

**(2005) 09 OHC CK 0057**

**In the Orissa High Court**

**Case No :** Writ Petition (C) No. 11178 of 2004 and 3354 of 2005

Project Construction Organisation (IDC) Workers' Union and  
Hirakud Industrial Workers (IDC) Officers' Association

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision :** 22-09-2005

**Acts Referred:**

Constitution of India, 1950 — Article 12, 14, 16, 226, 32

**Citation :** (2006) 101 CLT 537

**Hon'ble Judges :** P.K. Mohanty, J; J.P. Mishra, J

**Bench :** Division Bench

**Advocate :** Biswanath Rath, N.N. Rath, S.K. Jethy, M.K. Panda, P.S. Samantra, M.K. Singhdeo, P.R. Sahoo, P.K. Behera, S.K. Mishra, B.S. Mishra-2, M.R. Mishra, A.P. Dhirsamant and A.R. Mishra, for the Appellant; R.K. Rath, N.R. Rout and Additional Government Advocate, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

J.P. Mishra, J.—The employees of Project Construction Organisation (for short, "PCO") and its Union being a unit of subsidiary Company of Industrial Development Corporation Orissa Limited (for short, "IDCOL") have challenged the dis-investment of the entire share by the Government in favour of a private company, i.e., one M/s. Varsha Fabrics Private Limited. The Hirakud Industrial Works (IDC) Officers Association in W.P.(C) No. 3354 of 2005 have also claimed the right of being heard before dis-investment for adequate protection.

2. The grievance of the employees of Project Construction Organisation is that it was set up in the year 1978 as a unit of IDCOL and it was undertaking the works of erection, testing commissioning, and transmission of electric lines under the State Electricity Board and agencies within and outside the State of Orissa. Thereafter the PCO was merged with Hirakud Industrial Works (for short, "HIW") on 30.6.1986. The employees of the sick unit (HIW) were almost depending on the profit of the Project Wing (For short, "PW") after merger. The employees

tried their best for separation of the PW (Annexures-3, 4 & 5), but could not succeed. They could know regarding the dis-investment of shares to be transferred in favour of a private company from Annexure-6 dated 30.8.2004. According to the petitioner, the Project Wing being a profit making unit it should not be sold and be given to the petitioner-employees on lease basis. They have also claimed violation of natural justice of not being heard prior to the decision of dis-investment. It has been averred that the valuation of the assets of Hira Industrial Works Limited (for short, "HIWL") is considerably low being Rs. 5.25 crores and actually the worth of HIWL is Rs. 200 crores with the railway lines. According to them, the project Wing can be very well separated while dis-investing the other two units, i.e., HIW & Hira Cable. In so many words the petitioners have called the decision of dis-investment of the Government of Orissa to be capricious, arbitrary, illegal and, therefore, the opposite parties should be directed not to sell HIWL and, in alternative, to hand over the Project Wing to them on lease. The prayer of officers of HIWL is also similar to the employees of PW.

3. The State (O.P. Nos. 1 & 2) have not filed any counter to the claim of the petitioners. The Opp. Party Nos. 3 to 6 have taken the stand that Hira Industrial Works Limited is one subsidiary company of IDCOL (holding Company) having three units. According to them, HIWL sustained loss of more than Rs. 11 crores as on 31.3.2004 due to shortage of working capital resulting in non-payment of dues to the employees both statutory and non-statutory. For the said loss, the Government which have 100% share have decided to dis-invest the subsidiary company (HIWL) in order to revive it by transferring all the shares in lieu of Rs. 5.25 crores in favour of Varsha Fabrics Private Limited (Though the Opp. Parties have taken the stand of locus standi of the petitioners it has not been placed/pressed at any time during the course of argument). Due to loss of Project Construction Organization established in the year 1978, it was merged with HIW with the name of Project Wing (PW) with effect from 30.6.1986. After merger, as Hira Industrial Works earned profit and a separate subsidiary company was formed with the name of HIWL with effect from 1.4.1993 and to provide better functional capacity to the company, Hira Cable Works that was manufacturing conductors (wires) was also merged with HIWL since February 1997. It is stated that HIWL manufactures Tower and the Hira Cable Works produces cables, which are erected and drawn by the PW having no separate entity and any order received by the PW is composite one. Further the Project Wing has got a liability of Rs. 15.65 crores as on 31.3.2004. According to them, the decision of the Government to dis-invest the subsidiary company HIWL with an intention to revive the company is quite legal, transparent with adequate protection to the employees who have no right to be heard prior to the decision.

4. There is no dispute that the Project Construction Organization (PCO) was an unit of IDCOL which was looking after transmission of lines and sub-stations and was merged with Hira Industrial Works as its project unit in the year 1986 in order to give a combined effect of their activities, i.e., supply and erection. As

the progress was satisfactory and for the demands of economical liberalization, HIW was converted into a limited company with the nomenclature of Hirakud Industrial Works Limited as a wholly owned subsidiary of IDCOL being incorporated under the Companies Act, 1956 on 18.1.1993 with its registered office at Hirakud in the district of Sambalpur. The function of HIW was fabrication of tower and sub-station structures. The subsidiary was successfully executing valuable orders of State Electricity Board, Power Grid Corporation, Railways, etc. Its project wing has various divisions in different parts of Orissa to execute the erection orders. Hira Cables Works (for short, "HCW") was a leading manufacturer of AAAC and ACSR conductors. Since this unit was producing wire, it was merged in the subsidiary company HIWL with effect from 1.2.1997. So, the subsidiary company HIWL functions with the aforesaid three units.

5. On hearing both the parties at length we propose to address ourselves with the following question :

(i) Whether the employees/workmen have got the right to be heard before dis-investment of the entire share owned by the Government of Orissa ?

(ii) Whether the process of dis-investment of 100% share by the Government of Orissa suffers from mala fide and is not transparent?

(iii) Whether the worth of the Company (HIWL) has been poorly assessed, i.e., at Rs. 5.25 crores ?

(iv) Whether the interest of the employees has been adequately protected ?

(v) Whether the single unit of a subsidiary company can be segregated while dis-investing the 100% share in the company ?

6. Before answering to the questions with the present facts of the case in controversy we would like to mention the law governing the field. The Learned Counsel appearing for both the parties have cited a catena of decisions on the principle to be followed in case of dis-investment by the Government. We do not feel the necessity to refer all the decisions for the reason that almost in all the references the legal regime is same. Courts are very slow in interfering with the administrative decisions of the Government unless it is mala fide, capricious and arbitrary. The Court never sits as a Court of Appeal, but it has got the duty to review the process of dis-investment through which the decision traveled and conclusion arrived at. It is a known fact that the Courts have no expertise to correct the administrative decision. If a review of such a decision is permitted, possibility of substitution of its own decision can never be ruled out without the help of the experts. The process of dis-investment is within the realm of contract and it is made more qualitative with the assistance of the experts. The Government no doubt has got freedom of contract but certainly can be subjected to the application of "Wednesbury principle" of reasonableness and must be free from arbitrariness not tainted with mala fide. So, quashing of an administrative decision approved by the Government may result in imposition on the

Government administration and may lead to higher unbudgeted expenditure.

Answer to Question No. (i):

7. Shri B.B. Rath, Learned Senior Counsel, has vehemently urged that the action of dis-investment had violated Articles 14 and 16 of the Constitution. He also contended that the employees should have been heard as a matter of right to guard their interest relying on National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others, before dis-investment.

8. In the cited decision, the question for hearing of the employees/workmen came up in a winding up proceeding as the matter was adjudicated in such a proceeding. The Apex Court said that the workers have locus to appear and to be heard in winding up petition both before winding up petition is admitted and an order for advertisement is made and also after the admission and advertisement of the winding up petition until an order is made for winding up of the company. In the present case, we are not in a winding up proceeding. Almost a similar case came up before the Madras High Court in Southern Structural Staff Union v. Management of Southern structural Ltd. (1994) 81 Comp. Cas 389 the only difference between the controversies in the Madras High Court case and in the present case is that the Tamil Nadu Government had acquired 99% share in a company which faced loss and in this case the Government of Orissa has got a share of 100% in HIWL. The view expressed in the aforesaid case was approved by the Apex Court in BALCO Employees Union (Regd.) Vs. Union of India and Others, . The approved view of the Apex Court in paragraph-49 is quoted below :

A. Similar question came up for consideration before Madras High Court. In Southern Structural Limited, the State of Tamil Nadu had acquired over 99% of shares and the company had become a Government company. It had incurred losses over the years and the Government then decided to dis-invest from the company. This decision was challenged by the Company. This decision was challenged by the Company's employees by filing a Writ Petition in the Madras High Court. It was contended on their behalf that in the event of dis-investment being effected, the employees of the State Government would lose valuable rights including the protection of Articles 14 & 16 of the Constitution and a right to approach the Court under Articles 32 & 226. Repelling this contention in Southern Structurals Ltd., (supra) the High Court held as follows:

The submission that in order to enable the employees to invoke Article 14 or Article 16 and to approach the High Court or the Supreme Court directly by invoking Article 226 or Article 32, the Government is bound to retain its ownership of the bulk of the shares in this company forever is devoid of any force.

The protection of Article 14 is available to all and is not confined to employees of the State. The limitations placed by Article 16 on the State with regard to employment under the State is not intended to compel the State to provide employment under it to all who seek such employment or retain all persons

presently in its service in order to enable such persons to claim the benefit or Article 16.

Employment under the State is not a precondition for approaching the High Court or the Supreme Court. All industrial workers have a right to approach the Labour Court or Industrial Tribunals for adjudication of their rights subject to the limitations contained in the Industrial Disputes Act. Like all citizens industrial workers also have the right to approach Civil Courts for redressal of their wrongs. The decisions rendered by the Civil Labour and Industrial Courts or tribunals are open to challenge before the High Court and the Supreme Court in appropriate proceedings. Actions of the Government or other authorities performing any public duty are amenable to correction in proceedings under Article 226. By reason of the dis-investment, employees do not lose their right to seek redressal through Courts for any wrongs done to them.

The employees have no vested right in the employer company continuing to be a Government company or "other authority" for the purpose of Article 12 of the Constitution of India. Apart from the fact that the very status claimed by the employees in this case is a fortuitous occurrence with the employees having commenced work under a private employer and while on the verge of losing employment, being rescued by the State taking over the Company, the employees cannot claim any right to decide as to who should own the shares of the company. The State, which invested of its own volition, can equally well dis-invest. So long as the State holds the controlling interest or the whole of the share-holding, employees may claim the status of employees of a government company or "other authority" under Article 12 of the Constitution. The status so conferred on the employees does not prevent the Government from dis-investing; nor does it make the consent of the employees a necessary precondition for dis-investment.

Public interest is the paramount consideration, and if in the public interest the Government thought it fit to take over a sick company to preserve the productive unit and the jobs of those employed therein, the Government can, in the public interest, with a view to reducing the continuing drain on its limited resources, or with a view to raising funds for its priority welfare or developmental projects, or even as a measure of mobilizing the funds needed for running the government, dis-invest from the public sector companies. Article 12 of the Constitution does not place any embargo on an instrumentality of the State or "other authority" from changing its character.

It is nowhere disputed that HIWL is a public sector subsidiary company of IDCOL under Article 12 of the Constitution of India having 100% share. As per the settled law in *BALCO Employees' Union* (supra), a State can invest its capital of its own sweet will which can be equally dis-invested in case of a losing company and the employees cannot choose their employer. The Government can very well take a decision to dis-invest its share keeping in view the public interest checking continuous drain of loss of its limited resources and to mobilize funds for smooth

running of the Government. Therefore, the workmen/employees have got no right to be heard before dis-investment in favour of a private company keeping in view the policy of the Government of Orissa.

Answer to Question No. (v):

9. The petitioner has prayed in the Writ Application not to dispose of Hirakud industrial Works Limited to a private concern along with prayer to hand over the Project Wing to the petitioner on lease basis by separating it from M/s. HIWL. But, in the rejoinder they have stated that the petitioners have got no objection if HIWL is put to sell but not the Project Wing as the same is a profit making unit. So the averment shows that the petitioners have got no objection for dis-investment of other two units of M/s. HIWL, i.e., Hirakud Industrial Works and Hira Cable Works (HCW). Admittedly, Hirakud Industrial Works Limited is a subsidiary company of Industrial Development Corporation of Orissa Limited, a public undertaking in which the Government of Orissa has got 100% share.

10. Similar matter for imposition of Sales Tax on the product transferred from one unit to another was raised before a Division Bench of Andhra Pradesh High Court in K.C.P. Limited v. State of Andhra Pradesh 1993 88 STC 374 . In the said case K.C.P. Limited a public limited company was having three units. One in Madras engaged in business of manufacturing and sale of machine tools, another a sugar factory in Andhra Pradesh and the third a cement manufacturing division in Andhra Pradesh. Transfer of cement by the company to the other two units was treated as sale and sales tax was levied. The Hon"ble Judges while interpreting the language of Andhra Pradesh General Sales Tax Act and Central Sales Tax Act came to the conclusion that the tax is not leviable as the transfer from one unit to another was not by one person to another though the registration certificate was obtained by the three unit's for separate assessment. While deciding the controversy they came to the conclusion that the K.C.P. Limited is a company incorporated under the Companies Act, 1956 and undoubtedly an incorporated company is a distinct legal personality. It has been further said therein that the units of the company doing business may be regarded as a separate dealer for the purpose of administrative convenience, but that does not mean that each unit would thereby become an independent legal personality different from the company itself. Further in the said decision, Andhra Pradesh High Court referred to the Apex Court decision in English Electric Co. of India Ltd. and Another Vs. The Deputy Commercial Tax Officer and Others, and quoted the paragraph which reads as follows :

The appellant has branches at different places. The appellant-company is one entity and it carries on business at different branches. Branches have no independent and separate entity. Branches are different agencies. The contract of sale is between the appellant-company and the Bombay buyer.

In view of the Apex Court decision, the Court came to the finding that there is no distinction between units/divisions engaged in similar activities and those

engaged in different activities forming integral part of a single company. In the present case, the Industrial Development Corporation of Orissa Limited a Government of Orissa undertaking took over the Central Workshop of Hirakud Dam Project in November 1962 to meet the requirement of the Government Department for transmission of lines (Electricity) connecting towers and it was renamed as Hirakud Industrial Works (HIW) in 1962. It started functioning as a unit of IDCOL on 1.4.1963. Thereafter the Project Construction Organization an erstwhile unit of IDCOL which was looking after the construction of transmission lines and sub-station was merged with Hirakud Industrial Works as its Project Wing in the year 1986. Combining their activities of both supply and erection on 18.1.1993 both the units were incorporated as a company under the Companies Act, 1956 with the name and style of Hirakud Industrial Works Limited (HIWL) having its registered office at Hirakud. Similarly, Hira Cable Works which was earlier a unit of IDCOL was merged with HIWL w.e.f. 1.2.1997 as HCW was producing ACSR and AAAC conductors. So the function of HIWL being a Company was depending on all the three units. HIWL was manufacturing structures for fabricating of towers, HCW was producing conductors and the Project Wing was erecting towers and drawing wires. Therefore, as a whole, the company makes profit or loss as a whole. The profit, if any, of single unit cannot be taken into consideration segregating the same from the company as a whole while dis-investing the 100% share by the Government of Orissa. We may mention here that Project Construction Wing has no separate share and the shares of M/s. HIWL are not meant for any particular wing.

11. We are of the same view taken by the Andhra Pradesh High Court and, therefore, a company either gains as a whole or loses as a whole and the profit or loss cannot be counted unit wise. We may cite a single example, i.e., Annexure-20 dt. 1.12.1997 that the orders are not being received by Project Wing independently. Orders are always placed in the name of Hirakud Industrial Works Limited. Therefore, we reiterate that one unit cannot claim independent identity.

Answer to Question Nos. (ii), (iii) & (iv):

12. The main thrust of the argument of Shri Rath is that the process of dis-investment suffers from arbitrariness and mala fide for negotiating with single tenderer, i.e., M/s. Varsha Fabrics Private Limited for a lower price than the reserved price of the company. It is also contended by the Learned Senior Counsel Shri Rath that in absence of the decision of the Cabinet and two advertisements, i.e., Annexure-5 in the year 1999 and the other one on 7.2.2003, it is difficult to say as to who took the decision of dis-investment. It is only the Cabinet which can take decision and not the Cabinet Committee. Therefore, the entire process is bad and liable to be quashed in the interest public. He also contended that interest of the workmen have not been guarded.

13. Shri Rajat Kumar Rath, Learned Counsel, on the contrary submitted that the entire process to be genuine and only in the interest of public providing a better

protection to the employees of HIWL than in case of BALCO. He further contended that in absence of dis-investment, HIWL is bound to go to the BIFR under SICA resulting in winding up of the company.

14. It is true that vide order dated 14.10.2004, this Court did not prevent the process of dis-investment but directed to guard the interest of the Workmen and to file the agreement in the Court.

15. We have already held in the foregoing paragraph that a company either loses or gains as a whole. The annual account for the year 2003-04 (Annexure-C/3) of HIWL reveals a loss of Rs. 11,93,36,826/-. It has also been stated that the project wing has got a liability of Rs. 15,65 crores as on 31.3.2004. Moreover, the petitioner [in W.P.(C) No. 3354 of 2005] have taken the stand that their dues have not been paid by the company. Therefore, on the whole the subsidiary company HIWL was/is a losing concern.

16. It is true that in the present case the reserve price of the entire share of HIWL was fixed at Rs. 6 crores but was agreed with M/ s. Varsha Fabrics Pvt. Ltd. at Rs. 5.25 crores on negotiation as that was the single bidder in response to the advertisement. We are of the opinion that there is nothing wrong in negotiating with a single bidder and it is not adverse to the public interest. The reason behind negotiation is to obtain a higher price from the bidder. The negotiation is certainly permissible and has been settled by the Apex Court in Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, (at paragraph-10), allowing negotiation even in case of several bidders giving all the intending bidders to compete. In the said case the Court held that even a highest tenderer cannot claim right for acceptance of his tender as the power vests in the person who invites for the deal having power to reject all the tenderes depending on its validity with cogent reasons. The object of inviting the tenders for disposal of a commodity is to procure the highest price while giving equal opportunity to all the intending bidders to compete. Therefore, when a single bidder comes forward, the vender can certainly negotiate to fetch a better price with cogent reason. The reason shall be discussed in the latter part of the judgment though it is a factual aspect.

17. The submissions of two advertisements; one is in January, 1999 and the other on 7.2.2003 for dis-investment has got no foundation in the writ application. Though Annexure-5 has been filed purported to be an advertisement in January, 1999 inviting offers for taking over IDCOL Cement Ltd. and Hirakud Industrial Works Limited, it has not been pleaded anywhere that in which paper the advertisement was made. The petitioners have also nowhere stated that as to whether this Advertisement of the year 1999 was acted upon or was not pursued by rejecting the offer in respect of the same by the advertiser IDCOL. The petitioners have also nowhere whispered that present dis-investment is linked with this advertisement of the year 1999. Therefore, we shall proceed with the present advertisement made on 7.2.2003 published in The Economics Time, Kolkata.

18. The Department of Public Enterprises resolved for privatization/dis-investment of loss making Public/Co-operative Enterprises operating in non-core sectors. The Resolution was dated 26.11.2002. While laying down the policy matter of Government of Orissa, it referred to the white paper issued by the Department of Public Enterprises that Public Enterprise Reform Commission (PERC) was to carry out the privatization transaction through a transparent process following the standard international best practices by following the model of Government of India in three-tier decision making implementation mechanism, i.e., Cabinet Committee on dis-investment, Committee on restructuring of Public and Co-operative Enterprises and inter-departmental core group. An empowered Committee of the Cabinet to exercise its authority and accord necessary approvals for the reason that the entire Cabinet cannot meet frequently for consultation and approval needed to conclude the sale transaction, the said empowered Committee of the Cabinet (CCD) was headed by Chief Minister, Minister (Public Enterprises), Minister (Law) and two other Ministers to be nominated by the Chief Minister with the Minister-in-charge of the concerned Public Sector Unit (PSU) as a special invitee. It is the CCD to select the Enterprises for sale or dis-investment and to approve the annual programme to consider the advice of restructuring committee regularizing the policy issue relating to dis-investment programme to decide final price, approve selection of preferred bidders and to approve legal agreements required for finalizing transaction. The policy also speaks that the decision taken by the CCD will be deemed to be the decision taken by the Cabinet. So, any decision taken by the CCD is the decision of the Cabinet. Likewise, the restructuring Committee was constituted by the high officials including the Chief Secretary so also the Inter-Departmental Core Group. As per the policy, the Public Enterprise Department engaged advisors. Consequent to the above, the advertisement was made on 7.2.2003 inviting expression of interest for sale of 100% share in Hirakud Industrial Works Ltd. and the same was also given access in the Website [www.idcorissa.com](http://www.idcorissa.com) UTI Bank Ltd. being the advisor. The UTI Bank Ltd. selected five bidders on 7.3.2003 to be qualified in participating in the dis-investment process of HIWL as they requested for qualification.

19. On 10.2.2004, the Inter-Departmental Core Group IDCG discussed on dis-investment of HIWL. Initially, the reserved price for share of HIWL was fixed at Rs. 3.26 crores, i.e. 17.12.2004 without considering the Railway line of the company. On opening the financial bid of single bidder of M/s. Varsha Fabrics Pvt. Ltd. on 18.12.2003 the bid was found to be Rs. 2.61 crores, i.e., less than the reserved price. Thereafter, the bidder was called on 24.1.2004 and their Chairman Shri Ruhia wanted inclusion of the Railway line also in the deal. As the valuer (M/s. Swain and Associates) submitted the price of Railway line to be Rs. 3.78 crores, the IDCG fixed the price of HIWL at Rs. 6 crores on their meeting dated 4.2.2004 including some modification of sale purchase agreement. The bidder gave his revised offer at Rs. 5.25 crores. The IDCG recommended the rate of Rs. 5.25 crores being the highest bid though Rs. 6 crores was fixed. Though

we are not required to go into the factual aspect, we may mention here the paragraph-8 showing the acceptance of the recommendation of IDCG by public and Co-operative Enterprises Restructuring Committee on 21.5.2004.

As regard HIWL, it was noted by the Committee that the Company is incurring losses every month. It was explained by Secretary P.E. that for the period from April, 2003 to March, 2004 the Company has incurred a cash loss of about Rs. 2.68 crores as a result of which net current asset of the Company has been reduced by about Rs. 1.77 crores compared to the net asset value of the Company as on 31.3.2003. The Committee noted that the reserve price of Rs. 6.00 crores recommended by IDCG was on the basis of the Balance sheet of the Company as on 31.3.2003. If the reduction of net current asset by about Rs. 1.77 crores as on 31.3.2004 is factored into the valuation of the Company and the reserve price is accordingly adjusted, then the revised bid of Rs. 5.25 crores would be higher than the adjusted reserve price considering this the Committee endorsed the recommendation of the IDCG and taking into consideration the continuous deterioration in the performance of HIWL, recommended acceptance of the revised offer price of Rs. 5.25 crores of M/s. Varsha Fabrics Ltd for take over of the HIWL with the terms and conditions of the SPA as amended here in below.

According to them, Rs. 5.25 crores will be higher than the adjusted reserve price as per the above paragraph consequent to which they recommended acceptance of the revised price with the terms and conditions along with the suggestion for amendment of sale purchase agreement. The recommendation was given on 21.5.2004. Thereafter, the meeting of CCD was held on 3.2.2005 wherein, the amendment suggested to the sale purchase agreement and the recommended price by IDCG and PCRC at Rs. 5.25 crores offered by M/s. Varsha Fabrics Pvt. Ltd. was accepted and direction was given for vetting. The entire process does not seem to be arbitrary or tainted with mala fide.

20. In regard to the interest of the Workmen, a copy of the sale purchase agreement has been filed. At 5.4 it has been agreed that the employees shall not be retrenched for a period of 2 years other than the dismissal on disciplinary ground in accordance with law. It has also been agreed that after the conclusion of the transaction, in case of floating of a Voluntary Retirement Scheme for any of its permanent employees within a period of two years from the closing date the said scheme shall provide for payment of compensation in accordance with and based on at least the minimum remuneration package and benefits applicable to such employees as on the closing date and the package should be at least as attractive as offered by the Government of Orissa in similar cases in the company prior to the date of closing. The similar provision for restriction on retrenchment was only for a period of 1 year in case of BALCO (supra). The same condition, duties, liabilities and obligations were imposed in case of transfer by the strategic purchaser in favour of any other person within a period of 2 years from the closing date. On examining the clauses, we found the following clause

to be harsh which need to be deleted from everywhere where it appears in the deal/transaction. Accordingly, we direct the opposite parties to do so.

The Company will apply for declaration of HIWL as a relief undertaking to Government of Orissa which will be considered by Government on merit under the provision of Orissa Relief Undertaking (Special Provision) Act, 1983.

Further, the minutes of the meeting dated 25.4.2005 in presence of IDCOL, M/s. Varsha Fabrics Pvt. Ltd., HIW Workers Union and Hira Cable Employees Union have been filed. We would like to keep all the following terms agreed among the parties on record.

(1) Regarding the demand for demand for protecting the service conditions of the regular, casual and contract employees, it was agreed that their service cpnditions will be protected as per the provisions of I.D. Act, 1947.

(2) Regarding payment of pending salary it was agreed that all the workmen will be paid one month's current salary and one month's unpaid salary by M/s. VFPL immediately after taking over of the Company by them. In the second month the M/s. VFPL will pay one month current salary and Anr. one month arrear salary. In the subsequent months 25% of one month's pending salary, (unpaid salary) will be paid along with the current salary. In case of retired and VR employees their arrear salary, unpaid salary and other dues will be paid by M/s. VFPL immediately on submission of clearance.

(3) Regarding clearing of pending P.F. dues, it was agreed by M/s. VFPL that the matter will be taken up with the>RPF Commissioner and as per the directive of the RPF Commissioner the PF dues will be cleared.

(4) Regarding the request of the Union for running of the Company by the Govt./ IDCOL in the event of failure of M/s. VFPL to run the same, it was agreed that the buyer will give a Action Plan showing their plan to run the Company (Action Plan Copy enclosed). In the event of abandonment of the Company by M/s. VFPL, IDCOL will take up the matter with the Govt. and as per order and directive of the Govt., IDCOL will take suitable steps to protect the interest of the workman.

(5) Regarding clearing of Bank loan, leave encashment, medical reimbursement etc., it was agreed by M/s. VFPL that the same will be cleared as soon as possible after the take over of the management of the Company. It was agreed that IDCOL will monitor the same. Regarding clearing of pending LIC dues, it was agreed by M/s. VFPL that the unpaid LIC premiums will be deposited in time so as to ensure that the policies are not made defunct.

(6) Regarding applicability of D.A., it was stated by M/s. VFPL that there should not be any linkage of D.A. of the employees of IDCOL with that of HIWL. However, it was agreed that the package that will be offered by M/s. VFPL to the wokrmn of HIWL will be compatible.

(7) Regarding PF dues of retired and VR employees, it was agreed that the PF

dues of retired and VR employees will be cleared immediately after taking over of the management by M/s. VFPL.

(8) Regarding payment of 20% VR dues along with other dues on submission of clearance by the employees who will opt for VR, it was agreed that the same will be cleared immediately by M/s. VFPL.

(9) The 80% VR dues which is to be paid by DFID, the same will be paid within 4 (four) months and IDCOL will monitor the same.

(10) Regarding preference in employment to the Employee's Son/V.R./Ex-employee's dependant/legal heir of deceased employees/casual/contract labours, it was agreed by M/s. VFPL that while recruiting persons preference will be given to the V.R./retired employees of HIWL subject to their merit and suitability.

(11) It was agreed that since the Company will be separated from the IDCOL M/s. VFPL shall form a separate scheme in consultation with LIC as a substitute to the existing family aid scheme for the employees of the Company.

(12) Regarding payment of pending gratuity premium, it was agreed by M/s. VFPL that the same will be deposited with LIC in consultation with them and the payment will be made within 2 (two) months. The existing gratuity scheme will continue.

(\*13) Regarding payment of pending ESI contributions, it was agreed by M/s. VFPL to clear the same immediately after the take over of the management of HIWL.

(14) Regarding payment of pay revision arrear, it was agreed by M/s. VFPL that all the workmen will be paid 75% of one months arrear salary accrued due to revision of pay along with the current month salary from the 3rd month of take over of the Company.

(15) It was agreed that a tripartite settlement will be signed as per the above within a week of clearance of the Hon"ble High Court for take over of the Company.

21. From the above, it transpires that the Workmen shall sign a tripartite settlement within a week from the clearance of this Court, which solves the grievance of the workers in regard to their interest.

In our considered opinion, both the Writ Applications are devoid of merit and, accordingly, we dismiss the applications. The Misc. Cases are disposed of accordingly. The parties are directed to bear their respective costs.

P.K. Mohanty, J.

22. I agree.