

# SUPREME COURT OF INDIA

State of Assam

Vs.

Barak Upatyaka D.U.Karmachari Sanstha

C.A.No.6492 of 2002

(R.V.Raveendran and Markandey Katju JJ.)

17.03.2009

## JUDGEMENT

### **R. V. Raveendran J.**

1. This appeal by special leave is filed by the State of Assam aggrieved by the order dated 14.6.2001 passed by the Division Bench of the Gauhati High Court. By that order the Division Bench upheld the order dated 23.12.1999 of the learned Single Judge in Civil Rule No.2996/1995 allowing respondent's writ petition and directing the state government to sanction financial assistance by way of grant-in-aid to Cachar and Karimganj District Milk Producers' Cooperative Union Limited ('CAMUL' for short) so as to enable CAMUL to make regular payment of monthly salaries, allowances as also the arrears to its employees.

2. CAMUL is a society registered under the Assam Co-operative Societies Act, 1949 ('Act' for short). Respondent, a Trade Union representing the workers of CAMUL, filed the said writ petition (Civil Rule No.2996/1995) contending that the state government formed and registered CAMUL as a co-operative society to run its cattle development project; that its Board of Directors including the Managing Director (always a government servant, on deputation) were appointed by the state government; that the post of the Managing Director of CAMUL was declared to be a post equivalent to a Head of Department under the state government; that initially the entire staff of CAMUL were drawn on deputation from the Veterinary, Agriculture & Co-operative Departments of the state government; that in a phased manner, those employees were reverted back to their Parent Departments and replaced by the staff appointed by CAMUL, through a Selection Board set up by the state government with representatives from the Central Government and National Dairy Development Board; that state government sanctioned the staffing pattern of CAMUL; that from the year 1982-83 onwards the Government was extending financial assistance by way of grants to CAMUL to meet the expenditure (including the expenditure relating to its employees); and that for the years 1994-95 though the state government had sanctioned financial assistance in a sum of Rs. 7 lakhs as grant-in-aid, it was not disbursed and consequently CAMUL did not pay the monthly salaries to its employees from December 1994 onwards. It is contended that state government had all pervasive control over the affairs

and management of CAMUL and therefore it should be treated as a department of government of Assam, though registered as a co-operative society by lifting the corporate veil. It was further contended that state government was responsible and liable to pay the salaries and emoluments of the employees of CAMUL and it was not justified in withholding the grant amount. The respondent union therefore sought a direction to the state government to release the arrears of pay and allowances of employees of CAMUL with effect from December 1994 and for a direction to continue to pay the salary and allowances to the employees of CAMUL, every month in future. In addition to the state government (respondent No.1) and its officers (respondents 2 to 4), the Union of India (respondent No.5) and CAMUL and its Managing Director (respondents 6 and 7) were impleaded as parties to the writ petition.

3. The state government opposed the petition. It inter alia contended that the grant-in-aid was extended for helping CAMUL in its different development activities; that under a centrally sponsored scheme, between 4 1981 to 1986, the earmarked amount was released on 50:50 basis by central and state government with 70% loan component and 30% as grant component; that though the loan component was not repaid by CAMUL, the state government continued the grant-in-aid for purposes of development activities; that the state government had also provided Rs.43.60 lakhs for developing the milk-processing infrastructure of CAMUL; that despite such assistance, CAMUL became defunct and stopped all its activities and thereafter the Silchar Town Milk Supply Project was being run by the state's dairy development department itself; that at no time, the state government made any commitment or agreed to bear the salaries of employees of CAMUL or any other similar societies; that CAMUL had to generate its own funds and resources to pay the salaries of its staff; and that as there was no relationship of employer and employee between the state government and the employees of CAMUL, it was not responsible to bear or pay any amount towards the salaries of the employees of CAMUL.

4. The learned Single Judge allowed the writ petition. He held that the State Government through its Veterinary Department undertook the Integrated Cattle Development Projects (ICDP) in various districts of Assam; and as a part of the said project, an ICDP block was created at Ghungoor, Silchar in Cachar district; that 32 cooperative societies of Milk Producers were established and CAMUL was formed as an Apex Body of those co-operative societies; that the Dairy Development Department of the state government had been providing grant-in-aid earmarked in the state budget every year to CAMUL; that the state government failed to offer any explanation or reason for stopping the grant-in-aid from 1994; that the Dairy Development Project at Silchar was purely a state government scheme and as that Project has not been discontinued and as there was no decision to barring CAMUL from receiving grant-in-aid which was being granted from 1982-83 till 1994, the state government could not deny the grant-in-aid amount. Consequently, the learned Single Judge directed release of the grand-in-aid for paying monthly salaries and allowances along with arrears to the employees. The said order has been affirmed by the Division Bench which is under challenge in this appeal by special leave. The only question that arises for consideration is whether the High Court was justified in directing the state government to release grants to CAMUL, so as to enable CAMUL to pay the salary and other emoluments of its employees.

5. The various averments of the respondent in the writ petition, about the all pervasive financial, administrative and functional control of CAMUL by the state government, even if assumed to be true, may at best result in CAMUL being treated as `state' within the meaning of that expression 6 under Article 12 of the Constitution of India. If it is a `state', in case of violation of any of the fundamental rights of its employees, by CAMUL as employer, the employees were entitled to claim relief against CAMUL, by taking recourse to a writ petition under Article 226 of the Constitution of India. But the fact that a corporate body or co-operative society answers the definition of `state' does not make it the `state government', nor will the employees of such a body, become holders of civil posts or employees of the state government. Therefore the fact that the CAMUL may answer the definition of "state" does not mean that the state government is liable to bear and pay the salaries of its employees. CAMUL indisputably is a co- operative society registered under the provisions of the Assam Cooperative Societies Act, 1949. Section 85 of the said Act provides that every registered society shall be deemed to be a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted. Therefore, CAMUL, even if it was `state' for purposes of Article 12, was an independent juristic entity and could not have been identified with or treated as the state government. In the view we have taken, it is not necessary in this case to examine whether CAMUL was `state' for purposes of Article 12.

6. Section 43 of the Act provides that notwithstanding anything contained in any law for the time being in force, the State Government may grant loans or give financial assistance in any form to any registered society.

“Therefore, the fact that the state government had given financial assistance in the form of grant-in-aid to CAMUL continuously for some years, either to meet its development activities or for even meeting the salaries, does not mean that state government is responsible to bear and pay the salaries and emoluments of the employees of CAMUL or other liabilities of CAMUL.

Nor can the state government be made liable for extension of financial assistance for all times to come, to cover the payment of salaries of employees of CAMUL. If the salaries are not paid, the remedy of the employees of CAMUL is to proceed against CAMUL, in accordance with law, by approaching the forum under the appropriate labour legislation or the Co-operative Societies Act. But a trade union representing the employees of a co-operative society cannot, by filing a writ petition, require the Government to bear and pay the salaries of the employees of the co- operative society, howsoever pervasive, the control of the state government, over such society. Nor is any right created to demand the continuance of financial assistance to a co-operative society, on the ground that such assistance has been extended by the government, for several years. The respondent has not been able to show any right in the employees of CAMUL against the state government, or any obligation on the part of the state government with reference to the salaries/emoluments of employees of CAMUL either under any statute or contract or otherwise.”

7. The learned counsel for the respondent contended that the same issue arose for consideration in *Kapila Hingorani v. State of Bihar*<sup>1</sup> (for short `Kapila Hingorani I') and the issue has been answered in their favour. Reference is invited to the following question, which was set down as one of the questions arising for consideration in that case:

“Whether having regard to the admitted position that the government companies or corporations referred to hereinbefore are `State' within the meaning of Article 12 of the Constitution of India, the State of Bihar having deep and pervasive control over the affairs thereof, can be held to be liable to render all assistance to the said companies so as to fulfil its own and/or the corporations' obligations to comply with the citizens' rights under Article 21 and 23 of the Constitution of India? Reference is also invited to the following observations of this Court in considering the said question :

"30. The government companies/public sector undertakings being "States" would be constitutionally liable to respect life and liberty of all persons in terms of Article 21 of the Constitution of India. They, therefore, must do so in cases of their own employees. The Government of the State of Bihar for all intent and purport is the sole shareholder. Although in law, its liability towards the creditors of the company may be confined to the shares held by it but having regard to the deep and pervasive control it exercises over the government companies, in the matter of enforcement of human rights and/or rights of the citizen to life and liberty, the State has also an additional duty to see that the rights of employees of such corporations are not infringed.

31. The right to exercise deep and pervasive control would in its turn make the Government of Bihar liable to see that the life and liberty clause in respect of the employees is fully safeguarded. The Government of the State of Bihar, thus, had a constitutional obligation to protect the life and liberty of the employees of the government-owned companies/corporations who are the citizens of India. It had an additional liability having regard to its right of extensive supervision over the affairs of the company.

33. The State having regard to its right of supervision and/or deep and pervasive control, cannot be permitted to say that it did not know the actual state of affairs of the State Government undertakings and/or it was kept in the dark that the salaries of their employees had not been paid for years leading to starvation death and/or commission of suicide by a large number of employees. Concept of accountability arises out of the power conferred on an authority.

34. The state may not be liable in relation to the day-to-day functioning of the companies, but its liability would arise on its failure to perform the constitutional duties and functions by the public sector undertakings, as in relation thereto lie the State's constitutional obligations. The State acts in a fiduciary capacity. The failure on the part of the state in a case of this nature must also be viewed from the angle that

the statutory authorities have failed and/or neglected to enforce the social-welfare legislations enacted in this behalf e.g. Payment of Wages Act, Minimum Wages Act etc. Such welfare activities as adumbrated in part IV of the Constitution of India indisputably would cast a duty upon the state being a welfare state and its statutory authorities to do all things which they are statutorily obligated to perform."

Reference is invited to the fact that this Court directed the Bihar government to release Rs.50 crores and deposit it with the High Court for disbursing salaries of employees of government corporations/companies.

The contention of respondent is that the direction of the High Court, is in consonance with the said view."

8. The learned counsel for the respondent also relied upon the following observations in *Kapila Hingorani vs. State of Bihar*<sup>2</sup> (for short `Kapila Hingorani II') :

"26. We, therefore, do not appreciate the stand taken by the State of Bihar now that it does not have any constitutional obligation towards a section of citizens viz. the employees of the public sector undertakings who have not been paid salaries for years.

27. We also do not appreciate the submissions made on behalf of the State of Bihar that the directions issued were only one-time direction. In clause 4 of the directions, it was clearly stated that the State for the present shall deposit a sum of Rs. 50 crores before the High Court for disbursement of salaries to the employees of the corporations.

Furthermore, the matter had been directed to be placed again after six months."

This Court also issued further interim directions to State of Bihar to deposit a further sum of Rs.50 crores and State of Jharkhand to deposit a sum of Rs.25 crores to meet the arrears of salaries of Public Sector undertakings.

9. We have carefully examined the said two decisions. The two decisions are interim orders made in a writ petition under Article 32 of the Constitution. The said orders have not finally decided the issues/questions raised, nor laid down by any principle of law. The observations extracted above as also other observations and directions are purely tentative as will be evident from the following observations in *Kapila Hingorani (I)*:

"We, however hasten to add that we do not intend to lay down a law, as at present advised, that the State is directly or vicariously liable to pay salaries/remunerations of the employees of the public sector undertakings or the government companies in all situations.

We, as explained hereinbefore, only say that the state cannot escape its liability when a human rights problem of such magnitude involving the starvation deaths and/or suicide by the employees has taken place by reason of non-payment of salary to the employees of public sector undertakings for such a long time.

This order shall be subject to any order that may be passed subsequently or finally."

The position is further made clear in Kapila Hingorani (II) as under :

"We make it clear that we have not issued the aforementioned directions to the States of Bihar and Jharkhand on the premise that they are bound to pay the salaries of the employees of the public sector undertakings but on the ground that the employees have a human right as also a fundamental right under Article 21 which the states are bound to protect. The directions, which have been issued by this Court on 9.5.2003 as also which are being issued herein, are in furtherance of the human and fundamental rights of the employees concerned and not by way of an enforcement of their legal right to arrears of salaries. The amount of salary payable to the employees or workmen concerned would undoubtedly be adjudicated upon in the proper proceedings. However, these directions are issued which are necessary for their survival."

It is thus clear that directions were not based on legal right of the employees, but were made to meet a human right problem involving starvation deaths and suicides. But in the case on hand, relief is claimed and granted by proceeding on the basis that the employees of corporations/bodies answering the definition of 'state' have a legal right to get their salaries from the state government. In fact Kapila Hingorani (I) and (II) specifically negative such a right.

10. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as ratio decidendi. An interim order which does not finally and conclusively decide an issue cannot be a precedent.

“Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The observations and directions in Kapil Hingorani (I) and (II) being interim directions based on tentative reasons, restricted to the peculiar facts of that case involving an extraordinary situation of human rights violation resulting in starvation deaths and suicides by reason of non- payment of salaries to the employees of a large number of public sector undertakings for several years, have no value as precedents. The interim directions were also clearly in exercise of extra-ordinary power under Article 142 of the Constitution. It is not possible to read such tentative reasons, as final conclusions, as contended by the respondent. If those observations are taken to be a final decision, it may lead to every

disadvantaged group or every citizen or every unemployed person, facing extreme hardship, approaching this Court or the High Court alleging human right violations and seeking a mandamus requiring the state, to provide him or them an allowance for meeting food, shelter, clothing, salary, medical treatment, and education, if not more. Surely that was not the intention of Kapila Hingorani (I) and (II).”

11. What clearly holds the field at present is the principle laid down and reiterated by the Constitution bench of this Court in *Steel Authority of India v. National Union Waterfront Workers*<sup>3</sup> wherein this Court categorically held:

" We wish to clear the air that the principle, while discharging public functions and duties the government companies/corporations/societies which are instrumentalities or agencies of the government must be subjected to the same limitations in the field of public law - constitutional or administrative law - as the government itself, does not lead to the inference that they become agents of the Centre/state government for all purposes so as to bind such government for all their acts, liabilities and obligations under various Central and/or State Acts or under private law."

[emphasis supplied]

12. We, therefore, reject the interpretation put forth by the respondent, on the tentative observations in Kapila Hingorani(I) and (II), to contend that the government would be liable for payment of salaries and other dues of employees of the public sector undertakings. We are of the considered view that the decision of the High Court cannot therefore be sustained.

13. We, accordingly allow this appeal, set aside the orders of the Division Bench and the learned Single Judge of the High Court and dismiss the writ petition without prejudice to the right of the employees of CAMUL to take such action as is available in law for redressal of their grievances. We may also add that this decision will not come in the way of state government formulating any scheme or extending any relief or benefit to the employees of CAMUL or other similarly situated persons.

<sup>1</sup>2003 (6) SCC 1

<sup>2</sup>2005 (2) SCC 262

<sup>3</sup>2001 (7) SCC 1