# CASE ANALYSIS OF

#  A.K. BINDAL & ANR V. UNION OF INDIA & ORS

BY

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# BACKGROUND OF THE CASE

In 1961, a new company, Fertiliser Corporation of India (hereinafter referred to as FCI) was formed by merging two fertiliser companies, namely, Hindustan Fertilisers limited and Sindri Fertilisers and Chemicals ltd. From 1961 to 1977, FCI had under its ambit seventeen fertiliser units, out of which seven were operational and the rest ten were under various stages of implementation. In 1978, the Government of India set up a committee with the objective of working out the modalities for reorganising the fertiliser industry and the committee recommended the bifurcation of FCI and National Fertiliser ltd (hereinafter referred to as the NFL). Pursuant to the recommendation, FCI and NFL were bifurcated into five new undertakings and the units were distributed among the new undertakings. One of the newly created undertakings was the Hindustan Fertilizer Corporation ltd (hereinafter referred to as HFC). HFC was allocated four units, namely, Haldia, Namrup, Durgapur and Barauni. FCI retained six units, namely, Sindri, Gorakhpur, Ramagundam, Talcher, Korba and Jodhpur. The other undertakings created as a result of the bifurcation were Rashtriya Chemicals and Fertilisers ltd, National Fertilisers ltd and Project and Development India Ltd.

# FACTS IN ISSUE

A new pattern of industrial payment and dearness allowance was introduced subsequent to the reorganisation, effective from 1/9/1977. On 3/9/1979, the Department of Chemicals and Fertilisers, Government of India, issued a circular stating that the revision of pay scale and fringe benefits of the officers of the entire FCI/NFL would be the same. Consequently, all officers of the five companies were to be treated uniformly in terms of revision of pay scale and fringe benefits. It is safe to say that the circular dated 3/9/1997 introduced the principle of uniform treatment that the petitioner later contends. The revision of pay scales became due from 1/8/1986 but the same was not implemented as the government did not pursue the same. Nevertheless, the government decided to pay ad hoc relief to all officers working in public enterprise. The relief so paid wad based on the pattern of the industrial DA and related pay scales and was paid with effect from 1/1/1986 at a uniform rate, to all officers. A second ad hoc relief was recommended by the Bureau of Public Officers to the officers since the government did not take any decision revision of pay scale and perks of all officers working in public sector enterprises (hereinafter referred to as PSEs) in the entire country. As a result, circulars were issued by FCI and HFC on 24/1/1990 which provided for the payment of ad hoc relief to its officers. Until this stage, the officers belonging to the five companies were treated in a uniform manner with respect to revision of payment and other fringe benefits. It must be noted here that the revised pay scales made applicable from 1/1/1987 remained valid for the following five years. The next revision of pay scale became due from 1/1/1992. However, the pay scale and fringe benefits were not revised for the officers of FCI and HFC on the ground that the two companies were incurring losses. What is important to note here is that the remaining companies of the erstwhile FCI/NFL group were given the benefits of the revised pay scale. Thereafter, the Department of Public Enterprises issued an office memorandum dated 12/4/1993 on wage policy for fifth round of wage negotiations in public sector enterprises which directed the management of PSEs to begin wage negotiations with trade unions and associations and at the same time notified that under the new wage policy, the management had the liberty to negotiate wage structure subject only to the generation of resources and profits by the individual enterprises and units and that the government would not provide any budgetary support for the wage increase. This was followed by the impugned office memorandum dated 19/7/1995 issued by the Department of Public Enterprises which notified that pay revision and other benefits will be allowed for sick PSEs registered with the Board for Industrial and Financial Reconstruction only of it is decided to revive the unit and the revival package shall include the enhanced liability on this account.

The differential treatment meted out to the officers of HFC and FCI in terms of payment of wages and fringe benefits based on profits and losses incurred by the companies forms the basis of the present writ petitions filed before the Delhi High Court and transferred to the Supreme Court to be disposed of by a common order.

**The present case is A.K. Bindal And Another v. Union of India and Others (2003) 5 SCC 163**. The petitioners in the present case are (i) A.K. Bindal, President of the Federation of Officers Association of FCI and (ii) Dr. K.P. Sinha, authorised representative of the Federation of Officers Association of HFC. The petitioners have prayed for quashing the office memorandum dated 19/7/1995 so as to restore the uniform treatment of all officers in the profit/loss making companies of the erstwhile FCI/HFC and to direct the respondents to pay the petitioners by way of an interim relief at least 60% of the revision of pay and perks that the officers of the remaining companies have been given.

# ARGUMENTS OF THE PETITIONER

* As a right arising from the employer – employee relationship, employees are entitled to a fair and reasonable return for their employment which must not be viewed as a bounty endowed by the employer.
* Since the petitioners are employed in government companies, they can be considered as government employees.
* The government being the employer in this case, the denial of fair and reasonable wages on the sole ground of pendency of decision on the continuation of existence of the sick establishments is in contravention with the fundamental right guaranteed to the petitioners under Article 21 of the Constitution.
* The impugned memorandum is discriminatory in nature to the extent that PSUs following central dearness allowance pattern get the benefit of periodical pay revision regardless the profits or loss they make as opposed to PSUs, such as the ones in the present case which follow the industrial dearness pattern.
* The petitioners have been singled out and discriminated against since 1992 by being denied periodical pay revision on the basis of loss incurred by the FCI and HFC which would not have been the case had they followed the central dearness allowance pattern.
* It is inappropriate on the part of the government to postpone the revision of pay from 1992 for the employees of FCI and HCF and link it up in the year 1995 with the direction to refer them to BIFR as the companies have served their socio-economic purpose of production and distribution of fertilisers at affordable prices and the augmentation of agricultural and rural productivity.
* When the losses incurred by the units is not attributable to the performance of employees but to other factors, depriving employees of their pay revision by subjecting it to profitability of the concerned unit has resulted in gross injustice.
* Right to life includes the right to livelihood and financial incapability is no ground to deny the employees revision of wages.

# ARGUMENTS OF THE RESPONDENTS

* FCI and HCF had been under the administrative control of the Department of Fertilisers and had been declared as sick companies in 1992 after being referred to BIFR.
* Out of the four units of FCI, the Haldia unit never commenced its operations since its mechanical completion in 1981 and the Gorakhpur unit had been lying close since 10/6/1990.
* FCI and HCF had incurred net losses of Rs. 562.51 crores and Rs. 438.99 crores respectively for the term 1996-97; as a result, their equity base has been completely eroded.
* Revival packages were formulated for revamping the operational units of FCI and HCF by the Department of Fertilisers on consideration of suggestions received by the Industrial Credit and Investment Corporation of India, committee of ministers and Trade Unions and Associations and as a result a total of Rs. 2201.13 crores without including wage revision was finalised for rehabilitating the units. However, the same could not be provided owing to prior commitments of funds of public sectors units and cooperative societies in the fertilizer sector and the reluctance of financial institutions to raise funds for the sick units.
* In the event that the pay scales are to be revised from 1992, an additional 120 crores have to be provided which would add upon the financial requirements of the revival packages which already avoid implementation for want of funding, consequent to the inability of the operating agency, Department of Fertilisers and the promoters to mobilise funds.
* The government guidelines provided in the impugned memorandum do not outright prohibit the companies referred to BIFR from revising wages and fringe benefits but subject it to the approval of revival packages. The revival packages are to be approved by BIFR upon agreement by the operating agency and funding institutions. It was also highlighted that BIFR had recommended the winding up of FCI and has passed an order for the winding up of HFC and the Delhi High Court is now proceeding with the winding up of the FCI and HFC.

# ISSUES

1. Whether the employees of FCI and HFC qualify to be government employees.
2. Whether the financial capacity of the employer is an important factor in determining the wage of the employees.
3. Whether the right of livelihood of the employees has been infringed in the present case.
4. Whether the writ petition and claims of the petitioners survive after most of the employees have availed the voluntary retirement scheme.

# CORPORATE PERSONALITY OF GOVERNMENT COMPANIES

HCF and FCI were registered under the Companies Act as government companies within the meaning of section 617 of the Companies Act. Considering that the companies are government companies, it is essential to determine the position of the employees in order to determine if they are to be treated as government employees. It is essential to determine if the state can be regarded as the employer in case of government companies in order to ascertain the nature of legal relationship existing between the government and the petitioners which may subsequently give rise to the averred right to provide budgetary support for the wages of the petitioners.

The basic jurisprudence of company law recognises a company as a separate judicial entity having an existence distinct from its members. As recognised in the first case on the subject of a company’s existence as a separate entity, Kondoli Tea Co. Ltd.[[1]](#footnote-2), the company is altogether a body separate from its shareholders. The landmark case of Solomon v. Solomon Co. ltd.[[2]](#footnote-3) cemented the concept of corporate veil that distinguishes the company, a juristic person, from its owners and controllers and that the rights and obligations of a company are separate from that of its shareholders.

On the understanding of the law laid down in Solomon’s case, it is apparent that the rights that a government company owes to its employees cannot be translated to mean that in reality, it is the government that owes certain obligations to the employees. The purposive value of government companies was further explained in the case of In re, River Steam Navigation Co. Ltd.[[3]](#footnote-4) wherein it was highlighted that the government, in the present times, has become a competitor with public and private companies by carrying out trade and commerce and in doing so the government is not undertaking such activities qua government. Similarly, in the case of Western Coalfield limited v. Special Area Development Authority[[4]](#footnote-5), it was held that companies registered as government companies under the Companies Act have a corporate personality of their own which is distinct from that of the government of India. The same was reiterated in the case of Hindustan Steel Works Co. Ltd. v. State of Kerala[[5]](#footnote-6) where it was held that regardless of the control exercised by the government, a company is neither a government department nor a government establishment. The most relevant case law for the specific facts and circumstances of the present case is Heavy Engineering Mazdoor Union v. State of Bihar[[6]](#footnote-7) wherein it was held that the mere fact that the entire share capital of the company was contributed by the central government and that most of the shares were held by the President and certain Ministers does not make a difference in the corporate personality of the company and does not render the company an agent of either the President or the central government. The company and its shareholders remain distinct entities.

Hence, a government company cannot be equated with the government itself for the sole reason that the government owns all or the majority of shares of the company. This particular stand is the result of the unique nature of companies. It is the company, so incorporated, that carried out the undertakings and not the government. Incorporation also makes it wrong in law to say that the company acted as an agent of the government since the government carried out its undertakings through the company and remained under the general supervision of the Department of Fertilisers. As a result the petitioners would be considered as employees of the company and not the employees of the government which relinquishes the possibility of any entitlement of the petitioners to ask as a legal right to the government to pay their salary or to incur additional expenditure for the revision of wages and fringe benefits.

# FINANCIAL CAPACITY OF THE EMPLOYER

The petitioners had contended that the economic viability of the industrial unit and the financial capacity of the employer are not factors that ought to be taken into consideration for not revising the wages of the employees. The petitioners had further pleaded that the losses incurred by the units were not attributable to the employees and hence it would be wrong for the employees to bear the brunt of it by being denied pay revision and fringe benefits.

In the case of Express Newspaper (P) ltd. v. Union of India[[7]](#footnote-8), the Hon’ble Supreme Court laid down several principles that are to be taken into consideration while fixing rates of wages. The principles recognised the capacity of the industry to pay as an essential consideration, the only exception being the payment of minimum wage or bare subsistence where the employer is bound to pay the amount irrespective of its financial capacity. The financial capacity of the employer industry ought not to be decided on the general capacity of the industry but on a regional basis after taking a fair cross-section of the industry. The principles further highlighted the factors to be taken into consideration for determining the capacity of an industry to pay which included the elasticity of the product’s demand, possibility of tightening up the organisation to pay higher wages and lastly emphasized that the burden of the increased rate of wages of the employees must not be so high as to drive out the employer out of business. In the case of Hindustan Times Ltd. v. Workmen[[8]](#footnote-9), the Hon’ble Court had stressed upon the necessity of considering the ability of the industry to pay on an industry-cum-region basis while targeting to fix a fair wage.

In the office memorandum dated 19/7/1995, while the government gave the freedom to PSUs to negotiate wages, it restricted increase in administered prices of goods and services. If HFC and FCI were to provide its employees pay revision exceeding its own financial capabilities, there would undeniably be a rise in the cost of goods and services which would not only violate the memorandum but also defeat the purpose of setting up the companies which was to make fertilisers available at cheaper rates. It must also be taken into consideration that the huge losses incurred by the HFL and FCI and the existence of sick units under them would drive the companies out of business if it were to direct its financial resources to the increase the wage of its employees. The winding up orders for HFL and FCI issued by BIFR add further weightage to the assertion that the companies have lost their ability to survive their operations based on the internal generation of resources, let alone provide higher wages and fringe benefits to its employees.

# ON ARTICLE 21

Article 21 entitles every person to the right to life and personal liberty subject only to procedure established by law. An array of cases has established that right to life does not mean mere animal existence but connotes a meaningful life of dignity. Right to life encompasses within it various collateral rights including the right to livelihood. In the case of Olga Tellis v. Bombay Municipal Corporation[[9]](#footnote-10), right to livelihood was considered as an important facet of right to life since no person can live without the means of living and such right holds good to the extent that the means of livelihood is not illegal, immoral or opposed to public policy. In the case of People’s Union for Democratic Rights v. Union of India[[10]](#footnote-11), payment of minimum wages has been held to be a facet of right to livelihood. In the case of State of Maharashtra v. Chandrabhan Tale,[[11]](#footnote-12) it was held that the payment of subsistence to an employee in suspension which was insufficient to sustain his living was in contravention of Article 21.

As much essential right to livelihood is, it extends to the payment of minimum and fair wages and cannot be said to bring within its ambit revision of pay. The circumstances of the case do not present denial of payment of minimum or fair wages, neither have the petitioners contended that the employees are paid wages of meagre amount which is not sufficient for sustaining their lives. If the wage paid is in fact low or not depends on facts and circumstances unique to each case and cannot be spelled out in absolute terms. In the present case, inability to mobilise funds to revive sick units has been observed. In such circumstances, to say that the right to livelihood is denied to employees of FCI and HFL by the government not providing budgetary support that too in the absence of any legal obligation to do so would be stretching the right too far.

# ON VOLUNTARY RETIREMENT SCHEME

The developments subsequent to the filing of the writ petition show an increase in losses incurred by FCI and HFL and that the government has spent a total of Rs. 2227.00 crores by the government to provide for the salary, wages, administrative and preservation costs of the units in the form of non-budgetary assistance. The government also introduced a VRS Scheme on 6/11/2001 which addressed the grievance of the employees as to the non-revision of pay and provided for a 100% increase in basic pay and 50% increase in dearness allowance in the form of voluntary retirement compensation. It is pertinent to note here that the voluntary retirement scheme encompasses forty five days emoluments for each completed year of service or monthly emoluments at the time of retirement multiplied by balance of remaining months of service, besides terminal benefits. Facts disclose that almost 99% of employees in FCI and HFL have opted for voluntary retirement, including petitioner no. 1. Figures show that 4781 out of 4881 employees of HFC and 5712 out of 5675 employees of FCI have opted for voluntary retirement leaving only a few employees who are retained to assist in completing formalities related to winding up of the company.

The respondents have contended that opting for voluntary retirement scheme has led to the severance of employee-employer relationship and has rendered the writ petitions infructuous. However, the petitioners have pleaded that the employees were compelled to opt for the voluntary retirement scheme as they were given a period of only three months to opt for the benefits of voluntary retirement or to settle with just the retrenchment compensation. The petitioners have further averred that the severance of employee-employer relationship would not extinguish the claim of fundamental rights.

It has already been clarified that no fundamental rights exist on part of the petitioners to the extend of the revision of payment and fringe benefits. The second part of the prayer which sought for payment of at least 60% of the benefits that were due to the petitioners seem to have been already settled by the payments made for opting for voluntary retirement. Moreover, voluntary retirement leads to the cessation of the employer-employee relationship and a consequent relinquishment of all claims. Survival of claims even after voluntary retirement would defeat the purpose of voluntary retirement which has been devised for the benefit of the employees themselves. The petitioners opted for the benefits of the voluntary retirement scheme without any protest and thereby put an end to all valid claims under the present writ petition. Lastly, the units were already left with little hope for revival and the subsequent retirement of 99% of employees in FCI and HFC have made only the option of winding up available for these companies, resulting in frustration of the purpose of the writ petitions.

# JUDGMENT IN A GLANCE

1. FCI and HFC cannot be construed as government merely because the central government holds all shares of both the companies.
2. Since the employees of the FCI and HFC are not government employees, they have no legal right to claim that the government must pay their salary and must provide additional amounts on account of revision of pay scale.
3. The employees cannot claim that their wages must be revised and enhanced when the organisation they are employed in is incurring heavy and continuous losses. Economic capacity of the industry to pay wages cannot be disregarded.
4. Right to livelihood cannot be extended to bring within its ambit revision of pay.
5. The impugned memorandum is neither unconstitutional nor ultra vires.
6. Since 99% of the employees have availed the VRS scheme and have consequently left the companies, the writ petition no longer survives and has become infructuous.

# OVERVIEW OF THE JUDGMENT

The judgment has its roots primarily in company law and industrial law. The petitioners also brought in fundamental rights in the form of right to livelihood but the judgment clearly defined boundaries for the rights. The boundaries hence drawn are apt for the unique circumstances of the case and do not present a grim scenario where the court has turned a blind eye to the cause of justice. The court has taken into consideration the persistent efforts on the part of the government to revive the sick units and the non-budgetary support provided by the government. The fact that the employees were being paid remuneration is attributable to the government given the huge losses both the companies have been incurring. All efforts to revive the sick units have failed. The voluntary retirement scheme designed by the government effectively took into consideration the grievances of the employees of both the companies.

However, when this case is used as a precedent, the unique facts and circumstances of the case have to be taken into consideration before pressing for its application. The case has to be read with regard to its context for various principles generated in this judgment are unique to its facts and circumstances. For example, would the employees have any claim if the benefits under the voluntary retirement scheme would have been grossly insufficient? Would the court then have taken a step further to act in the interests of justice and allowed for the payment of the claim of 60% of the benefits due that was sought in the prayer. Another concern would be, had there been fair chances to revive the sick units, would the judgment have been any different. Lastly, if the petitioners would have placed evidence on record that the wages paid to the employees are not adequate enough for their basic subsistence, would the court have then recognised the right to livelihood of the employees? It cannot be denied that the courts has strictly applied laws and precedents to the present case but at the same time it has also asserted the peculiar circumstances of the case.

# REFERENCES

* *Kondoli Tea Co. Ltd*., Re ILR [1886]
* *Solomon v. Solomon*, UKHL 1, AC 22
* *In re, River Steam Navigation Co. Ltd*. [1967] 2 Comp. LJ 106
* *Western Coalfield limited v. Special Area Development Authority*, AIR 1982 SC 696
* *Hindustan Steel Works Co. Ltd. v. State of Kerala*, [1998] 2 CLJ 383
* *Heavy Engg Mazdoor Union v. State of Bihar*, (1969) 1 SCC 765
* *Express Newspaper (P) ltd. v. Union of India*, AIR 1958 SC 578
* *Hindustan Times Ltd. v. Workmen*, AIR 1963 SC 1332
* *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545
* *People’s Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235
* *State of Maharashtra v. Chandrabhan Tale*, (1983) 3 SCC 387

# BRIEF OF THE AUTHOR

Adyasha Kar is a third year student of BA LLB, Symbiosis Law School, Pune. She views law as a weapon of social change. Her research areas mostly linger on social, moral and political issues and how they're inextricably linked with laws. Her previous internships with Human Rights Law Network, Odisha and Odisha Human Rights Commission proved to effectively mirror grass root realities that often lose their due space in the larger public discourse. Her research papers mostly explore areas of human rights law. She is also the Vice President of the Rotaract Club of Symbiosis Law School, Pune. An ardent advocate of dialogue, she believes in not confining herself in the brackets of ideologies and wishes to discover every inch of human thought and social narratives.

1. *Kondoli Tea Co. Ltd., Re* ILR [1886]. [↑](#footnote-ref-2)
2. *Solomon v. Solomon,* UKHL 1, AC 22. [↑](#footnote-ref-3)
3. *In re, River Steam Navigation Co. Ltd.* [1967] 2 Comp. LJ 106. [↑](#footnote-ref-4)
4. *Western Coalfield limited v. Special Area Development Authority,* AIR 1982 SC 696. [↑](#footnote-ref-5)
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7. *Express Newspaper (P) ltd. v. Union of India,* AIR 1958 SC 578. [↑](#footnote-ref-8)
8. *Hindustan Times Ltd. v. Workmen,* AIR 1963 SC 1332. [↑](#footnote-ref-9)
9. *Olga Tellis v. Bombay Municipal Corporation,* (1985) 3 SCC 545. [↑](#footnote-ref-10)
10. *People’s Union for Democratic Rights v. Union of India,* (1982) 3 SCC 235. [↑](#footnote-ref-11)
11. *State of Maharashtra v. Chandrabhan Tale,* (1983) 3 SCC 387 [↑](#footnote-ref-12)