

**IN THE HIGH COURT FOR THE STATE OF TELANGANA:
HYDERABAD**

WRIT PETITION Nos. 41913 of 2018, 13789 and 20469 of 2019

W.P.No.41913 of 2018:

R.Sumathi and others

... Petitioners

Vs.

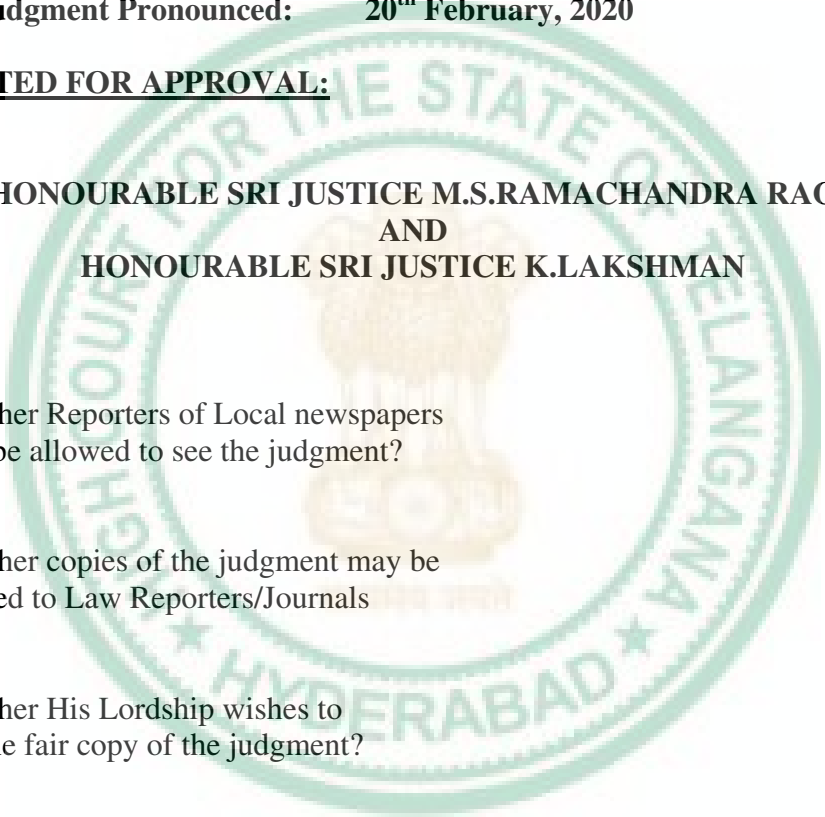
Telangana State Housing Board, Gruhakalpa,
Mukarramjai Road, Hyderabad rep. by its
Vice Chairman & Housing Commissioner.
and others

... Respondents

Date of Judgment Pronounced: 20th February, 2020

SUBMITTED FOR APPROVAL:

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE K.LAKSHMAN**

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
 2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

M.S.RAMACHANDRA RAO, J

K. LAKSHMAN, J

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE K.LAKSHMAN**

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... Respondents

<Gist:

>Head Note:

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Govt. Pleader for General Admin. (TG),
Govt. Pleader for Housing (TG),
Govt. Pleader for Housing (AP) and
Govt. Pleader for Services-I (AP)

? CASES REFERRED:

1. (2016) 6 S.C.C. 635
2. (1983) 1 SCC 305
3. (1971) 2 SCC 330
4. (1985) 1 SCC 429
5. (2015) 9 SCC 540
6. (2003) 6 SCC 1
7. (2014) 2 SCC 114
8. (2014) 2 SCC 114
9. (2014) 2 SCC 114
10. (1981) 1 SCC 449
11. (1991) 1 SCC 189
12. (1987) Supp SCC 228
13. (1992) 4 SCC 118
14. (2013) 2 SCC 5164.

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE K. LAKSHMAN

Writ Petition Nos.41913 of 2018, 13789 of 2019 and 20469 of 2019

COMMON ORDER: (per Hon'ble Sri Justice M.S. Ramachandra Rao)

These cases highlight the travails of former employees of the erstwhile Andhra Pradesh Housing Board (for short 'APHB') and their widows/legal heirs with regard to settlement of pension and other pensionary benefits after bifurcation of the erstwhile composite State of Andhra Pradesh into the separate new State of Telangana and the residuary State of Andhra Pradesh w.e.f. 02-06-2014.

2. The composite State of Andhra Pradesh had enacted the APHB Act, 1956 to make schemes and carry on works for the purpose of dealing with and satisfying the need of housing accommodation in the said State. Under Sec.3 of the said Act, by notification, the APHB was created as a body corporate having perpetual succession and a common seal competent to acquire and hold both moveable and immoveable property.

3. One of the service benefits allowed to the employees of the APHB who retire on superannuation was Pension.

4. The composite State of Andhra Pradesh was bifurcated into the new State of Telangana and the residuary State of Andhra Pradesh under the A.P. Reorganisation Act, 2014 (for short 'the Act').

5. But the bifurcation/demerger of the erstwhile Andhra Pradesh Housing Board into two Successor Boards for the two Successor States has not yet been completed.

6. However, pending such bifurcation, as per the instructions of the Government issued vide Circular Memo No.3685/INF(SRC)/2014, dt.29.05.2014, with effect from the appointed date i.e., 2-6-2014, it is functioning as two independent operational divisions/entities viz., APHB (Andhra Entity) (hence forth referred to as “APHB”) and APHB (Telangana Entity) (later re-named as TSHB) (henceforth referred to as “TSHB”) delivering services in the respective States.

7. The apportionment of the assets, liabilities and the employees of the erstwhile Andhra Pradesh Housing Board between the two successor Boards has not yet been completed as no mutual agreement/consensus could be reached with regard to the same between the two Successor Boards/States. The allocation of pensioners who retired prior to 2-6-2014 between both the successor Boards has also not been done.

8. According to the successor APHB, 96% of the properties of the erstwhile APHB are located in Telangana State and a mere 4% are located in the residuary State of Andhra Pradesh.

9. According to APHB Pensioners Association, there are 457 pensioners as on 02-06-2014 of which 330 have Telangana nativity and 127 have A.P. nativity.

10. According to the TSHB Retired Employees Association, there are 480 pensioners of which 314 belong to the State of Telangana and 164 belong to the A.P. State.

11. In brief the pleas of the petitioners in these Writ petitions is as under:

(A). W.P.No.13789 of 2019

(a) W.P.No.13789 of 2019 was filed by a three former employees of the APHB who had retired from service prior to 02-06-2014, the date of bifurcation of the composite State of Andhra Pradesh into the new State of Telangana and the residuary State of Andhra Pradesh.

(b) They contend that they were being paid pension calculated as per the Revised Pay Scales of 2008 though Pay Scales were revised w.e.f. 02-06-2014 by the State of Telangana. They contend that the pension has to be re-fixed as per the Revised Pay Scales, 2013 brought into effect by the State of Telangana from 02-06-2014; that Dearness Relief payable w.e.f. 01-07-2015 was not paid upto date; and that both Governments had issued Government Orders releasing Dearness Relief to pensioners of their Departments but the pensioners of the erstwhile APHB were denied the same.

(c) Proceedings dt.20-07-2018 were issued by the successor APHB to (i) pay pension only to pensioners belonging to the Andhra entity till the final bifurcation of the APHB, (ii) to meet the pension liability of the pensioners as on 02-06-2014 on the basis of their nativity as recorded in

their Service Registers from June, 2018, (iii) to return back to the TSHB Rs.51,63,634/- received by it from TSHB and (iv) asking the latter to pay pension to pensioners of Telangana nativity till the bifurcation of APHB takes place. It is the stand of the successor APHB in the said letter that it has no assets to meet the liability of pensions and that the TSHB is not sharing its fixed deposits and revenue on the common properties and that was why it was forced to take this view.

(d) The TSHB wrote to the petitioners on 08-06-2019 that it had passed an order on 16-03-2018 that it is not the competent authority to pass any order with regard to enhancement of pension or implementation of P.R.C. of 2015; that it would only implement the P.R.C. on population basis and that it would pay only 41.68% and that 58.32% has to be paid by the successor APHB.

(e) Both these proceedings dt.20-07-2018 of the successor APHB and proceedings dt.08-06-2019 of the TSHB are challenged in this Writ Petition.

(f) The 1st petitioner died after filing of the Writ Petition and his legal representatives were added. The other two petitioners are aged 66 years and 68 years respectively.

(B) W.P.No.20469 of 2019

(a) This Writ Petition is filed by the TSHB Retired Employees Association and 226 others to declare the action of both the States and both the Housing Boards in not paying full pension by implementing

PRC 2013 Revised Scales and Dearness Allowance to pensioners with Telangana nativity and to direct both Housing Boards to pay them the same.

(b) The 1st petitioner Association consists of 485 members who retired from the erstwhile APHB prior and subsequent to 02-06-2014. They allege that the successor APHB, on the basis of nativity of the pensioners, divided them in May, 2018 and the remaining members in the 1st petitioner Association are 367 members having Telangana nativity.

(c) The other petitioners comprise three categories :

(i) Pensioners who retired prior to 02-06-2014;

(ii) Family Pensioners i.e. widow/widower entitled to Family Pension;
and

(iii) persons who retired from the TSHB after 02-06-2014.

(d) It is contended that an expert committee headed by Smt.Sheela Bhide (I.A.S (Retd)) was appointed for division of employees and it had recommended that distribution of employees in the matter of APHB should be left to the body corporate to be finalized as provided in Section 82 of the Act; resources to meet pension liability should be apportioned in the population ratio of 58.32% (A.P.) and 41.68% (Telangana); but the TSHB did not agree with it; and sought intervention of the Union of India in the matter to settle the issues.

(e) They alleged that the State of Telangana and the TSHB have refused to part with 58% of the income they are getting on the assets of the erstwhile APHB to the successor APHB and that the latter is not in a position to meet the pension payment liability of the pensioners with Telangana nativity; that both the State of Telangana and the TSHB are dissatisfied with the sharing of assets of the erstwhile APHB located in the State of Telangana with the successor APHB and the A.P. State Government and are insisting that only the successor APHB should pay the full pension to all pensioners of erstwhile APHB.

(f) They also refer to order dt.12-04-2018 in W.P.No.10749 of 2018 passed a Division Bench of this Court directing both Housing Boards to take a considered decision on whether or not to extend the benefit of 2013 PRC Scales of Pay to their retired employees. The Division Bench observed that in the tussle between both the State Housing Boards, over division of assets and liabilities of the erstwhile APHB, retired employees cannot be made to suffer in the process, or be asked to await resolution of the *inter se* disputes between them.

(g) The petitioners contend that that for those employees of the TSHB who retired after 02-06-2014, the TSHB alone has to pay pension; that expenditure for payment of pension should be met from rental income being derived for letting out the properties of the Housing Board; since large amount of assets are located in the State of Telangana, it is the duty of the TSHB to meet the pension payment liability irrespective of the fact whether their nativity is with Telangana State or the residuary A.P.

State; and that the TSHB is needlessly dragging on the matter causing trauma to the pensioners and their families.

(h) It is contended that all the pensioners are Senior Citizens and some of them have even died but the respondents are not bothered to meet the liability of payment of pension raising untenable objections.

(C.) W.P.No.41913 of 2018

(a) The petitioners in this case are five widows of persons who worked as work charged employees in the erstwhile APHB. The 4th petitioner's husband died on 04-11-2018 awaiting his pension and pensionary benefits.

(b) They contend that their spouses were getting pension on par with Government employees till 2006, but it was then abruptly stopped; that this action was challenged before the erstwhile A.P. Administrative Tribunal in O.A.No.2772/2006; that the said O.A. was allowed on 08-12-2009 which was confirmed by this Court on 06-11-2014 in W.P.No.17094 of 2010 and batch; that S.L.P.(Civil) No.7966-7968 of 2016 was dismissed by Supreme Court on 02-05-2016; only nominal pension was paid to them as per May, 2003 rates without increase in Dearness Relief or P.R.C. recommendations of 1999, 2003 and 2008 and they were not being paid pension on par with State Government Employees.

(c) They contend that the Revised pension today on par with other employees will be Rs.12,000/- to Rs.20,000/- apart from arrears of

pension accrued from 2001 onwards and that as on the date of filing of the Writ Petition, they were getting only pensions of Rs.2554/-, Rs.3895/-, Rs.2709/-, Rs.3309/- and Rs.1731/- respectively.

(d) They allege that the State Government of Andhra Pradesh issued G.O.Ms.No.216 dt.30-05-2017 to restore pensionary benefits to the 48 work charged employees by implementing the orders of the High Court and the Supreme Court. They contend that they are entitled to payment of pension and pensionary benefits on par with Government employees in view of the decision of the High Court and Supreme Court referred to above and also G.O.Ms.No.216 dt.30-05-2017.

Order dt.12-4-2018 in WP.No.10749 of 2018

12. In an order dt.12-04-2018 in W.P.No.10749 of 2018, a Division Bench of this Court directed both the Housing Boards to take a considered decision on whether or not to extend the benefit of 2013 PRC Scales of Pay to their retired employees. The Division Bench observed that in the tussle between both the State Housing Boards, over division of assets and liabilities of the erstwhile APHB, retired employees cannot be made to suffer in the process, or be asked to await resolution of the *inter se* disputes between them.

Order dt.23.9.2019 in WP No.s 20469, 13789 OF 2019 AND 41913 OF 2018

13. Another order was passed on 23.9.2.109 in all the three W.Ps directing both the States of A.P and Telangana to address the issue of pension liabilities of the TSHB and the successor APHB in relation to

those who retired from service be it on 2.6.2014 or thereafter; and the Chief secretaries of both States were directed come to a decision, in consultation with the Vice Chairmen and Housing Commissioners of both the Boards, as to how the Boards shall meet the pension liability of such retired personnel by 4.11.2019.

14. It appears that the meeting held pursuant to the said directive was not fruitful.

15. Till date, there is no division of assets and liabilities of the erstwhile APHB and its successors the TSHB and the APHB.

16. There is also no allocation of pensioners of the erstwhile APHB between the TSHB and the successor APHB.

Stand of the successor APHB (APHB)

17. The successor APHB contends that 96% of the Assets of the erstwhile APHB (Which are the common Assets of the two Successor Boards) are located within the State of Telangana and a mere 4% are located in the residuary State of Andhra Pradesh. The assets located in the State of Telangana include the shops, office accommodations, community halls etc., which the erstwhile APHB had let out on rental basis and was utilizing such rental income towards its Administrative Expenses.

18. The successor APHB contends that the TSHB is receiving the entire income from the assets of the erstwhile APHB located in the State of Telangana and is not sharing the same with the successor APHB in

spite of several requests from the APHB to share the same on population ratio basis.

19. The successor APHB contends that even the Fixed Deposits of the erstwhile APHB amounting to Rs.41,51,58,017/- and Bank Balances Rs.20,44,16,901/- as on 01.04.2014, are retained by the TSHB; that as per the provisions of Section 53(2) of the Act, the same should remain with the APHB until they are transferred as per the method of apportionment of the assets and liabilities agreed upon; and as a mere 4% of the Assets are located in the successor State of A.P., from which the successor APHB is not receiving much income, and as the TSHB is not giving the share of the successor APHB out of the income being received by it from the common assets of the erstwhile APHB, while at the same time requiring the successor APHB to meet the common liabilities on population ratio basis, the successor APHB has been borrowing loans for meeting its share of the common liabilities on population ratio basis and has fallen into a financial crisis and is finding it difficult to even pay the salaries of its employees.

20. Due to the difficulty in payment of their salaries and lack of work in the successor APHB, many of its regular employees have been deputed to other entities like Township Infrastructure Development Corporation Limited (TIDCO), etc., which are paying their salaries.

21. When all the avenues were completely exhausted, the successor APHB made several requests to the TSHB for rightful share of income received from the Common Properties & Projects and Fixed Deposit

Amount, but in vain; and under such circumstances, successor APHB finally addressed a letter No.1753/DA/Pen/CAO/2018-2/405, dt.04.06.2018, to the TSHB, reiterating its request to share 58.32% of fixed deposits and revenue received on the common properties and projects so as to enable successor APHB to pay salaries, pensions & other benefits to the retired employees, repay HUDCO loan etc., as the successor APHB is sharing liabilities in the said ratio by borrowing interest bearing loan.

22. It contends that the TSHB is in possession of the Bank Balances and FDRs of the erstwhile APHB as on 01.06.2014 amounting to Rs.61,95,74,918/- ; in addition, it is receiving the monthly rental income from the shops and office accommodation let out by the erstwhile APHB; it is also receiving the revenue from the Joint Venture Projects; all these are assets of the erstwhile APHB and therefore the common assets of the successor APHB and the TSHB; therefore, the common liabilities of the erstwhile APHB such as repayment of the loans taken by it and the payment of pensions to its employees retired prior to 01.06.2014, have to be met from such common assets; but without giving the share of the successor APHB from such common assets/income from such common assets, TSHB is insisting that the common liabilities have to be met by both the successor Boards on Population Ratio basis.

23. It stated that the Vice-Chairman and Housing Commissioner, successor APHB, has taken a decision that from the month of June, 2018

onwards, the successor APHB shall pay the Pensions to the pensioners belonging to A.P. Nativity on the basis of the nativity as recorded in their Service Registers. This is intended purely as a temporary measure till the final bifurcation of the assets and liabilities of the erstwhile APHB between the two successor Boards is done. Once such final apportionment is done, if it is found that any excess or less liability has been borne by any of the Successor Boards than it was liable to bear as per such final apportionment, the same could be adjusted while apportioning the assets to each of the successor entities. The same was intimated to the Vice-Chairman and Housing Commissioner, TSHB, by letter dt.20.07.2018, duly enclosing the list of 164 Pensioners of A.P. Nativity and also returning the amount of Rs.51,63,634/- received from the TSHB towards its share of 41.68% (as per the population ratio) of the Pension liability of all the Pensioners (about 480), and asking TSHB to pay the Pensions to the Pensioners of Telangana Nativity. The said action was ratified by the Board of successor APHB in its 540th (Ordinary) meeting held on 31.07.2018, wherein the Board took note of the provisions of the A.P. Reorganization Act, 2014, and the fact that the APHB not getting its share of income received from common properties & projects in spite of repeated requests made to TSHB in this regard and the financial difficulty being faced by APHB, and passed the following resolution:-

“Resolved to provisionally meet the Pension Liability of the Pensioners as on 02.06.2014 on the basis of their nativity as recorded in their Service Registers and to ratify the action taken

by the Vice Chairman and Housing Commissioner in implementing the same with effect from June, 2018.”

24. The successor APHB contends that the TSHB has not accepted the said decision of the APHB, calling it a ‘unilateral decision’ without taking the consent of TSHB and is insisting that the earlier procedure of meeting the Pension liability on population ratio be continued, while refusing to share the revenue being received it from the common assets.

25. By erroneously relying on Section 59 read with the VIII Schedule to the A.P. Reorganization Act, 2014, TSHB is taking the stand that the said Act provides that the pension liability has to be shared between the two Successor Boards on Population Ratio basis; that the reliance on the said provision by TSHB is misplaced; and a reading of Section 59 clearly shows that it is applicable to Government employees and not to the employees of IX Schedule Institutions.

26. It contends that while the Expert Committee recommended that the liability of Pension should be apportioned between the two Boards on Population Ratio basis, it has also recommended that the resources to meet such liability i.e., rents receivable from the common assets, also should be apportioned on the basis of population ratio which is a fair recommendation; and if such rents are shared on population ratio, the successor APHB would be able to meet its share of the pension liability on population ratio basis; or the TSHB can pay the successor APHB’s share of pension payable to the Pensioners of Telangana nativity out of successor APHB’s share of the rental income which it is receiving.

27. It therefore contends that it is not fair to blame the successor APHB for the non-payment of the full pensions by the TSHB to the Pensioners of Telangana nativity.

28. According to the successor APHB, the total liability of payment of pension to all the 480 Pensioners who retired prior to 02.06.2014, is around Rs.1.35 Crores. Accordingly (since June, 2018) APHB is paying full Pension by implementing PRC, 2015 to 164 Pensioners of A.P. nativity mostly retired in AP, which comes to Rs.42,88,442/- per month. If it has to pay for all the 480 Pensioners on population ratios basis, the additional burden on it would be (Rs.75 lakhs – Rs.42,88,442) Rs.32,11,558/- per month.

29. As per the AP Reorganisation Act, 2014 the liabilities shall be apportioned in the ratio in which assets are apportioned to have just, reasonable and equitable distribution of assets and liabilities. Since June, 2018, TSHB is paying the pensions to the 316 Pensioners of Telangana Nativity, by dividing the amount equivalent to 41.68% of the Pension payable to 480 Pensioners, among the said 316 Pensioners, due to which they are receiving only 63.22% of their Pensions.

Stand of TSHB:

30. TSHB contends that it is paying its share of 41.68% pension to the retired employees on population basis as per the provisions of the A.P. State Re-organization Act, 2014. According to it, most of the petitioners have retired from service prior to 02.06.2014, i.e., in the erstwhile APHB.

31. It contends that the A.P. Re-organization Act does not contemplate bifurcation of pensioners on the basis of nativity and that the claim of the petitioners seeking declaration that they themselves have retired from TSHB is totally incorrect.

32. It contends that the APHB abruptly stopped releasing its share of 58.32 pension liability from June, 2018 onwards without adhering to the provisions of Schedule-VIII of A.P. State Re-organization Act by bifurcating its pension as pensioners of Andhra and Telangana entity and the APHB is not the competent authority to bifurcate the employees on the basis of nativity.

33. According to the TSHB, the apportionment of assets and liabilities is in no way connected with the payment of pension as the TSHB is paying its share of 41.68%.

34. It relies on Section 59 of the A.P. State Re-organization Act 2014 and contends that the liability of the existing State of Andhra Pradesh in respect of pensions shall pass to, or be apportioned between, the successor States of Andhra Pradesh and Telangana in accordance with the provisions contained in the Eighth Schedule of the Act.

35. It contends that the Government Orders issued from time to time provide that the expenditure of pension and pensionary benefits i.e., pension, commuted value of pension, gratuity and Earned Leave are apportioned between the two successor States on the basis of population basis for those who retire before apportioned date and also to those retire

on or after appointed date i.e. 02.06.2014 the pension and pensionary benefits are to be apportioned on population basis in terms of G.O.Ms.No.122, Finance (Pension-I) Dept dt.22.05.2014, G.O.Ms.No.97, Finance (PSC) Dept., dt.07.05.2014 and certification of Director State Audit. It contends that the TSHB is following the same procedure as contemplated in the A.P. State Re-organization Act.

36. It states that consequent to re-allocation of Accounts Wing to Andhra Pradesh Housing Board, Vijayawada, the pension to all the pensioners is being paid from AP Pension Account No.52203650259, after depositing the share of TSHB on population basis.

37. It contends that the successor APHB was paying pension till June, 2018 but it abruptly and unilaterally took the decision to bifurcate APHB pensioners as TSHB pensioners on the address in the service register without the consent of TSHB and returned the Telangana share liability of Rs.51,53,634/- which is against the provisions of the A.P. Re-organization Act, 2014.

38. It alleges that the decision taken by APHB is unilateral and pension is not being paid on the basis of nativity but it is paid on the basis of service rendered by the retired employee; there is no such provision contemplated for payment of pension on the basis of identification of nativity; and the entire action of APHB in not paying its share of pension on population basis is invalid in law. It states that the reasons of financial capacity pleaded by the successor APHB have no legs to stand, as the APHB has paid the pension up to June, 2018.

39. It alleges that the successor APHB is paying 100% pension to Andhra nativity employees, and therefore, non-payment of pension on population basis to the pensioners identified as Telangana pensioners is arbitrary and discriminatory. According to it, there is no justification to pay full pension to the employees who are identified as native of Andhra Pradesh.

40. It states that the total liability of monthly pension is around Rs.1.35 crores and the share of the APHB is 58.32% which works out to Rs.0.78 lakhs and for TSHB it works out to Rs.0.57 lakhs. Therefore, there is no justification on the part of the APHB in stating poor financial position and denying full pension to 342 pensioners when it is paying 100% pension to those petitioners identified as Andhra Pensioners on the basis of nativity is illegal, irrational and untenable.

I.A.No.4 of 2019 in WP.No.20469 of 2019 filed by the APHB

41. This application was filed by the APHB for the following relief :

“to modify the Common Interim Order, dated 23.09.2019 passed in Writ Petition Nos.20469/2019, 13789/2019 and 41913/2018 by directing that either (1) THB shall follow the recommendations of the Dr. Sheila Bhide Committee and share the income being received by it from common assets with APHB on population ratio basis in which case APHB shall bear the Pension liability on population ratio basis, or (2) APHB shall continue to pay Pensions to 164 Pensioners belonging to A.P. as is being done now and THB shall pay Pensions to about 314 Pensioners belonging to Telangana, or (3) the income being received from the common assets may be kept in a common account and the common liabilities may be met therefrom, or (4) APHB shall pay Pensions to the Pensioners of the erstwhile APHB who retired from the territories falling under the successor State of A.P. and TSHB shall pay Pensions to the Pensioners who retired from the territories falling under

*Telangana, till the final apportionment of the assets and liabilities of the erstwhile APHB between the two successor Boards is completed and subject to such adjustments as may be necessary as per such final apportionment...
...*

42. It is the contention of the successor APHB in this application that as the assets and liabilities of the erstwhile APHB have not yet been apportioned between the two successor boards, until the same is done, such assets and liabilities constitute the common assets and liabilities of both the successor boards; therefore liabilities of erstwhile APHB have to be met from the assets of the erstwhile APHB; after bifurcation of the erstwhile APHB, all its assets and liabilities were inherited jointly by the two successor boards and until their apportionment, they are the common assets and liabilities of the two successor boards; and the common liabilities inherited from the erstwhile APHB have to be met from the common assets of the erstwhile APHB. It contends that one such common liability is the liability to pay the pensions of about 480 pensioners who had retired from the erstwhile APHB prior to 02.06.2014, and this has to be met from the assets of the erstwhile APHB.

43. It is contended that expecting that the apportionment of assets and liabilities would be completed within a reasonable time, it was agreed by both the successor Boards to meet the common liabilities of the erstwhile APHB, such as repayment of loans taken from HUDCO and payment of pensions to the employees who retired prior to bifurcation, by the two successor Boards on 'population basis', as an *ad hoc* measure subject to adjustments to be made pursuant to the ultimate mode of apportionment

of assets and liabilities decided upon; but since more than five years have elapsed without such apportionment, the successor APHB (Andhra entity) has suffered a huge financial crises because 96% of the assets of the erstwhile APHB (which are common assets of the two successor Boards) are located within the State of Telangana and a mere 4% are located in the successor State of Andhra Pradesh; TSHB is receiving entire income from the assets of the erstwhile APHB located in the State of Telangana and is not sharing it with the successor APHB; that Fixed Deposits of Rs.41.51 crores and bank balances of Rs.20.44 crores were retained by the TSHB, though as per Section 53(2) of the Act they should remain with the APHB until they are transferred as per the method of apportionment of assets and liabilities agreed upon. It is also contended that the TSHB is receiving income from 20 Joint Venture Projects and other projects situated in the State of Telangana which were taken up by the erstwhile APHB and that the TSHB is retaining all revenues therefrom without sharing it with the successor APHB.

44. It is contended that the successor APHB is receiving negligible income from the 4% of common assets of the erstwhile APHB located in the residuary State of A.P. and so, it cannot be expected meet the common liabilities like pensions on population ratio basis.

45. It is contended that purely as a temporary measure till the final bifurcation of the assets and liabilities of the erstwhile APHB between the two successor Boards is done, the APHB had taken a decision to pay the pensions to the pensioners belonging to the AP since it has no

capacity to pay all the pensioners of the erstwhile APHB due to lack of resources to meet such liability.

46. It is contended that the TSHB is not correct in contending that irrespective of whether the entire revenue from the common assets is being received by it, the pension liability should be shared by it and the successor APHB on population ratio, i.e., 58.32 % by APHB and 41.68% by TSHB.

47. In the erstwhile APHB, there were both regular employees and work-charged employees; vide G.O.Ms.No.74 and 75, Housing (H.1) Department dt.29.07.1994, pension rules were framed for the regular employees of the APHB; but it had extended the benefit of the said Rules to the work-charged employees as well.

48. It contended that based on audit objection, a show-cause notice dt.19.04.2006 was issued to all the Work Charged Pensioners why their Pensions should not be stopped as the said Pension Rules are applicable to regular employees only and not to work charged employees. Challenging the same, they filed O.A.No.2772 of 2006 and vide Common Order dt.08.12.2009, the A.P. Administrative Tribunal set aside the said Notice. The same was upheld by this High Court by Order dt.06.11.2014 in Writ Petition No.17094 of 2019 and batch, and by the Supreme Court of India, in S.L.P. (C) Nos.7966-7968 of 2016, dt.02.05.2016. The petitioners therein filed Contempt Case No.2501 of 2015.

49. At that stage, the Government of Andhra Pradesh issued G.O.Ms.No.216 Municipal Administration & Urban Development (U.H.) Department, dt.30.05.2017, extending the Pension Rules framed under G.O.Ms.Nos.74 and 75, dt.29.07.1994, to the Work Charged employees also.

50. As at that time the pension liability of regular Pensioners was being shared by both the Successor Boards on population ratio basis, the Vice-Chairman and Housing Commissioner, APHB, addressed a letter dt.27.03.2017 to the Vice-Chairman and Housing Commissioner, TSHB, proposing that the pension liability of these Work Charged Pensioners may also be shared on population ratio basis to which the Vice-Chairman and Housing Commissioner, TSHB gave consent vide Letter dt.12.04.2017, and accordingly they were being paid Pensions along with the regular pensioners on population ration basis till May, 2018 and from June, 2018, as stated above, APHB (Andhra Entity) is paying the Pensions to the 164 Pensioners belonging to Andhra Pradesh and has requested TSHB to bear the Pension liability of the about 314 Pensioners belonging to Telangana.

51. It is contended that the relative financial position of the two Boards is as under : -

**COMMON ASSETS AND INCOME FROM COMMON ASSETS OF
ERSTWHILE APHB UNDER THE HANDS OF THE TWO SUCCESSOR
BOARDS PENDING APPORTIONMENT AS PER S.68(2) OF A.P.
REORGANIZATION ACT**

<u>DESCRIPTION</u>	<u>Telangana Housing Board</u>	<u>APHB</u>
Fixed Deposits as on 02.06.2014	Rs.41,51,58,017-00	Nil

Amounts in Bank Accounts as on 02.06.2014	Rs.20,44,16,901-00	Nil
Rents due from tenants of shops, office spaces, community halls etc., as on 02.06.2014	Rs.41,33,92,803-00	Nil
Monthly rents received from the tenants of shops, office spaces, community halls etc., from 02.06.2014 (Total built-up area 10.89 Lakh Sq.ft.)	Rs.2,00,00,000-00 per month (approximately) [10.67 Lakh Sq.ft. situate in Telangana (98%)]	Rs.10,000/- per month (approximately) [Only 0.22 Lakh Sq.ft. situate in A.P. (2%)]
Amount received after 02.06.2014 from Projects situate in A.P. utilized by THB and not reimbursed to APHB	Rs.10.68 crores	

52. According to the APHB, the above table shows the stark difference between the relative financial positions of the two Successor Boards pending finalization of the apportionment of the Assets and Liabilities.

53. It also placed reliance on the decision of the Supreme Court in **A.P. State Council for Higher Education vs. Union of India and others¹** in support of its above pleas.

54. Several documents have been filed by the APHB along with this application.

Counter of the TSHB to IA No.4 of 2019

55. According to TSHB, the contention of the successor APHB that till the apportionment of Assets and Liabilities is made between two successor Boards, the Assets and liability constitute the common Assets and Liabilities of both successor Boards and the liabilities of erstwhile

¹ (2016) 6 S.C.C. 635

APHB have to be met from the Assets of erstwhile APHB is not correct since Sec.47 of A.P. Re-organization Act, 2014 provides for apportionment of assets and liabilities of existing State of Andhra Pradesh immediately before the appointed date. Hence the question of common Assets and Liabilities after appointed date pending final apportionment does not arise. Further, there is no mention of 'Common Assets and Liabilities' after the appointed date in the Act.

56. Schedule VIII of A.P. Re-organization Act and G.O.No.122, Finance (Pension-I) Department dt.22.05.2014 issued by the Government of Andhra Pradesh provides for apportionment of pension liability between two successor states on the basis of population and here also mention has been made as to the sources from which the pension liability is to be met.

57. It is further contended by TSHB that consequent to bifurcation of the State of Andhra Pradesh a separate entity of TSHB came into existence from 2nd June, 2014 and separate Accounts were opened for Receipts and Expenditure of TSHB. The revenues received from E-seva of APHB were credited into APHB Account and revenue received from E-seva/Divisions located in Telangana are credited into THB entity Account. The liabilities also meet accordingly. As both the Boards have agreed to meet the Pension liabilities of successor APHB on the basis of population as an *Ad hoc* measure pending finalization of apportionment of subject to subsequent adjustments, the same procedure has to be followed till the final apportionment.

58. *The TSHB admits that major portion of Assets of erstwhile APHB is located in the State of Telangana but contends that in terms of provision of A.P. Re-organization Act, 2014 except Assets relating to Head Quarters, all other assets are to be apportioned to the TSHB as the assets are located in Telangana and revenue received from this assets also belong to TSHB only; and that there is no reference to utilization of common funds for the construction of these Assets and for sharing of rents realized on these assets in the A.P. Re-organization Act, 2014. Further, with reference to Fixed Deposits, it is contended that a major portion of the F.Ds. relates to subsidies received from Union Government payable to the banks for the Houses constructed under Rajiv Gruhakalpa, and employees' subscription towards Provident Fund (G.P.F.), which as per the Recommendation of Sheela Bhide Committee are to be apportioned on the basis of location and final distribution of employees, which is still pending. Further, out of the total sum of Rs.20.44 crores available in various Bank an amount of Rs.7.13 crores were available in the Accounts of in 5 Divisions located in APHB. Out of the remaining amount of Rs.13.31 crores, only an amount of Rs.2.79 crores relates to head quarters which requires to be apportioned between two successor states on the basis of population and remaining amount of Rs.10.52 crores relates to the divisions located in Telangana. The amount of Rs.2.79 crores of H.Q. was already apportioned and transferred to APHB account in June, 2014 itself. Further, as per expert committee, the bank balance other than Head Office balance is to be*

apportioned on the location basis. The amount relating to Head Office was apportioned on the date of bifurcation itself.

59. Further, it contends that the successor APHB has to reimburse an amount of approximately Rs.18.69 crores which was already incurred by TSHB towards payment of pensionary benefits, medical reimbursement and encashment of E.L. to the pensioners and the amount will further go up by around Rs.29.00 crores as APHB has to pay their share of 58.32% to pensioners identified as Telangana Pensioners by APHB unilaterally on the basis of nativity from June, 2018.

60. Further, while the successor APHB has implemented the Recommendations of P.R.C. – 2015 to the pensioners identified as APHB pensioners, the recommendations are yet to be implemented to the Telangana Pensioners by APHB as they retired prior to 02.06.2014; and the APHB has to bear their share of 58.32% as and when implemented. According to the TSHB, the apportionment of income received from 20 joint venture projects and other projects, situated in the State of Telangana does not arise, as the projects are located in the State of Telangana and that even, the expert committee also recommends apportionment on location basis only.

61. It is next contended that the apportionment of staff between the two Boards cannot be taken as a lead for bifurcation of pensioners, as separate provisions exist for sharing of pension liability in the Schedule VIII of the A.P. Re-organization Act; that the unilateral decision of APHB for bifurcating pensioners on nativity basis is not supported by

any appropriate Government Orders or provisions of the A.P. Re-organization Act, 2014; and the entire procedure adopted by the APHB is illegal and not traceable to any provisions of law. It is reiterated that the sharing of pension liability between the two successor states has to be made following the guidelines prescribed in Schedule VIII of the A.P. Re-organization Act, 2014.

62. It is further contended that this Court by order dt.12.04.2018 had directed the Housing Boards to take a considered decision on whether or not to implement the 2013 P.R.C. Scales of pay for its retired employees and whether or not to extend the benefit of revised Dearness Allowance to them. Subsequently, it appears that the APHB had passed a resolution on 31.07.2018 resolving to pay revised pension as per Revised Pay Scale, 2015 to the pensioners of Andhra Pradesh nativity w.e.f. June, 2018 onwards and to pay the arrears after final bifurcation of assets and liabilities.

63. It is further contended that the stand of APHB that from June, 2018 onwards, it was paying full pension by implementing the Revised Pay Scales, 2015 to only 164 retired employees of the erstwhile APHB on the ground of nativity, is illegal and the concept of nativity in its applicability to the retired pensioners is only a ruse by the APHB to shirk its responsibility to pay its share insofar as the remaining 345 employees of the erstwhile APHB is concerned, who have retired prior to 02.06.2014.

64. The TSHB contends that the action of successor APHB in not fixing the pension as per the Revised Pay Scale, 2015 for the remaining 345 retired pensions on the ground that they are not native of Andhra Pradesh is illegal; and on account of it, the TSHB is not able to remit its share of 41.68% towards pension liability, and that unless the pension is fixed for these pensioners also in terms of Revised Pay Scale, 2015, the TSHB cannot pay its share of 41.68%.

65. It is further contended that the pension liability is to be shared between two successor States on the basis of population only, irrespective of the financial status of the respective Boards and prays this Court to direct the APHB to share the pension liability of all the pensions on population basis pending finalization of apportionment, which will be in accordance with the provisions of A.P. Re-organization Act, 2014.

66. It is contended that the issues connected with De-merger Scheme has no relevance to sharing of Pension liability. Sharing of Revenue from Joint Venture Projects, location of 96% of the Asset in Telangana, incurrence of additional expenditure of above Rs.50 crores towards interest by APHB, deputation of staff of APHB, have no relevance for sharing of pension liability when specific guide lines exist in A.P. Re-organization Act, 2014 for sharing of pension.

67. An additional counter-affidavit was also filed on 08.01.2020 by the TSHB enclosing the Balance-Sheets of the TSHB after audit for the years 2014-15, 2015-16, 2016-17 and 2017-18 apart from the Income

Tax returns filed for the said periods on the basis of provisional Balance-sheet.

The consideration by the Court :

The nature of right to pension/pensionary benefits of a retired employee

68. In **D.S. Nakara v. Union of India**², the Supreme Court explained the *raison d'être* of 'pension' in the following terms:

*'29. ...pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.'*

69. Way back in 1971, a Constitution Bench of the Supreme Court in **Deokinandan Prasad Vs. State of Bihar**³ has ruled that pension is not a bounty or a gratuitous payment depending upon the sweet will or grace of the employer and that it is claimable as a right and can be enforced in a Court.

² (1983) 1 SCC 305

³ (1971) 2 SCC 330

70. In 1985, in **State of Kerala Vs. M.Padmanabhan Nair**⁴, the Supreme Court had declared in no uncertain terms that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but are a valuable right in their hands.

71. The principle was again reiterated in 2015 by it in **State of Rajasthan and others Vs. Mahendra Nath Sharma**⁵ where the Supreme Court held that not only pension is not a bounty, but is a benefit conferred upon an employee for his unblemished career and the Court had warned employers not to forget this aspect and litigate unnecessarily.

72. Yet, the petitioners have been driven to approach this Court seeking pension and other pensionary benefits due to them/their deceased spouses/relatives from the APHB/TSHB. This is indeed tragic.

73. In **Kapila Hingorani (I) v. State of Bihar**⁶, the Supreme Court declared:

“30. The government companies/public sector undertakings being “States” would be constitutionally liable to respect life and liberty of all persons in terms of Article 21 of the Constitution of India. They, therefore, must do so in cases of their own employees”

74. Before we deal with the respective contentions it is necessary to note the relevant provisions of the A.P. Reorganisation Act, 2014.

⁴ (1985) 1 SCC 429

⁵ (2015) 9 SCC 540

⁶ (2003) 6 SCC 1

75. The said Act provided for division of assets and liabilities between both the States of Telangana and the State of Andhra Pradesh after 02-06-2014, the appointed day when the State of Telangana and the residuary State of Andhra Pradesh were created, in Part-VI thereof.

76. Section 68 of the Act deals *with Companies and Corporations* constituted for the composite State of Andhra Pradesh and includes them in the IX Schedule to the Act and sub-Section (2) thereof directs the apportionment of assets, rights and liabilities of the said entities in the manner provided in Section 53. The erstwhile APHB would be covered by this provision since it is mentioned as Entry 14 in the IX schedule to the Act.

77. Section 53 deals with division of assets and liabilities of State undertakings and states:

“53. Assets and liabilities of State undertakings: (1) The assets and liabilities relating to any commercial or industrial undertaking of the existing State of Andhra Pradesh, where such undertaking or part thereof is exclusively located in, or its operations are confined to, a local area, shall pass to the State in which that area is included on the appointed day, irrespective of the location of its headquarters:

Provided that where the operation of such undertaking becomes inter-State by virtue of the provisions of Part-II, the assets and liabilities of:

- (a) the operational units of the undertaking shall be apportioned between the two successor States on location basis; and*
- (b) the headquarters of such undertaking shall be apportioned between the two successor States on the basis of population ratio.*

(2) Upon apportionment of the assets and liabilities, such assets and liabilities shall be transferred in physical form on mutual agreement or by making payment or adjustment through any other mode as may be agreed to by the successor States.”

78. Section 71 however empowers the Central Government to issue directions regarding the division of interests and shares of the existing State of Andhra Pradesh in the Companies mentioned in the IX Schedule between the successor States. It states:

*“71. **Certain provisions for companies:** Notwithstanding anything in this Part, the Central Government may, for each of the companies specified in the Ninth Schedule to this Act, issue directions:*

(a) regarding the division of the interests and shares of the existing State of Andhra Pradesh in the Company between the successor States:

(b) requiring the reconstitution of the Board of Directors of the Company so as to give adequate representation to the successor States.”

79. The Central Government, as of date, has admittedly not intervened with regard to the affairs of erstwhile APHB i.e., bifurcation of staff or pensioners or assets and liabilities.

80. Section 59 of the Act which is also being relied upon by the TSHB is also relevant and it states:

*“ Section 59. **Pensions.** The liability of the existing State of Andhra Pradesh in respect of pensions shall pass to, or be apportioned between, the successor States of Andhra Pradesh and Telangana in accordance with the provisions contained in the Eighth Schedule to this Act.”*

81. As can be seen from the above, though Sec.59 deals with topic ‘pensions’, it is in fact dealing with *employees of the erstwhile State of Andhra Pradesh* and not employees of the entities of the State such as those mentioned in IX schedule like the erstwhile APHB. It has therefore no relevance in the context of issue of ‘pensions’ payable to erstwhile employees of the APHB.

82. We therefore reject the contention of the Advocate General for the State of Telangana that Section 59 has to be applied in the instant case and that Schedule VIII mentioned therein would therefore apply.

83. The liability to make pension payments and pensionary benefits to the retired employees of the erstwhile APHB before 23.6.2014 is ‘one’ of the ‘liabilities’ in addition to several others like repayment of loans to financial institutions borrowed by the it from HUDCO etc.

84. In **State of Jharkhand v. Harihar Yadav**⁷, the Supreme Court :
declared:

“ 43..... ... when a State is bifurcated by a parliamentary legislation, both the States and the Centre are required to take certain decisions under the Act and they are required to be taken in quite promptitude and not leaving the poor employees high and dry and suffer for no fault of theirs.”

85. But admittedly, as of date there is no allocation of employees or pensioners between the successor APHB and the TSHB and there has also been no division of assets and liabilities between the two of them though 5 ½ years have elapsed since the bifurcation of the composite

⁷ (2014) 2 SCC 114

State of Andhra Pradesh into the new State of Telangana and the residuary State of Andhra Pradesh.

86. Both the Advocate General for the State of Telangana and the Special Government Pleader for the State of Andhra Pradesh are not able to indicate any time line for resolution of the above issues.

87. We therefore have to decide as how the pension claims of the petitioners in these writ petitions are to be resolved.

88. It is the specific plea of the successor APHB that 96% of the assets of the erstwhile APHB are located geographically in the new State of Telangana and only 4% are located geographically in the residuary State of Andhra Pradesh after 2-6-2014. According to it, the following are the assets and details of their possession/custody:

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REORGANIZATION ACT**

<u>DESCRIPTION</u>	<u>Telangana Housing Board</u>	<u>APHB</u>
Fixed Deposits as on 02.06.2014	Rs.41,51,58,017-00	Nil
Amounts in Bank Accounts as on 02.06.2014	Rs.20,44,16,901-00	Nil
Rents due from tenants of shops, office spaces, community halls etc., as on 02.06.2014	Rs.41,33,92,803-00	Nil
Monthly rents received from the tenants of shops, office spaces, community halls etc., from 02.06.2014 (Total built-up area 10.89 Lakh Sq.ft.)	Rs.2,00,00,000-00 per month (approximately) [10.67 Lakh Sq.ft. situate in Telangana (98%)]	Rs.10,000/- per month (approximately) [Only 0.22 Lakh Sq.ft. situate in A.P. (2%)]
Amount received after 02.06.2014 from Projects	Rs.10.68 crores	

situate in A.P. utilized by THB and not reimbursed to APHB		
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89. In para 5 of the Counter affidavit filed by the TSHB in IA NO.4/2019 in WP.No.20469 of 2019 *the TSHB admits that major portion of Assets of erstwhile APHB is located in the State of Telangana.*

90. According to the TSHB (Balance sheets were filed by it for the years 2014-15,2015-16,2015-16,2016-17 and 2017-18) , the fixed assets of the erstwhile APHB are worth Rs.21,72,70,447/- and Fixed Deposits are Rs.61,95,74,918/- as on 2.6.2014; as on 31.3.2015, value of it's net current assets are Rs.610.00 crores, excess of income over expenditure before tax is Rs.66,66,107/- (without deducting depreciation) and (-) Rs.58,03,241/- (after deducting depreciation); as on 31-03-2016, value of its net current assets is Rs.642.00 crores and its losses are Rs.17.69 crores (without deducting depreciation) and Rs.18.78 crores (after deducting depreciation): as on 31-03-2017, value of net assets is Rs.625.00 crores and excess of income over expenditure is Rs.80,45,157/- (without deducting depreciation) and losses are Rs.16,20,654/- (after deducting depreciation); as on 31-03-2018, value of its net current assets is Rs.616.00 crores and excess of income over expenditure before tax is Rs.1,48,14,253/- (before deducting depreciation) and Rs.61,60,490/- (after deducting depreciation). The financial position thereafter is not disclosed stating that the balance sheets are not yet ready.

91. The rents received by TSHB according to the balance sheet of 2017-18 is Rs.18,79,34,744/-; interest received is Rs.34,20,130/- and other incomes are Rs.10,51,96,898/-. This indicates that the TSHB has substantial current assets valuing more than Rs.600.00 crores and also has substantial annual income.

92. But the TSHB contends that in terms of provision of A.P. Re-organization Act, 2014 except Assets relating to Head Quarters, all other assets are to be exclusively apportioned to the TSHB as the assets are located in Telangana and the entire revenue received from these assets also exclusively belongs to TSHB only.

93. If the TSHB is laying claim to all assets of the erstwhile APHB in the State of Telangana i.e 96% of the assets, it cannot say that liabilities such as payment of pension and other pensionary benefits ought to be split on 'population basis' in the ratio 58.42% and 41.58% between the TSHB and the APHB. That would be a case of 'Having the cake' and 'Eating it too'.

94. Admittedly, the Expert Committee for approval of de-merger proposals of Government Companies, Corporations, Entities in Schedule-IX (where the erstwhile APHB is also included), in its recommendations vide D.O. Lr.No.5614/Expert Committee/2014 dt.17-01-2019 (Shiela Bhide Report) recommended that commercial buildings, shops and community halls (Annexures-I, II and III of the de-merger plan) should be apportioned on the basis of 'population ratio' as per Section 53(1) of the Act; and with regard to issue of apportionment

of pension liability of employees, the Committee recommended that pension liability of employees who retired prior to 02-06-2014 should be apportioned on the 'population ratio'. It specifically stated that *'Expert Committee would like to underline the fact that it has also recommended that the resources to meet such pension liability (rentals receivable from assets included in Annexures – I, II and III) should be apportioned on the basis of population ratio.'*

95. Admittedly the TSHB has refused to accept these recommendations.

96. If it is the stand of the TSHB that apportionment has to be done on location basis, then as 96% of the assets are located in the State of Telangana, it should also take 96% of the liabilities; and if its stand is that liabilities have to be apportioned in 'population ratio' basis, it should also be ready to share the assets/income in 'population ratio' basis with the successor APHB.

97. Its action and conduct, while coming to assets, that 'location basis' should be the norm for their apportionment, but with regard to liabilities, 'population ratio' should be the norm, is highly unreasonable, arbitrary and violates Article 14 of the Constitution of India.

98. We are of the view that as of date, the assets and liabilities of the erstwhile APHB, not having been apportioned between the TSHB and APHB, they have to be treated as common assets and liabilities of both the successor Boards. Common liabilities such as payment of pensions

of 480 pensioners who had retired from the erstwhile APHB prior to 02-06-2014, inherited from the erstwhile APHB, have to be met from the common assets of the erstwhile APHB only.

99. We agree with the contention of Sri S.Ravi, Senior counsel for the APHB that the applicable principle is '*liabilities have to be met from the assets*' and whoever claims the entire assets and *has custody of 96% of such assets* (i.e., the TSHB) has to meet the liabilities as well, because the other party (APHB), which has negligible or no assets, cannot be mulcted with liability of paying the pensions either substantially or proportionately. Of course any such payment made by successor APHB till date would certainly be taken into account at the time of final division of assets and liabilities.

100. This is also because apportionment of assets and liabilities as per Sec.53 or other provisions of the Act has not yet been carried out and no formula for such division has also been agreed between the TSHB and the successor APHB.

101. Therefore till there is bifurcation of assets and liabilities as well as allocation of employees/ pensioners takes place, only the TSHB has to meet the pension liability of the erstwhile employees of the APHB who retired before 2.6.2014 and also those who retired after 2.6.2014 in the TSHB.

102. Whatever the alleged financial difficulties the TSHB has in utilizing the assets in it's custody, it is it's duty to resolve them.

103. The TSHB cannot contend that till the bifurcation of assets and liabilities of the erstwhile APHB takes place, the APHB should meet the entire or substantial pension liabilities of all retired employees of the APHB who retired before and after 2.6.2014.

104. We are also of the opinion that Sec.47 of the Act relied on by the TSHB deals with apportionment of liabilities of assets and liabilities of the composite State of A.P. before 2.6.2014 between the new State of Telangana and the residuary State of Andhra Pradesh and has no application to issue of apportionment of assets and liabilities of entities such as the erstwhile APHB.

105. Merely because for a short period of time, i.e. till May, 2018, anticipating quick apportionment of assets and liabilities, APHB had agreed with TSHB to meet the common liabilities on 'population ratio basis', APHB cannot be expected to stick to the said agreement when such apportionment did not occur and when it has no resources to meet the said liabilities (such as pension payments) because the TSHB is not sharing its revenue from the 96% of assets located in the geographical area of Telangana (such as rents from shops, office accommodations, community halls, interest on fixed deposits of Rs.41.51 crores and bank balances of Rs.20.44 crores, income from 20 joint venture projects etc).

106. The successor APHB has stated that financial difficulties caused to it (on account of non-sharing of income by the TSHB) had forced it to depute all regular employees except 18 employees to other entities like

Township Infrastructure Corporation Limited (TIDCO) etc. This has not been denied by the TSHB.

107. With regard to the allegation of the TSHB that the APHB had unilaterally taken a decision to pay the pensions of 164 pensioners of A.P. nativity in its letter dt.20-07-2018, that the said practice is discriminatory, and that APHB should also pay its share insofar as remaining 345 employees of erstwhile APHB, who retired prior to 02-06-2014 is concerned, we are of the opinion that the same cannot be found fault with. Without any resources it cannot be expected to take over the whole liability, particularly when TSHB is not sharing any resources in spite of having assets worth more than Rs.600.00 crores and substantial income from rents, interest on F.Ds., joint venture projects etc every year. The gesture of APHB is obviously on humanitarian grounds to the employees of the AP Nativity, because the pensioners would otherwise face severe hardship.

108. For the aforesaid reasons, we do not agree with the plea of the TSHB :

- (i) that till the final apportionment of assets and liabilities is made, the APHB ought to bear its share of 58.32% in the payment of pensionary benefits to the Telangana pensioners;
- (ii) that pension liability should be shared between the two successor States on the basis of population only,

irrespective of the financial status of the respective Boards;

- (iii) that all the assets located in Telangana State would belong to it in view of Section 53(1) of the Act but the liabilities such as pension liability would have to be shared on population ratio basis i.e. 58.32% by APHB and 41.68% by TSHB.

109. It may be that the de-merger proposals made by the Expert Committee of Mrs. Sheela Bhide is pending with the Government of India, but we do not know if the Government of India intends to do anything in the matter in exercise of its power under Section 71 of the Act, and if so, when. The pensioners/their widows cannot be deprived of pensionary benefits due to them as of right for long and faithful service without blemish rendered by them/their spouses on such uncertain events.

110. In *State of Jharkhand v. Harihar Yadav*⁸ *State of Jharkhand v. Harihar Yadav*⁹, a Government Company was floated by the State of Bihar in the name of Bihar Hill Area Lift Irrigation Corporation Limited (for short 'BHALCO') and it was registered under the Companies Act, 1956.

A Public Interest Litigation was filed in the Supreme Court under Article 32 of the Constitution of India stating that several Government

⁸ (2014) 2 SCC 114

⁹ (2014) 2 SCC 114

Companies/Public Undertakings situated in the State of Bihar had not paid salaries to their workmen and other employees for a long time causing grave hardship to such employees some of whom had even died. The above Company was also mentioned in the list of defaulting Companies.

The State of Bihar took the stand that after bifurcation of the State of Bihar into the new State of Jharkhand and the State of Bihar, the above Corporation, renamed as JHALCO, which is located in the State of Jharkhand alone under Section 47(1) and Section 56 of the Bihar Reorganisation Act, 2000 has to meet all liabilities and assets.

The Jharkhand Government and took the stand that it will not absorb employees of erstwhile BHALCO or pay their salaries.

The Supreme Court found that JHALCO has absorbed only some of the employees but did not take steps to deal with other employees on some pretext or the other and that the State of Jharkhand had taken a vacillating stand.

It observed that *a man in dire need cannot fight a litigation against two experimenting States to get his dues and that it is the duty of the Constitutional Court to ensure that all are paid their dues.*

It observed:

“2. ... It is not because of any natural calamity beyond human control but because two States, namely, the State of Jharkhand and the State of Bihar have deliberately chosen to create an Everestine catastrophe by their act of abandonment of responsibility to pay

despite availing work for some years and thereafter disowning them and nonchalantly shifting the burden to the other's shoulder and ultimately arguing in chorus that Jharkhand Hill Area Lift Irrigation Corporation (JHALCO) and Bihar Hill Area Lift Irrigation Corporation (BHALCO) being companies registered under the Companies Act, 1956, it is open to the aggrieved employees or their legal representatives to initiate necessary winding-up proceedings to get their dues.

3. We can only say that the stand and stance so adroitly put forth by both the States are shorn of their constitutional accountability and statutory answerability. In a way, it seems to be orchestrated by some kind of abstruse and unfathomable idea fostered in a fertile mind that loves to keep helpless and hapless people in a state of despair where hope dies an unceremonial death or it lives in a state of "Trishanku". It indubitably depicts a startlingly unhappy situation commanding urgent surgical intervention so that the injury does not become malignant.

... ..

*52. Having regard to the position that has emerged, we are compelled to dwell upon the role of the State as a model employer. In **Som Prakash Rekhi v. Union of India**¹⁰ Krishna Iyer, J. has stated thus: (SCC pp. 484-85, para 70)*

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

*53. In **Gurmail Singh v. State of Punjab**¹¹ it has been held that the State as a model employer is expected to show fairness in action.*

*54. In **Balram Gupta v. Union of India**¹² the Court observed that as a model employer the Government must conduct itself with high probity and candour with its employees.*

*55. In **State of Haryana v. Piara Singh**¹³ the Court has ruled that: (SCC p. 134, para 21)*

¹⁰ (1981) 1 SCC 449

¹¹ (1991) 1 SCC 189

¹² (1987) Supp SCC 228

¹³ (1992) 4 SCC 118

“21. ... The main concern of the court in such matters is to ensure the rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16.”

56. In **Bhupendra Nath Hazarika v. State of Assam**¹⁴ while laying emphasis on the role of the State as a model employer, though in a different context, the Court observed: (SCC p. 540, para 65)

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

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

¹⁴ (2013) 2 SCC 516

permissible and indubitably absolutely unconscionable. It hurts the soul of the Constitution and no one has the right to do so.”

The Supreme Court, in the facts and circumstances of that case, directed the State of Bihar to pay salaries of the employees and deceased employees from 01-01-1995 to 29-12-2001 and the State of Jharkhand to pay salaries from 29-12-2001 till 13-09-2004.

111. The observations of the Supreme Court in the above case apply *mutatis mutandis* to the instant case.

112. This Court cannot remain an idle spectator to the wrangle between the TSHB and the successor APHB and look at impassively at the plight of the petitioners and similarly placed persons who had retired from the erstwhile APHB.

113. We hold that, in the facts and circumstances of this case, the inaction and the attitude of the TSHB towards its employees is arbitrary, unreasonable, cruel and without compassion and, such conduct cannot be countenanced.

114. There is no dispute that the pensioners of the erstwhile APHB are being paid pension calculated on Revised Pay Scales, 2008 though both the State of Telangana have released Revised Pay Scales, 2013 w.e.f. 02-06-2014 to their regular employees; and the pensioners of the erstwhile APHB have been denied Dearness Relief payable w.e.f. 01-07-2015. For regular employees of the respective State

Governments, both these benefits have been given but not to the pensioners of the erstwhile APHB.

115. We see no reason why the erstwhile employees of APHB who retired prior to or after 02-06-2014 should be denied pension as per the subsequent Revision in Pay Scales or denied the Dearness Relief being paid to the retired employees of other Departments of the State Government. It would be arbitrary and discriminatory to deny them the said benefits.

116. Coming to the work-charged employees of erstwhile APHB, admittedly, G.O.Ms.No.212 dt.29-03-1979 was issued extending pension and pensionary benefits to the work-charged employees on par with Government Employees. The attempt of the then APHB to deny the said benefits was thwarted by the A.P. Administrative Tribunal in its order dt.21-11-2008 in O.A.No.40 of 2007, which was also confirmed by this Court on 06-11-2014 in W.P.No.27530 of 2008 and batch and also by the Supreme Court on 02-05-2016 in S.L.P. No.7986-7988 of 2016. The Government of Andhra Pradesh issued G.O.Ms.No.216 Municipal Administration and Urban Development Department dt.30-05-2017 deciding to restore pensionary benefits to 48 work-charged employees as allowed under G.O.Ms.No.71 and 75 dt.29-09-1994 implementing the above decision of the Supreme Court and also to grant to them all consequential benefits. Yet, this is not being implemented and widows of some of the work-charged employees have filed W.P.No.41913 of 2018. We see no reason why such work-charged employees should be

denied pension and pensionary benefits on par with the Government Employees in view of the binding decision of the A.P. Administrative Tribunal confirmed by the High Court and the Supreme Court as mentioned above.

117. We also find it distressing that 63 employees who have retired after 02-06-2014 from the TSHB are being denied full pension (they are getting only 41.68% pension) though the liability to meet the same is exclusively that of the TSHB.

118. We equally find it distressing that Family Pension and funeral expenses to legal heirs of employees of erstwhile APHB and those who retired 02-06-2014 in TSHB, who have died, are not being paid.

119. Accordingly, the Writ Petitions are allowed to the following extent:

(a) the liability to pay full pension and pensionary benefits/family pension/funeral expenses to all retired employees of APHB who retired prior to 02-06-2014/to their legal heirs in the event of death of such retired employees (including work-charged employees) shall be borne by the TSHB exclusively as long as it retains exclusive control of 96% of the movable and immovable assets belonging to the erstwhile APHB and enjoys the income therefrom, till apportionment of assets and liabilities of the erstwhile APHB between the TSHB and the successor APHB;

(b) the TSHB shall give benefit of Revised Pay Scales, 2013 to pensioners/their legal heirs while calculating the pension and pensionary

benefits/family pension w.e.f. 02-06-2014 and also pay them the Dearness Relief w.e.f. 01-07-2015;

(c) the arrears of pension and pensionary benefits/family pension/Dearness Relief shall be released to the pensioners/legal heirs of pensioners by the TSHB within two (02) months from today;

(d) all the above payments made by the TSHB and those paid by successor APHB after 02-06-2014 to pensioners/legal heirs of pensioners shall be taken note of when the apportionment of assets and liabilities takes place between the TSHB and successor APHB, and appropriate adjustment shall be made between the two entities depending on what formula is applied at that time to divide the assets and liabilities between them;

(e) The TSHB shall pay costs of Rs.2000/- (Rupees Two Thousand only) to each of the petitioners in the Writ Petitions within four (04) weeks.

120. Pending miscellaneous petitions, if any, shall also stand dismissed. No costs.

M.S.RAMACHANDRA RAO, J

K.LAKSHMAN, J

Date: 20-02-2020

Vsv/Svv/Ndr