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M/S BALLARPUR INDUSTRIES LTD.

v.

STATE OF ORISSA AND ORS.

NOVEMBER 28, 2000

B

[S. RAJENDRA BABU AND S.N. VARIAVA, JJ.]

Service Law:

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Backwages—Employee terminated and reinstated—Liability to pay arrears of salary—Whether by company which has taken over the sick State mill or by State—Held, on facts, the State is liable to pay the arrears.

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The services of employee-respondent, working as Chief Welfare Officer with Respondent-Corporation, was terminated by an order dated 15.12.1981.

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The respondent appealed before the State Government as per the Rules. The State Government set aside the order of termination and directed reinstatement of the respondent. The Corporation insisted that the reinstatement of the respondent could be done only prospectively from the date of the appellate order and not retrospectively from the date of order of termination. The respondent filed a Writ Petition before the High Court. The High Court directed that the respondent should be allowed to continue in the post of Chief Welfare Officer forthwith. The respondent joined the service again on 26.7.1989. He was not paid his arrears of salary as the Corporation, by then, had been declared sick under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. The arrears of salary could be paid only with the decision of BIFR. BIFR sanctioned a Scheme on 21.12.1990.

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Under this Scheme, the mill, where the respondent was working, had been purchased by the State and sold to the Appellant. When the respondent approached the Appellant for arrears of salary, the Appellant refused payment as the liability was not taken over by the Appellant. The respondent filed a Writ Petition before the High Court for direction of payment of arrears of salary by the Appellant. During the pendency of this Writ Petition the respondent retired on 13.4.1992. High Court directed the Appellant to pay the dues to the respondent from 15.12.1981 till 2.8.1989. Hence this appeal.

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The Appellant contended that the State is liable to pay the dues to the respondent as per the MOU entered into by the Appellant with the State. The

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State, on the other hand, contended that as per the correspondences, MOU and the Scheme of BIFR, the Appellant has to pay all dues of the workers upto December 1998, which includes the respondent also. A

Disposing the appeal, the Court

HELD: 1.1 From the Scheme of BIFR and correspondences and the MOU between the State and the Appellant, the liability of the arrears of salary payable to the respondent was not taken over by the Appellant 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 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. [129-C] B C

1.2. It is clarified that the amounts due to the respondent are payable by the State of Orissa. It must be mentioned that there was a dispute as to whether the 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. There is 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 respondent will only be for the period from 15.12.1981 till 2.8.1989. The same must be paid as expeditiously as possible. [129-D-E] D E

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9294 of 1995.

From the Judgment and Order dated 7.4.95 of the Orissa High Court in O.J.C. No. 2736 of 1992. F

N. Sahni, Rajesh Malhotra and D.K. Malhotra for the Appellant.

V.A. Mohta, Sobhesh Roy, Advocate General Orissa, R.S. Jena, P.N. Gupta and Pravir Choudhary for the Respondents. G

The Judgment of the Court was delivered by

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. H

A 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.

H 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. A
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 B
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 C
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 D
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 E
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 F
payable in respect of Mill No. 3.

Corporate Offices/Branch and Sales Offices

(i) Employees of Corporate, Branch and Sales Offices who have been G
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 H

A 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.”

B 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.

C 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 :

D “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

E working capital dues, workers’ dues as per the award of BIFR and the pending dues of the State and Central Government.

F (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.

G (ii) The BILT shall pay the balance amount of Rs. 6 Crores after it receives the requisite permission under the MRTP 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 MRTP Act for acquiring the assets of TPM-3 is expeditiously granted.

H 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 :-

<i>Description</i>	<i>Amount</i>	
(a) The sale price of TPM-3	Rs. 6 Crores	E
(b) Working capital advance being payable to the banks.	Rs. 2.40 Crores	
(c) Dues payable to the State Government and the Central Government. This amount has not been quantified but is estimated to be in the region of Rs. 7 Crores.	Rs. 7 Crores	F
(d) Dues payable to the workmen for the period upto 31.1.1989.	Rs. 1.60 Crores	
(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.		G
(f) To reimburse the amount of Capital Gains Tax if any arising as a result of sale of TPM-		H

A 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.

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C 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.”

E Clause 10 is also relevant. It reads as follows;

F “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.”

G 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 St 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.

H 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. A
 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 B
 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 C
 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 D
 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 E
 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. F

B.S.

Appeal disposed of.