

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

With

WPSS No. 3735 of 2018

20TH JULY, 2021

Counsel for the petitioners: Mr. M.C. Pant, Mr. Shobhit Saharia, Advocates.

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. Virendra Kaparwan, the learned Standing Counsel for the Union of India.

Mr. Ashish Joshi, the learned counsel for the Uttarakhand Transport Corporation.

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

The Court made the following:

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

In pursuance of the order dated 29.06.2021, Mr. S.S. Sandhu, 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. Dr. Ranjit Kumar Sinha has filed an affidavit with regard to the steps taken in pursuance of the directions issued by this Court in its order dated 29.06.2021. The same shall be taken on record.

3. According to the said affidavit, Rs. 23.00 crores were released to the Transport Corporation on 29.06.2021. Using the said amount, the salaries of the employees for the month of February, 2021, and the salaries of the "contractual employees" for the month of March, 2021 have been disbursed. Moreover, the Corporation has submitted a new detailed working plan to overcome the present financial crisis of the Corporation. The said working plan was received by the State Government on 07.07.2021, and was presented before the Hon'ble Cabinet on 14.07.2021. The Hon'ble Cabinet has taken a decision to authorize the Hon'ble Chief Minister to take a decision for giving financial assistance to the Corporation. Consequently, the Hon'ble Chief Minister has approved the release of Rs. 34.00 crores from the State Contingency Fund to the Transport Corporation. Resultantly, a G.O. bearing No. 198 dated 17.07.2021 has been issued for release of the said amount.

4. During the course of the proceedings, Mr. Rohila, the learned Managing Director of the Transport Corporation, informs this Court that necessary papers have been moved today before the State Treasury. Mr. Amit Negi, the learned Secretary, Finance, informs this Court that the amount of Rs. 34.00 crores would be released to the Transport Corporation either today, or positively by tomorrow.

5. Mr. Rohila informs this Court that with availability of Rs. 34.00 crores, the Corporation would be in a position to pay the salaries of its regular employees for the month of March, 2021 and the salaries of all the employees, both regular and contractual, for the month of April.

6. Dr. Ranjit Sinha informs this Court that in the last meeting of the Board of Directors, a decision was taken to defer 50% of the employees' salary for the coming months. This Court has asked a pointed query to Dr. Sinha as to under what law, such a decision could be taken to defer the salaries of the employees? To this query, Dr. Sinha could not point out any provision of law that permits the Board of Directors to defer the salaries of its employees. Interestingly, despite the fact that Dr. Sinha was present in the meeting of the Board of Directors, a decision has been taken, which is *per se* contrary to and violative of Articles 21, 23 and 300A of the Constitution of India.

7. When it was pointed out to Mr. Sandhu, the learned Chief Secretary, that violation of Article 23 of the Constitution of India tantamounts to an offense being committed, Mr. Sandhu assured this Court that the Board of Directors will be requested to review their decision to defer the payment of salaries to the employees of the Corporation.

8. Moreover, Mr. Sandhu submits that a new proposal for pulling the Transport Corporation out of its financial crisis would be presented before the Hon'ble Cabinet in its next meeting. According to him, the next meeting of the Hon'ble Cabinet could take place prior to 31st July, although he is not in a position to make a positive statement about the convening of the Hon'ble Cabinet.

9. This Court has also asked Mr. Sandhu and Dr. Sinha to explain as to why the State of Uttarakhand is not negotiating with the U.P. Government with regard to the amount owed by the U.P. Government to the Transport Corporation. According to Dr. Sinha, if the circle rate is taken of the property, which the U.P. Government needs to pay the Transport Corporation for, the amount would be about Rs. 220/- crores. However, if the market rate were to be taken, the amount would be about Rs. 350/- crores. According to him, the payment of the amount was the subject matter of a litigation before this Court. This Court had directed the State Government to pay Rs. 27.00 crores to the

U.P. Government. However, as the State of Uttarakhand was aggrieved by the said order, it has filed an SLP, namely, SLP No. 1555 of 2020 before the Hon'ble Supreme Court. By the order dated 04.01.2021, the Hon'ble Supreme Court stayed the payment of the said amount to the U.P. Government.

10. According to Dr. Sinha, the last meeting between the two Governments had taken place on 19.03.2020, that too, under the aegis of the Central Government. However, the dispute with regard to the payment of the amount by the U.P. Government to the Uttarakhand Government has not been resolved.

11. Mr. Virendra Kaparwan, the learned Standing Counsel for the Union of India, informs this Court that on 24.02.2020, Mr. Sudip Dutta, the Under Secretary, Ministry of Road Transport and Highways, Government of India, had given an undertaking before this Court that a meeting would be convened between the Principal Secretaries of the State of Uttarakhand and the State of U.P. Consequently, a meeting was, indeed, convened on 19.03.2020. However, the issues were not resolved. According to him, after the said date, no meeting was convened by the Secretary, Ministry of Road Transport and Highways, Government of India. Therefore, the crucial issue with regard to the payment of monies from the U.P. Government to the Uttarakhand Government continues to be in an animated suspension.

12. This Court has asked Mr. Kaparwan to inform this Court as to how soon a meeting could be had and can be convened by the Secretary Ministry of Road Transport and Highways, Government of India? He seeks two days' time to inform this Court about the same.

13. This Court has also asked both Mr. Sandhu, the learned Chief Secretary, and Dr. Ranjit Kumar Sinha, who is looking after the issues of re-organisation of the State as to why the Hon'ble Chief Ministers of both the States have not been able to resolve the financial issues, which continue to linger on. To this query, the learned Chief Secretary informs this Court that he will try his level best to ensure that both the Hon'ble Chief Ministers do meet, and resolve the financial issues between the two Governments.

14. It is rather surprising that the employee of the Transport Corporation continue to be denied their rightful monthly salaries. They continue to be subjected to not only denial of salary, but according to the latest decision take by the Board of Directors subjected to the deferment of present salaries. Considering the fact that these employees do not belong to the upper echelon of the Corporation, and are mere workers, as most of them happen to be drivers, conductors, and other employees, it is surprising that both the Corporation, and the State Government have abandoned them out in the cold. Needless to say, the deprivation of the

salary is violative of Articles 21, 23 and 300-A of the Constitution of India. Thus, neither the Corporation, nor the State Government can be permitted to deprive the employees of their rightful salaries, that too, month after month.

15. In the case of ***Kapila Hingorani vs. State of Bihar and others, [(2003) 6 SCC 1]***, the Hon'ble Supreme Court has clearly held that even the State cannot be permitted to violate the fundamental rights and the human rights of the employees. It cannot be permitted to hide behind the fig leaf to claim that the responsibility of paying the salaries of their employees is that of the Corporation, and not of the State Government. When such a contention was raised before the Apex Court, the Apex Court rejected the same. Therefore, it does not lie in the mouth of the State to claim that it will not rush to the rescue of the employees of the Corporation.

16. It is, indeed, trite to state that any dispute that arises between the two States should necessarily be resolved as expeditiously as possible, and within a reasonable frame of time. As noted by this Court, in its order dated 24.02.2020, the issue with regard to the payment of salaries by the Government of U.P. to the Government of Uttarkhand has been hanging fire for the last sixteen years. Therefore, the callous attitude of both the State Governments certainly cannot be appreciated by this Court. Moreover, under Section

59 of the U.P. Reorganization Act, 2000, the Union of India is expected to play a proactive role, to call both the States on the negotiating table, and to resolve the difficulties being faced by the State of Uttarakhand. Due to the silence of the Union of India, and the Government of U.P., it is the State of Uttarakhand that continues to suffer. Needless to say, it is not just the State of Uttarakhand, but, more importantly, the people of Uttarakhand who continue to suffer. Therefore, this Court expects the Union of India to play a proactive role in resolving the lingering issues between the two States with regard to the payment of monies by the State of U.P. to the State of Uttarakhand. It is hoped that the Union of India would resolve this issue as expeditiously as possible, and preferable within a period of three months.

17. Meanwhile, it is hoped that the meeting of the Hon'ble Cabinet would be convened as expeditiously as possible, so as to resolve the financial crises being faced by the Corporation. After all, the employees cannot be abandoned either by the State of Uttarakhand, or by the Corporation.

18. Mr. S.S. Sandhu, the learned Chief Secretary, Mr. Amit Negi, the learned Secretary, Finance, Dr. Ranjeet Kumar Sinha, the learned Secretary, Transport, and Mr. Abhishek Rohila, the learned Managing Director of the Corporation, are directed to be present before this Court on the next date.

19. Since Mr. S.S. Sandhu, the learned Chief Secretary, hopes that the Hon'ble Cabinet meeting would be convened prior to 31st July, 2021, the Registry is directed to list this case on 04.08.2021.

(RAGHVENDRA SINGH CHAUHAN, C.J.)

(ALOK KUMAR VERMA, J.)

Dated: 20th July, 2021

Rathour