

CASE NO.:
Appeal (civil) 9294 1995

PETITIONER:
M/S. BALLARPUR INDUSTRIES LTD.

Vs.

RESPONDENT:
STATE OF ORISSA & ORS.

DATE OF JUDGMENT: 28/11/2000

BENCH:
S.R.Babu, S.N.Variava

JUDGMENT:

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J U D G M E N T

S. N. VARIAVA, J.

This Appeal is against a Judgment dated 7th April, 1995, by which the Appellant has been directed to pay arrears of salary of the 4th Respondent for the period from 15.12.1981 to 2.8.1989. Briefly stated the facts are as follows: The 4th Respondent was working as a Chief Welfare Officer under the 3rd Respondent Corporation. His services were terminated by an order dated 15th December, 1981. The 4th Respondent preferred an appeal to the State Government invoking its jurisdiction under the third Proviso to Rule 6(iv) of the Orissa Welfare Officers (Recruitment and conditions of Service) Rules, 1970. After hearing parties the State Government set aside the order of termination and directed reinstatement of Respondent No. 4. The 3rd Respondent Corporation then insisted that reinstatement could be given effect to with effect from the date of the appellate order and not from the date of order of termination. The 4th Respondent then filed a writ petition in the High Court of Orissa. The High Court directed that the 4th Respondent was to be allowed to continue in the post of Chief Welfare Officer forthwith. The 4th Respondent, therefore, joined the service again on 26th July, 1989. The 4th Respondent was still not paid his arrears of salary as the 3rd Respondent had been declared sick under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. Therefore, the arrears could not be paid until the BIFR took a decision in the matter. The BIFR sanctioned a Scheme on 21st December, 1990. Under this Scheme Mill No.3 i.e. the Mill where Respondent No. 4 was working, was purchased by the State of Orissa. Respondent No. 3 then intimated the 4th Respondent that the State of Orissa, after the purchase of Mill No. 3, had sold it to the Appellants. The 4th Respondent was informed that all liabilities would now be met by the Appellants. When the 4th Respondent approached the Appellants for payment of his dues, the Appellants claimed that they had not taken over the liability to pay his dues and refused to pay the amount. The 4th Respondent, therefore, filed a Writ Petition before

the High Court at Orissa that the Appellant be directed to pay his dues. During the pendency of this Writ Petition the 4th Respondent attained the age of superannuation on 13th April, 1992. Therefore, the only relief that was surviving was payment of arrears from the date of termination on 15th December, 1981 till superannuation on 13th April, 1992. In the Writ Petition the State of Orissa contended that the Appellants having taken over all liabilities in terms of an MOU dated 20th April, 1991 had to pay the dues of the 4th Respondent. The High Court by the impugned judgment has directed the Appellant to pay dues as set out herein above. The only question contended before us is that it is not the Appellants but the State of Orissa which is liable to pay the dues of the 4th Respondent. On the other hand on behalf of the State of Orissa it has been contended that the Appellants are liable to pay the amount. In order to determine who is liable to pay the arrears of salary of the 4th Respondent one has to look at the Scheme, which has been sanctioned by BIFR, and the correspondence and MOU between the Appellants and the State of Orissa. Under the Scheme which has been sanctioned by BIFR on 21st December, 1990, it is provided as follows : "Mill No. 3

Mill No. 3 would be sold to the Orissa Government. There are certain liabilities, which relate to mill no. 3 such as Rs. 240 lakhs as working capital advance and Rs. 100 lakhs as interest on the working capital advance, and certain State and Central Government dues. While all the State and Central Government dues would be paid by the Orissa State Government after the rehabilitation period and the interest on working capital advance is being written off as a part of the revival of TPM, the working capital advance of Rs. 240 lakhs and labour dues of Rs. 160 lakhs would be paid by the Orissa State Government. An amount of Rs. 6 crores would be the sale price of Mill No. 3 payable within 30 days by the State Government to TPM for meeting the dues of labour being retrenched in respect of Mill No. 2.

Pending litigations relating to Mill No. 3 before different courts and authorities will be taken over and pursued by the State Government purchasing the Mill. The Orissa Government will also take over all liabilities due to the State Government and the Central Excise duty payable in respect of Mill No. 3.

Corporate Offices/Branch and Sales Offices

i. Employees of Corporate, Branch and Sales Offices who have been on duty after 3.11.85 will be paid their arrears dues upto the date of sanction of the scheme;

ii. Those who have reached superannuation dates before the date of sanction of the scheme, will get their normal retirement benefits for which they are entitled to;

iii. About 90 employees of these offices other than those who have reached superannuation will stand retrenched with effect from the date of sanction of the scheme. They will be entitled to due compensation, and funds have been provided for this purpose."

Thus it is clear that under the Scheme it was the State of Orissa who was to pay the arrears due to employees of the Corporate Branch and Sales Offices upto the date of sanction of the Scheme i.e. upto 21st December, 1990. The

correspondence between the Appellants and the State of Orissa consists of letters dated 5th March, 1991, 13th March, 1991 and 16th March, 1991. Under the letters dated 5th March, 1991 and 13th March, 1991, the Appellants offer to purchase Mill No. 3 on the terms and conditions mentioned in the letters. The State of Orissa by the letter dated 16th March, 1991 accepts those terms and conditions. These terms and conditions are then incorporated in an MOU, which is signed between the parties on 20th April, 1991. The relevant clauses of the MOU are clauses (1), (2) and (3), which reads as follows : "1. That the State Government hereby agrees to transfer the assets of TPM-3 situated at Choudwar, Distt. Cuttack, State of Orissa in favour of BILT for a total sum of Rs. 12,00,00,000/- (Rupees twelve crores only) alongwith all other/deferred liabilities as detailed in Clause 3 of this MOU hereinafter, so as to discharge the liability of TPM-3, Bank's working capital dues, workers' dues as per the award of BIFR and the pending dues of the State and Central Government.

i. The BILT shall pay Rs. 6,00,00,000/- (Rupees six crores only) within 7 (seven) days from the date of signing of this MOU as advance towards and being the part payment of total sum agreed as above.

ii. The BILT shall pay the balance amount of Rs. 6 Crores after it receives the requisite permission under the MRTTP Act for the acquisition of the assets of the said TPM-3 from the concerned Authority duly constituted under the said Act and the State Government hereby assures that it will provide its good offices to BILT and will endeavour so that BILT's application to obtain requisite approval under the MRTTP Act for acquiring the assets of TPM-3 is expeditiously granted.

2. That the award dated 21.12.1990 passed by the BIFR has provided that an amount of Rs. 1.6 Crores is to be paid to the workman of TPM-3 for the period till January 31, 1989 and whereas in accordance with the letter No.7956/I-IX-HI-28/91 dated the 21st March, 1991 issued by the State Government BILT has started the process of direct negotiations with the workman of TPM-3 for a settlement in respect of their claims and wages for the period after January 31, 1989, the parties hereto hereby declare that it is their intention and objective that a just and fair settlement should be reached with the workmen thereby covering all the issues pertaining to the terms of employment of workmen for the period commencing on and from the 1st February, 1989 till the date of revival of TPM-3. It is also agreed by the State Government that it will issue appropriate directions to the Labour Deptt. To assist and extend full cooperation to BILT enabling them to arrive at a peaceful and amicable settlement.

3. That the award of the BIFR being Annexure -I on pages 5 and 10 thereof has spelt out the amount of consideration payable for the assets and to meet the liabilities of TPM-3 and in accordance with which the parties hereto hereby mutually agree that the liabilities of the TPM have to be discharged as under :-

Description	Amount	a. The sale price of TPM-3	Rs. 6@@
		IIIIII	
Crores	b. Working capital advance being payable	Rs. 2.40	

Crores to the banks.@@
JJJJJJJJJJJJ

c. Dues payable to the State Government Rs. 7 Crores and the Central Government. This amount has not been quantified but is estimated to be in the region of Rs. 7 Crores.

d. Dues payable to the workmen for the Rs. 1.60 Crores period upto 31.1.1989.@@
JJJJJJJJJJJJJJJJJJJJ

e. Dues payable as a consequence of certain proceedings/litigations relating to TPM-3 pending before different Courts/Authorities. This amount has Yet not been estimated.

f. To reimburse the amount of Capital Gains Tax if any arising as a result of sale of TPM-3. In the absence of any adjudication order as may be passed hereafter by the concerned Income Tax Authority, the liability under this head is not capable of being quantified/estimated and as such is undertaken to be payable in toto in principle.

However, the dues in respect of the claims and wages of the workmen of TPM-3 for the period subsequent to 31.1.1989 will be determined by direct negotiations with the workmen and such liability is undertaken in principle to be paid by BILT accordingly. Further, in accordance with the terms of the said award and the terms as contained in the Letter of Acceptance No. 7006/I-IX-III-28/91 dated 16.3.1991 issued by the State Government to BILT, BILT shall pay the balance dues of the State Government, if any, free of interest to the State Government and Central Excise dues to the Central Government free of interest after the expiry of 10 (ten) years from the date of commencement of production by BILT at the said TPM-3. Further, it is made absolutely clear that the total consideration of Rs. 12 Crores mentioned in Clause No. 1 above, is included in the break up shown in clause No. 3 above, which represents the total estimated liability of BILT."

Clause 10 is also relevant. It reads as follows ;
"That the State Government hereby clarifies that save and except the liabilities as are mentioned in the letter dated 5.3.91 (vide Annexure - IV) and letter dated 13.3.1991 (vide Annexure - V) addressed by BILT to the State Government, no other liability shall accrue to BILT as a consequence of its purchasing the said TPM-3."

Thus it is only the liabilities which are mentioned in the letters dated 5th March, 1991 and 13th March, 1991 and the liabilities mentioned in clause (3), which are to be borne by the Appellant. All other liabilities remain to be discharged by the State of Orissa. Liabilities mentioned in clause (3) of the MOU are those agreed to be taken by the Appellants in the letters dated 5th March, 1991 and 13th March, 1991. Reading of clauses (1) and (3) shows that the liability to make payment to the 4th Respondent has not been passed on to or taken over by the Appellants. It was sought to be suggested that under the letter dated 5th March, 1991, the Appellants were to pay all dues of the workers upto December 1998. It was submitted that the term "worker" would also include the 4th Respondent though he was not a workman. We are unable to accept this submission. Even in

the letter of 5th March, 1991, it is clarified that the dues of the workmen are to the extent of Rs. 1.60 Crores. This liability of Rs. 1.60 Crores is the same as had been set out in the Scheme as being labour dues of Rs. 160 lakhs. This liability is the same as that provided in clause 3(ii) of the MOU. It could not be disputed that Appellants have paid this sum of Rs. 1.60 Crores to the Workmen. The claim of Respondent No. 4 is in addition to and over and above the claim of the Workmen in the sum of Rs. 1.60 crores. The liability of the arrears of salary payable to the 4th Respondent was not taken over by the Appellants even though under the Scheme the State of Orissa had taken over the liability to pay all dues of the employees upto the date of the sanction of the Scheme. Thus dues of employees upto December 1990 were payable by the State of Orissa. This would include arrears of salary payable to the 4th Respondent. In this view of the matter the High Court was wrong in directing the Appellants to pay this amount. To that extent the order of the High Court is required to be and is set aside. It is clarified that the amounts due to the 4th Respondent are payable by the State of Orissa. At this stage it must be mentioned that there was a dispute as to whether the 4th Respondent continued to discharge his duty after 2nd August, 1989. As this was a disputed question of fact the High Court only directed payment of arrears for the period from 15.12.1981 till 2.8.1989. We see no reason to vary that portion of the judgment of the High Court. The arrears of salary which will be payable by the State of Orissa to the 4th Respondent will only be for the period from 15.12.1981 till 2.8.1989. The same must be paid as expeditiously as possible. The Appeal stands disposed of accordingly. There will be no order as to costs.