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Court : Patna

Decided On : Jul-09-2004

Judge : Ravi S. Dhavan C.J. and Shashank Kumar Singh, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.W.J.C. No. 11640 of 2003

Appellant : In the Matter Relating to Class of Persons Who Have Not Received their Salaries

Respondent : The State of Bihar and ors.

Advocate for Def. : R.K. Dutta, Adv. and K.A.H. Subramanian, IAS, Chief Secretary

Advocate for Pet/Ap. : Chakrapani, Adv. Rakesh Kumar, Adv.

Prior history : Ravi S. Dhavan, C.J. 1. The Committee which was placed by the Supreme Court to examine the matter relating to payments to be made to employees of government companies and public sector companies has been disbursing the amounts out of Rupees 50 crores in the matters which were placed before it. Without going into details, to the best of its ability and as fast as it could, the Committee discharged its functions. The Committee has also recorded that whereas it felt that an employee concerned wa

Judgement :

Ravi S. Dhavan, C.J.

1. The Committee which was placed by the Supreme Court to examine the matter relating to payments to be made to employees of government companies and public sector companies has been disbursing the amounts out of Rupees 50 crores in the matters which were placed before it. Without going into details, to the best of its ability and as fast as it could, the Committee discharged its functions. The Committee has also recorded that whereas it felt that an employee concerned was entitled to much more against the payment of his outstanding dues, it had to scale down the amount on a pro rata basis so that the disbursement could be spread equitably amongst those workmen whose cases were under examination. The Committee has indicated in its reports marked to the Chief Justice that the task which was assigned to it has turned out to be much more gigantic than it had ever imagined. That the record was not surfacing because these government companies had violated the law and had not filed statutory returns before the Registrar of Companies. Even the auditor never knew how the government companies or corporations were run. The affairs of most of the government companies were simply not audited as a habit. In some cases statutory returns had not even been filed for two decades. A company in the private sector cannot get away with such situations. But, merely because bureaucrats were directors, they had the power to avoid the law in this State run corporate management and they did it with impunity. Running State corporations or Government companies and enjoying managerial post sans responsibility is a generality in Bihar.

2. Ultimately, the State Government companies or State public sector undertakings were left with a large work force. The labour was subdued until exasperation bordering on starvation highlighted some cases. For the defaults, which were committed in not submitting accounts, diverting the coffers of State Government companies and State corporations, the matter is under examination by the Comptroller and Auditor General of India including the Central Bureau of Investigation. The Court will leave this aspect at this.

3. Coming to the situation as of now and today the Committee reports that now it has only Rs. 11,58,903.22 paise left and there are thousands and thousands of workmen who have to be paid their salaries. The Committee is in a quandary on what to do because its main function of disbursing amount to unpaid workers has virtually come to a grinding halt. The Chairman of the Committee alongwith members have also met the Chief Justice that they are at a loss now on how to proceed on the main functions with which they were given an obligation to disburse payments to the workers and that they have filed their reports before the High Court from time to time.

4. As indicated to the Committee this Court is not in a position to give any direction that any additional amount be placed before the Committee. The reason is simple : the order had been delivered by the Supreme Court. An aspect of retired employees of State Government undertakings, their arrears of salary and retiral dues is pending before the Supreme Court. If any directions are required then the persons affected may seek them at the Supreme Court. The High Court, if a representative application is received from the unpaid or affected employees, can assist in the grant of legal aid to take care of expenses needed, to go to the Supreme Court. Otherwise, no one has stopped the State Government from rising to the occasion and evaluating the situation or the gravity of the circumstances of the unpaid employees and taking care of them by a dedicated policy.

5. But while these matters are pending and many other matters which are before the Court and this part of the order is addressed to those causes also, the situation is not new within the portals of the State Government. The first signal was given by the Patna High Court to the State Government in the matter of The Bihar State Industrial Development Corporation Ltd. (in LPA 144/1999 R), General Manager, Bihar State Super Phosphate Factory at Sindri (in LPA 409 and 410/1998 R) v. Dharamraj Pandey and Ors. (in LPA 144/1999 R) Baijnath Singh and Ors. (in LPA 409/1998 R), Jitu Mandal and Ors., (in LPA 410/1998 R), 2004 (4) PLJR 795.

6. The workers were seeking their payments. They were told that the matter has been referred to the headquarters at Patna. The Court was examining the matters as it came before the Ranchi Bench, then part of the Patna High Court. The

General Manager seemed to have taken a posture that he has no instructions on the payment of the employees. These were factories under the aforesaid corporation at Sindri district Dhanbad. The managers were getting the salaries and workers were denied it. The following passage of the High Court's judgment needs to be noticed :

'Learned Senior Counsel appearing on behalf of the managers submitted that he cannot answer whether the managers are getting salaries from their units or the Bihar State Industrial Corporation Limited. A faint hint was being dropped that the units are closed. A proposition not accepted by counsel for the workers and, otherwise, irrelevant for the issues at hand-the payment of admitted retirement benefit to the workers. An argument was also made on behalf of the General Managers that the units need to be wound up. This again is an argument which the Court cannot appreciate as what will be subjected to winding up is the company of which the units are only part of the corpus and assets. Then, in a winding up proceeding on pari-passu ranking, workers dues have priority of ranking. But, this is not the stage and the General Managers have no authority to make such submissions. Even in equity, Courts reserve the passing of a winding up order as a measure of last resort. Unemployment of workers is one important factor.'

7. The problem, thus had already been born. At that time the State of Bihar should have become conscious that the disease had spread, and find out to what extent. Then came the matter in re. Bihar State Pharmaceutical Corporation Ltd. v. Bank of India and Ors., LPA No. 632 of 2002 (order dated 20.4.2002) arising out of CWJC No. 2404/2002. Two government companies (Bihar Pharmaceutical Corp. Ltd. and The Bihar Insecticides Ltd.), were before the Debt Recovery Tribunal. They were taking issues with the Tribunal, acknowledging the debt but resisting discharging it by taking defence, to the effect; go catch the State of Bihar. This was an ungraceful plea by a government company. Catching the State of Bihar will also not solve the problem. Between the State of Bihar as a guarantor and the two government companies which took loans, such issues should have been resolved on the theme suggested by the Supreme Court a decade ago not to increase State litigation but resolve it. Oil and Natural Gas Commission and Anr. v. Collector

Central Excise, 1992 Supp. (2) SCC 432 and 1995 Supp. (4) SCC 541. The creditor is a nationalised bank. The guarantor, the State of Bihar

The debtors, government companies of Bihar. This gives a bad name to Bihar that the State of Bihar is a guarantor and will not honour its debt. The workers suffer in this big fight.

8. Of the Companies mentioned in the previous paragraph the issue of unpaid workers could not be avoided when these government companies challenged the Debt Recovery Tribunal's proceeding. The Tribunal has an equity jurisdiction. The workers dues are the concern of the tribunal also. It is the equity jurisdiction of the High Court to show concern for the unpaid worker, in as much the Tribunal. By this time, the Government of Bihar had received a jolt already when a son sacrificed his life because his father, an employee of a public sector unit, had not been paid his retirement dues. This was only a spark which was heard nation wide and while these proceedings were pending the State of Bihar faced a public cause again which was brought before the Supreme Court. As an ad-interim measure, by a direction the State of Bihar was required to make available Rupees 50 crores as also a Committee to examine these matters.

9. Now the Committee has indicated that with only Rupees 11 lakhs left it is unable to discharge its obligations to all the persons to whom retiral dues are right fully due and recommend payment. The corpus is finished. The indication of the Committee is to the effect that, perhaps, it may require on a rough estimate a sum of Rupees 600 crores, if all the employees who are yet awaiting their retiral dues or salary are to be paid.

10. Not transgressing nor diverting attention from matters on what has caused these ills, the relevant question is that should the State of Bihar wait for somebody to tell them to tackle this problem or will it linger to gather up more debt as more people retire and, perhaps, die waiting for their pensions. It is only the suggestion, of the Court that while it may take directions, yet nothing stops the freedom of the State Government to ponder these issues on a war footing.

11. Matters to be considered are :

(a) The amount required to take care of the debts to be discharged against the retiral dues and unpaid salaries and making correct assessment on what this figure may be.

(b) To consider whether the Committee which has been given to the State Government of Bihar should receive the semblance of a permanent commission until these matters have been dealt with and the last man to whom the payment is due has been paid off.

(c) The viability of these State Government companies and State corporations whether to continue, disinvest or wind them up.

(d) Merely because a worker has asked for his dues is no ground for an angered State Government to file a winding up petition. The worker's equity had got involved in the incorporation of the company. He also has a right to say something to the managers of these State companies. Perhaps, the workers would like to run the company. This is one alternate but to wind up because the workers want their money is against all canons of corporate law. The problem has to be tackled on how to discharge the debt even if it amounts to increasing the share capital floating debenture or any other method.

(e) Why would a running company be closed because a worker has asked for his dues. The State of Bihar is free to seek private collaboration, private investment and be more equitable in its approach, after all, all the shares are held by the Governor of Bihar, and the effort should be to run these companies as a first measure unless unavoidable circumstances warrant closure. The Court mentions this because under the [Constitution of India](#), is a socialist republic. While we rush through into a free market economy, the word socialist is still in the Constitution. So winding up of a company must not be sought as a reaction because workers want their money. The matter is to be examined objectively within the government.

(f) It is not a sin to run a purely public sector enterprise but the freedom to seek capital from outside is an option always available. But this will need a less bureaucratic management. Maruti Udyog Limited is an example.

(g) Then there are such State Corporations which have been enacted by the legislature. Winding up cannot be sought and granted for the askance because the workers have demanded their rightful dues. Winding up a statutory State corporation is a decision which will have to be taken by the State Legislature in a deliberated debate and in this debate workers equity requires their statement of case to be taken into account. A statutory corporation or a government company is not the private preserve of the State Government. For those, who worked, their sweat and toil is their equity, like a share holder or a person who invests in an incorporated company. This matter needs deliberation not a posture of aggression against the workers.

(h) Any company petition filed impulsively as a reaction that workers have demanded their dues, either arrears of salary or retiral dues, these aspects have to be considered by the State Government with a very broad view objectively and not in confrontation with the workers. Killing a government company with one swing of sword is not going to relieve the State Government from its liability. Workers dues are secured by law. In a Government company to seek winding up to defeat the workers salaries and pensions is shameless. The State Government is a guarantor to the share holding and this is the peoples money, the tax payers money. The workers have to be paid in full. The government can wind up the company later after paying off the workers. Already, there is much conflict all over within the State corporate sector. It must bide its peace with the workers who work for State corporations and government companies and even in their closure there will have to be a very equitable peaceful golden hand shake of a scheme which must be well thought out.

12. The Court can only give suggestions. These are not directions. The suggestions have been made as measures to be considered so that the State Government returns to an amicable solution instead of conflicts in Courts with its employees in the State public sector.

13. This matter of course will remain pending.

14. The Chief Secretary is present. In fact, he has joined the Court in giving some of the suggestions which the Court has spelt out. He has further gone to place on

record that it will be his endeavor and that of the government to weigh each and every suggestion of the Court so that this conflict between the workers and the government companies or the State corporations is removed once and for all and he will spare no effort in this exercise. The Court appreciates this.

15. The Committee has reported for directions for disbursements of the amounts as are in its report dated 18.5.2004 at Flag G2, dated 20.5.2004 at Flag H2, dated 23.6.2004 at Flag 12 and dated 25.6.2004 at Flag J2. The disbursement be made as usual by the Registrar of Companies.

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