeewan Nursing Home, as two house surgeons and the medical superintendent.... *The other staff we interviewed thought that at least 100 major accident cases had been treated at the nursing home during the last 18 months or so. The nursing and other staff as well as the doctors felt that the cases were many more in 1981 and that the number has gone down recently....* The cases treated at the nursing home range from fracture of the leg, pelvis and ribs to fracture of the skull

with brain damage. One doctor remembers at least two cases belonging to the last category”

“...Information about what happens to the victims once they leave the hospital was given to us by more than fifty workers and three jamadars whom we interviewed. *If a person dies, the victim's family members, i.e. wife and children, brothers and sisters, are forced to go back to the village even against their will. The family members are paid about Rs. 2000 and usually the contractor bears the expenses of the funeral. The workers think that the family is forced to leave the place in order to hide evidence....*”

“...The workers mentioned that accidents are quite common on the site. *Some think that on an average there is one major accident everyday while others state that they are fewer than that—perhaps three or four a week. They estimate that there is at least one death every week, most of them among labourers working with Tarapore & Co., but not exclusively. ...As for the injured, when they are in the Hospital, the contractor's company pays for the medicines etc. Once the person is discharged from the hospital, he/she is forced to go back to the village. They (the workers) are not quite sure whether the victims get any compensation, but they are certain that they do not get wages for the days they are absent from work. Besides, pressure is brought on them to say that they do not want a medico-legal case.*

*One of the jamadars stated that given the pressure under which the workers are forced to work, accidents are inevitable. The Government is bent on getting the buildings ready on schedule. As a result, the contractors ignore all precautions in order to keep to the target. Very few holidays are observed. Women and children work at night. Safety measures are minimal....*

### Some Conclusions

1. *The first point that strikes us is the deliberate attempt made by the DDA officials and contractors to deceive us into believing that there had not been a single major accident....*One of the factors that seems to encourage concealment of factual information about accidents is the present law and the court procedure concerning accidents. Private nursing homes admit only persons who do not want any medico-legal case. The reluctance of the private practitioners to admit a medico-legal case is fully understandable,

given the amount of time they have to spend and the harassment they have to undergo, if they are in any way involved in such a case. Given the weak negotiating position of the labourers, it is easy for the contractors to put pressure on them and their families not to proceed with the medico-legal case....”

(From the report dated July 9, 1982)

“Moolchand Flyover—The labourers are mostly from Bihar and Bengal and very few from Rajasthan...We were told that the labour contractor pays the workers their fare and food as well as salary during the days of travel. Neither the contractors nor the PWD representatives seemed to know about the ‘displacement allowance.’ In fact they did not know much about the Inter-State Migrant Workers’ Act. The contracts were signed just around the time the law was enacted and no Asiad Construction contract we visited seems to have included it in the contract, since the engineers do not seem to have been aware of its existence at that time. Consequently ‘displacement allowance’ has not been paid.”

(From the report dated June 24, 1982)

(Such efforts to hide evidence are also violations of Personal Injuries (Compensation of Insurance) Act, 1963 read with Personal Injuries (Compensation Insurance) Rules, 1972 and Workmen’s Compensation Act 1923 read with Workmen Compensation Rules 1924—Eds.)

2. Minimum Wages Act, 1948—Section 12, read with the Minimum Wages (Central) Rules 1950, especially Rules 22, 23, 24, 25 and 26.

“Indraprastha Sports Complex :...We were ...told that at the moment there is no holiday and that work has to continue for 24 hours a day in order to meet the deadline...The DDA official thought that it was fortunate that ‘Rome and the Taj Mahal were built before labour laws were enacted’...

... Some skilled and semi-skilled workers whom we interviewed later informed us that they have seen women working at night on the site under at least one of the contractors whom they identified. The workers informed us that till recently the skilled workers used to be paid Rs. 350 per month as monthly wages and were given Rs. 1.60 per working day as bus fare. The semi-skilled workers who are known as helpers, used to be paid Rs. 240 per

month and were given Rs. 1.60 per day as bus fare. After a token half-day strike to demand double overtime and Rs. 55 raise in their salary the monthly salary of the helpers was raised to Rs.300 and that of skilled workers to Rs. 410 i.e. both were given a raise of Rs. 60 per month but the transport allowance of Rs.1.60 per day was withdrawn. Hence the raise is minimal. Some of the workers we interviewed stated that their employer's agents threatened that if they made any more demands they would be sent home now itself. They were afraid that they would not be taken on the next contract after this work is over. They do not seem to get any benefits such as PF (Provident Fund) though they have been on the site for over six months....

.... All the unskilled workers we interviewed as well as the jamadars told us that they were informed that their daily wages are Rs. 11.60. However, none receives salary directly from the contractor. All the money is given to the jamadar and the workers are made to put their thumb impression on the salary register. *Though the contractors claim that the workers are given a wage card, all the workers stated that none of them is given any card. ... The workers stated that a card in their hands would not make any difference in any case because they are illiterate and no one is interested in their welfare. Hence, they have to do what the contractors and jamadars tell them or else, lose even the little income they are getting.*

All the workers stated that they are promised Rs. 10.25 per day by the jamadar. However, they added that in practice they do not get all this amount in their hands. They buy the provisions they require on loan during the week and every week the jamadar gives them some money according to their need....”

(From the report dated July 9, 1982)

“At the Talkatora Swimming Pool (site)...We were told that no weekly holiday is observed... We were told that the first shift is 6 a.m. to 5 p.m. with lunch from 1 p.m. to 2 p.m.... Hotel Samrat complex... We interviewed wives and grown up children of some workers brought by a jamadar from Rajasthan. He seems to be having 60-70 workers under him. One of the jamadar's associates told us that the jamadar takes a daily commission of Re 1 per worker. But all the workers' wives and children, as well as a few workers whom we met were unanimous in stating that they get only Rs. 10.00 per day and that the jamadar keeps Rs.1.60 per day per worker as his commission. ....

We also met six workers working under another jamadar. They are from Madhya Pradesh and were employed by this jamadar in Delhi. As a result their journey was not paid... They too told us that they are given Rs. 10.00 per day as wages and that the jamadar keeps Rs. 1.60 per day per worker as his commission.

Some of the workers told us that though the contractor has provided a doctor who comes to the site everyday for two or three hours, their jamadar does not allow them to go to the doctor when they fall ill. Hence they have to buy medicines outside and pay for them. ...”

(From the report dated June 24, 1982)

“The wages paid to the workers are not uniform. Oriya workers working in the site are mainly from Banipur, Ranipur, Orissa work under Dadan system. These workers receive Rs. 120 per month. They receive this amount from the zamadars. Apart from Rs. 120 per month they receive the cost of food from zamadars.... Some of the women workers reported that they get lower wage from the zamadar than the male workers. The amount that the women workers get is Rs. 6... One woman worker reported that she was ill for two days and she was paid Rs. 15 only for four days’ work which amounts to Rs. 3.75 per day.”

(From the report dated July 30, 1982)

“Indraprastha Sports Complex—... Toilets : The workers as well as the jamadars we interviewed were unanimous in denouncing the contractors for not providing these (toilet) facilities. The contractors claimed that the workers are used to going to the field and they do not use the toilets if they are provided. The workers claimed that it is true that in their villages they go out to the fields or hills. But there is plenty of place there. Besides, dogs and other animals keep the area clean. In Delhi more than 250 families have got only a small field and it is dirty and stinking and they find it extremely difficult to go there. But they do not have a choice since no other facilities have been provided.

Rest Rooms and Drinking Water—The contractors have provided rest rooms in the form of jhuggi-hutments. The workers stated that they find this accommodation unsatisfactory because it does not provide any protection from heat during summer. Since it is only a roof over bare ground, in the rainy season the place is flooded. The rest rooms are usually blown away during dust storms. Hence



the workers seemed unhappy with the facilities since they did not provide protection either from rain or sun...

Canteen—The workers were unanimous in stating that there is no canteen meant for them... The contractors... have got a canteen. But it is meant for skilled workers and for the secretarial and other staff, not for the unskilled workers. If they were to take food there, they would have to spend at least Rs. 5.00 each per meal and that was far beyond their means. Besides in practice the canteen is not open to them..."

(From the report dated July 9, 1982)

"Samrat Hotel construction site—There are no creches at the work site at the present time. To avoid accidents the mothers tie their children to a post or to any heavy thing at the site. It was reported that a child had fallen from some height earlier and had been injured..."

... "No toilet facilities were provided in any of the workers camps. All workers have to go out to the city forest..."

...There is no special washing facility and the same hand-pump were used for drinking water and washing clothes."

(From the report dated July 30, 1982)

"Indraprastha indoor stadium.—During our interviews we asked the workers why they did not send their children to the creche and they gave two main reasons : 1. Initially the contractors had a creche without any facilities. The children were kept together in a tent and there was an attendant from among the workers. The children were given some porridge which they could not digest and many of them fell ill. Hence most parents withdrew their children from the creche both because they were not getting any care and the food did not agree with the children..."

(From the report dated July 9, 1982)

3. Employment of Children Act, 1938—Section 3, and the Constitution of India, Article 24.

"Indraprastha Sports Complex—We saw two children who told us that they were working as unskilled workers. One of them looked very young, perhaps just about ten years, though his mother insisted that he is sixteen years old. When we asked them about their wages, at first they said that they were getting Rs. 5 each per day. But when the jamadar prompted, they stated that they were getting Rs 8.60 per day..."

(From the report dated July 9, 1982)

“Samrat Hotel Complex—...We were told that no child workers are employed. However during our cursory inspection of the site we noticed several child workers on the site and within the building and one young boy told us that he was 11 years and was assisting the maistry. He did not receive any wage payment but he informed us that his whole family together was receiving about Rs. 200 for ten days. We were unable to continue our conversation since the boy was asked by a supervisor to go away.”

(From the report dated June 17, 1982)

“Talkatora Swimming Pool—We talked to two boys one of whom gave his age as sixteen but looked much younger. He told us that he is paid Rs 9 per day and has been working with the same Munshi for many years but did not remember how many.... The Second boy told us that he did not know his age and that he is paid Rs. 8 per day...”

(From the report dated June 24, 1982).

4. Contract Labour (Regulation and Abolition) Act, 1970—Sections 16 to 21, read with Contract Labour (Regulation and Abolition) Rules, 1971 : Rules 24, 25, 40—62, 68—82.

“Siri Fort Asian Village Complex—...A top official told us that the working hours are from 9 a.m. to 5 p.m. A lower level worker close to the site told us that the working hours are from 8 a.m. to 5 p.m. All the persons we interviewed told us that the workers are paid Rs 11.60 per day. However, two modes of payment were reported. A lower level worker near the site told us that the contractor gives the amount to the jamadar who pays the workers. A top official told us that the contractor pays the workers directly but does it in the presence of the jamadar who identifies the workers.

A jamadar's wife whom we interviewed told us that she and her husband have brought 35 workers from Rajasthan, that the workers are paid Rs 11.60 per day and have to give Rs 1.30 per head per day as the jamadar's commission. Besides, before coming to Delhi, the workers had borrowed between Rs 1500 and 2500 each from the jamadar. This amount is collected in instalments with interest. Another lower level worker told us that the jamadars collect Rs 2 per head per day...”

(From the report dated June 7, 1982)

6. Violation of the Supreme Court's order dated May 11, 1982 directing the contractors to "provide the requisite facilities" to the ombudsmen to interview the workers.

" . At the Talkatora site, as they were interviewing some of the workers, a person who introduced himself as a supervisor, shouted at the workers and asked them to stop talking and begin to work. At the two flyovers (Moolchand and Lodhi Road), there was no force used. But some functionaries of the contractor were always with them and in some cases they tried to prompt replies to the workers. Hence a confidential discussion was difficult."

(From the report dated June 24, 1982)

## V

### **Extracts from the Supreme Court Judgement of Justice Bhagwati and Justice Baharul Islam dated Sept. 18, 1982** (Writ Petition No. 1843 of 1981)

#### **On the locus standi of the petitioners (PUDR) to maintain the writ petition.**

"This Court has taken the view that, having regard to the peculiar socio-economic conditions prevailing in the country where there is considerable poverty, illiteracy and ignorance obstructing and impeding accessibility to the judicial process, it would result in closing the doors of justice to the poor and deprived sections of the community if the traditional rule of standing evolved by Anglo-Saxon jurisprudence that only a person wronged can sue for judicial redress were to be blindly adhered to and followed...*It has been held by this Court...that where a person or class of persons to whom legal injury is caused or legal wrong is done is by reason of poverty, disability or socially or economically disadvantage position not able to approach the Court for judicial redress, any member of the public acting bona fide and not out of any extraneous motivation may move the court for judicial redress of the legal injury or wrong suffered by such person or class of persons and the judicial process may set in motion by any public spirited individual or institution even by addressing a letter to the court...court would cast aside all technical rules of procedure and entertain the letter as a writ petition on the judicial*

side and take action upon it. That is what has happened in the present case. *Here the workmen whose rights are said to have been violated and to whom a life of basic human dignity has been denied are poor, ignorant illiterate humans who, by reasons of their poverty and social and economic disability, are unable to approach the courts for judicial redress and hence the petitioners have, under the liberalised rule of standing, locus standi to maintain the present writ petition espousing the cause of the workmen...."*

### **On the employment of children**

"...construction industry does not find a place in the Schedule to the Employment of Children Act 1938 and the prohibition enacted in section 3 sub-section (3) of that Act against the employment of a child who has not completed his fourteenth year cannot apply to employment in construction industry. This is a sad and deplorable omission which, we think, must be immediately set right by every State Government by amending the Schedule so as to include construction industry in it in exercise of the power conferred under section 3 A of the Employment of Children Act 1938. *We hope and trust that every State Government will take the necessary steps in this behalf without any undue delay, because construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work.* That would be in consonance with Convention No. 59 adopted by the International Labour Organization and ratified by India. But apart altogether from the requirement of Convention No. 59, we have Article 24 of the Constitution which provides that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment. This is a constitutional prohibition which, even if not followed up by appropriate legislation, must operate proprio vigore and construction work being plainly and indubitably a hazardous employment, it is clear that by reason of this constitutional prohibition, no child below the age of 14 years can be allowed to be engaged in construction work. There can therefore be no doubt that notwithstanding the absence of specification of construction industry in the Schedule to the Employment of Children Act 1938, no child below the age of 14 years can be employed in construction work and the Union of India as also every State Government must ensure that this constitutional mandate is not violated in any part of the country...."

### **On the employment of migrant labour**

“So far as the complaint in regard to non-observance of the provisions of the Inter State Migrant Workman (Regulation of Employment and Conditions of Service) Act 1979 was concerned, the defence of the Union of India, the Delhi Administration and the Delhi Development Authority that though this Act had come into force in the Union Territory of Delhi with effect from 2nd October 1980, the power to enforce the provisions of the Act was delegated to the Administrator of the Union Territory of Delhi only on 14th July 1981 and thereafter also the provisions of the Act could not be enforced because the Rules to be made under the Act had not been finalised until 4th June, 1982. *It is difficult to understand as to why in the case of beneficent legislation like the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 it should have taken more than 18 months for the Government of India to delegate the power to enforce the provisions of the Act to the Administrator of the Union Territory of Delhi and another almost 12 months to make the Rules under the Act...* We very much wished that the provisions of this Act had been made applicable earlier to the migrant workmen employed in the construction work of these projects though we must confess that we do not see why the enforcement of the provisions of the Act should have been held up until the making of the Rules.....so far as the rights and benefits conferred upon migrant workmen under the provisions of sections 13 to 16 of the Act are concerned, the responsibility for ensuring such rights and benefits rests not only on the contractors but also on the Union of India, the Delhi Administration or the Delhi Development Authority who is the principal employer in relation to the construction work entrusted by it to the contractors. We must confess that we have serious doubts whether the provisions of this Act are being implemented in relation to the migrant workmen employed in the construction work of these projects...”

### **On the responsibility of the Union of India the Delhi Administration and the Delhi Development Authority**

“It is true that the workmen whose cause has been championed by the petitioners are employees of the contractors but the Union of India, the Delhi Administration and the Delhi Development Authority which have entrusted the construction work of Asiad projects to the

contractors cannot escape their obligation for observance of the various labour laws by the contractors. So far as the Contract Labour (Regulation and Abolition) Act 1970 is concerned, it is clear that under section 20, if any amenity required to be provided under sections 16, 17, 18 or 19 for the benefit of the workmen employed in an establishment is not provided by the contractor, the obligation to provide such amenity rests on the principal employer and therefore if in the construction work of the Asiad projects, the contractors do not carry out the obligations imposed upon them by any of these sections, the Union of India, the Delhi Administration and the Delhi Development Authority as principal employers would be liable and these obligations be enforceable against them. The same position obtains in regard to the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979. In the case of this Act also, sections 17 and 18 make the principal employer liable to make payment of the wages to the migrant workmen employed by the contractor as also to pay the allowances provided under sections 14 and 15 and to provide the facilities specified in section 16 to such migrant workmen, in case the contractor fails to do so and these obligations are also therefore clearly enforceable against the Union of India, the Delhi Administration and the Delhi Development Authority as principal employers. . . . *The Union of India, the Delhi Administration and the Delhi Development Authority cannot fold their hands in despair and become silent spectators of the breach of a constitutional prohibition being committed by their own contractors. . . if the Union of India, the Delhi Administration or the Delhi Development Authority at any time finds that the provisions of the Equal Remuneration Act 1946 are not observed and the principles of equality before the law enshrined in Article 14 is violated by its own contractors, it cannot ignore such violation and sit quiet by adopting a non-interfering attitude and taking shelter under the executive that the violation is being committed by the contractors and not by it. . . .*"

### **On the breach of fundamental right Articles 21, 14 and 23.**

"The complaint of violation of Article 24 based on the averment that children below the age of 14 years are employed in the construction work of the ASIAD projects is clearly a complaint of violation of a fundamental right. So also when the petitioners allege non-observance of the provisions of the Equal Remuneration Act, 1946,

it is in effect and substance a complaint of breach of the principle of equality before the law enshrined in Article 14...Then there is the complaint of non-observance of the provisions of the Contract Labour (Regulation and Abolition) Act 1970 and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 and this is also in our opinion a complaint relating to violation of Article 21.. it has been held by this Court that the right to life guaranteed under this Article is not confined merely to physical existence or to the use of any faculty or limb through which life is enjoyed or the soul communicate with outside world but it also includes within its scope and ambit the right to live with basic human dignity and the State cannot deprive anyone of this precious and invaluable right because no procedure by which such deprivation may be effected can ever be regarded as reasonable, fair and just. *Now the rights and benefits conferred on the workmen employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition) Act 1970 and the Inter State Migrant Workmen (Regulation of Employment and Condition of Service) Act 1979 are clearly intended to ensure basic human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly be a violation of Article 21 by the Union of India, the Delhi Administration and the Delhi Development Authority which, as principal employers, are made statutorily responsible for securing such rights and benefits to the workmen...*(Regarding) the complaint in regard to non-payment of minimum wage to the workmen under the Minimum Wages Act 1948. . . .We are of the view that this complaint is also one relating to breach of a fundamental right. . . . and ...it is the fundamental right enshrined in Article 23 which is violated by non-payment of minimum wages to the workmen...Every form of forced labour, 'begar' or otherwise, is within the inhibition of Article 23 and it makes no difference whether the person who is 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, it is, labour supplied not willingly but as a result of force or compulsion...*in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, a contract of service may appear on its face voluntary but it may, in reality, be involuntary, because while entering into the contract, the employed, by reason of his economically helpless condition, may have been faced with Hobson's choice, either*

*to starve or to submit to the exploitative terms dictated by the powerful employer. . . . 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. . . . 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. . . . 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. . . ."*

### **On the payment of minimum wages**

*"We directed by our Order dated 11th May 1982 that whatever is the minimum wage for the time being or if the wage payable is higher than such wage, it shall be paid by the contractors to the workmen directly without the intervention of the jamadars and that the jamadars shall not be entitled to deduct or recover any amount from the minimum wage payable to the workmen as and by way of commission or otherwise. We would also direct in addition that if the Union of India or the Delhi Administration or the Delhi Development Authority finds—and for this purpose it may hold such inquiry as is possible in the circumstances—that any of the workmen has not received to the minimum wage payable to him, it shall take the necessary legal action against the contractors whether by way of prosecution or by way of recovery of the amount of the short-fall. We would also suggest that hereafter whenever any contracts are given by the government or any other governmental authority including a public sector corporation, it should be ensured by introducing a suitable provision in the contracts that wage shall be paid by the contractors to the workmen directly without the intervention*



*of any jamadars or thekadars and that the contractors shall ensure that no amount by way of commission or otherwise is deducted or recovered by the Jamadars from the wage of the workmen."*

### **On prosecutions launched against the contractors**

"We do not propose to go into the details of these prosecutions launched against the contractors but we are shocked to find that in cases of violations of labour laws enacted for the benefit of workmen, the Magistrates have been imposing only small fines of Rs. 200 thereabouts. *The Magistrates seem to view the violations of labour laws with great indifference and unconcern as if they are trifling offences undeserving of judicial severity.* They seem to overlook the fact that labour laws are enacted for improving the conditions of workers and the employers cannot be allowed to buy off immunity against violations of labour laws by paying a paltry fine which they would not mind paying, because by violating the labour laws they would be making profit which would far exceed the amount of the fine. If violations of labour laws are going to be punished only by meagre fines, it would be impossible to ensure observance of the labour laws and the labour laws would be reduced to nullity. They would remain merely paper tigers without any teeth or claws. *We would like to impress upon the Magistrates and Judges in the country that violations of labour laws must be viewed with strictness and whenever any violations of labour laws are established before them, they should punish the errant employers by imposing adequate punishment."*

### **On civil and political rights**

"The poor too have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality. *If the sugar barons and the alcohol kings have the Fundamental Right to carry on their business and to fatten their purses by exploiting the consuming public, have the 'chamars' belonging to the lowest strata of society no Fundamental Right to earn an honest living through their sweat and toil?* The former can approach the courts with a formidable army of distinguished lawyers paid in four or five figures per day and if their right to exploit is upheld against the government under the label of Fundamental Right, the courts are praised for their boldness and courage and their independence

and fearessness are applauded and acclaimed...Large numbers of men, women and children who constitute the bulk of our population are today living a sub-human existence in conditions of abject poverty ; utter grinding poverty has broken their back and sapped their moral fibre. They have no faith in the existing social and economic system. What civil and political rights are these poor and deprived sections of humanity going to enforce ?... *The only solution for making civil and political rights meaningful to these large sections of society would be to remake the material conditions and restructure the social and economic order so that they may be able to realise the economic, social and cultural rights...* Of course the task of restructuring the social and economic order so that the social and economic rights become a meaningful reality for the poor and lowly sections of the community is one which legitimately belongs to the legislature and the executive, but mere initiation of social and economic rescue programmes by the executive and the legislature would not be enough and it is only through multi-dimensional strategies including public interest litigation that these social and economic rescue programmes can be made effective. Public interest litigation, as we conceive it, is essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them..."

*FOR COPIES :*

**Bombay :**

SUPER BOOK HOUSE  
Sind Chambers  
Colaba Causeway  
Bombay-400005

**Calcutta :**

KATHASHILPA  
19, Shamcharan Dey Street  
Calcutta-700 073

**Delhi :**

PUDR  
Via Sumanta Banerji  
D-33, Press Enclave  
Malviya Nagar Extension  
New Delhi-110017

**Andhra Pradesh :**

SRIJANA  
Hanumakonda  
Warangal-506009

*Published by*

GOVINDA MUKHOTY

President, PUDR

213, Jor Bagh

New Delhi-110003

October 1982

*Price : Rs. 3/-*