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KAPILA HINGORANI

v.

STATE OF BIHAR

JANUARY 13, 2005

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[N. SANTOSH HEGDE AND S.B. SINHA, JJ.]

*Constitution of India, 1950:*

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*Article 21—Employees of Public Sector Undertakings in States of Bihar and Jharkhand—Non-payment of salary for a long time—Leading to loss of lives—Order of Supreme Court\*—Interim applications for implementation of—Held, human right and fundamental right of employees are to be protected by State—State has a constitutional obligation and acts in a fiduciary capacity vis-a-vis performance of its constitutional duties and functions by the public*

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*sector undertakings as it has constitutional obligations in relation thereto—State of Bihar in response to the applications filed by the petitioner cannot be permitted to raise questions which have expressly been rejected—It cannot seek a review of the said judgment indirectly which it could not do directly—Even for such matters, an application for clarification would not be maintainable—State of Bihar cannot take a stand now that it does not have*

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*any constitutional obligation towards a section of citizens, viz. the employees of the public sector undertakings who have not been paid salaries for years—Its plea that the directions issued were only one-time direction can also not be accepted—In clause 4 of the direction, it was clearly stated that the State for the present shall deposit a sum of Rs. 50 crores before the High Court for*

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*disbursement of salaries to the employees of the Corporation and the matter was directed to be listed again—The directions of this Court could not be complied with having regard to the fact that only six crores were left with the Committee—It is true that a new corporation named as JHALCO has come into being, but keeping in view of the fact that the State of Jharkhand itself has given option to the employees of BHALCO, the order of absorption of*

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*those employees who opt for employment may be passed at an early 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 an appropriate proceeding—Keeping in view the fact that despite*

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*this Court's order dated 6th May, 2003, five persons have lost their lives owing to non-payment of salaries and keeping in view the order of the Central Government dividing the assets and liabilities between the States of Bihar and Jharkhand in relation to certain State Undertakings, State of Bihar is directed to deposit a sum of Rs.50 crores and the State of Jharkhand a sum of Rs.25 crores—The Committee constituted by the Patna High Court would continue to function—The Patna High Court and the Jharkhand High Court would pass appropriate orders in the liquidation proceedings filed by the States of Bihar or Jharkhand, as the case may be, as expeditiously as possible—Any amount paid to the employees concerned shall be subject to the orders passed by the appropriate court of law in this behalf and the amount so paid to them shall be duly credited.*

*In its order dated 9th May, 2003\*, this Court considered the matter from the human rights aspect as also the fundamental rights of the employees of the public sector undertakings operating in the State of Bihar—It is made clear that these directions have not been issued 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 State is bound to protect—These directions as also the directions issued by this Court on 9th May, 2003\* 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 concerned employees or workmen would undoubtedly be adjudicated upon in the proper proceedings.*

*\*Kapila Hingorani v. State of Bihar, [2003] Supp. 1 SCR, relied on.*

*Steel Authority of India Ltd. and Ors. v. National Union Waterfront Workers and Ors., [2001] 7 SCC 1 and Electronics Corporation of India Ltd. and Ors. v. Secretary Revenue Department, Govt. of Andhra Pradesh and Ors., [1999] 4 SCC 458, referred to.*

ORIGINAL APPELLATE JURISDICTION I.A. NOS. 7 AND 9-10.

IN

WRIT PETITION (C) NO. 488 OF 2002.

(Under Article 32 of the Constitution of India)

A Mohan Parasaran, Additional Solicitor General, Prabha Shanker Mishra (A.C.). Tathagat harsh Vardhan, Ms. Priya Hingorani, Adv. Peitioner-in-person, Dr. Aman Hingorani, B.B. Singh, Ms. Sunita R. Singh, Rajeev Shanker Dwiwedi, Amit Kumar, Ashish Kumar, Vishnu Sharma, Gaurav Dhingra, Ms. Sandhu Goswami, Ms. Sushma Suri for Attonery General for India and Ashok Mathur for the Appearing parties.

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The following Order of the Court was delivered :

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This Court in this case disposed of on 9th May, 2003 since reported in [2003] 6 SCC 1 issued certain directions. Those directions need not be reproduced herein. Pursuant to or in furtherance of those directions, the State of Bihar has deposited a sum of Rs. 50 crores. The High Court of Judicature at Patna has also constituted a committee headed by Hon'ble Mr. Justice Uday Sinha, a former Judge of the Patna High Court.

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A report of the said committee has been placed before us, from a perusal whereof it appears that a sum of Rs. 25,98,65,883.00 had been recommended for payment to the employees of most of the undertakings. Payment to Bihar State Sugar Corporation was said to be in the pipeline which came to be about Rs. 17 crores. It has been pointed out that BSIDC and units of other corporations in Jharkhand had not been paid yet and the Committee is left with Rs. 6 crores and odd.

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An application for clarification has been filed by the Petitioner herein marked as I.A. No. 7 of 2004 wherein it has been prayed that the Jharkhand Hill Area Lift Irrigation Corporation Limited (JHALCO) be treated as successor of Bihar Hill Area Lift Irrigation Corporation (BHALCO) from 15.11.2000 onwards. It has further been contended that employees of Bihar Hill Area Lift Irrigation Corporation Ltd. would be absorbed by Jharkhand Hill Area Lift Irrigation Corporation Ltd., only if they forego their claim of salary for period prior to the respective dates of absorption.

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A prayer therefore has been made to clarify the order dated 9th May, 2003 as to whether the State of Bihar or State of Jharkhand or both would be required to pay the unpaid salary to the employees of BHALCO.

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Another interlocutory application being I.A. No. 9 of 2004 has been filed by the petitioner praying therein for a direction upon the Respondent State of Bihar and/or State of Jharkhand to deposit sufficient sum of money with the Hon'ble Patna High Court so that at least the employees of the

corporations listed in the order dated 9th May, 2003 be paid their salaries. A

Counter affidavits affirmed by Shri Ashok Kumar Choudhary, Chairman, Bureau of Public Enterprises, Government of Bihar, Patna have been filed on behalf of the State of Bihar both in I.A. No. 7 and I.A. No. 9 of 2004. In the counter affidavit filed in I.A. No. 7 of 2004, it has been contended that the Government of Bihar will initiate liquidation proceedings in respect of BHALCO and having regard to the offer made by the State of Jharkhand no relief should be granted by this Court to the employees of the said corporation as they may still close to exercise their option to get absorbed in JHALCO. B

In the counter affidavit filed in I.A. No. 9 of 2004, the State of Bihar has been contended that the direction issued by this Court in its order dated 9th May, 2003 being extraordinary in nature and by way of one time arrangement only, no direction should be issued directing the State of Bihar to make any further payment. C

The State of Jharkhand has also been impleaded 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 in stead and place of BHALCO, a new corporation known as JHALCO has been incorporated and registered to the Registrar of Companies, Jharkhand on or about 22nd March, 2002. The said JHALCO is, thus, said to be new corporation and nothing to do with BHALCO and in any event, it is not the successor of BHALCO. D E

It is not in dispute that pursuant to or in furtherance of the directions issued by this Court, the Central Government has exercised its jurisdiction under Section 65 of the States Reorganization Act. F

Union of India has filed an affidavit wherein it has been contended that winding up applications have already been filed by the State of Bihar in relation to the following eighteen companies: G

1. Bihar State Industries Development Corporation
2. Bihar State Leather Development Corporation
3. Bihar State Electronics Development Corporation
4. Bihar State Sugar Corporation Limited H

- A 5. Bihar State Medicine and Chemical Development Corporation  
6. Bihar State Fruit and Vegetables Development Corporation  
7. Bihar State Agro Industries Corporation
- B 8. Bihar State Textiles Corporation Limited  
9. Bihar State Small Industries Corporation Limited  
10. Bihar State Handlooms and Handicrafts Corporation  
11. Bihar State Forest Development Corporation Limited
- C 12. Bihar State Export Development Corporation Limited  
13. Bihar State Construction Corporation Limited  
14. Bihar State Bridge Construction Corporation Limited
- D 15. Bihar State Police Building Construction Corporation Limited  
16. Bihar State Water and Sewage Disposal Board  
17. Bihar State Panchayati Raj Finance Development Corporation Limited
- E 18. Bihar State Film Development and Finance Corporation Limited”

It is, therefore, contended that in that view of the matter, no order was required to be passed under Section 65 in relation thereto.

F It was further contended that eight companies, names whereof are noticed hereinbelow, operate within the territories of Bihar and as such no order of bifurcation was required to be passed:

- G “1. North Bihar Industrial Area Development Authority  
2. Darbhanga Industrial Area Development Authority  
3. Patna Area Development Authority  
4. Muzaffarpur Area Development Authority  
5. Darbhanga Area Development Authority
- H 6. Gaya Area Development Authority

7. Electricity Corporation Limited

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8. Bhagalpur Regional Development Authority, Bhagalpur”

So far as other companies which are operating both within the territories of States of Bihar and Jharkhand are concerned, a direction in respect of the following four companies orders for division of assets and liabilities has already been issued:

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“1. Bihar State Road Transport Corporation

2. Bihar State Housing Board

3. Bihar State Electricity Board

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4. Bihar State Pollution Control Board”

It is stated that no decision as regard 18 companies have been taken by the States of Bihar and Jharkhand. The case of one company known as Bihar State Cooperative Milk Producer’s Federation (COMFED) is said to be subjudice.

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For the purpose of division of assets of the companies which have been operating within the territories of States of Bihar and Jharkhand, it is stated:

“8. That as per the orders issued by the Ministry of Home Affairs, the assets, liabilities and employees of the most of the companies have been divided between the States of Bihar and Jharkhand. However, in respect of the Corporations such as Bihar State Warehousing Corporation, Bihar State Hydro Electric Power Corporation, Bihar State Text Book Publishing Corporation Limited, Bihar State Finance Corporation and Bihar State Food and Civil Supplies Corporation, it was decided that these Corporations will continue to function as inter-State Corporations in the States of Bihar and Jharkhand. Accordingly, it was decided to divide the shares of these Corporations as well as the representation of the two States in their respective Board of Directors.”

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A Committee has also been constituted for monitoring the progress of implementation of orders passed by the Central Government comprising of the Chief Secretary, Bihar or his/ her nominee and Chief Secretary, Jharkhand or his/her nominee. The said committee is required to meet at least once in a month and submit a progress report to the Ministry of Home Affairs.

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A Mr. B.B. Singh, learned counsel appearing on behalf of the State of Bihar would submit that the State has no liability to pay the salaries of the employees of the statutory corporations/ companies incorporated under the Indian Companies Act. Reliance in this behalf has been placed on *Steel Authority of India Ltd. and Ors. v. National Union Waterfront Workers and Ors.*, [2001] 7 SCC 1 and *Electronics Corporation of India Ltd. and Ors. v. Secretary, Revenue Department, Govt. of Andhra Pradesh and Ors.*, [1999] 4 SCC 458.

C The learned counsel would contend that the statutory corporations/ other public undertakings being not completely under the control of the State, the remedy of the employee, if any, is to file appropriate applications before the Company Judge before whom winding-up applications in relation to 18 companies have been filed or to approach the appropriate Industrial Court in that behalf.

D In its order dated 9th May, 2003, this Court considered the matter from the human rights aspects as also the fundamental rights of the employees of the public sector undertakings operating in the State of Bihar holding :

E “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 Undertaking 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 Reorganisation 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.”

G It has been contended before us that after passing of the aforementioned order, five of employees have died due to non-payment of their salaries.

H The Constitution Bench decision of this Court in *Steel Authority of India Ltd.* (supra) and *Electronics Corporation of India Ltd.* (supra), which has been relied upon by Mr. Singh had been considered by this Court in its

order dated 9th May, 2003 holding :

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“Thus, the law as stated therein is not of universal application. The ratio of the said decisions must be applied having regard to the fact situation obtaining therein [See *Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and Ors.*, [2003] 2 SCC 111 (Para 59). It has its limitations in its applications, as exceptions exist in several areas”

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This Court further relying upon the doctrine of ‘lifting the corporate veil’ observed:

“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 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 of life and liberty, the State has also an additional duty to see that the rights of employees of such corporations are not infringed.

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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 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.”

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As regards the statutory corporation, it was further noticed:

“In relation to statutory authority, the State had also the requisite power to issue necessary directions which were binding upon them, as for example, Section 79(c) of Electricity (Supply) Act.”

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This Court further observed that the State has a constitutional obligation and acts in a fiduciary capacity *vis-a-vis* performance of its constitutional duties and functions by the public sector undertakings as it has constitutional obligations in relation thereto.

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A The State of Bihar in response to the applications filed by the petitioner herein cannot, in our opinion, be permitted to raise questions which have expressly been rejected. It cannot seek a review of the said judgment indirectly which could not do directly. Even for such matters, an application for clarification would not be maintainable. [See *Ram Chandra Singh v. Savitri Devi*, JT (2004) 6 SC 93].

B 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.

C 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 direction, 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  
D been directed to be placed again after six months.

[emphasis supplied]

E 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  
F issue requisite directions as is permissible in law.

We have herebefore noticed the operative part of the report of the Committee.

G It would appear therefrom that the directions of this Court could not be complied with having regard to the fact that only six crores were left with the Committee. Before us a chart has been submitted showing the approximate amount involved for payment of arrears of salaries in relation to the following corporations:

"Name of undertaking	Approximate amount admittedly involved for payment of arrears
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Bihar State Sugar Corporation	Rs. 130 crores	A
Bihar State Leather Industries Development Corporation/Bihar Finished Leathers	Rs. 62.45 crores	
Bihar State Industrial Development Corporation	Rs. 61.72 crores	
Bihar State Agro Industries Development Corporation	Rs. 60.73 crores	B
Bihar State Construction Corporation	Rs. 37.50 crores	
Bihar State Handloom & Handicraft Corporation	Rs. 18 crores	
Bihar State Small Scale Industrial Development Corporation	Rs. 18 crores	C
Bihar State Medicine & Chemical Development Corporation	Rs. 9.46 crores	
Bihar State Panchyati Raj Financial Corporation	Rs. 3.75 crores	D
Bihar State Electronic Dev. Corporation	Rs. 2.51 crores	
Bihar State Fruit & Vegetable Development Corporation	Rs. 1.8056 crores	
Bihar State Vastraya (Textile) Corporation	Rs. 0.70 crores	E
Bihar State Film Development & Financial Corporation since August 2002"	Rs. 55,000 per month	

It has further been placed before us that as regards Bihar State Road Transport Corporation, Bihar State Khadi Gramdhoyog Board, Bihar State & Food Civil Supplies Corporation and Bihar State Seed Corporation, approximate amount involved for payment of arrears of salaries and assets and liabilities divided have been shown in the following terms:

"Name of Undertaking	Approximate amount involved for payment of arrears of salaries	Status	
Bihar State Road Transport Corporation	Rs. 160.35 crores	Assets and Liabilities divided at the ratio of 65:35 vide order dated 14.1.2004	F G H

A	Bihar State Khadi Gramdhoyog Board	Rs. 37.50 crores	Assets and liabilities divided vide Order dated 13.9.2004
B	Bihar State & Food Civil Supplies Corporation	Rs. 16.56 crores	Assets and liabilities divided at the ratio of 3:1 vide order dated 13.9.2004
C	Bihar State Seed Corporation	Rs. 4.53 crores	Assets and liabilities divided at the ratio of 78:22 vide order dated 13.9.2004"

As regards BHALCO, it was contended that the approximate amount involved for payment of arrears and salaries is not available as the said corporation continues to be under the control of the State of Bihar.

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 of 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 concerned employees 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 an appropriate proceedings.

Keeping in view of the fact that despite this Court's our order dated 9th May, 2003, five persons have lost their lives owing to non-payment of salaries and keeping in view of the order of the Central Government dividing the assets and liabilities between the States of Bihar and Jharkhand in relation to Bihar State Road Transport Corporation, Bihar State Khadi Gramdhoyog Board, Bihar State & Food Civil Supplies Corporation and Bihar State Seed Corporation, etc., we direct the State of Bihar to deposit a sum of Rs. 50 crores and the State of Jharkhand a sum of Rs. 25 crores within eight weeks from date.

The Committee headed by Justice Uday Sinha would continue to function. The High Court of Judicature at Patna and the Jharkhand High Court are hereby requested to pass appropriate orders in the liquidation proceedings filed by the States of Bihar or Jharkhand, as the case may be, as

expeditiously as possible and preferably within a period of six months from the date of communication of this order. A

Any amount paid to the employees concerned shall be subject to the order(s) passed by the appropriate court of law in this behalf and it goes without saying that the amount so paid to them shall be duly credited. B

We make it clear that we have not issued 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 9th May, 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 concerned employees or workmen would undoubtedly be adjudicated 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. C D

These applications are disposed of with the aforementioned directions. Put up the matter after six months. E

R.P.

Matters are pending.