

KAPILA HINGORANI & ANR. A

v.

STATE OF BIHAR & ANR.

(I.A. No. 21 of 2007 in Writ Petition (Civil) No. 488 of
2002)

JULY 8, 2008 B

[S.B. SINHA AND V.S. SIRPURKAR, JJ.]

Bihar Reorganisation Act, 2000 – ss. 65 and 85 – Division of original State of Bihar into existing State of Bihar and State of Jharkhand – Bihar Hill Area Lift Irrigation Corporation-(BHALCO) operating in State of Jharkhand – Constitution of Jharkhand Hill Area Lift Irrigation Corporation-(JHALCO) – Non-payment of salaries to employees – Public interest litigation before Supreme Court – Direction to State of Bihar to meet the liability of salaries of employees – Meanwhile, advertisements by JHALCO for absorption of employees of erst-while BHALCO with the condition that such employees would forego their earlier claim – Out of 389 applications, only 302 employees found eligible and absorbed – Interim applications – By order dated 13.1.2005, direction issued for absorption of employees of BHALCO who opted for employment without any undertaking at this stage – Non compliance – On interim applications, held: Order dated 13.01.2005 would have been enforced by initiating contempt proceeding – Initiation thereof and consequent punishment of officers guilty, on basis of incorrect statement would not subserve any purpose, thus such is desisted – In view of the pendency of writ petition in Jharkhand High Court by employees claiming absorption as also past salaries, High Court directed to dispose of the writ petition at the earliest – It would determine the question of final absorption, past salaries and liability to pay the same. C
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The original State of Bihar was divided into existing State of Bihar and State of Jharkhand by the Bihar

A Reorganisation Act, 2000. Thereafter, the area of operation of Bihar Hill Area Lift Irrigation Corporation-(BHALCO) fell within the boundaries of Jharkhand. The State of Jharkhand constituted Jharkhand Hill Area Lift Irrigation Corporation-JHALCO, with effect from 29.12.2001. There were allegations that the salaries of the employees of the said corporation were not paid for a long time which resulted in starvation of the employees. Thereafter, a PIL was filed under Article 32 of the Constitution. On 09.05.2003 this Court issued interim direction against State of Bihar to meet the liability of salaries of employees of State Corporation and also directed the Central Government to take decision as regard division of assets and liabilities. The High Court was directed to dispose of all liquidation proceedings in respect of the government companies owned and controlled by the State of Bihar. Meanwhile, on 27.3.2003 and 31.7.2003 JHALCO issued advertisement for absorption of employees of erstwhile employees/workmen of BHALCO which was subject to the condition that such employees had to forego their earlier claims of the unpaid salaries. 398 applications were filed for employment by employees of BHALCO, out of which 302 were found eligible and were absorbed. On 13.8.2004, this Court issued directions to the State Government, to take decision regarding the division of assets and liabilities of the government companies/public sector undertakings in terms of provisions of State Reorganisation Act, 2000.

Thereafter, I.As were filed. On 13.1.2005, this Court passed an order to absorb the employees of BHALCO who opted for employment without any undertaking at this stage and the IAs were disposed of. I.A. No.11/2005 and I.A. No.13/2005 were filed for modification/clarification of Order dated 13.1.2005. JHALCO was directed to file the status report. State of Jharkhand contended that pursuant to order dated 13.1.2005, 398 workman of

BALCO were asked to report for duty within three weeks but only 302 turned up and were absorbed, though 158 employees were found surplus. On 16.07.2007, this Court issued directions to the State for bearing the expense of those employees who were critically ill. In view of the statement made by counsel for the State of Jharkhand, the court held that no direction would be passed with regard to absorption of those who did not turn up for duty on the appointed day and disposed of the IA No. 11/2005.

It was submitted that the statement was not correct because the advertisements for absorption of erstwhile BHALCO employees were issued much earlier to the Court's Order dated 13.1.2005 and that pursuant to the Order dated 13.1.2005, only 216 fresh applications were filed by employees of erstwhile BHALCO and JHALCO accepted the same and kept in the cold storage. On 21.9.2007, the Court directed the State to file the Status Report. Hence, the appellant filed the present I.A. No. 21/2007 seeking directions to the respondent State/JHALCO to pass absorption order of 213 employees in JHALCO in terms of the order dated 13.1.2005. Thereafter, on 13.12.2007, this Court passed an order that it was of the opinion that the Secretaries of the State of Bihar and the State of Jharkhand as also the Managing Directors of the BHALCO and JHALCO should have a dialogue in regard to the absorption of the employees and submit a report and if necessary intervention of appropriate department of Central Government may also be taken. When matter was taken up, the State of Jharkhand tendered an unconditional apology that the Status Report shown in earlier affidavits which were filed subsequent to the order dated 13.1.2005 was actually that of the period prior to 13.1.2005, though it was purported to be relating to subsequent period.

Disposing of the appeal, the Court

HELD: 1.1 In filing the report in pursuance of I.A. no.

A 11 and making solemn statement before this Court that
302 employees were already accommodated in pursuance
of the Order of this Court dated 13.1.2005, a clear cut mis-
leading and false statement was made, but for which this
Court would not have passed the Order dated 16.7.2007
B on I.A. no. 11. Consternation is expressed. The bald apol-
ogy tendered by the State of Jharkhand is not satisfac-
tory. There is no explanation, whatsoever, as to how such
a statement came to be issued on behalf of the State Gov-
ernment by its standing counsel. It is obvious that the
C State merely made a poor attempt to extricate itself from
the difficult situation. [Para 14] [211 G 212 B]

1.2 The two affidavits on behalf of the State of
Jharkhand and JHALCO show that JHALCO and the State
are changing their stands from time to time. Their stands
D at times have become contradictory and inexplicable. The
Cabinet note dated 9.1.2002 which was filed by the writ
petitioner along with I.A. no. 11 of 2005 clearly suggests
that the Jharkhand State Cabinet had sanctioned that
BHALCO should be run in the form of JHALCO. In 2003,
E JHALCO gave two advertisements for absorption of
BHALCO employees and even later, it was admitted that
JHALCO required the experienced employees of
BHALCO. In pursuance of these advertisements, all the
BHALCO employees could have applied for being regu-
F larized, provided, their applications were found to be in
order. Accordingly, as many as 302 employees were ab-
sorbed. The applications of others were rejected and
some others had not applied at all, perhaps because of
the condition that such employees had to forego their
G earlier claims of the unpaid salaries. At the time when the
advertisements were issued, there was no compulsion
by way of any Court Order to accommodate all the em-
ployees and it could have been merely a humanitarian
consideration out of which the said advertisements came
to be issued. It cannot be forgotten that there was no
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trained staff available with JHALCO and, therefore, JHALCO required the experienced staff of BHALCO. Therefore, this move was only to replace the nomenclature of BHALCO and to continue the same as JHALCO. [Para 18] [216A-217A]

1.3 It seems that the non-payment of salaries to these employees was a non-factor and, therefore, JHALCO wanted to reap double benefit, viz., firstly it could get all the experienced employees and secondly, that too without having to face the liability of their salary payments. 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 concerned employees 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. 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 only to 302. Now, in pursuance of the Order dated 13.1.2005, 216 more employees had applied and that too without foregoing their claims over salaries. It is probably because of this that a decision was taken in a meeting dated 8.8.2005

A. to review the financial position of JHALCO, to curtail the
number of employees and to limit the total number of em-
B. ployees to 214. In fact, if paragraph A(f) of the Additional
affidavit is seen, it will be clear that though there were
152 excess Class IV employees, there was still require-
ment of 64 Officers, as only 14 Officers were engaged as
C. against the total sanctioned strength of 78 Officers. This
exercise of curtailing the employees and limiting the total
number of employees to 214 appears to be a deliberate
D. 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 I.A. no. 11. Even the figures given in the Additional
E. affidavit's paragraph are misleading. If properly calculated
as against the total sanctioned strength of 214, 302 em-
ployees 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 ex-
cess employees, is, therefore, clearly misleading. There
does not appear any explanation, nor any statistics to
F. justify the curtailing of the employees by JHALCO. After
all, there was no curtailment of area or the activities at
least none is pleaded, in which case the decision to cur-
tail the number of employees of JHALCO itself appears
to be neither sound, reasonable, nor justifiable and only
appears to get out of the rigour of this Court's Order dated
13.1.2005. [Para 18] [217-A-218-D]

1.4 There is a huge problem of the finance. It has been
pleaded in the Additional affidavit that JHALCO was run-
ning in deficit by 3.16 crores up to 2005-06. Its annual wages
G. on the date are 3.60 crores and it has already sought 2.60
crores from the State of Jharkhand to make the payment
for the financial year 2008-09. 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
H. the arrears of salaries [Para 19] [218 E-F]

1.5 When the response of the State of Bihar is seen 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 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, u/s. 47 (1) and s. 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 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 correct decision, and that it had written a letter to reconsider the same. It is surprising that how such a bald stand was taken by the State of Bihar. Seen from any angle, this 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 the over simplification of the issue. That is apart from the fact that in the Memorandum of Association of BHALCO, there is a reference of the six districts of Bihar which continued to be in the State of Bihar as its area of operation. The Order dated 13.9.2004 which is binding on the State of Bihar is seen. 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 State of Bihar, which it must discharge. [Para 20] [218 G- 219 E]

2. The mode of enforcing order dated 13.01.2005 would be by initiating a proceeding for contempt under

A the Contempt of Courts Act, 1970. Such a proceeding, as is
well known, must be initiated by way of last resort. Only be-
cause an incorrect statement had been made in respect
whereof comments have been made hereto before, initiation
and consequent punishment of the officers guilty therefor,
B would not subserve any purpose. [Para 21] [[219 G-220 F]

3. A writ petition is pending in the Jharkhand High
Court by the employees claiming absorption as also the
past salaries. Therefore, final directions are not given so
also a labour dispute in a public interest litigation directly
C filed before this Court is not dealt with. It would be better
if all the questions pending in the said writ petition are
finally decided as early as possible. [Para 21] [219-F]

Sushila Raje Holkar vs. Anil Kak (Retd.) 2008(7) SCALE
D 484 – referred to.

4.1 The High Court of Jharkhand is directed to dis-
pose of the writ petition pending before it at the earliest
and, if possible, within six weeks from date. It is made clear
that the question of final absorption, past salaries and the
E liability to pay the same may be determined by the High
Court in the said writ petition. [Para 22] [220 A-221 C]

4.2 The Managing Director, BHALCO and JHALCO
as also the Secretaries of the Government of Bihar and
Jharkhand are directed to meet within one month from
F the date and decide upon and assess the liability on ac-
count of the arrears of the salaries payable to the employ-
ees 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. [Para 22] [221 C-D]

G 4.3 The Central Government shall take immediate
steps to see that the directions in the order dated
13.09.2004, passed by it are complied with by the State of
Bihar. [Para 22] [221 E-F]

H CIVIL ORIGINAL JURISDICTION : I.A. No. 21 of 2007

IN

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Writ Petition (Civil) No. 488 of 2002

Attorney General for India (N.P.), P.S. Mishra (A.C.), (N.P.), Aman Ilingorani, Priya Ilingorani, (for M/s. Hingorani & Associates), Gopal Singh, Anil K. Jha, Anil K. Chopra, D.N. Goburdhan, Sandhya Goswami, Sushma Suri, Ajit Kumar Sinha, Amitabh, S. Yasovardhan, A. Parimal, C.D. Singh and Amit Kumar for the appearing parties.

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The Judgment of the Court was delivered by

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V.S. SIRPURKAR, J. 1. In the instant Application, the petitioner seeks directions from this Court on the following:

(a) Direct 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 I.A.), pursuant to the Order dated 13.1.2005 leaving the employees who have died.

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(b) Pass any other Order (s) as may be deemed fit and proper.

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2. The short history for proper decision would be necessary.

History:

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3. Original State of Bihar came to be divided into existing State of Bihar and State of Jharkhand by Bihar Reorganisation Act with effect from 15.11.2000. The State of Jharkhand exercising its power under Section 85 of the Bihar Reorganisation Act constituted a Corporation called "Jharkhand Hill Area Lift Irrigation Corporation" (hereinafter called 'JHALCO') by notification no. 2580 with effect from 29.12.2001.

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4. It may be recalled that there were press reports regarding the non-payment of salaries for long time resulting in starva-

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A tion of the employees of this Corporation. It was also reported
that one Chandan Bhattacharya, son of an employee of the Bihar
State Agro-Industries Development Corporation tried self-im-
B molation, which incident was widely reported in the press. Ulti-
mately, the said Chandan Bhattacharya succumbed to the burn
injuries. A public spirited lawyer initiated public interest litigation
in this Court under Article 32 of the Constitution of India,
inter alia raising a question regarding the liability of the Govern-
ment of State of Bihar for payment of arrears of salaries to
C the employees of the said owned corporations, public sector
undertakings and statutory bodies. The State of Bihar filed its
counter affidavit and claimed that the salaries were being paid
by the statutory authorities and further that all the salaries upto
30.9.2002 were paid in the case of 26 undertakings. In respect
D of some other Corporations, however, it was reported that large
number of employees were not paid the salaries and huge ar-
rears remained involving crores of rupees. In case of as many
as 16 undertakings including Bihar Hill Area Lift Irrigation Cor-
poration (hereinafter called 'BHALCO'), it was also admitted
that 14 employees had died in harness and 9 after retirement.
E However, it was totally denied that there was any suicide or death
due to starvation of any of the employees of the corporation.
After hearing the amicus curie, who was appointed by this Court
as also the learned counsel who appeared on behalf of State of
Bihar and Union of India, and after considering the law in de-
F tails, the Court issued the following interim directions in the
matter on 9.5.2003:

G “(i) The High Court may strive to dispose of all liquidation
proceedings in respect of the government companies
owned and controlled by the State of Bihar as
expeditiously as possible. For the said purpose and/
or purposes ancillary to or incidental therewith, it may
pass an interim order and/or orders by way of sale
and/or disposal of the properties belonging to such
public sector undertakings and/or government
H companies or to take such measure or measures as

it may deem fit and proper.

(ii) For the aforementioned purposes a committee not consisting of more than three members chaired by a retired High Court Judge or a sitting District Judge may be appointed who may scrutinize the assets and liabilities of the companies and submit a report to the High Court as expeditiously as possible preferably within three months from the date of constitution of the Committee. The terms and conditions for appointment of the said Committee may be determined by the High Court. All expenses in this behalf shall be borne by the State of Bihar.

(iii) The High Court shall be entitled to issue requisite direction/directions to the said Committee from time to time as and when it deems fit and proper.

(iv) 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 wherefor, the parties may file their claims before it.

(v) 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.

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

(vii) The Central Government is hereby directed to take

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A a decision as regards division of assets and liabilities of the government companies/public sector undertakings in terms of the provisions of the State Reorganisation Act, 2000.

B (viii) The State of Jharkhand is hereby impleaded as a respondent. let notice be issued to the newly added respondent."

It is clear that these directions were only to meet the exigencies which were then prevailing.

C 5. It seems that thereafter, number of developments took place including constitution of the committee by the High Court of Patna, as also the disbursement of 50 crores of rupees which were directed to be paid by the State of Bihar and which were deposited as per the directions. This Court on 13.8.2004 issued a direction, directing the State Government, in consultation with the concerned Ministries, to take the decision regarding the division of assets and liabilities of the government companies/public sector undertakings in terms of provisions of State Reorganisation Act, 2000.

E 6. Two I.As. being I.A. no. 7 of 2004 and I.A. no. 9 of 2004 came to be filed. In I.A. no. 7 of 2004, a clarification was sought in respect of JHALCO with the prayer that JHALCO should be treated as a successor of BHALCO from 15.11.2000 onwards. This was necessitated on account of the alleged offer by JHALCO by way of advertisements on 27.3.2003 and 31.7.2003. While by 1st advertisement the last date to submit the applications was 5.4.2003, by 2nd advertisement it was extended to 7.8.2003. 398 applications were filed out of which 302 were found eligible and those applicants were absorbed. F Thus 14 officers, 44 Class III employees and 244 Class IV employees were absorbed. It was clearly stated in the advertisement that the employees of BHALCO would be absorbed by JHALCO only if they forego their claim of salary for period prior to their respective date of absorption. By I.A. no. 9 of 2004, a G direction was sought that respondent State of Bihar and/or State H

of Jharkhand should deposit sufficient sum of money with the Patna High Court, so that at least the employees of the Corporations listed in the Order dated 9.5.2003 be paid their salaries.

7. These I.As were opposed by the State of Bihar by filing counter affidavits. The State of Jharkhand which was impleaded as a party also filed its counter affidavit which was affirmed by one Binod Kumar Verma, Managing Director, JHALCO, Ranchi. The stand taken by State of Jharkhand was that BHALCO was still under the control of State of Bihar and in place of BHALCO, a new Corporation known as JHALCO had been incorporated and registered by the Registrar of Companies, Jharkhand on or about 22.3.2002. In short, the stand was taken that JHALCO has nothing to do with BHALCO and it could not be treated as a successor of JHALCO. The Union of India had also filed an affidavit, wherein it was pointed out that winding up applications had already been filed by the State of Bihar in respect of as many as 18 companies, and in view of that, no order was required to be passed under Section 65 by the Central Government. It was also pointed out that 8 companies operated only within the territories of Bihar and as such, there was no necessity of bifurcation thereof. It was also pointed out that in respect of the 4 companies which were operating both within the territories of State of Bihar and Jharkhand, a direction was already issued for the division of assets and liabilities. It was pointed out in respect of such companies that they would continue to function as the inter-state corporations in the State of Bihar and State of Jharkhand. A Committee was also constituted for the implementation of the orders passed by the Central Government, which comprised of the Chief Secretary, Bihar or his/her nominee and Chief Secretary, Jharkhand or his/her nominee. The State of Bihar took the stand that the State had no liability to pay the salaries of the employees of the statutory corporations/companies incorporated under the Indian Companies Act. The Court passed a detailed Order dated 13.1.2005. It firstly expressed its dissatisfaction on the stand taken by the State of

A Bihar and then observed as under:

B “It is true, as has been contended on behalf of the State of
C 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*

D (emphasis supplied).”

The Court also further held:

E “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 9.5.2003 as also which are being issued
F 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
G 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.”

H This is how I.A. nos. 7, 9 and 10 were disposed of.

8. However, thereafter, I.A. no. 11 was filed for modification of the Court's Order dated 13.1.2005 in I.A. no. 7, 9 and 10. There was another I.A. no. 13, which was filed for clarification of the Order dated 13.1.2005. An affidavit came to be filed by JHALCO in I.A. no. 11; and it was directed to place on record, the details of the sanctioned posts, filled up posts and the balance. On 11.9.2006, another order came to be passed on I.A. nos. 8 and 11. By Order dated 3.11.2006, further time was granted to the State of Jharkhand to file the reponse to the Status Report which was already filed. The matter was adjourned from time to time, thereafter. Ultimately, an Order came to be passed on 16.7.2007, where firstly, the Court issued the same humanitarian directions to the State for bearing the expense of those employees who were critically ill and insofar as I.A. no. 11 of 2005 was concerned, the following Order was passed:

"It is stated by Mr. Ajit Kumar Sinha, learned counsel appearing on behalf of the State of Jharkhand that pursuant to this Court's Order dated 13.1.2005 out of 398 workmen who had been working with BHALCO and who had been asked to report for duty within three weeks, only 302 turned up and they have been absorbed. Learned counsel states that order of absorption had been passed despite the fact that 158 people have been found to be surplus. In this view of the matter learned counsel submits that those who had not turned up for their absorption within the aforementioned period may not be directed to be absorbed pursuant to this Court's Order dated 13.1.2005.

In view of the statement of Mr. Ajit Kumar Sinha, learned counsel that 158 persons are surplus, we are of the opinion that those who have not turned up for duty on the appointed date may seek their remedies in the matter as are available to them in law. We need not issue any direction in regard to their absorption.

I.A. no. 11 is disposed of accordingly.

I.A. no. 8

A I.A. no. 8 for intervention is dismissed as not pressed."

9. The statement was obviously an incorrect one because the absorption of 302 employees was obviously not done in pursuance of the Court's Order dated 13.1.2005. In fact, those advertisements for absorption of the erstwhile of BHALCO employees were issued much earlier to the Court's Order dated 13.1.2005. It seems that after the Order dated 13.1.2005, as many as 216 applications were filed by the erstwhile BHALCO employees. Out of these 216 employees, 5 were officers, 31 were Class III employees and 180 were Class IV employees. Therefore, it is obvious that while passing an Order on I.A. no. 11, this Court was kept in dark about two factors. Firstly that advertisements 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.

10. Again on 21.9.2007, the Court directed the counsel for the State to file the Status Report.

11. It is on this background, that the present I.A. no. 21 has been filed. The Court issued notice on I.A. no. 21, which notice was accepted by Mr. Ajit Kumar Sinha, counsel for the State of Jharkhand and he was given two weeks' time to file reply by Order dated 12.11.2007. Ultimately, on 13.12.2007, this Court passed the following Order;

"Having heard the learned counsel for the parties, we are of the opinion that as the situation in which the employees of the erstwhile BHALCO arises out of a statement before us by the counsel for JHALCO, from which the State now seeks to wriggle out, we are of the opinion that the Secretaries of the State of Bihar and the State of Jharkhand as also the Managing Directors of the BHALCO and JHALCO should have a dialogue in regard to the absorption of the concerned employees and a report be submitted to this Court. If necessary, intervention of the

appropriate Department of the Central Government may also be taken. A

List the matter on 31.1.2008.

The Secretary of the Irrigation Department of the State of Jharkhand as also the Managing Director of JHALCO shall remain present before us on that date." B

12. When the matter was taken up on 31.1.2008, there were two reply affidavits filed. The Managing Director of JHALCO in the initial reply specifically owned that the Status Report shown in the earlier affidavits which were filed subsequent to the Order dated 13.1.2005, was actually that of the period prior to 13.1.2005, though it was purported to be relating to subsequent period. An unconditional apology was tendered as under: C

"The State through its counsel gives an unconditional apology since it was only intended to mention prior to 13.1.2005 and not pursuant to 13.1.2005." D

The matter was left at that. This so-called parawise reply does not seem to convey anything new. In paragraph 9, however, it was stated that in pursuance of the Order dated 13.8.2004 of this Court, the Government of India vide letter no. 12025/24/2004-SR dated 13.9.2004 had decided that BHALCO continued to be under the control of the Government of Bihar in terms of Section 65 of the Bihar Reorganisation Act, 2000. It was, therefore, pleaded in that paragraph that BHALCO and JHALCO were two different corporations having no connection of inter dependence between them. It was only on this basis that ultimately it was prayed that I.A. no. 21 should be dismissed. E F G

14. We are constrained to say that in filing the said report in pursuance of I.A. no. 11 and making solemn statement before this Court that 302 employees were already accommodated in pursuance of the Order of this Court dated 13.1.2005, a clear cut misleading and false statement was made, but for H

A which this Court would not have passed the Order dated
16.7.2007 on I.A. no. 11. We express our consternation. We
must also say that we are not at all satisfied with the bald apol-
ogy which we have already quoted above. There is no explana-
tion, whatsoever, as to how such a statement came to be is-
B sued on behalf of the State Government by its standing coun-
sel. It is obvious that the State merely made a poor attempt to
extricate itself from the difficult situation.

15. The State filed an additional affidavit. In the additional
affidavit, however, it was reiterated that a meeting was arranged
C to be held between the concerned Secretaries and the Manag-
ing Directors on 17.1.2008 at Ranchi, wherein, the relevant facts
and issues were discussed. The affidavit once again stated
about the erstwhile absorption of 302 employees, and further
that as on date, 216 employees were left with BHALCO who
D had not so far been absorbed. It was then pointed out that there
was already a surplus of 152 Class IV employees with JHALCO
and if 216 employees were further directed to be absorbed,
JHALCO would become a sick company. The affidavit further
asserted that initial responsibility rests with BHALCO owing to
E the order passed by the Central Government on 13.9.2004. It
was also further reiterated in the affidavit that the Government
of Bihar and the Managing Director of BHALCO did not accept
this order dated 13.9.2004 and had protested against the Min-
istry of Home Affairs and submitted that all the employees of
F BHALCO should be absorbed by JHALCO. The affidavit then
goes on giving certain chronology of events, showing as to how
JHALCO was brought under the existence. It was accepted that
JHALCO adopted the rules and regulations of BHALCO and
that some assistance was received from the financial institu-
G tions for execution of its schemes. Further, it was expressed
that the services of BHALCO's employees would be taken only
as per the requirement. Again, a reference was made to the
two advertisements by which the BHALCO's employees were
given the opportunity to apply for absorption. It was also pointed
H out that the Muster-Roll employees, employees deputed in the

Government Department and employees who presented mutilated documents were not accepted by JHALCO. Reference was then made to the earlier Order dated 9.5.2003 of this Court and it was pointed out further that by Order dated 13.9.2004, the State Government had decided that as on date, BHALCO continued to be under the control of the Government of Bihar. In para (i), a very curious statement is made, which is as under:

“Therefore, after the Central Government order dated 13.9.2004, the Jharkhand State Government sought to annul its earlier decision to correct the technical error committed earlier in its order no. 2580 dated 29.12.2001 issued by Water Resource Department, Government of Jharkhand for which approval was given to this proposal by the Departmental Minister in October 2004. However, the process could not be completed because of elections in the State. Thereafter, the Cabinet revised its earlier decision in its meetings of 4.4.2005 and the order was issued vide WRD, Government of Jharkhand notification no. 1283 dated 26.4.2005.”

16. A reference was then made to an application for modification of this Court's Order dated 13.1.2005, allegedly filed by the State of Jharkhand on 15.2.2005. Further, the rejoinder affidavit filed by the State of Jharkhand dated 28.4.2005, showing the inability to absorb the remaining BHALCO employees was also referred to. Paragraph 8 (a) and 8 (b) of this additional affidavit suggested that JHALCO had adopted the rules and regulations of BHALCO, and that JHALCO will receive assistance from financial institutions. It is then admitted that to start and run JHALCO, experienced employees were needed. As BHALCO employees were sitting idle, an opportunity was given to them on humanitarian grounds. Again, the same table regarding the 302 absorbed employees was presented. It is then reiterated that the financial position of JHALCO could not be improved due to the excess staff already absorbed. In para 8 (e), a reference was made to the decision of the Government of Jharkhand issued by WRD notification no. 1283 dated 26.4.2005 and a meet-

A ing in pursuance of this decision held on 8.8.2005 to review the financial position of the JHALCO together with its work performance. This para is extremely important and reads as under:

B “(e) As per Government of Jharkhand decision issued by WRD notification no. 1283 dated 26.4.2005 the Board of Directors of JHALCO held a meeting dated 8.8.2005 to review the financial position of JHALCO together with its work performance. It decided to curtail the number of the employee, seeing the nature of the work which the corporation is executing, as all schemes are executed by the beneficiary of the concerned schemes and handed over to the beneficiary committee after completion of the scheme. The strength sanctioned by Board of Directors is as under:

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S.No.	Category of Post	Total Engaged Employees
(i)	Officers	78
(ii)	Class III	44
E (iii)	Class IV	92
	Total =	214

F (f) In view of the strength sanctioned by the Board of Directors of JHALCO seeing the nature of the work executed by the corporation the comparative statement of BHALCO employees already engaged in JHALCO in comparison to its need strength is as under:

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Sl. NO.	Category of Post	Total strength sanctioned	Total engaged employees	Balance
(i)	Officers	78	14	(-)64
(ii)	Class III	44	44	Nil
H (iii)	Class IV	92	244	(+) 152

The above comparative statement itself shows that 152 excess of BHALCO Class IV employees have already been engaged, regarding which an affidavit has been filed by the Government of Jharkhand in the Hon'ble Supreme Court. A

- (g) The remaining BHALCO employees are approximately 216. As per I.A.-21 filed by the petitioner (BHALCO employees) category wise position of these employees are as follow: B

S.No.	Category of Post	Remaining BHALCO Empl.	C
(i)	Officers	05	
(ii)	Class III	31	
(iii)	Class IV	180	
	Total	<u>= 216</u>	D

- (h) As mentioned above in the remaining 216 employees of BHALCO, Class III employees are 31 which are not needed in JHALCO and Class IV employees are 180 while JHALCO has already engaged 152 excess Class IV employees of BHALCO. E

- (i) As per audit report 2005-06, JHALCO is already running in 3.16 crores deficit.

- (j) The annual wages of JHALCO employees is about 3.60 crores, while the profit earned by JHALCO has been estimated to be approximately Rs. One crore. Thus, 2.60 crores have been sought from the WRD, State of Jharkhand to make the JHALCO employees payment for the financial year 2008-09". F G

17. It was then submitted in the further paragraphs that JHALCO was trying to become financially viable with the help of the Government of Jharkhand. It was also pointed out that in the erstwhile BHALCO, excess employees were engaged and the organization could not sustain the burden of its employees. H

A It was, therefore, reiterated that the estimate of taking the remaining BHALCO employees had to be seen in the light of the precarious financial situation and the excess staff. It was, therefore, reiterated that if those employees are taken, JHALCO also will be a sick company. In the rest of the paragraphs, other facts
B relating to the liquidation of BHALCO, as also the failure of the meeting dated 17.1.2008 which was ordered by this Court, were referred.

18. We have deliberately referred to the two affidavits on behalf of the State of Jharkhand and JHALCO only to show that
C JHALCO and the State are changing their stands from time to time. Their stands at times have become contradictory and inexplicable. It has already been noted that JHALCO came into existence long back on 29.12.2001, because the area of operation of BHALCO fell within the boundaries of Jharkhand after the State of Jharkhand came into existence. The Cabinet
D note dated 9.1.2002 which was filed by the writ petitioner along with I.A. no. 11 of 2005 clearly suggests that the Jharkhand State Cabinet had sanctioned that BHALCO should be run in the form of JHALCO. In 2003, JHALCO gave two advertisements for
E absorption of BHALCO employees and even later, it was admitted that JHALCO required the experienced employees of BHALCO. In pursuance of these advertisements, all the BHALCO employees could have applied for being regularized, provided, their applications were found to be in order. Accordingly, as many as 302 employees were absorbed. The applications of others were rejected and some others had not applied
F at all, perhaps because of the condition that such employees had to forego their earlier claims of the unpaid salaries. At the time when the advertisements were issued, there was no compulsion by way of any Court Order to accommodate all the employees and it could have been merely a humanitarian consideration out of which the said advertisements came to be issued. It cannot be forgotten that there was no trained staff available with JHALCO and, therefore, JHALCO required the experienced staff of BHALCO. Therefore, this move was only to re-
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place the nomenclature of BHALCO and to continue the same as JHALCO. It seems that the non-payment of salaries to these employees was a non-factor and, therefore, JHALCO wanted to reap double benefit, viz., firstly it could get all the experienced employees and secondly, that too without having to face the liability of their salary payments. 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 concerned employees 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. 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 only to 302. Now, in pursuance of the Order dated 13.1.2005, 216 more employees had applied and that too without foregoing their claims over salaries. It is probably because of this that 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. In fact, if paragraph A(f) 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. This exercise of curtailing the employees and limiting the total number of employees to 214

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A 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 I.A. no. 11. Even the figures given in the Additional affidavit's paragraph A(f) are misleading. 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. 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 at least none pleaded before us, in which case the decision to curtail the number of employees of JHALCO itself appears to be neither sound, reasonable, nor justifiable and only appears to get out of the rigour of this Court's Order dated 13.1.2005. Be that as it may we are, in view of the discussions made thereafter, not in a position to pass any order in favour of the applicants even if their contentions with regard to existence of vacancies are accepted.

E 19. However, there is a huge problem of the finance. It has been pleaded in the Additional affidavit that JHALCO was running in deficit by 3.16 crores up to 2005-06. Its annual wages on the date are 3.60 crores and it has already sought 2.60 crores from the State of Jharkhand to make the payment for the financial year 2008-09. 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.

G 20. When we see the 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, their does not appear to be anything more. In the name of written submissions on behalf of 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 Section 47 (1) and Section 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 further has 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 correct decision, and that it had written a letter to reconsider the same. We express our surprise as to how such a bald stand was taken by the State of Bihar. Seen from any angle, this 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 the over simplification of the issue. That is apart from the fact that in the Memorandum of Association of BHALCO, there is a reference of the six districts of Bihar which continued to be in the State of Bihar as its area of operation. We have carefully seen 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 State of Bihar, which it must discharge.

21. However, we are told that a writ petition is pending in the Jharkhand High Court by the employees claiming absorption as also the past salaries. We would, therefore, desist from giving final directions, so also we do not wish to deal with a labour dispute in 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.

There is another aspect of the matter which cannot be lost sight of. The mode of enforcing our order dated 13th January, 2005 would be by initiating a proceeding for contempt under the Contempt of Courts Act, 1970. Such a proceeding, as is well known, must be initiated by way of last resort.

A In *Sushila Raje Holkar vs. Anil Kak (Retd.)* [2008(7) SCALE 484], this Court held :

B “14. A proceeding under the Contempt of Courts Act has a serious consequence. Whether the alleged contemnor has willfully committed breach of the order passed by a competent court of law or not having regard to the civil/evil consequences ensuing therefor require strict scrutiny. For the said purpose, it may be permissible to read the order of the court in its entirety. The effect and purport of the order should be taken into consideration.

C Whereas the court shall always zealously enforce its order but a mere technicality should not be a ground to punish the contemnor.

D A proceeding for contempt should be initiated with utmost reservation. It should be exercised with due care and caution. The power of the court in imposing punishment for contempt of the court is not an uncontrolled or unlimited power. It is a controlled power and restrictive in nature (see *Re: P.C. Sen* [(1969) 2 SCR 649] and *Jhaireswar Prasad Paul and Another vs. Tarak Nath Ganguly & Ors.* [(2002) 5 SCC 352]).

E A contemnor, thus, may be punished only when a clear case for contumacious conduct has been made out.”

F Only because an incorrect statement had been made before us in respect whereof we have made our comments hereto before, initiation and consequent punishment of the officers guilty before us therefor, in our opinion, would not subserve any purpose. We, therefore, desist ourselves from doing so.

G 22. In view of the above, we give the following directions:

H (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 13.09.2004, passed by it are complied with by the State of Bihar

The Interim Application is accordingly disposed of.

N.J.

Appeal disposed of.