

SUPREME COURT OF INDIA

State of Jharkhand

Vs.

Harihar Yadav

C.A.No.10515 of 2013

(Anil R. Dave and Dipak Misra, JJ.)

22.11.2013

JUDGMENT

Dipak Misra. J.

1. Leave granted in all these Special Leave Petitions.

The Imperative Prologue

2. How does a constitutional court respond to a situation when a human problem of great magnitude frescoed on constitutional canvas gets painfully projected with intense sincerity, possibly realizing pain is one of the “sovereign masters of mankind”? How is the Court required to react in law when the workmen are forced to grapple with a colossal predicament of sense of belonging due to a situation created making them feel that they are neither here nor there? We consider it as an unbearable tragedy faced by the unfortunate employees warranting serious attention of this Court, for some employees have breathed their last due to starvation, constant stress being unable to meet the keen demands of appetite, and the impecuniosities that hampered them to avail timely treatment, and some families have been unwillingly driven to a state of unmeaning full survival - an animal existence - sans proper food, sans clothes and sans real shelter. It is not because of any natural calamity beyond human control but because two States, namely, State of Jharkhand and State of Bihar deliberately have chosen to create an Ever tine catastrophe by their act of abandonment of responsibility to pay despite availing work

for some years and thereafter disowning them and nonchalantly shifting the burden to other's shoulder and ultimately arguing in chorus that Jharkhand Hill Area Lift Irrigation Corporation (JHALCO) and Bihar Hill Area Lift Irrigation Corporation (BHALCO) being companies registered under the Companies Act, 1956, it is open to the aggrieved employees or their legal representatives to initiate necessary winding up proceedings to get their dues. We can only say that the stand and stance so adroitly put forth by both the States are shorn of their constitutional accountability and statutory answerability. In a way, it seems to be orchestrated by some kind of abstruse and unfathomable idea fostered in fertile mind that loves to keep helpless and hapless people in a state of despair where hope dies an unceremonial death or it lives in a state of "Trishanku". It indubitably depicts a startlingly unhappy situation commanding urgent surgical intervention so that the injury does not become malignant.

3. Before we proceed to exposit the facts, regard being had to the questions posed by us, we think it seemly to refer to certain principles laid down by this Court.

4. In *Jagdish Saran (Dr) vs. Union of India*¹, it has been stated as under:-

“Law, constitutional law, is not an omnipotent abstraction or distant idealization but a principled, yet pragmatic, value-laden and result-oriented, set of propositions applicable to and conditioned by a concrete stage of social development of the nation and aspirational imperatives of the people. India Today - that is the inarticulate major premise of our constitutional law and life.”

5. In *Chameli Singh and Others vs. State of U.P. and Another*², after referring to Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, 1966 which laid down that the State parties to the Covenant recognize “the right of everyone to an adequate standard of living for himself and for his family including food, clothing, housing and to the continuous improvement of living conditions”, the Court opined that the State parties are required to take appropriate action to ensure that the said right is realized.

6. In *P.G. Gupta vs. State of Gujarat and others*³, it has been opined that the Preamble to the Constitution says that the people of India having resolved to secure to all its citizens social and economic justice also made it subject to equality of status and opportunity to promote the dignity of the individual in the united and integrated Bharat. Reference was made to Article 37 that declares the rights in Part IV or fundamental law in the governance of the country and also to Article 39(b) which enjoins that the ownership and control of the material resources of the community are to promote the welfare of the people by securing social and economic justice to the weaker sections.

7. In *D.S. Nakara v. Union of India*⁴, the court stated that the basic framework of

socialism is to provide a proper standard of life to the people, especially, security from cradle to grave. Emphasis has been laid on a vibrant, throbbing socialist welfare society and what is the duty of the State to achieve the said goal.

8. In *J.K. Cotton Spinning and Weaving Mills Co. vs. Labour Appellate Tribunal of India*⁵, this Court clearly stated that the concept of social justice is not narrow, one-sided or pedantic, and is not confined to industrial adjudication alone. It is comprehensive. It is founded on the basic ideal of socio-economic equality and its aim is to eliminate disparities and inequalities.

9. In *State of Mysore vs. Workers of Gold Mines*⁶, the Court observed thus: -

“10. ... The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.”

10. In *Y.A. Mamarde vs. Authority under the Minimum Wages Act*, the Court observed that under our present Constitution the State is now expressly directed to endeavor to secure to all workers (whether agricultural, industrial or otherwise) not only bare physical subsistence but a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure. This directive principle of State policy being conducive to the general interest of the nation as a whole, merely lays down the foundation for appropriate social structure in which the labour will find its place of dignity, legitimately due to it in lieu of its contribution to the progress of national economic prosperity.

11. In *S.P. Gupta vs. Union of India*⁸, this Court held as under:-

“27.... The judiciary has, therefore, a socioeconomic destination and a creative function. It has to use the words of Glanville Austin, to become an arm of the socio-economic revolution and perform an active role calculated to bring social justice within the reach of the common man. It cannot remain content to act merely as an umpire but it must be functionally involved in the goal of socioeconomic justice.” [Emphasis added]

12. In *Ramon Services (P) Ltd. vs. Subhash Kapoor*⁹, R.P. Sethi, J. observed thus: -

“21. After independence the concept of social justice has become a part of our legal system. This concept gives meaning and significance to the democratic ways of life and of making the life dynamic. The concept of welfare State would remain in oblivion unless social justice is dispensed. Dispensation of social justice and achieving the goals set forth in the Constitution are not possible without the active,

concerted and dynamic efforts made by the person concerned with the justice dispensation system.”

13. In *Harjinder Singh vs. Punjab State Warehousing Corporation*¹⁰. Singhvi, J. opined thus: -

“It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the directive principles of State policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer—public or private.”

14. We have referred to the aforesaid authorities to highlight the concept of social justice, dignity of living and the role of the judiciary. The court is bound to respond within the constitutional framework. In this context, the Preamble of the Constitution becomes extremely significant. The Preamble uses the words “social justice” while speaking of “Justice - social, economic and political”. Thus, social facet and the economic aspect are the ideal goal of the welfare State. The Constitution casts a responsibility on the State to sustain social and economic security, for the Preamble is the floodlight illuminating the path to be persuaded by the State to set up a sovereign, socialist, secular, democratic republic. [See: D.S. Nakara (supra)].

15. It is the duty of the Court to see that the philosophy which is ingrained in our Constitution is not atrophied by the State paving a path of deviancy. The employer, within the meaning of Article 12 of the Constitution has a sacrosanct duty to act in terms of the sacred objectives of social and economic justice. In this content, we may fruitfully reproduce a passage from *Balbir Kaur and another vs. Steel Authority of India Ltd. and Others*¹¹:-

“The concept of social justice is the yardstick to the justice administration system or the legal justice and as Roscoe Pound pointed out the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whatever is beneficial for the society, the endeavor of the law court would be to administer justice having due regard in that direction.”

The Chequered History of the Litigation

16. Instead of mentioning only history, we have deliberately stated chequered history as we are at pains to say that this Court has dealt with this lis on earlier occasion in many a context and thereafter left it to the High Court to adjudicate. Before we chronologically refer to the earlier judgments it can be stated without any hesitation that the facts which have been unfurled are not only disturbing but also reflective of the scenario how a pyramid of suffering, strain and starvation can be ingenuously built by both the States, as if they are determined to compete with each other about gaining success in effectively creating a sanctuary of errors.

17. A Government company was floated by the State of Bihar in the name of Bihar Hill Area Lift Irrigation Corporation Limited and got it registered under the Companies Act, 1956. The object of that company was to explore, execute, install, develop, promote, improve, establish, finance, manage, administer and maintain water resources for the purposes of ensuring regular irrigation facilities to the cultivators in the hilly areas of Chotanagpur and Santhal Pargana and also for other areas like the districts of Rohtas, Aurangabad, Nawadah, Gaya, Bhagalpur (South of Ganga) and Monghyr (south of Ganga) through the means of bigger diameter wells intake, wells lift irrigation schemes as well as other suitable devices appropriate for such irrigation facilities and to manufacture spare parts, machinery, tools, implements, materials, substances, goods or things of any description which in the opinion of the company are likely to promote or advance the development of irrigation facilities to the cultivators in the aforesaid area. As the object of the company would project, it was floated in public interest and to take challenges in the field of irrigation and that too in difficult hilly areas in the State of Bihar.

18. As the events have been unfolded, in the State of Bihar many a Government corporation and companies were not paying the salaries to the employees and the whole thing was in utter chaos. An employee of a statutory corporation had attempted immolation as a consequence of which he sustained serious injuries and, eventually, succumbed to the same. At that stage a public spirited person, Kapila Hingorani, preferred a writ petition under Article 32 of the Constitution before this Court asserting, inter alia, that various Government companies/public undertakings situate in the State of Bihar have not paid salaries to their workmen and other employees for a long time resulting in deaths and insurmountable miseries befell on large number of families dependant on such employees. The two-Judge

Bench, dealing with the case of *Kapila Hingorani v.s State of Bihar*¹², encapsulated the pivotal controversy thus: -

“If at all and to what extent the Government of the State of Bihar is vicariously liable for payment of arrears of salaries to the employees of the State- owned corporations, public sector undertakings or the statutory bodies is the core question involved in this writ petition.”

19. Be it noted, a list was provided to this Court on 12.3.2003 and the name of

BHALCO featured at Sl. No. 19. The Court addressed the lis at length and took note of the dismal atmosphere in the State, as the deaths had occurred owing to starvation or malnutrition and the fact that employees had not been paid their salaries for a long time and in some cases for a decade or more as admitted. A stand was taken by the State of Bihar that having regard to the fact that most of the undertakings are companies registered or incorporated under the Companies Act, 1956, the rights and liabilities of the shareholders would be governed by the provisions of the said Act and the liabilities of the said companies cannot be passed on to the State by taking recourse to the doctrine of “lifting of veil” or otherwise. A further contention was advanced that having regard to the magnitude of the problem it would be just and proper if liabilities directed is met with to the extent of 80% by the Union of India and 10% by the State Government and the remaining from the sale of properties belonging to the respective companies. The public spirited person, Kapila Hingorani, appearing in person, contended that the State cannot escape its liability in the matter of payment of salary to its own employees though ostensibly they are working in companies incorporated under the Companies Act, 1956. The Court referred to number of authorities and came to hold that 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 and, therefore, they must do so in cases of their own employees. It was further opined that the Government of the State of Bihar for all intent and purport is the shareholder, although in law, its liability towards the debtors 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. The learned Judges further observed that 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 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. It was further held that the State having regard to its right of supervision and/or deep and pervasive control, could not 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. It has been ruled therein that concept of accountability arises out of the power conferred on an authority. That apart, 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 had 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.

20. Thereafter the Court adverted to the concept of human rights, the duty of the Constitutional Court, financial stringency and other aspects and expressed thus: -

“72. We are of the opinion that the State, thus, has made itself liable to mitigate the sufferings of the employees of the public sector undertakings or the government companies.

Xxx xxx xxx

74. 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. We are not issuing any direction as against the State of Jharkhand as no step had admittedly been taken by the Central Government in terms of Section 65 of the State Reorganization Act and furthermore as only four public sector undertakings have been transferred to the State of Jharkhand in respect whereof the petitioner does not make any grievance.”

21. Regard being had to the totality of circumstances in the interest of justice, the Court issued number of directions a part of which relates to liquidation proceedings pending in the High Court, formation of a committee to be headed by a retired High Court Judge or a sitting District Judge, to scrutinize the assets and liabilities of the companies and the High Court to issue directions/direction from time to time. The directions which are relevant in the context of the present lis are as follows: -

“4. 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. The amount of Rs 50 crores be deposited in two installments. Half of the amount shall be payable within one month and the balance amount within a month thereafter. The High Court shall see to it that the sum so deposited and/or otherwise received from any source including by way of sale of assets of the government companies/public sector undertakings be paid proportionately to the employee concerned where for, the parties may file their claims before it.

5. The High Court, however, in its discretion may direct disbursement of some funds to the needy employees, on ad hoc basis so as to enable them to sustain themselves for the time being.

6. The rights of the workmen shall be considered in terms of Section 529-A of the Companies Act.

7. The Central Government is hereby directed to take a decision as regards division of assets and liabilities of the government companies/public sector undertakings in terms of the provisions of the State Reorganization Act, 2000.”

22. In the said case I.As 7 and 9 were filed which were decided on 13.1.2005 as reported in *Kapila Hingorani vs. State of Bihar*¹³. The Court took note of the fact that in pursuance of the order dated 9.5.2003 it had directed to deposit Rs.50 crores and in furtherance of the said direction the State of Bihar had deposited a sum of Rs.50 crores and the High Court of judicature at Patna had constituted a Committee headed by Justice Udai Sinha, former Judge of Patna High Court. From the report of the Committee which was placed before the Court it appeared that a sum of Rs.25,98,65,883.00 had been recommended for payment to the employees of most of the undertakings. While dealing with JHALCO and BHALCO the Court addressed I. A. No. 7 of 2004 and took note of the respective affidavits. The stand of JHALCO in the said case, as has been noticed by this Court, is as follows:-

“8. The State of Jharkhand has also been imp leaded as a party herein and it has filed a counter-affidavit affirmed by one Shri Binod Kumar Verma, Managing Director, JHALCO, Ranchi wherein a contention is raised that BHALCO is still under the control of the State of Bihar. It has further been affirmed that instead and in place of BHALCO, a new corporation known as JHALCO had been incorporated and registered with the Registrar of Companies, Jharkhand on or about 22-3-2002. The said JHALCO is, thus, said to be a new corporation and has nothing to do with BHALCO and in any event, it is not the successor of BHALCO.”

The Court also took note of the fact that the Central Government had taken a decision under Section 65 of the Act. A contention was raised by the State of Bihar that it was not under obligation to pay the dues of the employees. Referring to the earlier order and various other authorities, the Court observed thus: -

“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.

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28. It is really a matter of regret that despite statutory power as also the power of control vested in the State of Bihar either under the statutes or in terms of articles and memorandum of association of the respective government companies, it did not exercise the same and now raised a contention that the State had no effective control over the functions of the said public sector undertakings. The States of Bihar and Jharkhand, indisputably, can exercise their statutory power and in discharge thereof can issue requisite directions as is permissible in law.”

After so stating, the Court proceeded to deal with the stand of the State of Bihar and

BHALCO and observed as follows: -

“33. It is true, as has been contended on behalf of the State of Jharkhand, that a new corporation named as JHALCO has come into being, but keeping in view the fact that the State of Jharkhand itself has given option to the employees of BHALCO, the order of absorption of those employees who opt for employment may be passed at an early date and not later than six weeks from date. The employees concerned need not file any undertaking at this stage as the question as to whether the State of Jharkhand is liable to pay any salary and other emoluments to the employees of BHALCO is a question which would fall for decision in appropriate proceedings.”

The Court reiterated the principle stating as follows: -

“37. 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 upon in the proper proceedings. However, these directions are issued which are necessary for their survival. Undoubtedly, any amount paid by Justice Uday Sinha Committee pursuant to these directions shall be duly credited for.”

23. In the said writ petition I.A. No. 21 of 2007 was filed which was decided on 8.7.2008 vide *Kapila Hingorani and another vs. State of Bihar and another*¹⁴, wherein the principal relief sought was for issue of a direction to the respondent State/JHALCO to immediately comply with the order dated 13.1.2005 and pass the order of absorption in JHALCO with respect to 213 employees listed in the letters issued by MD, JHALCO on various dates (annexed to the IA), pursuant to the order dated 13.1.2005 leaving the employees who have died.

24. While dealing with the prayer the Court adverted to the history of the litigation, the further death that had occurred with the efflux of time as the employees had committed suicide due to starvation and thereafter proceeded to dwell upon various facets. We think it appropriate to summarize what the Court had stated in the said case: -

(i) It is obvious that while passing an order on I.A. No. 11, this Court was kept in the dark about two factors - firstly, that advertisement were already made even before the order dated 13.1.2005 and secondly, that nothing was done in pursuance of the order dated 13.1.2005 excepting that the fresh applications of 216

employees were accepted by JHALCO and that they were kept in the cold storage.

(ii) It must be remembered that all this was in the wake of this Court's order dated 9-5-2003 wherein, this Court had required the State of Bihar to deposit a sum of 50 crores of rupees for disbursement of the salaries to the employees of the corporations and also had directed the disbursement of the funds to the needy employees on ad hoc basis. The Court had also directed creation of a committee for scrutinizing the assets and liabilities of the companies. Therefore, when the advertisements were issued with the cut-off date of 7.8.2003, JHALCO had a distinct advantage. However, thereafter came the order of this Court dated 13.1.2005, whereby, this Court took the notice of coming into being of JHALCO and further directed that the employees concerned who were to be absorbed need not give an undertaking of foregoing their claims for the past unpaid salaries. Till then, it seems from the language of the order dated 13.1.2005 that no formal order was passed for absorption. Probably, therefore, this Court gave six weeks' time to such employees.

(iii) Again, as in the earlier advertisements, only the employees foregoing their claims over salaries could apply, all the employees probably did not apply restricting the number to only 302. In pursuance of the order dated 13.1.2005, 216 more employees had applied and that too without foregoing their claims over salaries. Because of the said situation a decision was taken in a meeting dated 8.8.2005 to review the financial position of JHALCO to curtail the number of employees and to limit the total number of employees to 214. From Para Af) of the additional affidavit is seen, it will be clear that though there were 152 excess Class IV employees, there was still requirement of 64 officers, as only 14 officers were engaged as against the total sanctioned strength of 78 officers. The exercise of curtailing the employees and limiting the total number of employees to 214 appears to be a deliberate exercise in the wake of the order dated 13.1.2005 of this Court, and incidentally, even that order was not followed in its true spirit which ultimately required the petitioners to file IA No. 11. The figures given in the additional affidavit's Para Af) were misleading, for if properly calculated as against the total sanctioned strength of 214, 302 employees were engaged. Thus, only 88 excess employees could be said to have been engaged and that too prior to the decision dated 8.8.2005. The figure of 152 as the excess employees is, therefore, clearly misleading.

(iv) There does not appear any explanation, nor any statistics to justify the curtailing of the employees by JHALCO. After all, there was no curtailment of area or the activities and the decision to curtail the number of employees of JHALCO itself appears to be neither sound, reasonable, nor justifiable and only appears to be taken to get out of the rigor of this Court's order dated 13.1.2005. However, this Court is not in a position to pass any order in favour of the applicants even if their contentions with regard to the existence of vacancies are accepted.

(v) It has been pleaded in the additional affidavit that JHALCO was running in

deficit by 3.16 crores up to 2005-2006. Its annual wages on date are 3.60 crores and it has already sought 2.60 crores from the State of Jharkhand to make the payment for Financial Year 2008-2009. The affidavit, however, does not give any clear idea about the contribution which will be required to be made by the State of Bihar on account of the arrears of salaries.

(vi) In response of the State of Bihar, barring reference to the Letter dated 22.1.2001 by the Secretary of the Government of Bihar to the Secretary of the Government of Jharkhand recommending that all the employees of BHALCO should be absorbed in JHALCO without any condition, there does not appear to be anything more. In the name of written submissions on behalf of the State of Bihar, all that is stated is that since BHALCO was a corporation situated in the State of Jharkhand and its area of operation was also in the State of Jharkhand only, therefore, under Sections 47(1) and 56 of the Bihar Reorganisation Act, 2000, BHALCO is a corporation of the Government of Jharkhand with all its liabilities and assets. The State of Bihar then has further reiterated that the decision of the Central Government to treat BHALCO as a property of the State of Bihar and direction given vide Letter dated 13.9.2004 to take steps for liquidation of BHALCO is not a correct decision, and that it had written a letter to reconsider the same.

(vii) The stand taken by the State of Bihar is a bald one. Seen from any angle, the liability could not be altogether shaken off by the State of Bihar to avoid the same on the specious plea that BHALCO has now become JHALCO. That would be an over simplification of the issue. That is apart from the fact that in the memorandum of association of BHALCO, there is a reference to the six districts of Bihar which continued to be in the State of Bihar as its area of operation. That apart, the Order dated 13.9.2004 which is binding on the State of Bihar. By that order, the Central Government had ordered that the State Government of Bihar will initiate liquidation in respect of BHALCO. If that is so, then by the necessary logic, the liability to pay the arrears of salary is that of the State of Bihar, which it must discharge.

(viii) As a writ petition is pending in the Jharkhand High Court by the employees claiming absorption as also the past salaries, this Court would desist from giving final directions, keeping in view it was a public interest litigation directly filed before this Court. It would be better if all the questions pending in the said writ petition are finally decided as early as possible.

25. After so stating the two-Judge Bench issued the following directions: -

“(A) The High Court of Jharkhand is requested to dispose of the writ petition pending before it at the earliest and, if possible, within six weeks from date. If the High Court finds it difficult to dispose of the matter within the aforementioned period, it may pass interim order as it may deem fit and proper. It is made clear that in the event the High Court finds that the applicants were entitled to be

absorbed in the services of JHALCO from an earlier date it would be open to it to pass such an order as it may deem fit and proper so as to adjust the equities between the parties. It is made clear that the question of final absorption, past salaries and the liability to pay the same may be determined by the High Court in the said writ petition.

(B) Managing Director, BHALCO and Managing Director, JHALCO as also the Secretaries of the Government of Bihar and the Government of Jharkhand shall meet within one month from the date and decide upon and assess the liability on account of the arrears of the salaries payable to the employees already absorbed and to be absorbed, and make a report thereof within a week of the date of decision, to the High Court for taking final decision regarding the mode of payment, etc. to the employees, if any, so that the liability of JHALCO to that extent would stand reduced.

(C) The Central Government shall take immediate steps to see that the directions in the Order dated 13-9-2004, passed by it are complied with by the State of Bihar.”

The Lis before the High Court

26. After this Court disposed of the matter, the learned single Judge took up the hearing of the writ petition and keeping in view the directions of this Court he framed the following issue for consideration: -

“Whether BHALCO in view of the provision as enshrined in section 65 of the Bihar Reorganization Act would be considered to be the same entity only with a change in its name as JHALCO or JHALCO is a separate entity than BHALCO?”

27. Analyzing the language employed in Section 65 of the Act and steps taken by JHALCO including the somersault and further taking note of the interim order dated 8.7.2008 the learned single Judge opined as follows:-

“It be noticed that right from the beginning when decision was taken to allow the activities of BHALCO to continue in the territory of State of Bihar by the changed name of JHALCO, no such indication was ever given about the staffs being surplus. Moreover, even the advertisements issued by the JHALCO do indicate that applications were called upon from all the willing employees who want to join the services of JHALCO. At that time also no restriction was imposed over the number of employees to be absorbed. In this view of the matter, I do also subscribe the same view as has been expressed by the Hon'ble Supreme Court by observing "figure of 152 as the excess employees is, therefore, clearly misleading. There does not appear any explanation, nor any statistics to justify the curtailing of the

employees of JHALCO and such plea seems to have been taken to get out of the rigor of the court's order dated 13.1.2005".

Thus, for the reasons discussed hereinabove BHALCO and JHALCO cannot be said to be two separate entities rather BHALCO in terms of section 65 of Bihar Reorganization Act can be said to have been functioning as JHALCO.

Therefore, I do find that the petitioners are entitled to be absorbed in the services of JHALCO from the date when they have made applications for their absorption, pursuant to direction given by the Hon'ble Supreme Court on 13.1.2005 and they are entitled to get their salaries from the date of their absorption which is to be paid by the JHALCO as other employees whose services were accepted by the JHALCO are also paid from the date of joining.”

28. Being dissatisfied with the aforesaid judgment and order the State of Jharkhand and its functionaries preferred LPA no. 77 of 2009 and JHALCO preferred LPA No. 79 of 2009. The Division Bench, after chronologically stating the developments and referring to the provisions of the Act, posed three questions for consideration: -

“(1) Whether BHALCO vests in the State of Jharkhand by the operation of the Act of 2000?

(2) Whether BHALCO and JHALCO are two separate entities or one and same?

(3) If not as contended by the appellant, then whether the petitioners have any right to seek absorption in JHALCO, being employees of BHALCO?”

29. Dealing with the first issue the Division Bench referred to the Sections 47, 65 and 85 of the Act and taking note of the order dated 13.9.2004 passed by this Court in W.P. (C) no. 488 of 2002 came to hold that the conclusion arrived at by the learned Single Judge to the effect that BHALCO and JHALCO cannot be regarded as two separate entities was unsustainable. Thereafter, the Division Bench referred to the decisions rendered by this Court and keeping in view the fact that the employees were made to suffer for no fault of theirs and had been deprived of salary for 11 years when the matter was decided by the court came to hold that the relationship between the employees and the employer had not become extinct by any proceeding or operation of law. Thereafter it directed as follows:-

“Therefore, taking this equitable ground also in consideration with the legal basis in the claim of the employees, we are of the view that BHALCO is liable to pay all the arrears of salary to the employees who have not been absorbed by the JHALCO till date and also to the heirs of the deceased employees who died during this period.”

30. Thereafter, the Division Bench dealing with the intra-court appeal addressed the issue with regard to absorption and opined that there was no reason that the respondent employees should face non-absorption by JHALCO and, accordingly, directed as follows:-

“36. We are also of the considered opinion in view of the fact that these employees continued in service in BHALCO the salaries be paid to the employees by the BHALCO till they are absorbed or stand absorbed in the JHALCO and thereafter JHALCO shall pay the salaries of those employees. However, JHALCO can take a policy decision to deal with the employees stand absorbed by virtue of this order passed by this Court whether they are to be retrenched. If retrenched, then it can be done by paying adequate compensation and that decision is to be taken by the management by application of mind judiciously, and keeping in mind the humanitarian approach and our observation may not be treated to be the direction or licence to the JHALCO to remove those employees without there being any just reasons.

37. Since it was the offer of the JHALCO to absorb the employees then as we have already discussed that the JHALCO shall absorb the employees now from the date of order of this Court i.e. today 16th June, 2011 and they shall be deemed to have been absorbed in JHALCO with the employees entitled to the benefits of past service rendered by the employees in the BHALCO. But the State of Bihar and BHALCO are directed to pay the arrears of salary and other service benefits to the employees of erstwhile BHALCO upto order of this date within a period of three months from today and the liability to pay the salary of the employees who stand absorbed in JHALCO, shall be of JHALCO, however, from the date of joining of these petitioners and other employees, if they approach JHALCO within a period of two months from the date of this order.”

31. It is apt to note here that prayer for award of interest was not accepted by the High Court. The aforesaid judgment and order by the Division Bench has been assailed by the State of Jharkhand, State of Bihar, JHALCO and BHALCO. Be it noted, two review applications that had been filed by BHALCO having been rejected it has preferred two appeals, by special leave, assailing the said orders of rejection.

The Submissions

32. We have heard Mr. Ranjit Kumar, learned senior counsel, and Mr. Gopal Singh, learned counsel, for the State of Bihar and BHALCO, Mr. Amarendra Saran, learned senior counsel, for the State of Jharkhand and JHALCO and Ms. Priya Hingorani, learned Advocate for the respondent- workmen in all the appeals.

33. Mr. Ranjit Kumar and Mr. Gopal Singh, appearing for the State of Bihar, have raised

the following contentions:-

(a) The High Court has clearly gone wrong in imposing the liability on the State of Bihar, for enrichment of area of Jharkhand and all the assets including Bank Accounts, fixed deposits, office, trained employees the irrigation instruments, huge machineries and other equipments were taken over by the State of Jharkhand and now the liability is sought to be imposed on the State of Bihar. This factual position becomes significant in view of Section 47 of the Act which stipulates that the assets and liabilities relating to any commercial or industrial undertaking of the existing State of Bihar shall pass to the State in which the undertaking is located.

(b) The assets and liabilities of the erstwhile BHALCO has been merged/taken over by JHALCO and State of Jharkhand by their conscious decision. The area of operation, infrastructures, office records/files have been amalgamated into the JHALCO and the Head Office of the BHALCO is situate in Ranchi, Jharkhand. It is evident from the notification dated 29.12.2001 issued by the State of Jharkhand that the Head Office of BHALCO which has been changed as JHALCO would be at Ranchi as before and under these circumstances to mulct the liability on the State of Bihar is neither just nor fair.

(c) The State of Jharkhand has arbitrarily accepted 300 employees of BHALCO to be absorbed in JHALCO without ascertaining as to how many workmen were working in BHALCO at the time the decision was taken and hence, it is the duty of JHALCO to carry out the obligations.

(d) In any case, if the employees have any grievance with regard to their non-payment of salary and service conditions including absorption they can take recourse to the statutory remedies as provided under the Companies Act, 1956 and the Industrial Disputes Act, 1947.

34. Mr. Saran, learned senior counsel, and Mr. Tapas Kumar Sen, appearing for the State of Jharkhand, have advanced the following contentions: -

(i) The High Court has fallen into grave error by not appreciating that JHALCO had issued various advertisements to take the employees of BHALCO on deputation basis only and there was no unconditional offer to absorb all the employees of BHALCO in JHALCO.

(ii) JHALCO is a commercial organization and it has to arrange for its establishment expenditure from its own resources and when it is running in loss it is inappropriate by the High Court to command JHALCO to absorb and pay the salaries to those employees. That apart, the High Court has committed further illegality by directing that the absorbed employees shall be entitled to the benefit of past service rendered by the employees in BHALCO.

(iii) Five respondents/employees had approached the Court and if any order is passed, it should be restricted to them and there should not be a general order, more so, when I. A. No. 3 of 2012 for impalement has been dismissed on 29.8.2013 as withdrawn.

(iv) No record is available with JHALCO or BHALCO about the employees and hence, it would be difficult to ascertain whether a person is entitled to any benefit.

35. Ms. Priya Hingorani, learned counsel appearing for the workmen-respondents, resisting the aforesaid contentions urged by the appellants, has contended that the respondents are extremely unfortunate to have worked in BHALCO without payment of salary since 1995 and thereafter being not absorbed by JHALCO, despite JHALCO having absorbed more than 300 employees of BHALCO. Number of orders passed by this Court in this case would go a long way to show the apathy exhibited by both the States and the statutory corporations despite the existence of employer and employee relationship. The attitude of the appellants clearly reflects a callous and insensitive attitude. It is further urged by her that the Central Government has taken the decision under Section 65 of the Act determining the liabilities but the same is not properly appreciated and applied as a consequence of which such a disastrous stage has come in. The learned counsel has seriously controverted about the identification of the employees on the foundation that the names of the employees mentioned in the list annexed to the written note of arguments find place in the report submitted by Justice Udai Sinha and their original service books are available.

36. A chart has been annexed indicating the sum payable to the respondents and other employees who are similarly situated. Though the learned counsel for the respondents initially pressed for absorption, yet in course of hearing she conceded that this Court may mould the relief and issue appropriate direction with regard to payment of salary and give a quietus to the lis.

The Necessitous Approach In Praesenti

37. We have already adverted to the orders passed by the High Court, noted the respective contentions at the Bar and stated the chequered history of the litigation. The factual expose, as is evident, reflects a very sad scenario. We call it sad as we are disposed to think that when a State is bifurcated by a Parliamentary legislation, both the States and the Centre are required to take certain decisions under the Act and they are required to be taken in quite promptitude and not leaving the poor employees high and dry and suffer for no fault of theirs.

38. The submission, so assiduously made, that it is open to the employees to seek their remedy under the Companies Act, 1956 or under the provisions of the Industrial Disputes

Act, 1947, leaves us totally unimpressed regard being had to the facts and circumstances of the case and the plight in which the employees have been put in. This Court on earlier occasion had also categorically clarified that this is a different situation and it is not laying down the law that in every case the State Government should come forward to pay. It has been held earlier that it is a problem of great magnitude affecting human rights and the purpose of living as enshrined under Article 21 of the Constitution. That apart, it is not a case where the services of the employees have been terminated or retrenched or even there is no decision that the posts have been abolished.

39. As is manifest, initially the State of Jharkhand took a decision to take over BHALCO and thereafter resiled. The Division Bench has correctly opined that such a decision could not have been taken unilaterally by the State of Jharkhand but the fact remains that it had been taken and some employees were absorbed. We do not intend to say anything on the status of the employees who have already been absorbed as the application for impalement I. A. No. 3 of 2012, has been dismissed as withdrawn by order dated 29.8.2013, because the controversy pertaining to the same is pending before the High Court. We are only going to focus on the plight of the employees who have not been absorbed and not got salary from any quarter.

40. At this juncture, it is necessary to refer to the order dated 13.9.2004 issued by the Government of India, Ministry of Home Affairs. The said decision was taken in pursuance of the order passed by this Court on 13.8.2004 in Writ Petition No. 488 of 2002. The Competent Authority of the Central Government, after referring to what transpired in the meetings and noting the difference in regard to the views by the State of Bihar and State of Jharkhand, passed the following order: -

“And whereas, the Central Government considers that as on date BHALCO continues to be under the control of the Government of Bihar in terms of Section 65 of the Bihar Reorganization Act, 2000 and as Government of Bihar has already initiated proceedings for liquidation of fifteen companies and has decided to initiate liquidation proceedings in respect of Bihar Hill Area Lift Irrigation Corporation Ltd. (BHALCO) Now therefore, in exercise of the powers conferred upon it under section 65(1) & (2) of the Bihar Reorganization Act, 2000, the Central Government hereby directs that Government of Bihar will initiate liquidation proceedings in respect of Bihar Hill Area Lift Irrigation Corporation Ltd. (BHALCO) to which the Government of Jharkhand has no objection.”

41. At this stage the conduct of the State of Jharkhand is relevant to be noticed. We repeat, we have already approved the view of the Division Bench that the State of Jharkhand could not have taken the decision in a unilateral manner. But what steps it had taken are significant for what we are going to direct at a later stage. From the uncurtaining of facts it is demonstrable that the issue pertaining to employees of BHALCO came up for consideration before the State of Jharkhand for post facto approval of acquisition of BHALCO and making it functional as JHALCO. On 9.1.2002 a memorandum of cabinet

was drawn for post facto approval. The proposal of acquisition and adoption of BHALCO as JHALCO was placed before the following conditions:-

“6. Thus under the circumstances the proposal of acquisition and adoption of BHALCO as JHALCO is proposed with the following conditions:

A. The establishment expenditure of JHALCO will be brought down. For this the services of those employees who have irregularly been appointed would be terminated as per rules.

B. JHALCO will be given full autonomy and it shall function on commercial lines and shall arrange for salaries of its employees from its own sources. '

C. Arrear of salary pertaining to period prior to 15.11.2000 shall not be paid.

D. No new appointment under any circumstances will be done in JHALCO.

E. The memorandum and articles of Association of JHALCO shall be accepted in totality and Bihar state and Bihar, wherever it has been mentioned shall be replaced by Jharkhand State and Jharkhand respectively. Accordingly, the memorandum shall be treated as modified.

F. Govt. will provide JHALCO a sum of Rs. 5.00(five) Crores as its share capital and also 5.25 Crores for payment of salaries to its employees for the period from 15.11.2000 to 31.3.2000.

7. The proposal under para 6 has the approval of the Law Department.

8. The proposal under para 6 has the approval of the Chief Secretary.

9. The proposal under para 6 has the approval of Minister Water Resources Department.

10. The proposal under para 4 has the approval of Hon'ble Chief Minister.

11. The post facto approval of the cabinet is solicited on proposals laid in para 4 above."

42. Be it noted, before the High Court a stand was taken by the State that the proposal that put forth before the Government on 9.1.2002 was not approved. The plea of the employees was that it had been approved. Be that as it may, as is manifest, thereafter JHALCO issued notices in the local newspaper calling for applications from the employees of BHALCO for absorption of their services in JHALCO. The notice dated 23.2.2003 stipulated that the Officers/employees of BHALCO who wish to serve JHALCO on the basis of deputation can apply to the scrutiny committee constituted for the said purpose. The officers/employees at the time of submission of application were

required to show proof of being validly appointed employees of BHALCO. Vide notice dated 11.3.2003 time for submission of application was extended to 15.3.2003. On 27.3.2003 a notice was issued to the effect that the employees of BHALCO who had earlier submitted applications would only submit their joining letter and the employees who had not submitted applications earlier they shall submit the application Form in the prescribed format and joining letter as well. It was stipulated that after the joining letter being accepted they would be treated as employees of JHALCO from the date of acceptance of joining letter and their salary would be payable by JHALCO from that date. Vide notice dated 31.7.2003 time was extended till 7.8.2003. Eventually, the Managing Director of JHALCO passed an office order on 17.4.2004 in respect of one of the employees of BHALCO which has been brought on record as a sample order. The conditions laid down in the said office order are reproduced below:-

- “1. This arrangement is totally temporary.
2. Last basic pay and dearness allowance thereon paid in BHALCO shall be paid.
3. No arrears shall be payable of period prior to date of joining.
4. As per requirement and scheme may be posted/appointed anywhere, in JHALCO.
5. He shall be liable to departmental action if nay information found in the joining and application is found false.”

It is relevant to mention here that the services of the said category of employees were made effective from the date of joining in JHALCO, i.e., 20.4.2004.

43. From the aforesaid action taken by the State of Jharkhand it is clear as crystal that it took up the responsibility and the State of Bihar, as it appears, tacitly acceded to the position as a result of which the employees remained at the mercy of JHALCO. At a later stage controversy cropped up, as noticed earlier, due to disagreement and difference between the two States and it was stated that a decision was taken to initiate the liquidation proceedings and the Central Government in exercise of its power under Section 65 of the Act directed the State of Bihar to initiate liquidation proceedings. Government of Jharkhand conceded to the same. Because of the vacillating stand of the State of Jharkhand a distressing and unusual situation has arisen. It is not in dispute that JHALCO absorbed some of the employees but did not take any steps to deal with the other employees on some pretext or the other. There is a cavil over the assets and liabilities. We are neither concerned with the said controversy nor do we intend to express any opinion.

44. The High Court has directed the State of Bihar to pay the salary till 16.6.2011 and has directed JHALCO to absorb the unabsorbed employees. Learned counsel for the State of

Jharkhand and JHALCO has painted a picture of frustrated affairs and further advanced the plea that there is no vacancy. As stated earlier, the learned counsel for the respondents-employees has suggested for molding the relief to give a quietus to the litigation.

45. Having regard to the position that has emerged, we are compelled to dwell upon the role of the State as a model employer. In *Som Prakash Rekhi vs. Union of India*¹⁵, Krishna Iyer, J., has stated thus: -

“Social justice is the conscience of our Constitution, the State is the promoter of economic justice, the founding faith which sustains the Constitution and the country is Indian humanity. The public sector is a model employer with a social conscience not an artificial person without soul to be damned or body to be burnt.”

46. In *Gurmail Singh and others vs. State of Punjab and other*¹⁶, it has been held that the State as a model employer is expected to show fairness in action.

47. In *Balram Gupta vs. Union of India and Another*¹⁷, the Court observed that as a model employer the Government must conduct itself with high probity and candor with its employees.

48. In *State of Haryana vs. Piara Singh*¹⁸, the Court has ruled that the main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16.

49. In *Bhupendra Nath Hazarika and another vs. State of Assam and others*¹⁹, while laying emphasis on the role of the State as a model employer, though in a different context, the Court observed:

“It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized.”

50. If the present factual matrix is tested on the anvil of the aforesaid principles, there can be no trace of doubt that both the States and the Corporations have conveniently ostracized the concept of “model employer”. It would not be wrong to say that they have done so with Pacific calmness, sans vision, shorn of responsibility and oblivious of their role in such a situation. Their action reflects the attitude of motionlessness, proclivity of impassivity and deviancy with cruel impassibility. Neither of the States nor the Corporations have even thought for a moment about the livelihood of the employees. They have remained totally alien to the situation to which the employees have been driven to. In a State of good governance the Government cannot act like an alien. It has an active role to play. It has to have a constructive and progressive vision. What would have ordinarily happened had there not been bifurcation of the State and what fate of the employees of BHALCO would have faced is a different matter altogether. The tragedy has fallen solely because of the bifurcation. True it is, under the law there has been bifurcation and the Central Government has been assigned the role to settle the controversies that had to arise between the two States. But

the experimentation that has been done with the employees as if they are guinea pigs is legally not permissible and indubitably absolutely unconscionable. It hurts the soul of the Constitution and no one has the right to do so.

51. Be it noted, a contention was canvassed with immense vehemence by the appellants that the directions may be issued in respect of the respondents-employees who approached the Court. It is not a case where we shall confine the relief to the respondents alone. Earlier this Court had constituted a Committee and the State of Bihar had deposited rupees fifty crores for all the Corporations and the employees working in BHALCO who were not paid salary from 1995 were proportionately paid. Their identities are known. The employees who have died, their legal representatives are easily identifiable. A man in dire need cannot fight litigation against two experimenting States to get his dues. It is the duty of the constitutional court, as submitted by Ms. Priya Hingorani, that all should be paid their dues as this Court may think fit.

52. Keeping in view the totality of facts and circumstances of the case and taking note of the concept of social justice under the Constitution, role of a model employer in a welfare State and the conduct of both the States we proceed to issue the following directions: -

(i) The employees who were paid certain amount after this Court had directed for deposit of rupees fifty crores by the State of Bihar and have not been absorbed by JHALCO, they should be paid their salary from 1.1.1995 till 29.12.2001.

(ii) The State of Bihar shall comply with the directions within a period of three months from today as they are aware of the names of employees who had been paid proportionally out of the deposit made earlier.

(iii) The State of Jharkhand shall pay from 29.12.2001 till 13.9.2004. We have fixed the cut-off date for the State of Jharkhand as it had issued the notification on 29.12.2001 creating an erroneous impression and confusion. The date for State of Bihar has been determined regard being had to the date the Central Government took a decision asking the State of Bihar to go for liquidation.

(iv) The State of Jharkhand shall pay the amount within a period of four months to those employees or their legal representatives of the employees who have received the amount in proportion from the State of Bihar.

(v) The State of Bihar shall deduct the amount already paid by virtue of the order passed by this Court. However, the State of Jharkhand shall pay the entire amount of salary for the period as directed by us as it is clear from the record that it has not paid anything to the employees.

(vi) Both the States shall compute the salary component after granting the benefit of pay revision which has been extended to other employees.

(vii) The amount, as directed to be paid, shall be paid with 7.5% simple interest per annum.

(viii) The claim for absorption stands closed.

53. The appeals stand disposed of with the above directions and, accordingly, the judgment and order passed by the Division Bench is modified. There shall be no order as to costs.

Judgment referred

¹1980 (2) SCC 0768

²1996 (2) SCC 0549

³1995 Supp. (2) SCC 0182

⁴1983 (1) SCC 0305

⁵AIR 1964 SC 0737

⁶AIR 1958 SC 0923

⁷1972 (2) SCC 0108

⁸1981 Supp SCC 0087

⁹2001 (1) SCC 0118

¹⁰2010 (3) SCC 0192

112000 (6) SCC 0493

122003(6) 0001

132005 (2) SCC 0262

142008 (17) SCC 0394

151981 (1) SCC 0449

161991 (1) SCC 0189

171987 (Supp) SC 0228

181992 (4) SCC 0118

192013 (2) SCC 0516