

GA No. 3211 of 2013  
APO No. 430 of 2013  
WP No. 980 of 2011  
IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction

ORIGINAL SIDE

STATE OF WEST BENGAL & ORS.  
Versus  
EMAMI BIOTECH LTD. & ORS.

BEFORE:

The Hon'ble CHIEF JUSTICE MR. ARUN MISHRA

The Hon'ble JUSTICE JOYMALYA BAGCHI

Date : 13th March, 2014.

For State : Mr. Bimal Chatterjee, Advocate General  
Mr. Abhratosh Majumder,  
Mr. Paritosh Sinha, Advocates

For WBIDC : Mr. R.S. De, Advocate

For Respondent Nos.1&2: Mr. Anindya Kr. Mitra, Sr. Advocate  
Mr. Pratap Chatterjee, Sr. Advocate  
Mr. Mainak Bose, Advocate  
Ms. Vineeta Meharia, Advocate with  
Mr. Pushan Kar,  
Mr. Souvik Majumder,  
Ms. Tanisistha Lahiri and  
Mr. Utpal Majumdar, Advocates

The Court : The intra-court appeal has been preferred as  
against the judgment and order dated 22.7.2013 passed by the  
Single Bench in W.P. No.980 of 2011.

It is not in dispute that there is liability on the part of the State Government to make payment of Rs.68.49 Crore for the period 2008-09 upto 2011-12.

The Single Bench has directed for making such payment within 30 equal monthly installments starting from 1.9.2013, that is, Rs.2.28 Crore per month.

The intra-court appeal has been preferred by the State Government by submitting that the State Government is facing financial crunch and a sum of Rs.280 Crores has been allocated for the purpose of incentive schemes for the year 2013-14. It is also submitted that as there are various industrial units to whom the incentive is payable, it is not possible to make the monthly payment and also to wipe out the liability within time frame as ordered by the Single Bench, that too, in monthly installments. State Government is facing financial crunch even to distribute salary of its employees. It has not been able to pay the Dearness Allowance etc. at the equal rate. Various documents as also the financial budget have been placed on record showing the financial constraints being faced by the State Government.

Learned Advocate General appearing on behalf of the State has submitted that in the facts and circumstances of the case it would not be practical to make the payment in monthly installments as incentive payments has to be made to various industries and instalment of Rs.2.28 Crore per month is excessive one. The money



so paid has to go the account of WBIDC Limited on account of money payable by the respondent industry and not to the respondent industry. He has prayed for 'five years' period to make the payment of the aforesaid dues that too in yearly instalments. So far the State Government has made payment of Rs.8.80 Crores whereas as per the monthly instalment ordered, the sum of Rs.15.96 Crore ought to have been paid by 1.3.2014.

Mr. Anindya Mitra, learned Senior Advocate appearing with Mr. Pratap Chatterjee, learned Senior Advocate, assisted by other learned Advocates, submitted that besides the liability of Rs.68.49 Crore, there is further liability of Rs.37.42 Crore for the year 2012-13, which has been ordered to be paid as punctually as possible as per the direction issued by the Single Bench. Thus there is a huge liability of approximately Rs.97 Crore. There is no reason to increase the time limit or the number of installments. However, he has submitted that amount may be ordered to be made in 'quarterly' installments. He has also submitted that on the basis of the materials placed on record, no case has been made out so as to increase the time limit for making the payment of the incentives on the sales tax.

Taking notice of the fact that there is a serious financial constraints faced by the State Government and considering the mode of payment of incentives and mode of release of money by the State Government for the purpose of payment of incentives to the various



industries, it is not practical for the State Government to make the payment in monthly installments. It would be appropriate to direct payment in half yearly installments. Thus, we propose to order the payment of the sum, which is due out of Rs.68.49 Crores after deducting a sum of Rs.8.80 Crore, which has been deposited so far in the months of January and February of 2014. Therefore, a sum of Rs.59.69 Crore has to be paid as outstanding as on today. However, though the learned Advocate General has prayed that we should allow 60 months time, that is five years time, but we consider that by now as the installments had to commence on 1.9.2013, six months period is already over. It would be appropriate considering the financial crunch which is being faced by the State of West Bengal, to direct payment of incentives in seven half-yearly installments i.e 42 months.

It is assured by the State Government that effort will be made by it to make the payment of first six-yearly installment out of the equal installments of Rs.59.69 Crore which has to be paid in seven installments and for payment of the aforesaid amount the period of six-monthly installments will commence from 1.4.2014. As assured by the State Government, effort will be made to wipe out the first six-monthly installment liability within a period of two months, that is, by the end of May, 2014.

We do not propose to disturb the liability for 2012-2013 as there is already an order to make the payment as punctually as

possible, as we feel that the order passed by the Single Bench adequately safeguards the interest of the respondent.

Mr. Mitra has relied on a decision reported in (1980) 4 SCC 162 (Municipal Council, Ratlam vs. Shri Vardichan & Ors.) in which it has been laid down that by self-created bankruptcy State Government or Municipal authorities cannot be permitted to make mockery of statutory provisions. Statutory obligation of providing drainage system in a working condition sufficient to meet the needs of the people cannot be evaded by the Municipality on the ground of financial inability. Thus the State Government was directed to cannalise its resources towards statutory liability and once directive principles have found statutory expression in the form of Municipal Act they become enforceable in judicial review. As the duties enjoined under the Act were not discharged by the State Government, appropriate directions were issued not only to the State Government but to the Municipal Corporation to discharge their statutory obligations.

But the fact in the instant case is that liability to pay incentives under scheme arises out of contractual liability. The State Government is ready and willing to make payment but praying for a reasonable time due to serious financial crunch being faced by it.



Considering the facts and circumstances of the case and the financial constraints faced by the State Government, ends of justice would be met if payment is ordered in aforesaid manner.

The order is modified to the aforesaid extent. Accordingly, the appeal and application stand disposed of.

(JOYMALYA BAGCHI, J.)

(ARUN MISHRA, CJ.)