

(2013) 03 DEL CK 0022

In the Delhi High Court

Case No : Writ Petition (C) No. 2113 of 1994

Sh. Baldev Saran Gumber and Others

APPELLANT

Vs

Indian Road Construction Corporation Ltd. and Others

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 17(3)

Citation : (2013) 03 DEL CK 0022

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Maninder Acharya, for the Appellant; Sanjiv K. Jha, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The present writ petition is filed by five petitioners. These five petitioners joined the respondent no. 1-organization M/s. Indian Road Construction Corporation Ltd. as senior accountants. They were thereafter promoted as Deputy Managers. On being promoted as Deputy Managers, they by means of an order dated 26.11.1990 got a particular pay-scale. This particular pay-scale was the result of giving to the petitioners seven advance increments. The respondent no. 1, however, subsequently withdrew the order dated 26.11.1990 by its office orders dated 11.4.1991 and 23.4.1991. The office orders dated 11.4.1991 and 23.4.1991 were passed by the respondent no. 1 on the basis of recommendation of a committee which was appointed to examine the issue as to whether the petitioners' pay fixation granting seven advance increments was valid or not. The petitioners claiming that they are entitled to the pay-scale granted in terms of the order dated 26.11.1990, have challenged the office orders dated 11.4.1991 and 23.4.1991, not only on merits, but also on the ground that they have been passed without complying the principles of natural justice. The respondent no. 1, in response, has raised the following defences:-

(i) The petitioners had claimed seven advance increments on the basis that their junior one Sh. H.S. Nijhawan had got a particular pay-scale, whereas, the correct facts are that the said Sh. H.S. Nijhawan was no doubt junior to the petitioners, but so only in the respondent no. 1 organization, and actually, the said Sh. H.S. Nijhawan had 22 years of service in his earlier organization in which he was earlier working and from where he had come on deputation to respondent no. 1. At the time of taking of Sh. H.S. Nijhawan on deputation with the respondent no. 1 his earlier pay was specifically protected. It is argued that Sh. H.S. Nijhawan fell in a class which was different than the petitioners, and therefore, the petitioners cannot claim equality with Sh. H.S. Nijhawan as if the said Sh. H.S. Nijhawan is junior to the petitioners. Accordingly, the committee had rightly recommended recall of the order dated 26.11.1990, and which order had granted seven advance increments on the wrong basis of petitioners being entitled to equality with Sh. H.S. Nijhawan.

(ii) The petitioners have during the pendency of the writ petition taken voluntary retirements, and which voluntary retirements were taken without reserving any rights in the petitioners to claim benefits prayed for in the writ petition, and thus the petitioners are estopped from pursuing the petition.

(iii) Even assuming the issue of voluntary retirements is not considered, yet, the respondent no. 1 had become a sick company, it has closed operations since the year February, 2000, and therefore, with respect to a company which had become sick and thereafter had closed its operations, the petitioners cannot claim increase in scale of pay even assuming they were entitled to the same.

2. Before going on the issue of merits, let me first examine two technical pleas against the petitioners of their firstly having accepted voluntary retirements without reserving rights and secondly if the voluntary retirements were without reserving any rights even then the financial condition of the respondent no. 1/ PSU, which has already been ordered to be wound up is such that the petitioners are not entitled to get the increase in scale of pay which they were asking.

3. The respondent no. 1, in support of the arguments with respect to the acceptance of these two technical defences relied upon the two judgments of the Supreme Court in the cases of A.K. Bindal and Another Vs. Union of India (UOI) and Others, and Officers and Supervisors of I.D.P.L. Vs. Chairman and M.D. I.D.P.L. and Others, . I would refer to the relevant paragraphs of these judgments in the later part of this judgment, however, at this stage, it is necessary to look into the aspect as to whether the petitioners took voluntary retirements without reserving any rights claimed in the writ petition, and they are therefore estopped from pursuing the present writ petition.

4. There are five petitioners in the present case namely Sh. Baldev Saran Gumber, Sh. Martin Soy, Sh. Pritpal Narang, Sh. K.K. Pujyar and Sh. T.K. Chattopadhyaya. So far as petitioner nos. 2 and 4 namely Sh. Martin Soy and Sh. K.K. Pujyar are concerned, there is no controversy that these persons had not

given any letters whereby they had stated that they are seeking voluntary retirements subject to their rights in the present writ petition. Therefore, having taken voluntary retirement without specifying in their application that they are claiming VRS benefits without prejudice to their rights in the present writ petition, these two petitioners are therefore estopped from pursuing the petition on this ground itself. Also, even assuming that there was allegedly an application stating that they are taking voluntary retirement benefits yet these two persons will be estopped because these persons have received the amount of VRS benefits under the covering letters of the respondent no. 1 dated 25.10.2000 and 10.4.2001, which specifically state that the amount is paid to these two persons in full and final settlement of their dues on their taking voluntary retirements. These letters have been duly received by these two petitioners and there is no endorsement on the letters dated 25.10.2000 and 10.4.2001 that these two petitioners Sh. K.K. Pujyar and Sh. Martin Soy have not taken their payments in full and final settlement or have taken it without prejudice to the present Court case. Clearly, therefore, so far as the petitioner nos. 2 and 4, Sh. Martin Soy and Sh. K.K. Pujyar are concerned, they are estopped from pursuing the present petition. This is so held in the judgments of A.K. Bindal (*supra*) and Officers & Supervisors of I.D.P.L. (*supra*) cases. The relevant paragraphs of the judgment in the case of A.K. Bindal (*supra*) are paras 34 and 35 and which read as under:-

34. This shows that a considerable amount is to be paid to an employee ex-gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. That is why in business world it is known as "Golden Handshake". The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated.

35. The contention that the employees opted for VRS under any kind of compulsion is not worthy of acceptance. The petitioners are officers of the two companies and are mature enough to weigh the pros and cons of the options which were available to them. They could have waited and pursued their claim for revision of pay scale without opting for VRS. However they, in their wisdom thought that in the fact situation VRS was a better option available and chose the same. After having applied for VRS and taken the money it is not open to them

to contend that they exercised the option under any kind of compulsion. In view of the fact that nearly ninety nine per cent of employees have availed of the VRS Scheme and have left the companies (FCI & HFC), the writ petition no longer survives and has become infructuous.

(emphasis added)

5. Therefore, the writ petition is liable to be dismissed on the principle of estoppel so far as petitioner nos. 2 and 4 are concerned.

6. So far as petitioner no. 3 is concerned, the reasoning as given above with respect to petitioner nos. 2 and 4 will also apply with the variation that though there is a letter which exists on the record of the respondent no. 1, said to have been given alongwith the typed proforma seeking voluntary retirement, however, in my opinion, the argument urged on behalf of the respondent no. 1 is to be accepted that this letter has been inserted subsequently because the petitioner had no proof of this letter having been received by any officer of the respondent no. 1. Also, in the record of the respondent no. 1 there is no running page numbering found with respect to the alleged covering letter which was given with the typed proforma seeking voluntary retirement. Therefore, the petitioner no. 3 is also estopped from pursuing the present writ petition.

7. So far as petitioner no. 1 is concerned, in the application seeking voluntary retirement, there is no dispute that he did seek voluntary retirement subject to his rights to pursue the present writ petition, however, in the letter by which the VRS benefits were thereafter received by the petitioner no. 1 Sh. Baldev Saran Gumber, and which is dated 28.6.2001, there is no endorsement of the petitioner no. 1 disputing that the amount received by the petitioner no. 1 is not in full and final settlement as stated in this letter dated 28.6.2001. Therefore, petitioner no. 1 is also estopped from pursuing his writ petition on the ground of estoppel and having received the VRS benefits in full and final settlement of his dues especially in view of the ratio of A.K. Bindal's case (supra) given in para 34 of the judgment which is reproduced above.

8. The only remaining person is petitioner no. 5 who has not taken voluntary retirement, however, the writ petition so far as he is concerned, would not be maintainable not only on the ground of lack of financial viability of the respondent no. 1 to grant the monetary benefits but also on disentitlement on merits to the reliefs, and which aspects are dealt with immediately hereinafter.

9. As per the facts of the present case, what the petitioners claim is an entitlement to monetary benefits on the ground that one of their juniors Sh. H.S. Nijhawan has been given a higher scale of pay and therefore, the petitioners are entitled to a higher scale of pay. Let us for the sake of argument accept that the petitioners are getting a lower scale of pay than their junior, though that is not true as will be dealt with in the later part of this judgment. The issue is that can still the petitioners seek a higher pay-scale from the respondent no. 1 company which after being in financial doldrums has been forced to close down its

business way back in February, 2000? The aspect of monetary liability of sick PSUs on account of entitlement of employees to claim higher pay-scales has been dealt with by the Supreme Court in the case of Officers & Supervisors of I.D.P.L. (supra) and paras 4, 7, 8, 11, 13, 17, 18 and 19 of this judgment are relevant and which read as under:-

4. With the above contentions, the petitioners filed the above writ petition with the following prayers:

(a) direct the respondents to revise scales of pay of the petitioners w.e.f. 1-1-1996 and pay the arrears immediately.

(b) direct the respondents to pay three installments of interim relief w.e.f. the dates the payment become due.

7. In the above background, the question which arises for consideration is whether the employees of public sector enterprises have any legal right to claim revision of wages that though the industrial undertakings or the companies in which they are working did not have the financial capacity to grant revision in pay-scale, yet the Government should give financial support to meet the additional expenditure incurred in that regard.

8. We have carefully gone through the pleadings, the Annexures filed by both sides and the orders passed by the BIFR and the judgments cited by the counsel appearing on either side. Learned counsel for the contesting respondent drew our attention to a recent judgment of this Court in A.K. Bindal and Anr. v. Union of India and Ors. in support of her contention. We have perused the said judgment. In our opinion, since the employees of government companies are not government servants, they have absolutely no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay-scales should be met by the Government. Being employees of the companies, it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay-scale, the petitioners, in our view, cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay-scales. We are unable to countenance the submission made by Mr. Sanghi that economic viability of the industrial unit or the financial capacity of the employer cannot be taken into consideration in the matter of revision of pay-scales of the employees.

11. In our view, the economic capability of the employer also plays a crucial part in it; as also its capacity to expand business or earn more profits. The contention of Mr. Sanghi, if accepted, that granting higher remuneration and emoluments and revision of pay to workers in other governmental undertakings and, therefore, the petitioners are also entitled for the grant of pay revision may, in our opinion, only lead to undesirable results. Enough material was placed on record before us by the respondents which clearly show that the first respondent

had been suffering heavy losses for the last many years. In such a situation the petitioners, in our opinion, cannot legitimately claim that their pay-scales should necessarily be revised and enhanced even though the organization in which they are working are making continuous losses and are deeply in the red. As could be seen from the counter affidavit, the first respondent company which is engaged in the manufacture of medicines became sick industrial company for various reasons and was declared as such by the BIFR and the revival package which was formulated and later approved by the BIFR for implementation could not also be given effect to and that the modifications recommended by the Government of India to the BIFR in the existing revival package was ordered to be examined by an operating agency and, in fact, IDBI was appointed as an operating agency u/s 17(3) of SICA. It is also not in dispute that the production activities had to be stopped in the major two units of the company at Rishikesh and Hyderabad w.e.f. October, 1996 and the losses and liabilities are increasing every month and that the payment of three installments of interim relief could not also be made due to the threat of industrial unrest and the wage revision in respect of other employees is also due w.e.f. 1992 which has also not been sanctioned by the Government of India.

13. We have already reproduced the directions passed by this Court in Jute Corporation of India Officers' Association (supra). However, after the said judgment in which conditional directions were issued, as is apparent, the Central Government vide its O.M. dated 19.07.1995 decided as follows:-

13. For SICK, PSC registered with the BIFR pay revision and grant of other benefits will be allowed only if it is decided to revive the unit. The revival package should include the enhanced liability on this account. The benefit of pay revision etc. shall be extended to IISCO and financial liability thereof shall be met by SAIL.

...

17. In A.K. Bindal (supra), this Court specifically held that the economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to function and may have to close down which will inevitably have disastrous consequences for the employees themselves. The Court also negated other contentions raised by the employees and referred to and relied upon the fact that the Company was a sick unit. Facts in the present case are similar.

18. Further, directions issued in Jute Corporation of India Officers' Association (supra) would have no bearing in the present case as the Scheme under the SICA has failed to revive the Company. When the Company cannot be revived because of large losses, there is no question of enhancing scales of pay and dearness allowances. Direction No. (ii) issued in that case indicates that the employees appointed on or after January 1, 1989 will be governed by such pay scales and allowances as may be decided by the Government in its discretion. If

the company itself is dying, the Government has discretion not to grant enhanced pay scales or dearness allowances and for the same reason Direction No. (i) cannot be implemented.

19. Since this Court has already decided the very issue in question and the petitioners have opted for VRS, nothing survives in this petition and the same is liable to be dismissed. The petitioners having applied for VRS, it is not open to them to contend that they are entitled to pay revision.

(underlining added)

10. The emphasized portions of the aforesaid paragraphs of the judgment in I.D.P.L. (supra) case shows that economic viability and financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure and revision of pay-scales, and upward revision cannot be done when a PSU has been suffering heavy losses for many years. It has further been observed that the responsibility to pay salaries to the employees of PSUs is of the PSUs themselves and not of the Central Government which is not bound to give moneys to PSUs to clear the monetary liabilities of the PSUs to be created on account of enhancement of salaries. Further the Supreme Court has categorically observed that where units have already suspended their operations, then, employees cannot claim entitlement for revision and enhancement of the pay-scales, more so once the companies are making continuous losses and are deeply in red.

11. It is undisputed in the present case that the respondent No. 1 suffered grave losses and it is in the process of being wound up. The business of the company has been closed since over about last 12 years i.e. since February, 2000. The aforesaid ratio of the Supreme Court judgment therefore squarely applies to the present case that there cannot be grant of monetary benefits to employees including, by promotion, totally overlooking the financial condition of the sick PSUs.

12. Learned counsel for the petitioner has sought to distinguish the judgment in I.D.P.L.'s case (supra) by referring to para 5 of the judgment, wherein the argument on behalf of sick company was referred to, that the petitioners in that case agreed to revival package by giving written undertaking sacrificing various facilities and agreed for the deferment of wage revision for a period of four years, and it is argued that since in the present case no undertakings have been given by the petitioners, therefore, the judgment in I.D.P.L.'s case (supra) will have no application so far as the present petition is concerned.

In my opinion, this argument is misconceived because in the operative portion of the judgment from paras 7 to 19 there is no conclusion given for denying the relief to the employees on the ground of their undertakings and the denial of reliefs is on the ground of lack of financial viability. The Supreme Court has independently on both the grounds of the employees taking VRS and also of financial incapacity of a sick PSU to pay dues, denied the monetary benefits of

pay-scale revision which was claimed by the employees. The Supreme Court made it clear that the directions of the earlier judgment of the Supreme Court in the case of Jute Corporation of India Officers' Association Vs. Jute Corporation of India Ltd. and Another, would not apply to sick PSUs.

13. The Supreme Court in the case of A.K. Bindal (supra) has also similarly held and the relevant paras of this judgment are paras 22, 34 and 35. Paras 34 and 35 have already been quoted above. Para 22 reads as under:-

22. In South Malabar Gramin Bank Vs. Co-ordination Committee of South Malabar Gramin Bank Employees' Union and South Malabar Gramin Bank Officers' Federation and Others, , relied upon by the learned counsel for the petitioners, the Central Government had referred the dispute regarding the pay structure of the employees of the Bank to the Chairman of the National Industrial Tribunal headed by a former Chief Justice of High Court. The Tribunal after consideration of the material placed before it held that the officers and employees of the Regional Rural Banks will be entitled to claim parity with the officers and other employees of the sponsor banks in the matter of pay scale, allowance and other benefits. The employees of nationalised commercial banks were getting their pay scales on the basis of 5th bipartite settlement and by implementation of the award of the National Industrial Tribunal, the employees of the Regional Rural Banks were also given the benefits of the same settlement. Subsequently, the pay structures of the employees of nationalised commercial banks were further revised by 6th and 7th bipartite settlements but the same was not done for the employees of the Regional Rural Banks who then filed writ petitions. It was contended on behalf of the Union of India and also the Banks that financial condition of the Regional Rural Banks was not such that they may give their employees the pay structure of the employees of the nationalised commercial banks. It was in these circumstances that this Court observed that the decision of the National Industrial Tribunal in the form of an award having been implemented by the Central Government, it would not be permissible for the employer bank or the Union of India to take such a plea in the proceedings before the Court. The other case namely A.I. Regional Rural Bank Officers Federation and Others Vs. Government of India and Others, arose out of interlocutory applications and contempt petitions which were filed for implementation of the direction issued in the earlier case namely South Malabar Gramin Bank (supra). Any observation in these two cases to the effect that the financial capacity of the employer cannot be held to be a germane consideration for determination of the wage structure of the employees must, therefore, be confined to the facts of the aforesaid case and cannot be held to be of general application in all situations. In Associate Banks Officers' Association Vs. State Bank of India and Others, it was observed that many ingredients go into the shaping of the wage structure of any organisation which may have been shaped by negotiated settlements with employees' unions or through industrial adjudication or with the help of expert committees. The economic capability of the employer also plays a crucial part in it; as also its capacity to expand

business or earn more profits. It was also held that a simplistic approach, granting higher remuneration to workers in one organisation because another organisation had granted them, may lead to undesirable results and the application of the doctrine would be fraught with danger and may seriously affect the efficiency and at times, even the functioning of the organisation. therefore, it appears to be the consistent view of this Court that the economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to (sic) and may have to close down which will inevitably have disastrous consequences for the employees themselves. The material on record clearly shows that both FCI and HFC had been suffering heavy losses for the last many years and the Government had been giving considerable amount for meeting the expenses of the organisation. In such a situation, the employees cannot legitimately claim that their pay scales should necessarily be revised and enhanced even though the organisations in which they are working are making continuous losses and are deeply in red.

(emphasis added)

A reference to these paras of A.K. Bindal's case (supra) shows that similar observations have been made on the economic viability of PSUs for denial of monetary benefits, as have been made in the case of IDPL (supra). Also, in paragraph 34 of the judgment in A.K. Bindal (supra) quoted above, it is specifically observed that as per "golden handshake" on taking VRS by an employee, the jural relationship between the employer and the employee ceases, and the employee leaves with all rights and there is no question of his again agitating for any grant of his past rights with his erstwhile employer including making any claim with regard to enhancement of pay-scale for an earlier period. The Supreme Court has observed, and indeed forcefully, that an employee if is allowed to raise a grievance regarding enhancement of pay-scale even after opting and taking voluntary retirement benefits, then the whole purpose of introducing the VRS scheme would stand totally frustrated.

14. Learned counsel for the petitioner once again sought to distinguish the judgment in the case of A.K. Bindal (supra) by referring to para 33 on the ground that the employees in that case had received voluntary retirements in addition to terminal benefits and the employees there had received adequate compensation in the scheme of VRS and which is a ground to distinguish application of VRS in A.K. Bindal's case (supra). Para 33 relied upon by the counsel for the petitioner reads as under:-

33. The Voluntary Retirement Scheme (VRS) which is sometimes called Voluntary Separation Scheme (VSS) is introduced by companies and industrial establishments in order to reduce the surplus staff and to bring in financial efficiency. The office memorandum dated 5-5-2000 issued by the Government of India provided that for sick and unviable units, the VRS package of the Department of Heavy Industry will be adopted. Under this Scheme and employs

is entitled to an ex gratia payment equivalent to 45 days' emoluments (pay + DA) for each completed year of service or the monthly emoluments at the time of retirement multiplied by the balance months of service left before the normal date of retirement, whichever is less. This is in addition to terminal benefits. The Government was conscious about the fact that the pay scales of some of the PSUs had not been revised with effect from 1-1-1992 and therefore it has provided adequate compensation in this regard in the second VRS which was announced for all Central public sector undertakings on 6-11-2001. Clause (a) of the Scheme reads as under:-

(a) Ex gratia payment in respect of employees on pay scales at 1-1-1987 and 1-1-1992 levels, computed on their existing pay scales in accordance with the extant Scheme, shall be increased by 100% and 50% respectively.

15. I have really failed to understand that how para 33 in any manner can be said to be relevant inasmuch as the ratio laid down in the said case pertaining to estoppel after taking the VRS benefits and also with respect to disentitlement of employees of sick PSUs to claim monetary benefits are applicable independently of the observations in para 33 of the said judgment, and so also the ratio of golden handshake and estoppels against an ex-employee. Therefore, I do not think that para 33 of the judgment in the case of A.K. Bindal (supra) can have any bearing for any application of the said case for dismissing the claim of the petitioners in the present case. Rationale and ratio of disentitlement of employees of sick PSUs which are stated in the judgments in A.K. Bindal (supra) and I.D.P.L. (supra) cases, are in themselves sufficient grounds to dismiss the writ petition qua petitioner no. 5 who has not applied for VRS but has left the respondent no. 1-organization and joined another company.

16. So far as the facts of the case and the first argument of disentitlement of the petitioners to claim the relief also on merits is concerned, in my opinion, the arguments raised on behalf of the respondent no. 1 are sound and have to be accepted. Admittedly, the only ground urged for the petitioners to seek recall of the office orders dated 11.4.1991 and 23.4.1991 and to restore the office order dated 26.11.1990 is that the petitioners have been discriminated against as compared to one Sh. H.S. Nijhawan. In this regard, the respondent no. 1 has stated in its counter-affidavit that Sh. H.S. Nijhawan had been absorbed by the respondent no. 1 on deputation from the Government of India and since he had prior 22 years of his service to his credit at the entry point to the respondent no. 1-corporation, his existing/earlier pay-scale was protected at the time of the joining of Sh. H.S. Nijhawan with the respondent no. 1. All these aspects, as has been rightly pointed out by the respondent no. 1, were duly considered by the committee which accordingly held that the petitioners have wrongly been granted the seven increments for Deputy Managers, and the committee therefore gave its report after due deliberations and withdrawing of the wrong increments taken by the petitioners.

17. In my opinion, thus there cannot be challenge to this committee report dated

2.4.1991 which recommended as under:-

RECOMMENDATIONS

Based on the findings, the Committee has the following recommendations:

- (i) Pay fixation/grant of 7 premature advance increments to five DMs is void ab-initio;
- (ii) The pay fixation of five DMs should be re examined and done de-novo strictly in accordance with the rules stipulated in DPE letter dated 12.6.90.
- (iii) Necessary recoveries in respect of excess payment made, if any, be affected.

18. Therefore, even on merits, the petitioners have no case for recalling of the office order dated 11.4.1991 and 23.4.1991 and for restoring of the order dated 26.11.1990 inasmuch as the case of Sh. H.S. Nijhawan quite clearly fell in a separate category because on account of his experience of 22 years prior to joining the respondent no. 1-corporation, his existing pay-scale was protected by the respondent no. 1.

19. The aforesaid facts thus show that the extraordinary jurisdiction of this Court under Article 226 of Constitution of India cannot and ought not to be exercised in favour of the petitioners. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.