

(2009) 10 CAL CK 0008
In the Calcutta High Court
Case No : Writ Petition No. 985 (W) of 2007

Sri Amar Kumar Barik and Others

APPELLANT

Vs

National Instruments Limited and Others

RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:

Companies Act, 1956 — Section 619, 620
Constitution of India, 1950 — Article 14, 21, 226, 311
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 18(2), 18(4),
18(6A), 19(3)

Citation : (2009) 10 CAL CK 0008

Hon'ble Judges : S.P. Talukdar, J

Bench : Single Bench

Advocate : Indrajit Dasgupta, Saktinath Mukherjee, Swapan Kumar Dutta and Anindya Lahiri, for the Appellant; Asit Kumar Bhattacharjee and Somnath Gangopadhyay for Respondent Nos. 1 and 2, Manoj Roy, Debasish Chattopadhyay and Papri Basak for Union of India, for the Respondent

Judgement

S.P. Talukdar, J.—The employees of certain Public Sector Enterprises filed several writ petitions with regard to pay revision of the Central Public Sector Employees following Central Dearness Allowance (hereinafter referred to as "CDA") pattern in 69 Public Sector Enterprises of the Government of India. In pursuance of the directives given by the Hon'ble Supreme Court on 14th March, 1986 in connection with those writ petitions, the Government of India appointed a High Power Pay Committee on 7th April, 1986 under the Chairmanship of the Hon'ble Mr. Justice R. B. Misra (as His Lordship then was), which gave its final report to the Government of India on 24th November, 1988 recommending Central Government pay structure for all the 69 Public Sector Enterprises including National Instruments Limited, being respondent No. 1 herein. By judgment dated 3rd May, 1990, the Apex Court directed implementation of the recommendation of the High Power Pay Committee Report. Ministry of Programme Implementation, Department of Public Enterprises, Government of India issued an office Memorandum No. 2(43)/90-DPE(WC) dated 12th June, 1990 regarding

implementation of the recommendations of the said High Power Pay Committee.

2. Para 3(iii) of the office Memorandum dated 12th June, 1990 provides that all employees following 3rd Central Pay Commission Dearness Allowance pattern appointed on or after 1st January, 1986 but before 31st December, 1988 would be deemed to have been appointed in the revised scales. In para 11 of the Memorandum dated 12th June, 1990 which dealt with "next pay revision", it was stated that "the employees in respect of whom the recommendations of the HPPC are now being implemented under orders of the Supreme Court dated 3.5.1990 would get pay revision only as and when similar changes are effected for the Central Government employees (Supreme Court judgment dated 3.5.1990)."

3. The National Instruments Limited was, however, declared a Sick Industrial Company on a reference to the Board for Industrial and Financial Reconstruction (hereinafter referred to as "BIFR") u/s 17 of the Sick Industrial Companies (Special Provisions) Act, 1985. The Government of India, Ministry of Industry, Department of Public Enterprises issued one office memo No. 2(42)/97-DPE(WC) dated 24th October, 1997 in the matter of pay revision of the Central Public Sector employees following CDA pattern in 69 Public Sector Enterprises including the NIL. It was stated that the pay scales in respect of all the Public Sector Enterprises would be revised w.e.f. 1st January, 1996 as per judgment of the Hon'ble Supreme Court dated 3rd May, 1990 on the recommendations of the High Power Pay Committee. There was a Memorandum of Settlement arrived at 6th October, 1997 after protracted negotiation between the management of NIL and the Unions for rehabilitation. The employees in the best interest of revival of the NIL agreed that the status quo in respect of existing pay scales would be maintained for a period of at least three years. On expiry of the stipulated period of three years, the rights and privileges, so far sacrificed may revive, as if the same have never happened. It was further agreed that the arrears accruing out of the arrangement as mentioned in Clause 7.5.2 would be sacrificed by the employees. The management was to revive the position at the end of each financial year.

4. Regarding treatment of Sick Enterprises, the Pay Revision Committee made the following observation:

6.11.1 - A basic question, which concerns the working of public sector undertakings and emoluments of their employees, is the manner in which sick and loss making undertakings are treated. Today, these public sector undertakings fall under three categories.

6.11.2 - The first category is public sector enterprises that follow the Central Dearness Allowance pattern. Irrespective of their financial position these companies have got the benefit of the recommendations of the 5th Central Pay Commission. This is as per the orders of the Supreme Court. In respect of these companies, the Committee recommends that, so long as the Court decision

remains, emoluments have to be paid as per the Court orders.

5. Respondent No. 1/NIL following the said CDA pattern for the petitioners comes within the first category of Public Sector Enterprises. According to the report dated 30th October, 1998 and so long as the order of the Hon'ble Supreme Court subsists, emoluments have to be paid to the petitioners following the recommendation of the 5th Central Pay Commission irrespective of the financial position of the NIL. The NIL has been issuing salary bills showing the payment of emoluments according to the 4th Pay Commission Recommendations and accrual of emoluments according to the 5th Pay Commission Recommendations. On 12th November, 2002, the BIFR by an order concluded that the NIL was not likely to become viable on a long term basis and it be wound up.

6. In such changed circumstances, arising out of the order of the BIFR dated 12th November, 2002, the bipartite settlement dated 6th October, 1997 had lost its force. The appeal was, however, preferred against the order of the BIFR before the Appellate Authority for Industrial and Financial Reconstruction, in short "AAIFR" and the same is still pending. The two leading Universities of West Bengal, namely, Calcutta University and Jadavpur University, submitted their individual proposals to the Department of Heavy Industry expressing their desire to take over the assets and liabilities of NIL along with the responsibilities of the existing man power. Meeting was convened on 24th June, 2005 regarding such taking over the assets and liabilities by either of the said two Universities. In the said meeting, Department of Heavy Industries, Government of India had agreed to take the responsibilities of all the dues pertaining to the employees of NIL up to the last date.

7. The petitioners along with others submitted a representation dated 6th July, 2006 to the Chairman and Managing Director of NIL requesting the said authority to disburse the salaries of the CDA pattern employees as per High Power Pay Committee Recommendations (5th Pay Commission) w.e.f. 1st January, 1996. This was done by the NIL in respect of the CDA pattern employees as per officer Memorandum dated 24th October, 1997. But such revised pay scales as per 5th Pay Commission Recommendation could not be implemented to the existing employees due to non-availability of financial resources and considering the pendency of the revival package of the NIL. But the amount was accumulated as arrear in the name of each individual employee. The extent of financial involvement of the arrears was communicated to the Ministry for release of fund from time to time. In the representation dated 6th July, 2006, it was pointed out that those employees of NIL who had retired/resigned/separated under Voluntary Retirement Scheme had been given their dues in the revised pay scales as per 5th Pay Commission Recommendations along with arrear salaries. 11 employees of NIL who retired between 31st January, 1996 and 28th February, 2006 had been given the benefits of 5th Pay Commission (High Power Pay Committee Scales of Pay) w.e.f. 1st January, 1996. Two employees who retired on 19th July, 1996 and 23rd June, 1999 had been given similar benefits. One Edward Lapcha,

since deceased, who was upper division clerk of NIL, was also given such benefits w.e.f. 1st January, 1996 after his death on 17th October, 1998.

8. A list of 79 employees who were released under Voluntary Retirement Scheme on 28th August, 2002 and a list of 102 employees released under Voluntary Retirement Scheme as on 4th February, 2003 as also a list of 212 employees released under the Voluntary Retirement Scheme on 31st March, 2003 circulated under inter office memoranda dated 28th May, 2001 and 3rd February, 2003 show that in case of employees under CDA Scale, calculations of the service benefits were made as per High Power Pay Committee Pay Scales according to 5th Pay Commission Recommendations. The Department of Heavy Industries, Government of India, issued a D.O. No. 11/36/2004-PE.I dated 25th October, 2006 stating, inter alia, that the proposal regarding transfer of assets, liabilities and man power of NIL to Jadavpur University was concurred by most of the Ministries/Departments of the Government of India subject to certain pre-conditions. One of the pre-conditions was that the Government of India would not provide any budgetary support for payment of arrears of wages/VRS dues. The University may take over the liabilities on "as is where is" basis, as on the date of transfer. The Government of West Bengal did not agree to take the liabilities of the arrear dues of the employees. On 22nd November, 2006, AAIFR passed an order wherein the stand of the Government of India is that some minor reconciliations, if required, were to be done for payment of dues of the employees and workers in consultation with the Department of Public Enterprises.

9. Thus, the legitimacy of the petitioners' demand cannot be any longer in dispute. They are being given interim relief as per recommendations of the 5th Pay Commission. The recommendations of the 5th Pay Commission vis-?-vis the High Power Pay Committee have been implemented w.e.f. 1st January, 1996 in respect of all other employees under CDA scale excepting the existing employees including the petitioners. In the pay bills issued in favour of the petitioners, their entitlements to the benefits as per recommendation of the 5th Pay Commission have been duly reflected. In the 48th Annual Report for 2004-06 of NIL there was a provision for payment of arrear salary and wages to the existing employees as per 5th Pay Scale, which was considered adequate as on 31st March, 2005. Such provision was, however, withdrawn and not reflected in the 49th Annual Report for 2005-06 of NIL. The authorities were repeatedly approached by the petitioners but without any result. The respondent authorities, thus, acted in an arbitrary manner and the writ petitioners had been discriminated against.

10. Being left with no choice, the petitioners approached this Court for redressal of their grievances.

11. In the Affidavit-in-Opposition filed on behalf of the respondent Nos. 3 and 4, it had been alleged that the salary/wages of the employees of Public Sector Undertakings (PSUs) governed by CDA pattern are monitored by the Pay Commission report. Ministry of Finance constitutes such Pay Commission, which

makes recommendations. After examining such recommendations, the Ministry of Finance circulates the same for implementation of Pay Commission report to the PSUs and it is for the administrative department to take necessary action on the basis of the guidelines and the financial position of the PSUs under its control. It is for the PSUs to satisfy all the pre-conditions set forth for the implementation of such Pay Commission report. Implementation is subject to the financial condition of the PSUs and the Government of India does not provide any financial assistance for implementation of such revision. The office Memorandum dated 12.6.1990 is applicable to the PSUs in which 4th Pay Commission report has been implemented with the due procedural approval of the concerned administrative ministry. Since the present case relates to the arrear of 5th Pay Commission Recommendation, it is necessary to refer to the fact that National Instruments Limited was referred to BIFR in 1992 and it could never make any profits thereafter. As such, question of revising the pay scales w.e.f. 1st January, 1996 could just not arise. It had been further claimed that the mention of 5th Pay benefits on the pay slip cannot be construed as an approval of the Government to grant the employees of the NIL such pay revision. There has been no explicit order granting 5th Pay Commission revision to NIL. After the winding up orders had been passed, there could be no reason for the company to revise the Pay Scales in light of the poor financial condition of the company. Failure of any bipartite settlement for not revising pay scale dated 6.10.1997 because of BIFR does not amount to an approval for revising the pay scales. There is no provision for revising the pay scales to the 5th Pay Commission's scales in the proposal for transfer and hence there are no outstanding salary/wages dues on account of 5th Pay revision.

12. The arrangement with Jadavpur University and Calcutta University was just a step taken for protection of the jobs of the employees of the company when BIFR had ordered closure and winding up of the company.

13. The said respondents further claimed that the representation submitted by the petitioners was taken up with the Departmental of Public Enterprises which in turn replied that the decision on payment of arrears of CDA scale of pay may be taken by administrative department keeping in view DPE guidelines on pay revision, financial position of the company and on the basis of prevailing scale of pay. It had been further stated that any payment to some employees, as alleged, if had been done in a wrong manner will not amount to an approval of revision of pay scales. An order of revision of pay scales has to be an explicit order clearly mentioning the conditions and on the basis of the financial condition of the company.

14. Such respondents, thus, sought for dismissal of the writ application.

15. Respondent Nos. 1 and 2 also contested the case by filing a separate Affidavit-in- Opposition. They claimed that respondent No. 1 is a Central Government Undertaking under the management and control of Department of Heavy Industry, Ministry of Heavy Industries and Public Enterprises being

incorporated in 1956. In 19992, the respondent No. 1 was referred to BIFR and on 21st November, 2002, it was declared a Sick Industrial Unit and the BIFR was pleased to recommend for winding up of respondent No. 1. The Department of Heavy Industries decided that since respondent No. 1 was making loss for the last 15 years and since it had been referred for winding up, there could be no obligation to pay arrear in terms of 5th Pay Commission to the employees under CDA scale of pay. On 17th July, 2007, a meeting was held in the BIFR to consider the recommendation of the AAIFR when the scheme of transferring the assets, liabilities and man power of the respondent No. 1 to Jadavpur University submitted by the State Bank of India, the Operating Agent was found viable. A notice inviting objection regarding such transfer was proposed to be published in the leading newspapers and date was fixed for further hearing on 29th October, 2007. It was further stated that the decision of taking over of respondent No. 1 by the Jadavpur University Authority although approved by the concerned Ministry, the same is yet to be implemented and the Government's decision about taking responsibilities has not taken effect as yet.

16. It was also claimed that no order had been issued by the Government for payment of arrear of pay revision to the retiring officers/VRS employees/other employees of the respondent No. 1. No decision had been taken by the concerned authority about implementation of 5th Pay Commission. Since the company had been recommended for winding up, the question of revising the pay scale w.e.f. 1st January, 1996 could not arise.

17. On behalf of the petitioners it was contended that some of the employees standing on an identical footing were given revised pay scale at the time of their VRS. Learned Senior Counsel, Mr. Saktinath Mukherjee expressed his wonder as to how, in such circumstances, the writ petitioners could be discriminated against. According to him, the plea that such payment, if at all made, was unintentional and had been a mistake, is far from convincing. It was further submitted by Mr. Dutta while assisting learned Senior Counsel Mr. Mukherjee, that the NIL is essentially a research institution which cannot be expected to make material profit. He submitted that since inception, this respondent No. 1 takes loan from the Government for payment of salaries etc.

18. It was submitted on behalf of the writ petitioners that the CDA employees who have retired/resigned and/or died have been given all benefits based upon the recommendation of the 5th Pay Commission. The petitioners who continued to be in service have been denied such benefits. This, according to the learned Counsel for the writ petitioners, is arbitrary and illegal and it violates Article 14 and Article 21 of the Constitution of India. It was then submitted that National Instruments Limited being a Research based Organization, the question of its making profit and loss does not arise.

19. Inviting attention of the Court to Annexure-"P-13" of the Affidavit-in-Reply, it was submitted that para 11.1 of the Report of the Pay Revision Committee for Public Sector Executives states:

The first category is public sector enterprises that follow the Central Dearness Allowance pattern. Irrespective of their financial position these companies have got the benefit of the recommendations of the 5th Central Pay Commission. This is as per the orders of the Supreme Court. In respect of these companies, the Committee recommends that, so long as the Court decision remains, emoluments have to be paid as per the Court orders.

20. It was further submitted on behalf of the writ petitioners that the Government of India has approved the "write off" its loan and decided to bear any financial implication that may arise for payment of outstanding decided of the petitioners by way of grant of equivalent amount of additional budgetary support. The decision of the Government of India to pay salaries and allowances of the petitioners till the date of transfer of NIL to Jadavpur University has also been clearly spelt out. Initially the cut off date was 1.4.2007 which, however, was extended till 15th January, 2009. Learned Counsel for the petitioners could not find any sufficient justification for raising the issue that the writ petitioners are just few in number and the application has not been filed in a representative capacity. It was submitted that the relief's have been sought for in respect of such writ petitioners only and the same can very well be extended to the added respondents. This stand can not be said to be without farce.

21. On behalf of the writ petitioners, it was then contended that the respondent/ Union of India is not justified in taking the stand that the writ petitioners being employees of Public Sector Enterprises could not demand to be treated equally as the Central Government employees.

22. On the other hand, learned Counsel for the respondent No. 3/Union of India categorically mentioned that such respondent No. 1 has been consistently over a protracted period of time running in huge loss. It became a Sick Public Sector Enterprise in 1992 and reference to the BIFR was made accordingly. Since 1991-92, such respondent No. 2 could never, in fact, make any profit. BIFR recommended for winding up of such PSE unit. According to learned Counsel for such respondent No. 3 the office Memorandum dated 24th October, 1997 will be applicable to the sick unit, which run consistently with losses for more than 15 years.

23. Annexure-"P-9" at page 76 to the writ petition is a communication dated 6th July, 1996. By such representation addressed to the Chairman & Managing Director, NIL, the signatories brought to the notice to the concerned authority that there had been discrimination against the writ petitioners who had been denied the benefits, which were extended to the employees who retired/resigned/separated under the VRS. Such assertion on the part of the writ petitioners raises certain intricate points of law. Even assuming that certain benefits were extended to the employees who retired/resigned/expired/separated can that by itself just be a sufficient justification for extending the same benefit to others. Significantly enough, learned Counsel for the respondent/Union of India sought to wash his hands of while submitting that it could be a calculated internal

arrangement. The fact of extending certain benefits in the matter of pay scale was, thus, sought to be described as an intra family arrangement for mutual benefit at the cost of public exchequer.

24. Mr. Saktinath Mukherjee while discussing about the role of State referred to the decision of the Apex Court in the case between Kapila Hingorani Vs. State of Bihar, . The Apex Court in the said case observed that "the corporate veil indisputably can be pierced when the corporate personality is found to be opposed to justice, convenience and interest of the revenue or workmen or against public interest."

25. It was submitted that the State may not be liable in relation to day-to-day functioning of the companies, but its liability would arise on its failure to perform the constitutional duties and functions by the public sector undertakings, as in relation thereto lie the State's constitutional obligations. The State cannot be so insensitive to the plight of its citizens, particularly the employees of the public undertakings. The Apex Court in the said case observed that "financial stringency may not be a ground for not issuing requisite directions when a question of violation of the fundamental right arises". According to Mr. Mukherjee the State is liable to mitigate the sufferings of the employees of the public sector undertakings or the Government companies.

26. It is true that the term "life" used in Article 21 of the Constitution has a wide and far- reaching concept. It includes livelihood and so many other facets thereof. "Life", as observed by Field, J. in *Munn v. Illinois* 94 US 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed.

27. The Apex Court in the said case held that expansion of the right to life and personal liberty under Article 21 of the Constitution has been made by implicating:

(i) Right to travel - *Maneka Gandhi v. Union of India* and *Satwant Singh Sawhney v. D. Ramarathnam*.

(ii) Right to privacy - *Kharak Singhy v. State of U.P.* and *Sharda v. Dharmpal*.

(iii) Right to speedy trial - "*Common Cause*", *A Registered Society v. Union of India*.

(iv) Right to prisoners to interview - *Prabha Dutt v. Union of India*.

(v) Right to a fair trial - *ComMr. of Police v. Registrar, Delhi High Court*.

(vi) Right against torture and custodial violence - *D.K. Basu v. State of W.B.*

(vii) Right to free legal aid - *State of Maharashtra v. Manubhai Pragaji Vashi*.

(viii) Right to primary education - *Unni Krishnan, J.P. v. State of A.P.* and *T.M.A. Pai Foundation v. State of Karnataka*.

(ix) Right to health and medical care - Consumer Education & Research Centre v. Union of India and State of Punjab v. Mohinder Singh Chawla.

(x) Right to pollution-free environment - M.C. Mehta v. Union of India.

(xi) Right to safe drinking water - A.P. Pollution Control Board v. Prof. M.V. Nayudu.

(xii) Sexual harassment of working women - Vishaka v. State of Rajasthan and Apparel Export Promotion Council v. A.K. Chopra.

(xiii) Right to a quality life - Hinch Lal Tiwari v. Kamala Devi.

(xiv) Right to family pension - S.K. Mastan Bee v. G.M. South Central Rly.

28. It was then submitted that at the relevant point of time for taking over the sick PSE by Jadavpur University, the following liabilities had been subsisting i.e. -

a) The loan with the SBI was Rs. 810 lacs.

b) Loan with the Government of West Bengal 569.94 lacs.

c) Loan with the Central Government, the respondent No. 3, was Rs. 23,274.61 lacs and

d) Employees related dues worth of Rs. 203.48 lacs.

29. It was submitted that the Apex Court in the case between Jute Corporation of India Officers' Association v. Jute Corporation of India, as reported in 1990(3) SCC 437, never distinguished the categories of PSE, namely, (1) who are generating profits and (2) who are running with losses several years consecutively. It was observed that the recommendation of Pay Commission will also be applicable for 69 PSEs in general. In pursuant to the said judgment, the Central Government prepared its guideline for Public Sector Enterprise (PSE) to implement Pay Commission Recommendation in compare to Central Government employees. In the said guideline it was categorically held that there are three kinds of PSEs (1) profit making PSUs (2) Loss making PSUs (3) PSU before BIFR.

30. Attention of the Court was invited to the guideline, which refers to the implementation of the Pay Commission Recommendation. It suggests that the PSUs which do not make profit during the preceding three years viz., 1991-92, 1992-93 and 1993-94 or had incurred loss during any of these financial years would also be allowed to adopt the scales of pay of the executives holding posts below the Board Level and non-unionized supervisors with the approval of the Government i.e. the Administrative Ministry acting in consultation with the DPE, provided they give an estimate as to how resources would be generated by them to meet the extra expenditure. It was submitted on behalf of the respondent No. 3 that in the instant case, no such document had been relied upon by the writ petitioners to that effect and to show that they had taken measures to mobilize resources to meet the extra burden. It was further submitted that after amendment of the Sick Industrial Companies (Special Provisions) Act, 1985, the

PSEs have been brought within its purview. So far 50 PSEs have been registered with the BIFR. It was suggested that the PSEs, which have been referred to BIFR would not be allowed the benefit of revised scale of pay - for their Board Level executives, executives holding posts below the Board Level and non-unionized supervisors - unless and until the verdict of the BIFR is available. Wherever revival plan for a PSE has been approved by the BIFR, proposals for adopting revised scales of pay w.e.f. 1.1.1992 would be required to be submitted by the concerned PSEs to the Government for appropriate approval by the Administrative Ministry acting in consultation with the DPE provided they give an estimate of their wage bill and also spell out measures for mobilizing of resources to meet the extra burden.

31. It seems to be the consistent and categorical stand of the respondent/Union of India that until and unless the necessary funds are generated by the respondent Public Sector Enterprise, the implementation of revised report of the 5th Pay Commission could not be given effect to. Learned Counsel, in this context, submitted that unequals cannot be treated with equals as part of economical status. It was then submitted that the company never raised any fund for making payment/implementation of the recommendation of the 5th Pay Commission. On the other hand, on 6th October, 1997, the employees' union entered into a settlement with the management of the company for maintenance of "status quo" in respect of the pay scale. Such a settlement formed a part of the rehabilitation scheme. Learned Counsel for the respondent No. 3 contended that when Jadavpur University came forward as a promoter to revive in the NIL, the writ petitioners got anxious to extract some benefit.

32. It was further submitted that for implementation of "taking over", the Central Government had written off huge amount of outstanding dues of Rs. 232 crores and had further provided additional amount of Rs. 1.58 crores for payment of arrear of salary and wages in order to give effect. On the basis of such sacrifice of huge liquid cash amounting to Rs. 248.58 crores, an order was passed by the AAIFR on 4th August, 2008.

33. On behalf of the respondent No. 3, reference was made to the said order dated 4th August, 2008 passed by the AAIFR. While setting aside the order of the BIFR dated 30th September, 2002 for the purposed winding up of the company, the AAIFR directed preparation of a draft revival scheme. The Board, based on the draft scheme received from the OA (SBI) and other materials on record, prepared a scheme for revival of the sick company M/s. NIL, which envisaged transfer of assets and liabilities of the sick company M/s. NIL along with the transfer of existing employees w.e.f. 1.4.2007 in favour of Jadavpur University (JU), Kolkata for utilization of the company's infrastructure for R&D purpose of JU and the Board approved the said scheme in terms of provision u/s 18(2b), 18(6A) and 18(4) read with 19(3) of the Act. The said order of the AAIFR was never challenged before any competent Court. It was categorically mentioned that it would be the responsibility of the management to arrange for

necessary fund for additional payments, is situation so arises.

34. Based on the aforesaid order dated 4th August, 2008, a scheme for revival of sick company was sanctioned. The Government of India has written off Rs. 23,274.91 lakhs and also paid Rs. 203.48 lakhs towards employees related dues which was much higher than the employees dues at the relevant point of time as on 31st March, 2007. The writ petitioners, being 14 in number, could not be entitled to get the benefit of the recommendations of the 5th Pay Commission.

35. In this context, learned Counsel, Mr. Roy, appearing for the respondent No. 3/ Union of India, referred to the decision of the Apex Court in the case between A.K. Bindal and Another Vs. Union of India (UOI) and Others, . The Apex Court in the said case dealt with the legal position of a Government company while dealing with Sections 619 and 620 of the Companies Act, 1956. It was held that a Government company cannot be identified with the Government itself. Its employees are not Government servants and not entitled to protection under Article 311 of the Constitution. The Apex Court in the said case further dealt with the scope and ambit of Article 21 of the Constitution and that was in reference to the expanded scope and meaning of "right to life".

36. It is, perhaps, needless to mention that concept of "life with human dignity" cannot be placed in a straight jacket formula. It is not always desirable to link it with the income of an independent. But it should be a life without begging, borrowing and stealing. The Apex Court, however, in the said case of A.K. Bindal (Supra) observed that the scope and content of Article 21 has been expanded by judicial decisions. Right to life enshrined in Article 21 means something more than survival or animal existence. It would certainly include the right to life with human dignity. But to hold that mere non-revision of pay scale would also amount to a violation of fundamental right guaranteed under Article 21 would be stretching it too far. The economic viability of the financial capacity of the employer is also an important factor and it cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to function.

37. In Tamil Nadu Electricity Board and another Vs. N. Raju Reddiar and another, , the Apex Court took into consideration as to whether the conduct of some of the Superintending Engineers in passing some of the bills on multi-slab basis can be pleaded as an estoppel against the defendants and can form the basis of plaintiffs' case.

38. In the present case, it had been strongly contended on behalf of the writ petitioners that some of the retired employees were given pay scale, which have not been extended to the present writ petitioners. The Apex Court in the said case observed that such a recommendation or passing of the bills on one count or multi-slab basis cannot be construed to have conferred a right on the plaintiffs to get the payments on multi-slab basis, until and unless it is proved that the defendants agreed under the written contract to pay on multi-slab basis.

39. The facts and circumstances of the present case, however, are significantly

different. Here the petitioners sought to highlight the fact that the benefits, which were given to some of the retiring employees who virtually stood on the same footing with the present writ petitioners cannot be denied. This has been sought to be assailed by learned Counsel for the respondent/Union of India on the ground that grant of such pay scale or benefits was a calculated, conscious and designed act and it was an intra-family arrangement made with an ulterior motive. According to respondent No. 3, the Union of India could have had no role to play in that regard and as such, the claim of discrimination cannot be said to have any rational basis.

40. In course of submission, reference was further made by the learned Counsel for the respondent/Union of India that any direction to give benefits to the employees may cause financial burden and it can become so heavy that the undertaking itself may collapse under its own weight. The Apex Court observed in the case between Secretary, State of Karnataka and Others Vs. Umadevi and Others, that the Court ought not to impose a financial burden on the State by such directions, as such directions may turn counterproductive.

41. So far the controversy raised in the present writ application is concerned, the challenge on the ground of maintainability cannot be said to have any justification whatsoever since the grievance relating to inordinate delay in approaching the Court was never raised earlier. Moreover, this by itself, in the factual backdrop of the present case, cannot be considered to be a sufficient reason for showing the exit door to the writ petitioners.

42. The fact that the application was not filed in representative capacity cannot also change the legal complexion of the case. The benefits, which have been claimed by the writ petitioners, if granted, could very well be extended to others standing on the identical footing and particularly, the supporting respondents. After hearing learned Counsel for both parties and having regard to the factual backdrop of the present case, it may be mentioned that the main objection as raised on behalf of the respondent No. 3 is that the writ petitioners cannot be entitled to the benefits as sought for since the organization, National Instruments Limited, has been running at a loss for years. There is no scope for any dispute in that regard.

43. But on behalf of the writ petitioners, Mr. Saktinath Mukherjee, sought to explain the position by pointing out that this was never intended to be a profit-making organization and its job was essentially directed towards research.

44. This Court finds it difficult, if not impossible, to brush aside the grievances as ventilated on behalf of the writ petitioners regarding alleged discrimination. It is true that there cannot be any equality amongst unequals. But so far the present case is concerned, I find it difficult to hold that the present writ petitioners stand on a footing different from those who had been given the benefits, which are now being claimed by the writ petitioners. Another very significant aspect is that the concerned organization has always been consistent in keeping provision for such

benefits in the budget assessment.

45. Much has been said regarding lack of rationality in involving the State in a dispute of the present nature. But who can dispute the changing role of the State in a fast changing society.

46. The renowned jurist, W. Friedmann, in his book, "Law in a Changing Society" observed that "the ideal of social welfare, i.e. of the responsibility of the community for minimum standards of living and protection against the major vicissitudes that would leave the individual - except the fortunate few - destitute and degraded, provided only with the theoretical freedoms of contract, property and trade, is now almost universally accepted". It is well settled that a democratic ideal of justice must rest on the three foundations of equality, liberty and ultimate control of Government by the people.

47. The plea of absence of any direct role cannot be raised in order to permit the respondent to wash its hands of when there is clear discrimination. Article 14 of the Constitution does not, perhaps, allow the State to raise that plea and having regard to the fact that a good number of employees standing on the identical footing have been given the benefits of the recommendations of the 5th Pay Commission, it would not be just and proper on the part of the State respondents to deny the same to the present writ petitioners.

48. But there remains more things to be taken care of. While the State cannot certainly scream and say "who am I to take up arms against the sea of troubles", the Court also need to take a cautious approach - when there is huge financial involvement. Our laws do not permit the authority to act arbitrarily and extend benefits to a section of employees while denying the same to others. It cannot derive inspiration from George Orwell and say that all are equals but some are more equal than others.

49. Considering all these aspects and in view of the fact that the contradictions are essentially non-antagonistic in nature, the respondent authorities must re-evaluate the entire grievances, as ventilated in the application under Article 226 of the Constitution and reappraise the same in the light of observations made hereinbefore.

50. In order to enable it to do so, the writ petitioners must send a copy of the application under Article 226 of the Constitution along with its annexures and of course, a copy of the judgment to the respondent authorities. The said authorities must take necessary action within a period of three months from the date of receipt of the same and of course, after giving the writ petitioners or their representatives an opportunity of hearing.

51. Action to be so taken or order to be so passed must also be duly communicated to the writ petitioners within a further period of three weeks. The application, being W.P. No. 985 (W) of 2007, stands accordingly disposed of.

52. There is no order as to costs.

53. Xerox certified copy of the judgment be supplied to the parties, if applied for, as expeditiously as possible.

54. Immediately after passing of the said judgment and order, prayer is made on behalf of the respondent/Union of India for stay of operation of the same.

55. After hearing learned Counsel for both the parties, such prayer is allowed. The operation of the judgment and order dated 30.10.2009 be stayed for a period of three weeks from this date.

56. Xerox certified copy of the judgment be supplied to the parties, if applied for, as expeditiously as possible.