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Kapila Hingorani Vs. State of Bihar

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Court : Supreme Court of India

Decided On : May-09-2003

Reported in : 2003(3)AWC2344(SC); 2003(2)BLJR1354; [2003]116CompCas133(SC); JT2003(5)SC1; (2003)IIILLJ31SC; (2003)3MLJ1(SC); 2003(4)SCALE712; (2003)6SCC1; [2003]44SCL429(SC)

Judge : V.N. Khare, C.J. and; S.B. Sinha, J.

Acts : Companies Act, 1956 - Sections 598A; Constitution of India - Articles 11, 12, 14, 19, 21, 23, 51A, 298 and 300A; Jammu and Kashmir Registration of Societies Act, 1898; Electricity (Supply) Act - Sections 79; Payment of Wages Act; Minimum Wages Act; Protection of Human Rights Act, 1993; Sick Industrial Companies (Special Provisions) Act, 1985; State Reorganisation Act, 2000 - Sections 65

Appeal No. : Writ Petition (C) No. 488 of 2002

Appellant : Kapila Hingorani

Respondent : State of Bihar

Advocate for Pet/Ap. : Soli J. Sorabjee, Attorney General,; P.S. Mishra,; Shanti Bhus

Judgement :
ORDER

1. If at all and to what extent the Government of the State of Bihar is vicariously liable for payment of arrears of salaries to the employees of the State owned corporations, public sector undertakings or the statutory bodies is the core question involved in this writ petition.

2. It appears from the records that various Government companies/public sector undertakings, details whereof are stated hereunder have not (SIC) paid to their workmen and other employees for a long time resulting in death of several persons and miseries brought to a large number of families as would appear from the following:

Statement As of 12.3.2003

Sl. No. Name of Public Undertaking No. of Employee Date from which salary is due Nos. of Death of Employees

1. Bihar State Agro Industries Development Corporation 630 May-93 702. Bihar State Medicine & Chemical Development Corporation 265 Aug-93 113. Bihar State Handloom & Handicraft Corpn. 429 In Headquarter from May 1996 in Unit from 1993 34. Bihar State Small Scale Industrial Development Corporation 141 In Headquarter from April 1995. In Unit from April 1993 365. Bihar State Sugar Corporation 9240 From January 2000 in Headquarter. In Unit from April 1992 4676. Bihar State Leather Development Corpn. 471 From March 1993 136a. Bihar Finished Leathers 357. Bihar State Industrial 1551 Development Corporation 1551 In Headquarters from July 2001 in Unit from Feb. 1993 1258. Bihar State Electronic Corporation 157 In Headquarter upto date. In Unit from April 1998 59. Bihar State Vastraya Corporation50 Nov-96 Nil10. Bihar State Film Development & Financial Corporation 8 Aug-02 Nil11. Bihar State Fruit & Vegetable Development Corporation 16 From Aug-94 1 12. Bihar State Seed Development Corpn. 137 From May 1999 513. Bihar State Fisheries Development Corporation 42 Before May 2000 due of 32 to 40 months 514. Bihar State Food & Civil Supplies Corpn. 1716 Pending from till 40 months 32515.Bihar State Panchayati Raj Financial Corpn.130 From March 1996 716. Bihar State Construction Corpn. 657 In Headquarter from January 1995. In Unit from January 1992 5517. Bihar State Road Transport Corporation 5580 Headquarter + In sum units from Nov.

1998 Balance in from December 1993 Note: 20518. Bihar State Khadi Gramdhoyog Board 75 Payment of Salaries 71 Staff in non-plan (upto date) due from April 94 Staff Salaries NA19. Bihar Hill Area Lift Irrigation Corpn. 684 NA

3. A newspaper report as regard non-payment of salary for a long time resulting in starvation highlighted the case of one Chandan Bhattacharya, son of an employee of the Bihar State Agro-Industries Development Corporation who tried to immolate himself. The incident was widely reported, inter alia, in 'The Hindustan Times', Delhi Edition, on 19.9.2002 under the caption 'Empty coffers drive staff to self-immolation bids'. The said Chandan Bhattacharya later on succumbed to the burn injuries suffered by him.

4. In this writ petition, the writ petitioner, a public spirited citizen and a Supreme Court lawyer, alleged that apart from plight of the employees of the public sector undertakings or the statutory authorities, even the teaching and non-teaching staff of Aided and Unaided Schools, Madrassas and Colleges have been facing a similar fate. We, however, as at present advised do not intend to deal with the same. According to the petitioner, from a newspaper report it would appear that about 250 employees died due to starvation or committed suicide owing to acute financial crisis resulting from non-payment of remunerations to them for a long time. The report further goes on to say that the leader of the opposition in the Bihar Assembly had alleged that over 1000 employees died 'due to lack of salary for a period ranging from four months to 94 months'.

5. In its counter affidavit, the State of Bihar does not deny about the factual statement made in the said writ petition. Its stand, however, is that salaries are being paid by the statutory authorities, the details whereof are in the following terms:

'In the following 26 undertakings, salary payments are upto date (as on 30.9.2002) and are continuing on a regular basis as per reports from the Corporation:-

5. Bihar State Financial Corporation Ltd.

6. Bihar State Credit & Investment Corporation

7. Bihar State Agricultural Marketing Board

8. Bihar State Forest Development Corporation

9. Bihar State Pollution Control Board

10. Bihar State Warehousing Corporation

11. Bihar State Tourism Development Corporation

12. Bihar State Text Book Corporation

13. Bihar State Minerals Development Corporation

14. Bihar State Housing Board

15. Bihar State Police Building Construction Corporation

16. Bihar State Bridge Construction Corporation

17. Bihar State Electricity Board

18. Bihar State Hydro-electric Power Corporation

19. Patna Industrial Area Development Authority

20. North Bihar Industrial Area Development Authority

21. Darbhanga Industrial Area Development Authority

22. Patna Regional Development Authority

23. Muzaffarpur Regional Development Authority

24. Darbhanga Regional Development Authority

25. Gaya Regional Development Authority

26. Bhagalpur Regional Development Authority

27. Bihar State Water & Sewerage Board

28. Bihar State Minorities Finance Corporation

29. Bihar State Export Corporation, and

30. Tenughat Vidyut Corporation.'

6. As regards the Bihar State Road Transport Corporation, it is contended that 50% of salary was paid to the employees as directed by this Court in Civil Appeal No. 7290 of 1994. The State contends that with a view to clear the dues, the Corporation would require approximately a sum of Rs. 160.35 crores.

7. However, in relation to the 16 Undertakings, according the State, the financial implication would be as under:

Sl.No.Name of UndertakingNo. of employeesSalary Due SinceApproximate Amount involvedDeaths reported by corpn.Cause of death as reported

33. Bihar State Leather Industries Development Corpn 471+259 in Bihar Finished Leather March 1993 Rs.62.45 Crores Nil Not Applicable34. Bihar State Pharmaceuticals & Chemicals Development Corpn. 265 Aug.93 Rs.9.46 crores Nil -do-35. Bihar State Hand-Loom Power loom & Handicrafts Dev. Corpn. 429 Hers-May 1996 Units 1993 Rs..18 crores 23 5 from ill-ness, Rest not reported36. Bihar State Small Ind. Corporation 141 HQ Apr. 94 Units April.93 Rs.18 crores Nil NA 37. Bihar State Sugar Corpn. 9240 HQ Jan '00 Units April 92 Rs.130 crores Illness38. Bihar State Agro Ind. Dev. Corpn. 630 May '93 Rs.60.73 crores 1 As in para III above39. Bihar State Industrial Development Corpn. 1551 HQ-July '01Units Feb. 93 Rs.61.72 crores Nil NA40. Bihar State Electronics Dev. Corpn. 157 HQ up Date Units April. '98 Rs.2.51 crores Nil -do-41. Bihar State Textile Corporation 50 Nov., 96 Rs. 0.70 crores Nil -do-42. Bihar State Film Dev. & Fin. Corpn. 08 Aug.,02 Rs.55,000/-Per month Nil -do-43. Bihar State Fruits & Vegetable Dev. Corpn. 16 Aug.,94 Rs. 1.8056 Crores Nil -do-44. Bihar State Seeds Dev. Corpn. 137 May,99 Rs. 4.53 crores 5 Inadequate Medical Treatment45. Bihar Slate Fisheries Development Corpnn. 42 32-40 months upto March, 00 Update from March. 00 Rs. 1 crore Nil NA46. Bihar State Food And

Civil Supplies Corporation 1716 Upto 40 Months Rs.16.56 crores. Nil -do-47. Bihar State Panchayati Raj Finance Corporation 130 Mar '96 Rs.3.75 crores Nil -do-48. Bihar State Const-Ruction Corpn. 657 HQ Jan, Unit Jan, 1992 Rs. 37.50 1995 crores Nil -do-49. Bihar Hill Area Lift Irrigation Corpn. 684 Being collectedBeing Collected Nil-do-

8. The State accepts that although the Managing Director of the Bihar State Small Industries Corporation had initially reported that 14 of its employees died in harness and 9 after retirement, but in the subsequent report the Managing Director stated that there is no report regarding suicide or death due to starvation of any of the employees of the Corporation. It is averred:

'...The Managing Director of the Bihar Panchayati Raj Finance Corporation had initially reported that 3 employees of the Corporation had died, but had not given any details about the date and cause of their deaths. In his subsequent report the Managing Director reported that there was no report regarding the suicide or death due to starvation of any employee of the corporation. The Managing Director of the Bihar State Sugar Corporation had initially reported that 4 employees of the Corporation had died for want proper treatment. In this subsequent report the Managing Director has reported that the employees' Union has submitted a list of 241 employees who have died or become disabled. Similarly, the Company Secretary of the Bihar State Seeds Corporation had initially reported that 4 employees of the Corporation have died during the period when salary was not paid. Subsequently, the Company Secretary has reported that 5 employees of the Corporation have died for want of proper treatment. However, in view of the discrepancy in the two reports of these corporations, the concerned Managing Directors have been asked to make a thorough investigation into the causes of these deaths and to submit detailed reports in the matter.

I say that the employees Union of the Bihar Handloom, Powerloom and Handicrafts Development Corporation has submitted to the Managing Director of the Corporation a list of 7 employees and 2 wives of employees who have died. The cause of death of 4 employees has not been specified, while 3 employees and 2 wives of employees are stated to have died due to financial hardship. The

Managing Director of the corporation has reported that no case of suicide or starvation death by employees of their dependents have been reported to the Corporation but the submission of the employees union is being verified. The Managing Director has been asked to make a thorough investigation into the causes of these deaths and to submit a detailed report in the matter.'

9. The records of this case bear out that deaths had occurred owing to starvation or malnutrition. The fact that the employees have not been paid their salaries for a long time; in some cases for a decade or more; stands admitted.

10. the Affidavit of the State of Bihar, purported to have been based on reports of the Managing Director of same Undertaking does not inspire confidence. The statements made therein are self-contradictory and inconsistent. It smacks of lack of bona fide and is full of afterthoughts.

11. The stand of the State of Bihar on law is that having regard to the fact that most of the undertakings or companies are registered or incorporated under the Indian Companies Act, 1956, the rights and liabilities of the shareholders would be governed by the provisions of the said Act and the liability of the said companies cannot be passed on to the State by taking recourse to the doctrine of 'lifting the veil' or otherwise.

12. Keeping in view the complexity of the matter, this Court appointed Shri P.S. Mishra, a senior counsel of this Court, as amicus curiae. Shri Amarendra Sharan also assisted the court.

13. The learned amicus curiae has, inter alia, submitted that the independent investigation revealed that the head offices of the Government companies are situated the rented premises. It was contended that all shares are owned by the State and in some of the cases only one share had been allotted in the name of the nominee of the Government of the State of Bihar. The allegations of the writ petitioner of the effect that there had been starvation deaths and/or suicide by the employees of the public sector undertakings are correct.

14. Mr. Shanti Bhushan, learned senior counsel appearing on behalf of the State of Bihar, would submit that having regard to the magnitude of the problem, it would be just and proper if liability is directed to be met to the extent of 80 per cent by the Union of India and that the State Government will bear the burden to the extent of 10 per cent thereof and the remaining may be realised from the sale of properties belonging to the respective companies. The learned counsel would submit that pursuant to or in furtherance of a decision of the Full Bench of the Patna High Court in C.W.J.C. No. 5015 of 1996, liquidation proceedings of the Government companies have been initiated and they are pending before the Company Judge of the Patna High Court. Mr. Shanti Bhushan would urge that having regard to the well-settled principle of law that a company registered under the Indian Companies Act is a juristic person, its rights and liabilities must be determined in terms thereof and not de'hors the same. Strong reliance, in this behalf, was placed on Steel Authority of India Ltd. and Ors. v. National Union Waterfront Workers and Ors. and Electronics Corporation of India Ltd. and Ors. v. Secretary, Revenue Department, Govt. of Andhra Pradesh and Ors. : AIR 1999 SC1734 .

15. Mr Soli J. Sorabjee, the learned Attorney General appearing on behalf of Union of India submitted that neither in law nor in equity the Union of India can be fastened with any liability of the State. The learned counsel would contend that this Court, with a view to do justice to the parties, may direct that an official liquidator be appointed in respect of all the companies and the learned company judge may further be directed to dispose of the winding up applications are expeditiously as possible wherein having regard to the provision contained in Section 529A of the Companies Act the dues of employees will have primacy. Mr. Sorabjee would urge that the learned Company Judge may also be directed to look into the Human Right aspect of the matter.

16. Mr. Mishra, learned amicus curiae, would submit that there is no reason as to why the burden of the State should be shifted to the Union of India and having regard to the provisions of Articles 21 and 23 of the Constitution of India, this Court is entitled to pierce the corporate veil of the Government companies which are 'States' within the meaning of Article 12 of the Constitution of India. According to Mr. Mishra, it is beyond any cavil of doubt that the State for all intent and purport

was the sole shareholder of those companies and as such it cannot escape its liability having regard to the fact that it had deep and pervasive control including financial control over the affairs of the said companies. Mr. Mishra would urge that as indisputably the corporations owned and controlled by the State of Bihar are 'State' within the meaning of Article 12 of the Constitution of India, neither they nor the State of Bihar can escape their liability from enforcing the rights of the citizens of India under Articles 21 and 23 of the Constitution of India.

17. Mr. Mishra would submit that the Full Bench of the Patna High Court has referred to certain decisions of this Court which did not deal with an issue of this nature nor it took notice of different facets of Article 21 of the Constitution of India which would include a right to food, shelter and other basic amenities. Non-payment of lawful salary to the employees, Mr. Mishra would submit, would fall within the definition of 'forced labour' which is prohibited by Article 23 of the Constitution of India. In support of his contentions, Mr. Mishra placed strong reliance on People's Union for Democratic Rights and Ors. v. Union of India and Ors. : (1982)IILLJ454SC , Board of Trustees of the Port of Bombay v. Dilipkumar Raghvendranath Nadkarni and Ors. : (1983)ILLJ1SC and Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors. : AIR 1986 SC180 .

18. Ms. Hingorani, the petitioner appearing in person, would contend that the State cannot escape its liability in the matter of payment of salaries to its own employees; although ostensibly they are working in the companies incorporated under the Indian Companies Act.

19. According to the petitioner starvation deaths and/or commission of suicide by the employees of the State owned corporation being admitted, this Court should issue interim directions for payment of salaries to the employees. Ms. Hingorani would contend that the government companies or corporations will have to discharge their constitutional obligations in terms of Article 21 of the Constitution of India. In support of the said contention, reliance has been placed on Andhra Pradesh State Road Transport Corporation v. The Income Tax Officer and Anr. : [1994]52ITR524(SC) , Western Coalfields Ltd. v. Special Area Development Authority, Korba and Anr. : [1982]2SCR1 , Hem Chand Etc. v. The Delhi Cloth &

General Mills Co. Ltd. and Anr. etc. : [1978]1SCR241 and Som Prakash Rekhi v. Union of India and Anr. : (1981)ILLJ79SC .

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 violations 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 fulfill its own and/or the corporations' obligations to comply with the citizens' right 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?

21. A Company incorporated under the Companies Act is a juristic person. A company indisputably has a distinct and separate entity vis-a-vis its shareholders.

22. This Court in Electronics Corporation of India Ltd.'s case (supra) opined:

'A clear distinction must be drawn between a company and its shareholder, even through that shareholder may be only one and that the Central or a State Government. In the eye of the law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its hares.'

23. Yet again, a Constitution Bench of this Court in Steel Authority of India's case (supra) noticed the following decisions to hold that a company incorporated under the Companies Act being a juristic person would be governed by the Companies

Act.:

'In Ramana Dayaram Shetty v. International Airport of India (Ramana Dayaram Shetty v. International Airport Authority of India : (1979)IILLJ217SC), a three-Judge Bench of this Court laid down that corporations created by the Government for setting up and management of public enterprises and carrying out public functions, act as instrumentalities of the Government; they would be subject to the same limitations in the field of constitutional and administrative laws as the Government itself, though in the eye of the law they would be distinct and independent legal entities. There, this Court was enforcing the mandate of Article 14 of the Constitution against the respondent - a Central Government corporation.

Managing Director, U.P. Warehousing Corporation v. Vijay Narayan Vajpayee : (1980)ILLJ222SC dealt with a case of dismissal of the respondent employee of the appellant Corporation in violation of the principles of natural justice. There also the Court held the Corporation to be an instrumentality of the State and extended protection of Articles 14 and 16 of the Constitution to the employee taking the view that when the Government is bound to observe the equality clause in the matter of employment the corporations set up and owned by the Government are equally bound by the same discipline.

In Ajay Hasia v. Khalid Mujib Sehravardi (Ajay Hasia v. Khalid Mujib Seharavardi, : (1981)ILLJ103SC), the question decided by a Constitution Bench of this Court was : whether Jammu and Kashmir Regional Engineering College, Srinagar, registered as a society under the Jammu and Kashmir Registration of Societies Act, 1898, was 'State' within the meaning of Article 12 of the Constitution so as to be amenable to writ jurisdiction of the High Court. Having examined the memorandum of association and the Rules of the Society, the Court decided that the control of the State and the Central Government was deep and pervasive and the Society was a mere projection of the State and the Central Government and it was, therefore, an instrumentality or agency of the State and the Central Government and as such an authority-State within the meaning of Article 12.

The principle laid down in the aforementioned cases that if the Government acting through its officers was subject to certain constitutional limitations, a fortiori the

Government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations, was approved by the Constitution Bench and it was pointed out that otherwise it would lead to considerable erosion of the efficiency of the fundamental rights, for in that event the Government would be enabled to override the fundamental rights by adopting the stratagem of carrying out its function through the instrumentality or agency of a corporation while retaining control over it. That principle has been consistently followed and reiterated in all subsequent cases - see Delhi Transport Corporation v. D.T.C. Mazdoor Congress : (1991)ILLJ395SC , Som Prakash Rekhi v. Union of India : (1981)ILLJ79SC , Manmohan Singh Jaitla v. Commr., Union Territory of Chandigarh : (1985)ILLJ514SC , P.K. Ramachandra Iyer v. Union of India : (1984)ILLJ314SC , A.L. Kalra v. Project and Equipment Corporation of India Ltd. : (1984)IILLJ186SC , Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly (Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly, : (1986)IILLJ171SC , C.V. Raman v. Bank of India (C.V. Raman v. Bank of India, : (1988)IILLJ423a SC), Lucknow Development Authority v. M.K. Gupta : AIR 1994 SC787 , Star Enterprises v. City and Industrial Development Corporation of Maharashtra Ltd. : [1990]2SCR826 , LIC of India v. Consumer Education & Research center : AIR 1995 SC1811 and G.B. Mahajan v. Jalgaon Municipal Council (1991) 3 SCC 19. We do not propose to burden this judgment by adding to the list and referring to each case separately.

We wish to clear the air that the principle, while discharging public functions and duties the government companies/corporations/societies which are instrumentalities or agencies of the Government must be subjected to the same limitations in the field of public law - constitutional or administrative law - as the Government itself, does not lead to the inference that they become agents of the center/State Government for all purposes so as to bind such Government for all their acts, liabilities and obligations under various Central and/or State Acts or under private law.

(Emphasis supplied)

24. Thus, the law as stated therein is not of universal application. The ratio of the said decisions must be applied having regard to the fact situation obtaining therein [See Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and Ors. : AIR 2003 SC511]. It has its limitations in its applications, as exceptions exist in several areas.

25. It is now well-settled that the corporate veil can in certain situations be pierced or lifted. The principles behind the doctrine is a changing concept and its is expanding its horizon as was held in the State of U.P. and Ors. v. Renusagar Power Company and Ors. : AIR 1988 SC1737 . The ratio of the said decision clearly suggests that whenever a corporate entity is abused for an unjust and inequitable purpose, the court would not hesitate to lift the veil and look into the realities so as to identify the persons who are guilty and liable therefore.

26. The proposition that a company although may have only one shareholder will be distinct juristic person as adumbrated in Salomon v. Salomon and Co. [1897 AC 22], has time and again been visited the application of doctrine of lifting the corporate veil in revenue and taxation matters. [See Dal Chand and Ors. v. Commissioner of Income Tax, Punjab and Juggilal Kamlapat v. Commissioner of Income Tax, U.P. : [1969]73ITR702(SC) .

27. The corporate veil indisputably can be pierced when the corporate personality is found to be opposed to justice, convenience and interest of the revenue or workman or against public interest. [See C.I.T., Madras v. The Meenakshi Mills Ltd. and Ors. : [1967]63ITR609(SC)]; Workmen Employed in Assn. Rubber Industry Ltd., Bhavnagar v. Associated Rubber Industry Ltd., Bhavnagar and Anr., : (1986)ILLJ142SC ; New Horizons Ltd. and Anr. v. Union of India and Ors. : (1995)1SCC478 ; State of U.P. and Ors. v. Renusagar Power Co. and Ors. : AIR 1988 SC1737 ; Hussainbhai, Calicut v. The Alath Factory Thezhilali Union, Kozhikode and Ors. : (1978)IILLJ397SC ; and Secretary H.S.E.B. v. Suresh and Ors. : (1999)ILLJ 1086 SC .

28. The test that a public sector undertaking or Government company can be a 'State' within the meaning of Article 12 of the Constitution, only when it discharges some sovereign functions, has been given a go-bye by this Court in a recent

decision in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors. : [2002]3SCR100 . Disagreeing with the decision of this Court in Sabhajit Tewary v. Union of India and Ors. : (1975)ILLJ374SC , it was held that the premises whereupon the ratio of the said decision was based was not correct and followed the precedents like Sukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi and Anr. : (1975)ILLJ399SC and Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors. : (1981)ILLJ103SC . This Court further held that the decision in Chander Mohan Khanna v. National Council of Educational Research and Training and Ors. : (1992)ILLJ331SC does not lay down the correct law.

29. We are not oblivious of the legal proposition as enunciated in Ramana Dayaram Shetty and SAIL (supra) that even if a Government company is a State within the meaning of Article 12 of the Constitution of India as an agency or instrumentality of the State, there does not exist a relationship of principal or an agent and only the action of the said authorities would be State action.

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. The Government of the State of Bihar for all intent and purport is the sole shareholder. Although in law, its liability towards the debtors of the Company may be confined to the shares held by it but having regard to the deep and pervasive control it exercises over the Government companies; in the matter of enforcement of human rights and/or rights of the citizen of life and liberty, the State has also an additional duty to see that the rights of employees of such corporations are not infringed.

31. The right to exercise deep and pervasive control would in its turn make the Government of Bihar liable to see that the life and liberty clause in respect of the employees is fully safeguarded. The Government of the State of Bihar, thus, had a constitutional obligation to protect life and liberty of the employees of the Government owned companies/corporations who are the citizens of India. It had an additional liability having regard to its right of extensive supervision over the affairs of the company.

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

33. The State having regard to its right of supervision and/or deep and pervasive control, cannot be permitted to say that it did not know the actual state of affairs of the State Government undertakings and/or it was kept in dark that the salaries of their employees had not been paid for years leading to starvation death and/or commission of suicide by a large number of employees. Concept of accountability arises out of the power conferred on an authority.

34. The State may not be liable in relation to the day to day functioning of the Companies, but its liability would arise on its failure to perform the constitutional duties and functions by the public sector undertakings, as in relation thereto the State's constitutional obligations. The State acts in a fiduciary capacity. The failure on the part of the State in a case of this nature must also be viewed from the angle that the statutory authorities have failed and/or neglected to enforce the social welfare legislations enacted in this behalf e.g. Payment of Wages Act, Minimum Wages Act etc. Such welfare activities as adumbrated in Part IV of the Constitution of India indisputably would cast a duty upon the State being a welfare State and its statutory authorities to do all things which they are statutorily obligated to perform.

35. In 'The constitution, social rights and liberal political justification', Frank I. Michel man published in International Journal of Constitutional Law, Volume I, page 13, it is stated:

'Whatever else it may also be, a country's written constitutional bill of rights is a high-ranking regulatory law, a 'statute' fraught with direct legal consequences. Granted, the constitution may not be 'simply' that. No doubt it may figure as something beyond positive law: 'a 'mirror reflecting the national soul',' perhaps; an expression of national ideals, aspirations, and values expected, as such, to 'preside and permeate the processes of judicial interpretation and judicial discretion' throughout the length and breadth of the national legal order. But had bills of rights not also and always registered as direct, regulatory legislation - as laws to be enforced like other laws - jurists and scholars the world over would not

have conducted their debates over the constitutionalization of social rights in the terms that we have grown used to.

Constitutions, to be sure, are regulatory laws of a special kind, setting terms and conditions for the making and execution of all other laws. Typically, although not necessarily, some of the terms and conditions are cast in the form of a bill of rights; a list of certain interests of persons, upon whom are conferred what are considered to be legal rights, not just background moral claims, to have these interests at least negatively respected, and may be positively secured and redeemed, by the state's legislature and other actions yet to come.'

36. The power of the State in the sphere of exercise of its constitutional power including those contained in Article 298 of the Constitution of India inheres in it a duty towards public, whose money is being invested. Article 298 of the Constitution of India confers a prerogative upon the State to carry on trade or business. While doing so the State must fulfil its constitutional obligations. It must oversee protection and preservation of the rights as adumbrated in Articles 14, 19, 21 and 300A of the Constitution of India.

37. Even before India become independent, our leaders started thinking in terms of eradication of poverty and discrimination as well as uplift of down-trodden. At the time of framing of the Constitution, the Constitution makers had before them the harrowing tales of starvation deaths and particularly the infamous Bengal famine.

38. If it is considered to be the duty of the citizen to remind himself of the aspirations of the Constitution makers, the State, in our opinion, cannot be permitted to say that it has no such duty towards its own citizens.

39. Clauses (a)(b) and (h) of Article 51A of the Constitution of India read as under:

'Article 51A. It shall be the duty of every citizen of India-

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspire our national struggle for freedom;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious; linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;'

40. In its attempt to interpret a statute in the light of the constitutional scheme, this Court has time and again interpreted a statute particularly in the light thereof. [See A.I.I.M.S. Students Union v. A.I.I.M.S. and Ors.- : AIR 2001 SC3262].

41. The Universal Declaration of Human Rights, 1948 enumerates at least 27 broad rights including the right to life, freedom from slavery and forced labour. The Protection of Human Rights Act, 1993 defines Human Rights to mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in International Covenant on civil and political rights and International Covenant on Economic, Social and Cultural Rights which were adopted by the General Assembly of United Nations on 16.12.1966. The said Act was made by the Parliament 'having regard to the changing social realities and growing concern in India and brought about issues relating to Human Rights with a view to bring about greater accountability and transparency in enforcement of laws of the nation.'

42. Parts III and IV of the Constitution of India contain a large number of rights which guarantee human right, some of which are akin to the rights enumerated in International Treaties and Chapters. Article 11 of International Covenant in Economic, Social and Cultural Rights, 1966 reads thus:

'1. The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;'

43. This Court in Chameli Singh and Ors. v. State of U.P. and Anr. : AIR 1996 SC1051 referring to Article 11 of the International Covenant on Economic, Social and Cultural Rights, 1966 held that the State parties recognize 'the right to everyone to an adequate standard of living for himself and for his family including food, clothing, housing and to the continuous improvement of living conditions'. Indisputably, the State parties were to take appropriate steps to ensure realization of this thought.

44. Justice Holmes expressed the following view in Missouri v. Holland 252 US 416 (433):

'When we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realise that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realise or to hope that they had created an organism, it has taken a century and has cost their successors must sweat and blood to prove that they created a nation. The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago.'

45. Justice Frankfurter elucidated the interpretive role in 'Some Reflections on the Reading of Statutes':

'There are varying shades of compulsion for judges behind different words, differences that are due to the words themselves, their setting in a text, their setting in history. In short, judges are not unfettered glossators. They are under a

special duty not to overemphasize the episodic aspects of life and not to undervalue its organic processes- its continuities and relationships'

46. In Jagdish Saran and Ors. v. Union of India : [1980]2SCR831 , it is stated:

'Law, constitutional law, is not an omnipotent abstraction or distant idealization but a principled, yet pragmatic, value-laden and result-oriented, set of propositions applicable to and conditioned by a concrete stage of social development of the nation and aspirational imperatives of the people. India Today - that is the inarticulate major premise of our constitutional law and life.'

47. It is also well-settled that a statute should be interpreted in the light of the International Treaties and Conventions. In Chairman, Railway Board and Ors. v. Mrs. Chandrima Das and Ors. : 2000 CriLJ1473 this Court stated the law thus:-

'24. The International Covenants and Declarations as adopted by the United Nations have to be respected by all signatory States and the meaning given to the above words in those Declarations and Covenants have to be such as would help in effective implementation of those rights. The applicability of the Universal Declaration of Human Rights and the principles thereof may have to be read, if need be, into the domestic jurisprudence.'

48. In 'Human Rights and Indian Values' Justice M. Rama Jois noticed the Ancient Indian Texts in the following words:

SAMANI PRAPA SAHA VONNBHAGA

SAMANE YOKTRAY SAHA WO YUNISM

ARAH NABHIMIV ABHITE:

'All have equal rights in articles of food and water. The yoke of the chariot of life is placed equally on the shoulder of all. All should live together with armony supporting one another like the spokes of a wheel of the chariot connecting its rim and the hub. (Atharvanaveda-Samjnana Sukta)'.

Thus, the right to equality of all human beings has been declared in the Vedas, which are regarded as inviolable. In order to emphasize the dignity of the individual, it was said that all are brothers as all are the children of God. No one is inferior or superior. Similarly the Atharvanaveda stressed that all have equal right over natural resources and all were equally important like spokes in a wheel. Both the Rigveda and Atharvanaveda declared that co-operation between individuals in necessary for happiness and progress. It is also of utmost importance to note that right to equality and made a part of 'Dharma' long before the State came to be established.

It is equally interesting to refer to the contents of Articles 1 and 7 of the Universal Declaration of Human Rights (1948), which read:

'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.'

'All are equal before law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination'.

This declaration is similar to the declaration of equality made in the Rigveda.

After the establishment of the State, the obligation to protect the right to equality was cast on the Rulers. It was made a part of the Rules of Raja Dharma, the Constitution Law.

YATHA SWARIN BHUTANI DHARA DHARYATE SAMAM

TATHA SWARIN BHUTANI BIBHARTE PARTHIVM VARTAM

'Just as the mother earth gives equal support to all the living beings, a kind should give support to all without any discrimination' (Many IX 31).

This also meant that the kings were required to afford equal treatment to all the citizens in the same manner in which a mother treats all her children.'

49. Prof. Upendra Baxi in his book entitled 'The Future of Human Rights' stated:

The processes of globalization, thriving upon the heavily critiqued ideologies of developmentally and its eventual demise, seek to reproduce the soft state. That notion is, however, now reconstructed in several important ways. The 'progressive state' at least in, and for, the South, in now conceived not as a state in its internal relations with its own people but in relation to the global community of foreign investors. A progressive state is one that is a good host state for global capital. A progressive state is one that protects global capital against political instability and market failures. A progressive state is one that represents accountability not so much directly to its peoples, but to the World Bank and international Monetary Fund. A progressive state is one that instead of promoting world visions of a just international order learns the virtues of debt repayment on schedule. Finally, a progressive state is one that gleans conceptions of good governance neither from the histories of struggles against colonization and imperialism nor from its internal social and human rights movements but from the global institutional gurus of globalisation.

The Construction of 'progress' is animated by a post-Fukuyama world in which there is no Other to Capitalism, writ globally large. Of course, the contradictions between democracy and capitalism are once again, recognized, but these two are reconstructed, for example, as follows:

War against hunger gets transformed in the 1998 Rome Declaration on the Right to Food into the free market oriented state and international management of food security system;

The struggle against homelessness and for shelter, in the 1998 United Nations Social Summit at Istanbul, becomes a series of mandates for the construction industries and urban developers;

'Sustainable development', becomes an instrument of policy for the promotion and protection of corporate governance practices of 'greenwashing';

The UNDP inspired 'mainstreaming' of human rights 'mission' envisaging the raising of a billion dollars for the Global Sustainable Development Facility has already been subscribed to by way of seed money by some of the most egregious multinational enterprise corporate human rights offenders.'

50. In the 12 Misconceptions About the Right to Food (FIAN) it is inter alia stated:

'What does the Right to Food mean? Can the existence of this Right cause laziness among people? The Right to Food is about respecting, protecting and fulfilling access to food producing resources and work. Therefore, the Right to Food doesn't make people laxly but busy, enabling them to feed themselves.

Would the Right to Food be asking for too much from the government, and advocating for big government? The Right to Food in the context of Human Rights doesn't mean that the state is a super-entrepreneur determining and carrying out economic activities according to its own wisdom. It means the Right to Feed Oneself, which emphasizes dignity and self-reliance, very different from command economics of big government.

Does the Right to Food require a moral revolution of society, allowing human rights to become the foundation of interpersonal ethics? The Right to Food does require a moral revolution. However, this moral revolution does the concern interpersonal ethics, but the duty to operationalize the state's obligations under Economic and Social Human Rights.

Is hunger a violation of Human Rights? Lack of access to food can have many reason. If the state fails to respect, protect or fulfill this access, unless for lack of resources in a society, this must be termed a violation of the human right to food. Very often, the obligations of states vis-a-vis the vulnerable groups and persons are obvious and so is the availability of resources in society.

Is the Right to Food about good governance? Good governance is negotiable, Human Rights are not. The central concept for Human Rights is the concept of 'violation', referring to the suppression of vulnerable groups and individuals, whereas the concepts of good governance all too often deal with political theory

and statistical indicators. If a country has the resources, but people get marginalized or continue in deprivation, this is not bad government, but oppression, international or not.

Is the Right to Food realized if nobody is hungry anymore? Not necessarily. The Right to Food not only means that hunger and malnutrition are eradicated, but that future malnutrition can be eradicated by court action or other comparable mechanisms holding the state accountable on its obligations under the Right to Food.'

51. In Kishen Pattnayak and Anr. v. State of Orissa : [1989]1SCR57 , a Division Bench of this Court while considering poverty and starvation deaths in drought prone districts of Kalahandi and Koraput in the State of Orissa having regard to the report of the District Judge of kalahandi noticed that Natural Calamities Committee had been constituted at the districts level of Kalahandi and Koraput directed the Government of Orissa to recommend at least five persons belonging to the recognized voluntary organizations like Sarvodaya Gandhi Peace Foundation, Ramakrishna Mission, Bharat Sewa Sangha and registered voluntary agencies as members of the said Natural Calamities Committee. This Court monitored for a long time the measures taken by the State for the purpose of mitigating hunger, poverty, starvation deaths etc. of the people of Kalahandi and Koraput. It opined that if such measures are taken, there can be no doubt that it will alleviate to a great extent the miseries of the people of Kalahandi. It was directed:

'...The Natural Calamities Committee shall also keep a watch over the working of the social welfare measures which are being taken and may be taken in future. Shri Pattnayak also does not dispute that if such measures are continued to be taken, it will be a great relief to the people of Kalahandi and Koraput. We hope and trust that in view of the prompt action that has been taken by the government, soon the miseries of the people of these two districts will be over.'

52. Yet again in M/s. Shantistar Builders v. Narayan Khimalal Totame and Ors. : AIR 1990 SC630 , this Court observed:-

'Basic needs of man have traditionally been accepted to be three - food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in....'

53. This Court upheld the right to shelter in P.G. Gupta v. State of Gujarat and Ors. : 1995(1)SCALE653 , Chameli Singh (supra) and Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan and Ors. : AIR 1997 SC152 .

54. In Chameli Singh's case (supra), this Court held:

'In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society....'

55. It proceeded to held:

'Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organized civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy.

The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being...

56. The term 'life' used in Article 21 of the Constitution of India has a wide and far reaching concept. It includes livelihood and so many other facets thereof. 'Life', as observed by Field, J. in Munn v. Illinois (1877) 94 US 113 means something more than mere animal existence and the inhibition against the deprivation of life

extends to all those limits and faculties by which life is enjoyed. [See Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and Ors. - : (1983)ILLJ1SC and Olga Tellis and Others v. Bombay Municipal Corporation and Ors. - : AIR 1986 SC180].

57. In Nadkarni's case (supra), this Court was dealing with the right of workman.

58. Expansion of the right to life and personal liberty under Article 21 of the Constitution has been made by implicating:

(i) Right to travel - Maneka Gandhi v. Union of India : [1978]2SCR621 ; Satwant Singh v. A.P.O., New Delhi : [1967]3SCR525 .

(ii) Right to privacy - Kharak Singh v. State of U.P., : 1963 CriLJ329 ; Sharda v. Dharampal : [2003]3SCR106 .

(iii) Right to speedy trial - Common Cause, a Registered Society v. Union of India : 1997 CriLJ195 .

(iv) Right to prisoners to interview - Prabha Dutt v. Union of India, : 1982 CriLJ148 .

(v) Right to a fair trial - Police Commissioner, Delhi v. Registrar, Delhi High Court : 1997 CriLJ90 .

(vi) Right against torture and custodial violence - D.K. Basu v. State of West Bengal : 1997 CriLJ743 .

(vii) Right to free legal aid - State of Maharashtra v. M.P. Vashi : AIR 1996 SC1 .

(viii) Right to primary education - Unnikrishnan v. State of A.P. : [1993]1SCR594 ; T.M.A. Pai Foundation v. State of Karnataka : (2002)8SCC481a .

(ix) Right to health and medical care - CERC v. Union of India : (1995)IILLJ768SC ; State of Punjab v. M.S. Chawla [AIR 1997 SCC 125]

(x) Right to pollution-free environment - M.C. Mehta v. Union of India : [1986]1SCR312 .

(xi) Right to Safe drinking water - APPCB v. M.V. Naidu AIR 1999 SC 822

(xii) Sexual harassment of working women - Visakha v. State of Rajasthan : AIR 1997 SC3011 ; AEPC v. A.K. Chopra : (1999)ILLJ962SC .

(xiii) Right to a quality life (SIC) Lal Tiwari v. Kamala Devi and Ors. : AIR 2001 SC3215 .

(xiv) Right to Family Pension - S.K. Mastan Bee v. General Manager South Central Railway : (2003)ILLJ561SC .

59. While dealing with the right of the workmen, again this Court in People's. Union for Democratic Rights and Ors. v. Union of India and Ors. : (1982)IILLJ454SC and in State of Gujarat v. Hon'ble High Court of Gujarat : 1998 CriLJ4561 held that constitutional provisions must be so interpreted so as to advance its socio economic objectives. In no uncertain terms, this Court held that exaction of labour and services against payment of less than the minimum wages amounts to forced labour within the meaning of Article 23 of the Constitution of India.

60. Explaining the rights of a citizen under Article 21 of the Constitution of India, this Court in S.M.D. Kiran Pasha v. Government of Andhra Pradesh and Ors. : (1990)1SCC328 observed that Article 226 of the Constitution of India would be maintainable also when a right is threatened as contra distinguished from the right when infringed. This Court held:

'In the language of Kelsen the right of an individual is either a mere reflex right - the reflex of a legal obligation existing towards this individual; or a private right in the technical sense - the legal power bestowed upon an individual to bring about by legal action the enforcement of the fulfilment of an obligation existing towards him, that is, the legal power. From the above analysis it is clear that in the instant case the appellant's fundamental right to liberty is the reflex of a legal obligation of the rest of the society, including the State, and it is the appellant's legal power bestowed upon him to bring about by a legal action the enforcement of the fulfilment of that obligation existing towards him. Denial of the legal action would, therefore, amount to denial of his right of enforcement of his right to liberty....'

61. It is also well-settled that interpretation of the Constitution of India or statutes would change from time to time. Being a living organ, it is ongoing and with the passage of time, law must change. New rights may have to be found out within the constitutional scheme. Horizons of constitutional law are expanding. The necessity to take recourse to such interpretative changes has recently found favour with a Division Bench of this Court in The State of Maharashtra v. Dr. Praful B. Desai : 2003 CriLJ2033 :

'13. One needs to set out the approach which a court must adopt in deciding such questions. It must be remembered that the first duty of the court is to do justice. As has been held by this Court in the case of Sri Krishna Gobe v. State of Maharashtra : 1973 CriLJ235 courts must endeavour to find the truth. It has been held that there would be failure of justice not only by an unjust conviction but also by acquittal of the guilty for unjustified failure to produce available evidence. Of course the rights of the accused have to be kept in mind and safeguarded, but they should not be over emphasized to the extent of forgetting that the victims also have rights.

14. It must also be remembered that the Criminal Procedure Code is an ongoing statute. The principles of interpreting an ongoing statute have been very succinctly set out by the leading jurist Francis Bennion in his commentaries titled 'Statutory Interpretation', 2nd Edition page 617:

'It is presumed the Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wordings to allow for changes since the Act was initially framed. While it remains law, it has to be treated as always speaking. This means that in its application on any day, the language of the Act though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as a current law...

In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the original intention. Accordingly, the interpreter is to make allowances for any relevant changes that have occurred since the Act's passing, in law, in social conditions, technology, the meaning of words and other matters.....

That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal development. The drafter will foresee the future and allow for it in the wording.

An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials.'

15. At this stage the words of Justice Bhagwati in the case of National Textile Workers' Union v. P.R. Ramakrishnan : (1983)ILLJ45SC , need to be set out. They are: 'We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still : it must change with the changing social concepts and values. If the bark that protects the tree fails to grow and expand along with the tree, it will either choke the tree or if it is a living tree, it will shed that bark and grow a new living bark for itself. Similarly, if the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the move adapting itself to the fast changing society and not lag behind.'

62. The liability of the shareholders or even a third party in a given case would depend upon the nature of the situation and the extent of the statute covering the same. Participation in the functioning of a company has led to and independent liability by the secured creditors under the Comprehensive Environment Response Compensation and Liability Act, if its involvement with the management of the facility is sufficiently broad to support the inference that it could affect hazardous waste disposal decisions; although it was not currently an owner or operation of the facility within the meaning thereof in United States v. Fleet Factors Corporation [20 ELR 20832 : (1990) 901 F 2d 1550. Thus a liability can be fastened both upon

the owner as also the operator of the company under certain situations.

63. The right to development in the developing countries is itself a human right. The same has been made a part of WTO and GATT. In 'The World Trade Organisation. Law, Practice, and Policy (Oxford) by Matusushita Schoenbaum and Mauroidis at page 389, it is stated :

'The United Nations has proclaimed the existence of a human right to development. This right refers not only to economic growth but also to human welfare, including health, education, employment, social security, and a wide-range of other human needs. This human right to development is vaguely defined as a so-called third-generation human right that cannot be implemented in the same way as civil and political human rights. Rather, it is the obligation of states and intergovernmental organizations to work within the scope of their authority to combat poverty and misery in disadvantaged countries.

[Emphasis supplied]

64. The matter may be considered from another angel. While the State expects the industrial houses and multi-national companies to take such measures which would provide a decent life to the persons living in the society in general and to their employees in particular and in that premise it is too much to ask the State to practise what it preaches? This gives rise to another question. Can the State be so insensitive to the plight of its own citizens in general and the employee of the public sector undertakings in particular?

65. The court in a situation of this nature is obligated to issue necessary directions to mitigate the extreme hardship of the employees involving violation of human rights os the citizens of India at the hands of the State of Bihar and the government companies and corporations fully owned or controlled by it. A right to carry on business is subject to compliance of constitutional obligations as also provided for in the Constitution.

66. Financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental right arises. This Court has been

highlighting this aspect in the matters concerning fundamental rights and maintenance of ecology. [See Rural Litigation and Entitlement Kendra and Ors. v. State of Uttar Pradesh and Ors. - : [1987]1SCR641 , Municipal Council, Ratlam - : 1980 CriLJ1075 and B.L. Wadhera v. Union of India - : [1996]3SCR80]. In All India Iman Organization and Ors. v. Union of India and Ors. : [1993]3SCR742 , this Court held:

'6....Much was argued on behalf of the Union and the Wakf Boards that their financial position was not such that they can meet the obligations of paying the Imams as they are being paid in the State of Punjab. It was also urged that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any correlation between the two. Financial difficulties of the institution cannot be above fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which is created.'

[Emphasis supplied]

67. In State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees and Ors. : (1995)4SCC507 . it was opined:

'16. The constitutional mandate to the State, as upheld by this Court in Unni Krishnan case - to provide free education to the children up to the age of fourteen - cannot be permitted to be circumvented on the ground of lack of economic capacity or financial incapacity.'

68. However, before we issue any direction, we may state that by no stretch of imagination, the liability of the State of Bihar can be shifted to the Union of India. Only because the Union of India allegedly is repository of funds raised by it through Central excise and other levies and impost, the same by itself would not mean that it is indirectly or vicariously liable for the failings on the part of the State Public Sector Undertakings. Either precedentially or jurisprudentially the Union of

India cannot be held liable and no such direction can be issued as has been submitted by Mr. Shanti Bhushan.

69. The investments made by the State in the public sector undertakings in pursuit of social justice is from public account. It is in this behalf accountable to the public through the legislature. If the State or the State agencies have failed to perform their duties, it cannot under the wrap of financial stringency seek to shift its liability to the Union of India or to the State of Jharkhand.

70. The matter might have been different, had such financial assistance was required by the State due to a natural calamity or cause beyond its control.

71. The State must thank itself for having placed itself in such a state of affairs. If at an appropriate stage, having regard to its right of deep and pervasive control over the Public Sector Undertakings it had properly supervised the functioning of the Government Companies and take necessary steps to refer the sick companies to BIFR in terms of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, the position might have been different. It even failed to take any positive action even after coming to know the starvation deaths and immense human sufferings.

72. The States of India are welfare States. They having regard to the constitutional provisions adumbrated in the Constitution of India and in particular Part IV thereof laying down the Directive Principles of the State Policy and part IVA laying down the Fundamental Duties are bound to preserve the practice to maintain the human dignity.

73. We are of the opinion that the State thus, has made itself liable to mitigate the sufferings of the employees of the public sector undertakings or the government companies.

74. While passing an interim order, however, it is our duty to take into consideration the immediate hardship which may be faced by the State of Bihar having regard to the alleged financial stringency.

75. We, however, hasten to add that we do not intend to lay down a law, as at present advised that the State is directly or vicariously liable to pay salaries/remunerations of the employees of the public sector undertakings or the Government companies in all situations. We, as explained hereinbefore, only say that the State cannot escape its liability when a human rights problem of such magnitude involving the starvation deaths and/or suicide by the employees has taken place by reason of non-payment of salary to the employees of Public Sector Undertaking for such a long time. We are not issuing any direction as against the State of Jharkhand as no step had admittedly been taken by the Central Government in terms of Section 65 of the State Reorganisation Act and furthermore as only four public sector undertakings have been transferred to the State of Jharkhand in respect whereof the petitioner does not make any grievance.

76. In the peculiar fact and circumstance of this case in our opinion, interest of justice shall be met, if the following interim directions are issued for the present:

1. The High Court may strive to dispose of all liquidation proceedings in respect of the Government companies owned and controlled by the State of Bihar as expeditiously as possible. For the said purpose and/or purposes ancillary to or incidental therewith, it may pass an interim order and/or orders by way of sale and/or disposal of the properties belonging to such public sector undertaking and/or Government companies or to take such measure or measures as it may deem fit and proper.

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

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

4. The State for the present shall deposit a sum of Rs. 50 crores before the High Court for disbursement of salaries to the employees of the corporations. The amount of Rs. 50 crores be deposited in two instalments. Half of the amount shall be payable within one month and the balance amount within a month thereafter. The High Court shall see to it that the sum so deposited and/or otherwise received from any source including by way of sale of assets of the Government Companies/Public Sector Undertakings be paid proportionately to the concerned employee wherefor, the parties may file their claims before it.

5. The High Court, however, in its discretion may direct disbursement of some funds to the needy employees, on ad hoc basis so as to enable them to sustain themselves for the time being.

6. The rights of the workmen shall be considered in terms of Section 529A of the Companies Act.

7. The Central Government is hereby directed to take a decision as regards division of assets and liabilities of the Government companies/public sector undertakings in terms of the provisions of the State Reorganisation Act, 2000.

8. The State of Jharkhand is hereby impleaded as a respondent. Let notice be issued to the newly added respondent.

77. This order shall be subject to any order that may be passed subsequently or finally.

78. Let the matter be placed again after six months.

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