

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21893 of 2011

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1. Bihar State Ardh Sarkari Arajpati Karamchari Maha Sangh, Krishi Udyog Bhawan, Sinha Library Road, Patna Through Its General Secretary Awadh Kishore Sharma S/O Late Vishwanath Sharma
 2. Awadh Kishore Sharma S/O Late Vishwanath Sharma Resident Of Village & P.O. Belchi, P.S. Chandi, District Nalanda.
 3. Yogendra Jha S/O Late Jaikant Jha Resident Of Mitra Mandal Colony, Block-A, Plot-24, Phulwarisharif, District Patna.
 4. Shankar Dayal Singh S/O Late Sudama Singh Resident Of Virkumar Singh Colony, Ramjiwan Chouk, Hajipur, District Vaishali.
 5. Jagdish Mandal S/O Sri Lakhan Mandal Resident Of Village Rahtoli, P.O. Sripur Gahar, Via Elmaspur, District Samastipur.
 6. Lakhan Prasad S/O Late Ram Bahadur Resident Of Dhelwan House, Poorandarpur, Near Old Jakkanpur Thana, Jakkanpur, District Patna.
 7. Balmiki Sharma S/O Late Dudheshwar Sharma Resident Of Village Kanauti, P.O. Kazisara, P.S. Makhdoompur, District Jehanabad.
 8. Sheo Kumar Yadav S/O Late Munshi Yadav Resident Of Village Bhagjoga, P.S. Paliganj, District Patna.
 9. Ram Narain Bhanu S/O Late Banarsi Hari Resident Of Village Bhikhanpur, P.O. Head Post Office, Bhagalpur, District Bhagalpur.
 10. Vinod Bihari Singh S/O Sri Ram Lakhan Singh Resident Of Mohalla Chandpur Bella, Azad Lane, P.O. G.P.O., District Patna.
 11. Pawan Kumar Singh S/O Late Bholam Prasad Singh Resident Of Mohalla Kurji, P.O. Sadakat Ashram, P.S. Digha, District Patna.
 12. Shyam Sundar Rai S/O Sitab Rai Resident Of Mohalla Saristabad, P.O. Anisabad, P.S. Gardanibagh, District Patna.
 13. Bishnu Dayal Singh S/O Ram Swarath Singh Resident Of Nilam Bhawan, Nill Nagar, B.D. Lane, Hardwar Road, P.S. Digha, District Patna.
 14. Sushil Kumar Jha S/O Late Ramashankar Jha Resident Of Vill. Ujjan, P.O. Dharempur, District Darbhanga.
 15. Shiv Shankar Srivastava S/O Late Sant Prasad Resident Of New Alhabad Colony, Lalapul Par, Bajrangpuri, P.O. & P.S. Gulzarbagh, District Patna.
 16. Praduman Prasad Roy S/O Late Baikunth Roy Resident Of Village Digha Ghat (Pokhar) P.O. & P.S. Digha, District Patna.
 17. Harilal Yadav S/O Late Sabliak Yadav Resident Of Village Alhampura, P.O. Bihta, District Patna.
 18. Ram Vinay Rai S/O Late Chitan Rai Resident Of Village Pavitra Nagar, P.O. Harnahi, District Sheohar.
 19. Satyendra Prasad S/O Late Lal Bihari Rai Resident Of Village Sabar Chak, P.O. Sorampur, District Patna.
 20. Sheo Nandan Mehta S/O Late Mishrilal Mehta Resident Of Village & P.O. Sakhua, P.S. Pipra Bazar, District Supaul.
 21. Ram Nandan Prasad S/O Late Sipahi Prasad Resident Of Mohalla Harnichak, Anisabad, P.S. Gardanibagh, District Patna.
 22. Pradeed Kumar Rai Choudhary S/O Late Bijan Bihari Choudhary Resident Of Janki Apartment, Flat No. 403, R.K. Avenue Road, P.O. Rajendra Nagar, P.S. Kadam Kuan, District Patna.

.... **Petitioners**

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Patna.

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2. The Chief Secretary, Government Of Bihar, Patna.
 3. The Principal Secretary, Department Of Finance, Government Of Bihar, Patna.
 4. The State Of Jharkhand Through The Chief Secretary, Government Of Jharkhand, Ranchi.
 5. Bihar State Agro-Industries Development Corporation Ltd. Krishi Udyog Bhawan, Sinha Library Road, Patna-800001 Through The Managing Director
 6. Bihar State Medicine And Chemical Development Corporation Block-A, 5th Floor, Maurya Lok Complex, Dakbunglow Road, Patna-800001 Through The Managing Director
 7. Bihar State Construction Corporation Ltd. Null Khwaja Imali, Anisabad, Patna-800002 Through The Managing Director
 8. Bihar State Handloom & Handicraft Corporation Udyog Bhawan, East Gandhi Maidan, Patna-800004 Through The Managing Director
 9. Bihar State Vastraya Corporation Khadi Gram Udyog Bhawan, East Gandhi Maidan, Patna-800004 Through The Managing Director
 10. Bihar State Industrial Development Corporation Indira Bhawan, Boring Canal Road, Ramcharitra Singh Patna, Patna-800000 Through The Managing Director
 11. Bihar State Electronic Development Corporation Beltron Bhawan, Sashtri Nagar, Patna-800023, Through The Managing Director
 12. Bihar State Export Corporation, Land Development Bank Building 5th Floor, Budh Marg, Patna-800001 Through The Managing Director
 13. Bihar State Forest Development Corporation, Patliputra Colony, Patna-800013 Through The Managing Director
 14. Bihar State Sugar Corporation Udyog Bhawan, 3rd Floor, East Gandhi Maidan, Patna-800004 Through The Managing Director
 15. Bihar State Leather Corporation Udyog Bhawan 3rd Floor, East Gandhi Maidan, Patna-800004, Through The Managing Director
 16. Bihar State Finished Leather Corporation Udyog Bhawan, 3rd Floor, East Gandhi Maidan, Patna-800004 Through The Managing Director
 17. Bihar State Panchayati Raj Financial Corporation, New Secretariat, 2nd Floor, Bailey Road, Patna-800001, Through The Managing Director

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Raju Giri, Advocate
For the Respondent/s : Mr. Lalit Kishore, AAG1

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL ORDER

46 04-03-2015 Petitioner No.1 is an Association of employees of various Corporations, whereas petitioner nos. 2 to 22 are individual employees of different Corporations/Undertakings both in their own and representative capacity.



2. The writ application has been filed for release of fund, payment of salary dues, retirement benefits and medical expenses etc. The share of the State is almost 100% in these Corporations. The relief sought for by the petitioners is founded on the principles laid down and directions of the Hon'ble Apex Court in *Kapila Hingorani vs State of Bihar*, reported in (2003)6 SCC 1 and another decision between the same party reported in (2005)2 SCC 262 and in the case of *State of Jharkhand vs Harihar Yadav*, reported in 2014(2) SCC 114. It is not in dispute that the Corporations are all government companies and undertakings owning full shares and having deep pervasive control.

3. During the pendency of the writ application, a number of Interlocutory Applications were filed. For instance, I.A. No.8588 of 2011 was filed for adding 13 Corporations as party respondents which were allowed. I.A. No.8589 of 2011 was filed seeking a direction for payment of due salary, retirement benefits, medical expenses to petitioner nos.2 to 22 and to constitute a Committee for disbursement of funds released by the Government which was allowed vide order dated 15.12.2011. Thereafter some more Interlocutory Applications were filed by the individual employees on ground of medical exigencies, marriages and self sustainance, which were disposed of with a direction to the Committee constituted by the Health Department as well as to the concerned

respondents for immediate redressal of their grievance.

4. The case of the petitioners is that as the Corporations are unable to make payment of their admitted legal dues, constitutional obligations are cast upon the State, being in pervasive control over its affairs, to make such payment and it cannot raise its hand on the ground that it is not legally liable for the same. The petitioners submit that similar issues came up for consideration in a public spirited petition filed by a Senior Advocate Kapila Hingorani which came to be registered as Kapila Hingorani vs State of Bihar, reported in (2003)6 SCC 1. In the aforesaid case, the State took the usual stand that it is not legally bound to make payment of dues of the Corporation as its liability is limited only to the extent of share in the company. The facts raised in the petition and the stand of the State, posed a large number of questions which were framed by the Hon'ble Apex Court in paragraph 20, as follows:

“20. The case at hand poses a large number of complex questions such as:

1. Whether in a case of this nature, the Court would take a sheer legalistic approach in holding that the corporate veil would not be lifted although its conscience stands satisfied that there has been violation of citizens' right to life and liberty as adumbrated under Article 21 of the Constitution of India?

2. Whether having regard to the admitted position that the government companies or corporations referred to hereinbefore are States within the meaning of Article 12 of the Constitution of India, the State of Bihar having deep and pervasive control over the

affairs thereof can be held to be liable to render all assistance to the said companies so as to fulfil its own and/or the corporations' obligations to comply with the citizens' rights under Articles 21 and 23 of the Constitution of India?

3. Whether the State of Bihar can escape its liability having regard to the human rights problem involved in the matter?

4. Whether in a case of this nature the liability of the State of Bihar, if any, can be shifted to the Union of India?

5. The Hon'ble Apex Court after noticing the facts observed that the Corporations before it, are all government companies, fully owned by it. The Hon'ble Apex Court after dealing with the concept of lifting of Corporate veil, held that the Corporations are instrumentalities of the State carrying out its public enterprises and as such its liability would not be confined to the shares held by it, but having regard to the deep and pervasive control it exercises over the Corporations, it would also extend to in matter of enforcement of human rights, the right of citizen to life and liberty, besides additional duty to ensure that the rights of such employees are not infringed.

6. The Hon'ble Apex Court dealt in depth whether the State could be insensitive to the plight of such employees and its citizen. Dealing with the directive principles enshrined in part IV of the Constitution, the Hon'ble Apex Court observed that the State is bound to preserve the practice to maintain the human dignity and

thus also liable to mitigate the sufferings of the employees. The Hon'ble Apex Court, however, did not lay down a law that State is vicariously liable for the salary of the employees of the Corporation in all situations. Nonetheless, the Hon'ble Court at the same time observed that the State when faced with a human life problem of this magnitude involving starvation deaths and suicides taking place by reasons of non-payment of salary cannot escape its liability. Paragraph 74 of the judgment is quoted hereinbelow:

“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 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.”

7. The Hon'ble Apex Court in paragraph 75 gave interim direction to constitute a Committee chaired by a retired High Court Judge or a sitting District Judge and directed the State to deposit a sum of Rs.50 crores before the High Court for



disbursement of salary. As the aforesaid sum was only minimal to tide over the immediate hardship, the matter was re-considered in the second Kapil Hingorani case, reported in (2005) 2 SCC 262. Again similar stand was taken by the State which too was turned down and further direction was issued for payment of Rs.50 Crores. Later on, the Hon'ble Apex Court in the case of State of Jharkhand vs Harihar Yadav, reported in 2014(1) PLJR 321 Supreme Court directed State of Bihar to make available another sum of Rs.50 Crores for making payment to the employees.

8. Counsel for the Corporations does not dispute that the salary of the employees has not been paid for a long number of years. The Corporation also does not dispute the legitimate claim of the employees for salaries are due since long. The case of the Corporations is that on account of weak financial position, they are unable to make payment of the salaries and legal dues like retirement benefits.

Argument on behalf of the State:

9. Mr. Lalit Kishore, learned Principal Additional Advocate General appearing on behalf of the State submits that the issues involved in this case were also subject of consideration before the Full Bench of this Court in the case of Manikant Pathak vs State of Bihar, reported in 1997(1) PLJR 664. The Full Bench after noticing the number of decisions as well as arguments of the



parties, held in paragraphs 18 and 19 that the State is not liable to make payment of salary of the government companies, beyond the extent of their share. He next submits that the decision of Kapila Hingorani was rendered in view of the situation which arose consequent to some self immolations and starvation death. There was wide publicity of the occurrence in the newspaper. The Apex Court took cognizance of the newspaper report and treated the same as PIL. The Apex Court in paragraph 1 framed issues as to what extent the Government of Bihar is vicariously liable, if at all, for payment of arrears of salary to the employees of the State owned Corporation, Public Sector Undertaking or statutory body. The Hon'ble Apex Court in paragraph 2 noticed that it appeared from the records placed before it that a large number of government companies, Public Sector Undertakings have not been paid for a long time resulting in death of several persons and miseries brought to a large number of families, the details of which were incorporated in the said paragraph itself. In paragraph 3, the Apex Court noticed that one Chandan Bhattacharya son of an employee of the Corporation tried to immolate himself which incident was widely reported in Hindustan Times, daily edition on 19.9.2002 under the caption "Empty Coffers drive staff to self-immolation bids". In view of long list of unpaid salary noticed in paragraphs 2 and 7, a direction was issued for release of Rs.50



Crores to mitigate the present suffering and the situation which have arisen on account of self-immolation bids and starvation death. Further more, the Apex Court in paragraph 74 observed that it does not intend to lay down a law that the State is directly or vicariously liable to pay salary and remuneration of employees of Undertaking or Government companies.

10. Learned Principal AAG further submits that in view of the Division Bench order dated 3.5.2012 passed in light of order, dated 12.9.2011 in I.A. CC No. 14474 of 2011 and SLP(C) No.24469 of 2011, only the affected persons can approach this Court for their claim. The order dated 12.9.2011 passed by the Apex Court is quoted hereinbelow:

“In our order dated 9th August, 2010, we had indicated that the case needs to be monitored by the High Court and, in that connection, we directed the High Court to consider making interim payments to the affected persons, including medical treatment. We may clarify that only an affected person has to approach the High Court and if an application is made by him/her, then, in the course of monitoring, the High Court may consider the claim made by such affected person, who has to be one of the employees of the State Public Sector Undertaking.

We this clarification, the Interlocutory application and Special Leave Petitions are disposed of”.

11. I have heard learned counsel for the parties.

12. From the pleadings of the parties, the following facts emerges:-

(i) The Corporations/Government companies and State Undertakings are all State owned with which we are concerned in which the State has almost 100% share.

(ii) The State has deep and pervasive control over their affairs.

(iii) The salaries of the most of the employees were not paid since 1990, till interventions of Hon'ble Apex Court.

(iv) The Corporations are not in a position position to make payment of such salaries and retirement benefits of the employees of the Corporations

(v) On account of non-payment of salaries, some of the employees died earlier which was duly noticed by the Hon'ble Apex Court in the case of Kapila Hingorani vs State of Bihar, reported in (2003) 6 SCC 1.

(vi) The employees and their family members do not have money for medical treatment, even for fatal disease, concern hepatitis etc. In absence of non-payment of salary, the day to day condition of the employees has turned virtually pathetic and some are said to be on death bed.

(vii) The Hon'ble Apex Court in paragraph 74 of the judgment reported in (2003) 6 SCC 1 has not stated in absolute term that in no situation the State may not be directly or vicariously liable to pay salaries/remunerations of the employees



of the public sector undertakings or the government companies particularly 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. The logical inference would be that in appropriate and critical cases, the State cannot escape its liability to meet the legal dues of the employees of the government companies and undertakings.

(viii) The Hon'ble Apex Court in its order dated 12.9.2011 observed that the grievance of the affected person can be considered by the High Court.

(viii) As per order dated 3.5.2012 of the Division Bench of this Court, the matter is to be considered by a learned Single Judge.

13. It has been submitted on behalf of the State that necessary provisions has been made for disbursement of fund for medical treatment, the details of which is mentioned in Annexure-A to the affidavit filed on behalf of the Health and Family Welfare Department, Government of Bihar. The concerned person in need of treatment can approach the Committee comprising of Director in Chief, Health Services.

14. I find that a number of Interlocutory Applications has been filed by different employees claiming release of money for



treatment, marriages and day to day expenses. One such I.A. bearing I.A. No.2058 of 2014 filed on behalf of intervenor Tarun Kumar Prabhat was considered by this Court in order dated 16.6.2014 praying for release of Rs.75,000/- for treatment of his wife Smt. Bibha Prabhat who was suffering from cancer. Interlocutory Application was disposed of directing the Committee constituted by the government to take a decision within two weeks from the date of receipt of a copy of that order of this Court. Similar direction was passed with respect to I.A.No.2070 of 2014.

15. A large number of employees have filed petitions stating that they have been badly affected on account of non-payment of money. They have cited a number of reasons, like marriage of daughters, ailment, old age disease, payment of loan etc. In the facts and circumstances of the case, I direct as follows:-

i) The Finance Department would allocate at first instance a sum of Rs.10 Crores separately for payment to the affected employees on the recommendation of the Managing Director/Administrator of the Corporation, as the case may be. This amount would be supplemented as occasion arises.

ii) On receipt of application from the employees claiming to be the affected person, the concerned Managing

Director/Administrator would examine the individual cases and may decide to make recommendations accordingly depending on the merit of the case for release of fund in his/her favour.

iii) On receipt of such recommendations, the Finance Department would make necessary allocation of fund to the concerned Managing Director/Administrator of the Corporation for its disbursement to the affected employees.

iv) The whole exercise must be completed within three months from the date of receipt of application from the employees.

16. With the aforesaid observations and directions, this writ application stands disposed of.

(Samarendra Pratap Singh, J)

Md. Jamaluddin Khan

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