

(2004) 10 PAT CK 0036

In the Patna High Court

Case No : C.W.J.C. No's. 10105 of 2000, 10309 and 12542 of 2001, 6632 of 2002, 3078 of 2003, 4320 and 4779 of 2003

Sita Devi and Others

APPELLANT

Vs

Bihar State Khadi and Village Industries Board and Others

RESPONDENT

Date of Decision : 05-10-2004

Acts Referred:

Bihar State Khadi and Village Industries Act, 1956 — Section 16, 24

Citation : (2004) 3 BLJR 2073 : (2004) 4 PLJR 565

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Vivekanand Vivek, in CWJC No. 122/2000, Uday Chand Prasad, in CWJC No. 10105/2000, Birendra Prasad Verma, in CWJC No. 10309/2001, A.K. Thakur No. 2, in CWJC No. 12542/2001, Alok Kumar Sinha No. 1, in CWJC No. 6632/2002, Gajendra Kumar Jha No. 2, in CWJC Nos. 3078 and 4779 of 2003 and Harendra Kr. Tiwary, in CWJC No. 4320/2003, for the Appellant; R.P. Bhagat, G.P. IV and S.K. Ranjan, JC to G.P. IV, R.S. Pradhan Umakant Singh and Sanjay Kumar, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—The petitioners in this batch of eight writ petitions are retired employees (in two cases the widows of deceased employees) of the Bihar State Khadi and Village Industries Board ("the Board" hereinafter). The petitioners (the expression includes the dead husbands of the petitioners in two cases) retired from the service of the Board after full tenures, spanning over 30, 35 or 40 years. They have not been paid their terminal benefits and these writ petitions are filed seeking a direction to the Board and the State Government for payment of their retiral dues.

2. The Board does not dispute the petitioners' claim. It is admitted that the petitioners were the employees of the Board. They were validly appointed and they served the Board for full tenures of their respective services. Their claim for retiral dues is admitted. In fact, in cases of some of the petitioners even sanction

orders were issued for payment of their retiral dues. But, according to the Board, it is unable to pay the retiral dues of the petitioners simply because it has no money. For its finances the Board is completely dependent upon the grants made by the State Govt. The State Government seems to hold that in relation to the Board its financial liability is limited only to providing for the latter's establishment cost. It provides funds to the Board, subject strictly to the condition, that it would be used for payment of salary/retiral dues etc. to employees under "None-Plan Head" and with a firm direction that no portion of the funds made available by it would be used for payment of salary and/or retiral dues etc. to the Board's employees under "Plan-Head", The State Government seems to have taken a rigid stand that it has no liability for payment of salary and/or retiral dues to the Board's employees appointed and working against posts under plan-head. The petitioners before the Court were employees of the Board under plan-head. According to the Khadi Board, it has no funds of its own for payment of retiral dues to its employees. As a result, the Board is unable to pay retiral dues to a number of its employees (like the petitioners) retiring from posts under plan-head.

3. In a previous order passed on 3.9.2003 this Court took note of the curious distinction between the posts under plan-head and posts under non-plan-head, a distinction which is not supported by any statutory provision. The Court also expressed its surprise over the stand of the State Government that its financial liability towards the Board was confined only with regard to the posts under plan-head. In course of hearing of this matter, it came to light that the distinction between the "posts under plan-head and posts under non plan-head" and the inflexible stand of the State Government that its financial liability in regard to the Board was limited only to the posts under non plan-head are based on a letter, dated 3.11.1977 from the Joint Secretary to the Govt. to the Accountant General, Bihar on the subject of the scheme for restructuring of the Board with a view to regulate its establishment cost. But before proceeding to examine the stand of the State Government based on the scheme for restructuring of the Board as envisaged in the letter, dated 3.11.1977, it would be essential to take note of some basic facts and certain earlier decisions of this Court.

4. The Board was established in the year, 1956 u/s 3 of the Bihar Khadi and Village Industries Act, 1956 (Bihar Act XIV of 1956) ("the Act hereinafter). There is nothing to show what posts were created or the number of posts that were sanctioned by the State Government u/s 10 of the Act at the time of the Board's establishment, or even at a later stage, to enable it to discharge its statutory functions as provided u/s 14 of the Act. But the fact of the matter is that right from its establishment in the year, 1956 till the year, 1986-87 the State Government provided the Board with sufficient funds to fully meet its establishment cost, including payment of salary to its employees under the so-called plan-head who are no other than the employees working in the Sales Centres and in different projects/schemes of the Board undertaken by it in terms of Section 14 of the Act.

5. Here it may be noted that Section 16 of the Act makes it obligatory upon the Board to prepare an annual budget and forward it in the prescribed form, to the State Government. Section 16(1) of the Act reads as follows :

"16. Preparation and submission of annual programme :

"(1) In each year, on such date as may be prescribed, the Board shall prepare and forward in prescribed form to the State Government :-

"(a) a programme for the promotion and development of Khadi and Village Industries; and

"(b) a schedule of the staff of officers and servants already employed and to be employed in the next year".

6. Section 24 requires the Board to prepare and submit to the State Government for approval, each year, two separate budgets for the next financial year to be called the Khadi Budget and the Village Industries Budget and Section 25 empowers the State Government to sanction the budgets submitted to it with such modifications as it may think fit.

7. It is the case of the Board that from its inception in 1956 it submitted to the State Government every year its annual programme prepared under Section 16 and the annual budgets prepared u/s 24 of the Act. At no time the State Government questioned the appointment of any officer or employee made by the Board and till the year 1986-87 the State Government gave funds to the Board on the basis of the budgets submitted to it and sanctioned by it. But from the year 1987-88 the State Government stopped to follow the statutory scheme. Though, the Board continued to submit its annual programme and annual budgets, the State Government gave funds to it not on the basis of the annual budgets but as ad hoc grants to the tune of Rs, 30-31.50 lacs. (In one year only the annual grant was of Rs. 58 lacs). This ad hocism had a very debilitating effect on the financial position of the Board and over the years its position became so bad that it was not in a position to pay the regular salary to its employees or to make the statutory deposits from the deductions made from the employees' salary.

8. At that stage the matter came to this Court in CWJC No. 12124 of 1993 filed by an association of the Board's employees, namely, the Bihar Rajya Khadi Gram Udyog Board Karyakarta Sangh and others. The petitioners prayed for a direction from the Court commanding the State Government and its officials to release funds in favour of the Board to enable it to meet its establishment expenses for the financial year 1993-94. They also prayed for a further direction to the State and its officials to sanction the annual programme, including the annual schedule of the officers and servants of the Board prepared and submitted by it to the Government within the stipulated time-frame so that there was no delay in actual release of the funds by the State Government for meeting the expenditure of the Board's establishment. The writ petition was allowed, subject to certain

observations, by a Bench of this Court by judgment and order dated 18.1.1996, reported in 1996 (1) AII PLR 250.

9. In that case the State Government repudiated any obligations to give any fund to the Board on the plea that it was a distinct legal entity. In the alternative it was submitted that the liability of the State Government would, in any event, be limited only in regard to such employees of the Board who were appointed in accordance with the Act, that is to say, with the approval of the Government and in case any appointments were made by the Board without the approval of the State Government the Board must itself find the resources to meet the liabilities, arising from such illegal appointments.

10. The Court examined the relevant provisions of the Act and on a consideration of the legal position and the submissions made by the respective parties came to find and hold that the Board had no commercial activity to perform and further that for its finances the Board was totally dependent upon grants made by the State of Bihar or by the Khadi Commission, apart from any donations etc., made to its fund. In para 9 of the judgment it was observed and held as follows :

"9. All these provisions make it clear that the Board has no commercial activity to perform and can perform only these functions which are entrusted to it by the Act. In the matter of funds it is totally dependent upon grants made to it by the State of Bihar or the Khadi Commission, apart from any donations etc. made to its fund. In the matter of appointment of officers and servants of the Board, it is the State Government which has to accord sanction for such appointments and no appointment can be made by the Board unless it has the approval of the State Government. These provisions of the Act leave us in no doubt that it is the State Government which is responsible to meet the establishment expenses of the Board. So far as other activities are concerned, the Board may regulate the activities having regard to the availability of funds in the form of grants or advances made by the State of Bihar or the Khadi Commission, but, so far as the liability to pay salaries and wages to its officers and staff is concerned, the liability is of a permanent recurring nature and, therefore, there can be no doubt that the funds required to maintain the establishment of the Board have to be made available by the State Government, which is required to approve the budget of the Board. In fact, from Annexure-9 produced before us, it would appear that a provision is made in the State's budget presented to the legislature, for allocation of funds to the respondent Board, and it appears that it was to the tune of Rs. 31,50,000/- for the year 1992-93".

11. The decision repelled the submission by the Advocate General that since the Board was constituted under the Act, it was a distinct legal entity and hence, the State Government had no legal obligation to give it funds for meeting- its establishment cost. But it upheld the plea of the State Government that the liability of the State was limited only in regard to the employees appointed in accordance with the provisions of the Act, that is, with the approval of the State Government and in this connection it was observed and held (in para 14 of the

judgment) as follows :

"14. The learned Advocate General in the alternative submitted that the State is under no obligation to meet all the liabilities that may be incurred by the Board. The State Government at best can be called upon to allocate adequate funds for meeting the liabilities lawfully incurred by the Board. The Board has to appoint officers and servants with the approval of the State Government. If the Board, contrary to law, appoints on its own officers and servants without approval of the Government, the Government is not obliged to allocate funds for the payment of salaries and wages to such illegally appointed officers and servants. We have no hesitation in accepting the submission urged by the Advocate General. Since the Act imposes a duty upon the State Government to meet expenses legally incurred by the Board, it has vested in the Government powers to see to it that the Board does not perform its duties in breach of the statutory provisions so as to incur liabilities which can be reasonably avoided. The purpose behind giving to the State Government power to approve appointments made by the Board, is to keep a check on the number of persons who are appointed by the Board so that unnecessary expenses are not incurred by maintaining unduly heavy establishment. The control by the Government is essential because ultimately it is the Government which has to provide funds for payment of salary and wages to the officers and staff of the Board. Apart from the fact that the Board has no authority to make an appointment without approval by the Government, any appointment so made is clearly illegal and it does not vest in the persons so appointed the right to receive salary. It goes without saying that the State Government cannot be compelled to pay salaries and wages to the officers and staff illegally appointed by the Corporation without its approval....."

12. Finally, the operative portion of the judgment was as follows :

"15. In these circumstances we allow the writ petition and hold that for the legitimate expenses incurred by the respondent-Board in the performance of statutory functions, including the employment of officers and servants with the approval of the Government, the State Government is obliged to provide adequate funds to the Board to meet the obligations. If the funds which are being allocated year after year are not sufficient to meet those obligations, the State Government must and is directed to allocate additional and so as to enable the Board to discharge its legal obligation to pay salaries and allowances to the officers and servants of the Board legally appointed with the approval of the Government.. We make it clear that the State Government is not obliged to provide for payment of salaries and allowances to the officers and servants appointed by the Board in breach of the provisions of the Act and without approval of the State Government. We direct the State of Bihar to take immediate steps to provide additional funds to the respondent-Board to meet its legal obligations. The Board shall prepare a detailed statement of account and submit the same to the State Government giving full particulars about the persons employed by it, the Government orders sanctioning the posts etc. and

the funds required to meet its obligations and after examining the same and working out the liability incurred by the Board, the State shall make available to the Board necessary funds to meet such obligations including arrears due, within a period of three months from the date on which the Board furnishes the necessary statement to the Government. The Board shall upon receipt of the amount, pay to the employees legally appointed, their arrears of salaries and allowances within two weeks".

Here it will be useful to bear in mind that the decision in *Karyakarta Sangh* (supra) was given by the Bench of B.P. Singh, J. (as his Lordship then was) and I.R Singh, J.

13. It appears that thus confronted with the liability to meet the establishment expenses of the Board on the basis of the judgment in *Karyakarta Sangh* (supra), the State Government tried to cut corners as far as possible and to that end found the earlier scheme of restructuring of the Board as envisaged in the letter, dated 3.11.1977 quite useful. But before coming to that letter, and the stand of the State Government based thereon, it is needed to take note of two more decisions of this Court.

14. It is noted above, that in *Karyakarta Sangh* (supra) a Division Bench of the Court held that the Board had no authority to make appointment without approval by the Government and any appointment so made would be illegal and it would not vest in the person appointed the right to receive salary. About three years later in *Nand Kishore Thakur and Ors. v. State of Bihar and Ors.*, 1999 (2) PLJR 380 the issue once again arose before the Court, though in a slightly different form. By the decision in *Nand Kishore Thakur* this Court disposed of three analogous writ petitions that were heard together. In each case-there was a single petitioner. The petitioner in one of the cases was initially appointed as a Peon. Later on, pursuant to the decision of the Establishment Committee of the Board he was promoted against the Class III post of Typist and he received his salary as Typist for some time. The payment of his salary was later stopped and it was not resumed even after the decision of this Court in *Karyakarta Sangh* (supra). He, therefore, came to the Court seeking a direction to the Board for regular payment of his salary in the scale of Typist. The petitioner in the second case was initially appointed as Typist in the Central Godown of the Board at Patna. He was later transferred to the Head Office and the Establishment Committee of the Board decided to adjust him in the Head Office. On the basis of the decision of the Establishment Committee an office order was issued but by another order issued later, the order of his adjustment in the Head-office was stayed. The petitioner, however, continued to get his salary in the Head Office for some time but after the decision in *Karyakarta Sangh* an order was issued cancelling his appointment/adjustment against the post of Typist in the general establishment of the Board and reverting him to the Central Godown, Patna on the same post. He came to the Court challenging (1) the office order staying his alleged irregular appointment on the post of Typist and (ii) the 1997 order by

which his appointment/adjustment against the post of Typist in the general establishment of the Board was cancelled and he was reverted to the Central Godown, Patna. The petitioner in the third case was initially appointed as Salesman. Later, he was asked to perform duty in the Accounts Section in the general establishment of the Board. Later on, the Establishment Committee decided to absorb him against the vacant post of Ledger-Keeper. The matter of his absorption was referred to the State Government but the Industries Department refused to approve his absorption on the post of Ledger-Keeper. As a consequence the Board issued an office order cancelling his absorption on the post in the higher scale. He came to the Court challenging the refusal of the State Government to grant approval for his absorption on the higher post of Ledger-Keeper and the consequent office order issued by the Board cancelling his absorption.

15. In all the three cases the stand of the State Government and the Board was that the promotions/absorption were irregular because those were made without the approval of the Bureau of Public Enterprises and the Government. It was contended on behalf of the Government and the Board that the Secretary of the Board was not competent to make the initial appointment. In support of the stand the State Government relied upon the general direction issued by the Administrative department namely the Industries Department vide letter No. 5373 dated 19.4.1991 directing not to pay salary to such employees who were appointed or promoted or adjusted against different posts without approval of the State Government.

16. The three writ petitions (hereinafter collectively referred to by the name of Nand Kishore Thakur) were allowed by judgment and order passed by a learned Judge of this Court sitting singly. The decision in Nand Kishore Thakur negated the contention of the State Government and the Board on the issue of approval by the State Government being the precondition for a valid appointment. The judgment by the learned single Judge noticed the earlier Division Bench decision in Karyakarta Sangh (supra) but referring to the provisions of Section 30 of the Act and Rule 5 of the Rules made thereunder as well as the provisions of Section 10 the judgment took the view that might appear to be somewhat divergent from the view taken by the earlier Division Bench in Karyakarta Sangh.

17. In para 7 of the judgment in Nand Kishore Thakur, it was observed as follows:

".....The State Government's power of approval, however, is limited to the number of posts. In other words," the Government has power to determine the number of posts against which the Board can make appointment. On its part, the Board is supposed to appoint only such officers and employees "as it may consider necessary" but subject to the approval of the State Government. From bare perusal of the provisions it would, thus, appear that the Government has no power to approve or disapprove the individual appointments made against the post(s) sanctioned by the Government. True, the State Government has to bear the financial burden of such appointments to a considerable extent but it is

obvious that once posts along with pay are sanctioned, appointment or adjustment or grant of sanctioned scale against sanctioned post are not likely to cause additional burden on the State."

18. And in para 8 of the judgment it was observed as follows :

"8. On the other hand, Rule 5 of the Bihar State Khadi and Village Industries Rules, 1978 framed by the Governor of Bihar u/s 33 of the Bihar Khadi and Village Industries Act, lays down" in express terms that it is the Establishment Committee of the Board which shall be competent to appoint, promote (as well as discharge and dismiss) Class III and Class IV employees. The Establishment Committee in fact, is competent to make transfer and posting and take disciplinary action in respect of Class I and Class II Officers as well. In view of the aforesaid rules, which have been framed "for carrying out the purposes of this Act" (to use the words of Section 33), conferring power upon the Establishment Committee to make appointments and give promotion in respect of Glass III and Class IV employees, the Establishment Committee was fully competent to appoint the petitioners or to adjust them in the particular scale."

It may be noted here that three appeals being LPA Nos. 781, 782 and 788 of 1999 were preferred against the Single Judge judgment in Nand Kishore Thakur. All the three appeals were dismissed by a division Bench. The division Bench fully endorsed the view taken by the learned single Judge and dismissing the appeals, observed as follows :

"We are in complete agreement with the view of the learned Judge that under the Act it is only the number of posts which is to be approved by the State Government and it is not required to approve each and every appointment made by the Board in accordance with the Act."

19. The Division Bench that dismissed the LPAs was presided over by B.P. Singh, J.

20. The same matter yet again came before this Court in CWJC No. 8148 of 1997 (Chandra Bhushan Choudhary v. State of Bihar and Ors.). In this case, first placed before a learned single Judge, the State relied upon the Division Bench decision in the case of Karyakarta Sangh (supra) while on behalf of the petitioner reliance was placed upon the single Judge decision in Nand Kishore Thakur (supra). It seems that to the single Judge hearing the case of Chandra Bhushan Choudhary it was not pointed out that the single Judge judgment in Nand Kishore Thakur was later confirmed in appeal by a Division Bench. Hence, the learned single Judge hearing the case of Chandra Bhushan Choudhary noticed the divergence of the judicial views between the Division Bench decision in Karyakarta Sangh and the single Judge judgment in Nand Kishore Thakur. Accordingly, by order, dated 8.5.1999, the learned single Judge, referred the case to be heard by a Division Bench.

21. By co-incidence the matter came up before the Division Bench of B.P. Singh,

J. and IP. Singh, J. and the writ petition was allowed by judgment and order, dated 4.2.2000. In that order, the Division Bench held that since the appointment of the concerned employee was made on a sanctioned post, he could not be removed from service on the ground that the appointment was made without the sanction of the State Government. Referring to the earlier decision, by the same Bench, in the case of Karyakarta Sangh following observations were made in the order :

"Needless to say that the Government, in view of a judgment of this Court reported in 1996 (1) BLJ 682 (Bihar Rajya Khadi Gramin Udyog Board Karyakarta Sangh and Ors. v. State of Bihar through the Chief Secretary, Government of Bihar and Ors.), is bound to make necessary allocation and grant funds to the Board to meet its expenses, which includes payment of salary to its employees."

22. Against the order passed in the case of Chandra Bhusham Choudhary the State Government went in appeal before the Supreme Court in Special Leave to Appeal (Civil) No. 9602 of 2000 which was dismissed in limine by order, dated 12.4.2002.

23. Thus, the position that emerges is that against posts which are duly sanctioned by the State Government, the Establishment Committee of the Board is legally competent to make appointments and no prior sanction or later approval of the State Government is required in respect of individual appointments. The appointment being valid and legal, the State cannot avoid or escape the financial liabilities in view of the decisions in the case of Karyakarta Sangh and Nand Kishore Thakur.

24. That being the legal position it is now to be examined how far the stand of the State Government that its financial liability in relation to the Board is confined only to the posts under non-plan head can be sustained and how far the distinction between posts under plan-head and non-plan head is itself valid and reasonable.

25. As seen earlier the judgment in Karyakarta Sangh, delivered by a division Bench of this Court on 18.1.1996, held the State Government liable to meet the establishment cost of the Board. Faced with the decision the State Government sought to cut down its liability as far as possible and to that end it seems to have dug out and resurrected a scheme for restructuring of the Board formulated about 20 years earlier. In 1977 a committee was constituted by the State Government for regulating the establishment cost and re-organisation of the executive machinery of the Board. On the basis of the Committee's recommendations a scheme was prepared for restructuring the Board. The scheme of restructuring also fixed the number of officers/employees at the Headquarter of the Board at Patna and at the Regional (Divisional) Organisation and the District Organisation. According to the scheme, 101 officers and employees were to be required at the Headquarter Organisation for establishment, development and coordination and another 41 officers and

employees for accounts, audit and utilisation. At Regional (Divisional) Organisation (in old four Divisions) the number officers and employees was fixed at 72 and for the District Organisation (in old 17 districts) the number of officers and employees was fixed at 220. Thus, a total number of 434 officers/employees was fixed for the entire establishment of the Board. The restructuring scheme made no provision for any officer(s)/employee(s) for the different sale centres or Khadi Bhawans being run by the Board or for the different scheme like Bee Keeping, pottery etc. undertaken by the Board in discharge of its functions u/s 14 of the Act. The complete exclusion of the sale centres/Khadi Bhawans from the establishment of the Board appears to be quite unreasonable and unjustified. More so, in view of the finding of this Court in Karyakarta Sangh that the Board was not engaged in any commercial activity and all its activities were aimed at discharging its statutory functions as laid down u/s 14 of the Act.

26. It may also be noted that even while fixing the total number of officers and employees for the establishment of the Board at 434, it was noted in the letter, dated 3.11.1977 that "as a result of re-organisation, posts of 58 employees (employees) shall become surplus. The Committee has recommended that it would be better to absorb these 58 surplus employees in other industries rather than retrench them. It is also policy of the State Government not to retrench the employee".

27. After fixing the total number of officers and employees for the establishment of the Board and after accounting for their salary and, other establishment cost, the letter, dated 3.11.1977 went on to direct that the payment of the amount shall be made to the Board from "Aid-Subsidy grant under the budget Head 32 (Village and Small Industries-Khadi Industries)". It was reported to the Court that the budgetary head indicated in the letter falls under non-plan and it was on that basis that the wholly artificial distinction between posts under non-plan-head and posts under plan-head gained currency. It was this scheme for restructuring formulated in 1977 under which the Board's employees working in different sale centres/Khadi Bhawans and in different schemes and projects were completely excluded that was brought out to cut-down the State's financial liability in view of the decision of this Court in Karyakarta Sangh.

28. It may be noted here that though the restructuring scheme was formulated in 1977, it was never fully implemented or enforced till the Division Bench decision in Karyakarta Sangh. The 58 employees who were held to be surplus by fixing the number of officers/employees at 434, though recommended to be absorbed in other industries, continued with the Board as before and received their salary along with other employees. Not only this, after 1977, 12 more employees were inducted who also continued to receive their salary from the Board.

29. It appears that after the decision in Karyakarta Sangh on 18.1.1996 the State Government called for from the Board the relevant details in the prescribed form. The Board submitted the details as called for by the State Government

along with a letter dated 18.4.1996 from its Chief Executive Officer. This letter gives a complete picture of the Board from its inception in the year, 1956 till 1996. It was pointed out that till 1978 no rules, as referred to u/s 10 of the Act, were framed and in the absence of any rules, the appointments were made by the Secretary to the Board on the basis of the recommendations made by a selection committee consisting of the members of the Board. Then Bihar Khadi Gram Udyog Rules were framed u/s 33 of the Act and were notified vide S.O. No. 829, dated 6.7.1978. Rule 5(1) of the Rules provided for an Establishment Committee to make appointment against Class III and IV posts. The letter further stated that under the provisions of the Act or the Rules there was no requirement of taking any prior or post approval of the State Government for making appointment against Class III and IV posts, sanctioned by the Government. After coming into force of the Rules all appointments were made by the Establishment Committee constituted under Rule 5(1) of the Bihar Khadi Gram Udyog Rules. The letter also pointed out that right from the establishment of the Board in 1956, every year annual returns concerning the Board's promotional programmes were submitted to the State Government. The annual returns also included a schedule of the staff of officers and servants already employed and to be employed during the next year. At no stage there was any objection from the State Government regarding appointment of any of the employees mentioned in the annual returns, The letter further pointed out that even though the restructuring scheme of 1977 fixed the number of employees at 434, declaring 58 employees as surplus, it did not hold the appointment of any existing employee as invalid or made in violation of the statutory provisions. The letter also stated that after 1977, two further committees were constituted, and in the year, 1982 under Shri U.N. Panjiar and the other in the year, 1988 under Shri P.K. Basu. Neither of the two Committees had found that any of the Board's employees were appointed invalidly. The 1982 committee under Shri U.N. Panjiar had found that apart from 434 employees, of the 58 who were declared surplus under the restructuring scheme of 1977, 52 were still working in the Board. Besides that 12 more employees were appointed after 1977 and a total number of 470 employees were receiving their salary from the funds made available by the State Government. Apart from the 470 who were getting their salary from the fund given by the State Government there were in fact 191 more employees working in the Board at that time.

30. In course of hearing the Court was informed that though in the restructuring scheme of the year 1977, 434 posts were determined for the establishment and general administration of the Board, at present only 58 persons were working there. During the past 25 years a majority of the employees retired, while some others died, but, the vacancies were not filled up due to an embargo imposed by the State Government against any fresh appointment. In addition to the 58 persons working in the establishment and general administration of the Board, there were 72 persons working under the so-called plan-head. Two persons were working in the scheme of bee-keeping, one in pottery division and the remaining

69 persons were working in the different sale centres and Khadi Bhawans. It is difficult to understand how the Board can be expected to discharge its statutory functions at! over the State with a work force of 58 persons in the establishment and general administration and 72 persons in the sale centres/Khadi Bhawans and in the Board's schemes.

31. The attention of the Court was also invited to an order issued by the Secretary, Department of Industries, Govt. of Bihar under memo No. 2386, dated 1.7.2002 by which the posts under non-plan-head in the Board were declared as a dying cadre and a ban was imposed against making any appointment adjustment etc. on any of the posts falling vacant due to retirement etc. of the present incumbents.

32. On a careful consideration of the entire materials on record and on hearing counsel for the parties, I come to the firm conclusion that not only the restructuring scheme of the year, 1977 was quite unreasonable and arbitrary in excluding the Board's employees working at its sales centres/Khadi Bhawans and in its different schemes from the Board's establishment but the stand taken by the State Government on the basis of that letter to limit its financial liability only in regard to the employees working under the so-called non plan-head is wholly unsustainable.

33. The petitioners, claiming their retiral dues, were appointed long before 1977. The details regarding their appointment were furnished to the State Government in the annual returns submitted u/s 16 of the Act. At no time there was any objection that their appointments were invalid. Even in the 1977 scheme of restructuring it was not said that the petitioners were appointed invalidly or in breach of the statutory provisions. In those circumstances, I fail to see how the State Government can repudiate its liability in regard to the petitioners on the basis of the 1977 scheme of restructuring. Moreover, the scheme of restructuring was also not fully implemented in 1977 and it was brought out only after the decision of this Court in Karyakarta Sangh in the year 1996.

34. I am, therefore, constrained to observe that the 1977 restructuring scheme has been taken out for giving rise to this baseless controversy simply to neutralize this Court's decision in Karyakarta Sangh and in order to cut down the State's lawful liability.

35. On the basis of the discussions made above, I come to the firm conclusion that the distinction sought to be made between the employees working in the establishment and general administration of the Board and those working at its sale centres/Khadi Bhawans is wholly illusory, arbitrary and unreasonable and the liability of the State Government extends also to the employees of the Board working at the sale centres and the Khadi Bhawans. The State Government is, therefore, fully liable to make available to the Board sufficient funds for payment of the retiral dues of the petitioners and others similarly situated.

36. Before parting with the records of the case, I would like to observe that the

action of the State Government in limiting the number of posts, imposing an embargo against filling up the vacancies arising as a result of superannuation/death of the existing employees and declaring the posts in the Board as dying cadre amounts to subversion of the legislative mandate. I do not propose to make any direction on that issue because it does not fall directly in this case. But I cannot refrain from observing that the Board was set up, in order to discharge certain functions, by the mandate of the legislature, expressing the plenary will of the people. In order to discharge its functions the Board naturally requires the basic infrastructure and personnel. The executive action by which the posts under the Board have been declared as dying cadre and the Board is forbidden to make any appointments clearly over-reaches the legislative mandate and amounts to subverting an Act of the legislature. The State Government will be well advised to reconsider the matter in the light of these observations.

37. In the result, these writ petitions are allowed and the State Government is directed to make available sufficient funds to the Board for payment of retiral dues of the petitioners and other similarly situated employees without any delay and preferably within two months from the date of receipt/production of a copy of this order before the Secretary, Department of Industries, Bihar, Patna.