

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

THE HON'BLE THE CHIEF JUSTICE Mr. RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE JUSTICE Mr. ALOK KUMAR VERMA

**WRIT PETITION (PIL) NO. 82 OF 2019**

**26<sup>TH</sup> JUNE, 2021**

**BETWEEN:**

Uttarakhand Roadways Karamchari Union and another.

.....Petitioners.

and

State of Uttarakhand and others.

....Respondents

Counsel for the petitioners: Mr. M.C. Pant, Advocate.

Counsel for the respondents: Mr. S.N. Babulkar, learned Advocate General with Mr. C.S. Rawat, learned Chief Standing Counsel for the State of Uttarakhand.

Mr. Gopal K. Verma, learned Additional Chief Standing Counsel for the State of U.P.

**The Court made the following:**

**JUDGMENT:** (per Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan)

In pursuance of the order dated 25.06.2021, Mr. Om Prakash, the learned Chief Secretary, Mr. Amit Negi, the learned Finance Secretary, Dr. Ranjit Kumar Sinha, the learned Transport Secretary, and Mr. Abhishek Rohila, the learned Managing Director, Uttarakhand Transport Corporation, are present in the virtual Court through video conferencing.

2. Mr. Om Prakash informs this Court that by G.O. No. 53 and G.O. No. 54, both dated 25.06.2021, the Government has already released Rs. 23.00 crores in favour of the Corporation as compensation for "the hill loss".

3. Dr. Ranjit Kumar Sinha informs this Court that he was appointed as a Secretary, Transport, on 06.03.2021. Ever since then, he has been discussing the financial crisis, which has enveloped the Corporation. On 16.04.2021, the Department had received a proposal for seeking a soft loan of Rs. 20.00 crores from the Transport Corporation. According to him, the proposal is still under consideration by the Government. Only recently, they have received a re-payment schedule for the said soft loan from the Transport Corporation.

4. Moreover, he informs his Court that there is arrears of salary / wages to be paid to the employees of the Corporation for the last four months. Since the monthly expenditure of salary and wages is approximately Rs. 17.00 crores, the arrears of salary for the last four months is about Rs. 68.00 crores.

5. He further informs this Court that a proposal is about to be prepared by the Transport Department with regard to revamping and resurrecting the Corporation. According to him, the proposal will deal with the following three aspects: -

- (A) How to tie over the present financial crisis?
- (B) How to improve the performance of the Corporation so that it becomes a profit earning instead of loss facing Corporation?
- (C) To strategise what needs to be done with the future of the Corporation.

6. According to him, it is for the Cabinet to decide as to how much amount should be shelled out to the Corporation to extricate the Corporation from its financial crisis.

7. Mr. Amit Negi, the learned Finance Secretary, informs this Court that the State has already suffered a financial loss of Rs. 1000 to 1200 crores. Therefore, the State is, presently, financially constrained. According to him, although the State does not have the amount in cash, but it does have a contingency budget of Rs. 500.00 crores. However, the said budget is detected from the Annual Budget of the State. Moreover, since Rs. 500.00 crores in the contingency budget cannot be given to a single Corporation, as the interest of the other Department and the Corporation have to be kept in mind necessarily, it is for the Cabinet to decide as to how much funds can be disbursed to the Corporation out of the contingency budget.

8. Mr. Om Prakash informs this Court that the Cabinet is likely to be convened within fifteen days. Therefore, the

issue regarding the financially critical position of the Corporation, and the issue with regard to the payment of arrears of salary and wages to the Corporation's employees would, at best, be resolved within fifteen days. Moreover, according to him, since the Government has already released Rs. 23.00 crores on 25.06.2021, a temporary relief can be given to the employees in the coming few weeks.

9. Mr. S.N. Babulkar, the learned Advocate General appearing for the State, submits that the contention of the learned counsel for the petitioners, that right to livelihood is included in right to life under Article 21 of the Constitution of India, is highly misplaced contention. For, in none of the cases decided by the Hon'ble Supreme Court has the Apex Court even held that right to life includes the right to livelihood.

10. Secondly, the Court would not be justified in saddling the State with financial liability far beyond its financial means. In order to buttress this plea, the learned Advocate General has relied on the case of ***State of Punjab & others vs. Ram Lubhaya Bagga & others, [(1998) 4 SCC 117]***.

11. Heard Mr. Om Prakash, the learned Chief Secretary, Government of Uttarakhand, Mr. Amit Negi, the learned Finance Secretary, Dr. Ranjit Kumar Sinha, the learned Transport Secretary and Mr. Abhishek Rohila, the

learned Managing Director, Uttarakhand Transport Corporation.

12. Under the Constitution of India, Article 21 guarantees the fundamental right to life. As interpreted by the Hon'ble Supreme Court, the right to life includes the right to livelihood, besides many other rights, such as right to food, right to shelter, and right to personal development. Moreover, Article 23 of the Constitution of India categorically and absolutely prohibits forced labour. In fact, forced labour is a punishable offense.

13. Furthermore, under Article 39(e) of the Constitution of India, it is the constitutional duty of the State to preserve and protect the health and strength of workers, men and women, and of children.

14. Under Article 39(f) of the Constitution of India, it is the duty of the State to ensure that children are given opportunities and facilities to develop in a healthy manner, and to protect their freedom and dignity in the childhood.

15. Article 43 of the Constitution of India, on the other hand, directs the State to endeavour to secure "a living wage for the workers". It shall ensure that the condition of the work is upto a decent standard, and provide a decent standard of life and full enjoyment of leisure. Therefore, while dealing with the employees of the Corporation, the State is

duty bound to keep these provisions of the Constitution in mind.

16. In the case of **Kapila Hingorani vs. State of Bihar [(2003) 6 SCC 1]**, the Hon'ble Supreme Court was seized with an identical issue, as has been raised in the present case, namely in a situation when the employees of the Roadways and other Corporations are not being paid their wages / salaries, whether it is the duty of the State to step-in, and to ensure that the employees are duly paid their wages and salaries or not? Or whether it is the duty of the Corporation to pay wages and salaries of its employees?

17. In the said case, the Roadways' employees of the State of Bihar were denied their wages for many months. In other Corporations, run by the State, the employees were equally denied their wages for many months. It had created a crisis for the employees, where many employees had, in fact, committed suicide. For, they were unable to cope-up with the financial crisis being faced by their families.

18. The Hon'ble Supreme Court, in the said case, opined as under: -

*"Having regard to the deep and pervasive control, the State 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. In relation to the statutory authority, the State had also the requisite power to issue necessary directions which were binding upon them.... The State, therefore, cannot be permitted to say that it did not know the actual state of*

*affairs of the 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".*

19. The Hon'ble Supreme Court further pointed out as under: -

*".....the State acts in a fiduciary capacity. Moreover, in the present case, the statutory authorities have failed and/or neglected to enforce the social welfare legislations enacted in this behalf, i.e. the 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".*

20. Therefore, the Hon'ble Supreme Court concluded that *"the State cannot be so insensitive to the plight of its own citizens, but particularly, the employees of the public sector undertakings".*

21. Moreover, the Hon'ble Supreme Court observed that *"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 of the citizens of India at the hands of the State of Bihar and the Government Companies and Corporations fully owned or controlled by it".*

22. The Hon'ble Apex Court further concluded 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".*

23. Ultimately, the Hon'ble Supreme Court directed that *"the State should deposit Rs. 50.00 crores before the High Court in two instalments. That amount together with amounts received from any other source should be paid proportionately to the employees of the Government Companies / Public Sector Undertaking concerned. It also directed that the High Court may direct disbursement of more fund to the needy employees on an ad hoc basis"*.

24. In the case of **K.K. Baskaran vs. State [(2011) 3 SCC 793]**, the Hon'ble Supreme Court observed that *"the State being the custodian of the welfare of the citizens as parens patriae cannot be a silent spectator without finding a solution"*.

25. The Hon'ble Mr. Justice V.R. Krishna Iyyer observed in the case of **M/s Fatehchand Himmatal and others vs. State of Maharashtra [(1977) 2 SCC 670]** that *"we can never forget, except at our peril, that the Constitution obligates the State to ensure an adequate means of livelihood to its citizens and to see that the health and strength of workers, men and women, are not abused, that exploitation, moral and material, shall be extradited"*.

26. The first contention raised by Mr. S.N. Babulkar, the learned Advocate General, is unacceptable. For, in the case of ***Olga Tellis & others vs. Bombay Municipal Corporation & others***, [(1985) 3 SCC 545], the Constitution Bench of the Hon'ble Supreme Court has clearly declared that right to livelihood is part and parcel of right to life under Article 21 of the Constitution of India. Further, in the case of ***Delhi Transport Corporation vs. D.T.C. Mazdoor Congress & others***, [1991 Supp. (1) SCC 600], the Apex Court also opined that the right to work and earn livelihood is part of right to life.

27. Moreover, the case of ***Ram Lubhaya Bagga*** (*supra*) is distinguishable on factual matrix. For, in the said case what was under challenge was a policy framed by the Government. However, in the present case, no such policy is under challenge. In fact, what is under challenge is the omission being committed by the State in not rushing to the rescue of the employees of the Corporation.

28. As mentioned and quoted hereinabove, according to the judgment of ***Kapila Hingorani*** (*supra*), it is, indeed, the foremost duty of the State to ensure that the employees of the Corporation are duly paid their arrears of salaries and wages. Therefore, reliance placed on the case of ***Ram Lubhaya Bagga*** (*supra*) is highly misplaced.

29. Moreover, this Court is well-aware of the fact that the State does have its own financial constraints. The State has to cater to the needs and interest of different sections of the society, of different departments, and of different State Corporations. By no means is this Court asking the State Government to go beyond its financial means and limits. This Court merely hopes that within its financial means and limits, the State will take up the present issue of payment of arrears of salaries of four months of the employees of the Corporation on a war-footing, and to immediately resolve the financial crises being faced by the employees of the Corporation. In light of the case of ***Kapila Hingorani*** (*supra*), the Court would be justified in issuing such a direction to the State.

30. Admittedly, the employees of the Corporation have not been paid their salaries since February, 2021 till present. Admittedly, the salary expenditure of the Corporation per month is about Rs. 17.00 crores. According to G.O. Nos. 53 and 54, the Government has released merely Rs. 23.00 crores as a "hill loss" suffered by the Corporation. Therefore, even if the Corporation were to use the said amount, the Corporation would be in a position to pay the salary of merely one and a half months to its employees. Thus, the arrears of salary would continue for approximately fifteen days of March, and for the months of April, May and June, 2021. Hence, the release of Rs. 23.00 crores is merely a drop in the

bucket. The Government is also required to ensure that not only the present salaries, but also the future salaries for the remaining period of the year are assured to the employees of the Corporation. Thus, the Corporation would need a total of Rs. 170.00 crores. And yet, there is no discussion, and no proposal as to where and how the Corporation will get Rs. 170.00 crores in order to meet-out its salary expenditure for its employees?

31. Undoubtedly, the employees have been suffering for the last five months. They have badly suffered not only due to the pandemic, but are also faced with the onslaught of the natural disasters, such as landslide, monsoon rains, which are beginning to batter the State. Needless to say, each employee has his own familial and social obligation to fulfil on a daily basis: children need to be fed, elderly parents need to be taken care of, medical needs of the wife have to be fulfilled. And yet, during this crisis of pandemic, the employee is left high and dry by the State. Despite their tragedies and crisis, the State is merely making a mumble full of promises that *"it shall look into their future difficulties and resolve them in an uncertain future date"*. The State cannot be permitted to function in a laid-back style. Each day, without any financial support, is an uphill task for its people to survive. It is a critical condition that requires an immediate solution for people who are penniless, and who are beginning to starve. Every single minute counts. They cannot be

satisfied with a mere promise that the Cabinet will be convened within fifteen days to solve their socio-economic problems. Such placebo does not cure the disease.

32. Considering the critical financial problem being faced by the employees, considering the violation of their fundamental rights under Articles 21 and 23 of the Constitution of India, considering the violation of their statutory rights under the Payment of Wages Act, and other labour legislations, this Court requests the Hon'ble Chief Minister to immediately call an emergent Cabinet meeting, preferably on or before 28.06.2021 to resolve this financial crisis of the Corporation, and to ensure that the arrears of salaries for the months of February to June, 2021 are paid to the employees. For, the State cannot turn a Nelson's eye to the plight of its employees. In case, the Cabinet were to be convened on or before 28.06.2021, the learned Chief Secretary Mr. Om Prakash is directed to inform this Court on 29.06.2021 about the decision of the Cabinet with regard to the proposals made by the learned Secretary, Transport, and about the payment of arrears of salary to the employees of the Corporation.

33. The Registry is directed to list this case on 29.06.2021, along with the connected matter.

**(RAGHVENDRA SINGH CHAUHAN, C.J.)**

**(ALOK KUMAR VERMA, J.)**

Dated: 26<sup>th</sup> June, 2021

Rathour