
(2008) 12 P&H CK 0107
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5468/1988

Bharat Commerce & Industries Ltd. and others	APPELLANT
Vs	
Union of India and another	RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Citation : (2009) 3 PLR 107 : (2009) 2 RCR(Civil) 655

Hon'ble Judges : Permod Kohli, J

Advocate : None for the Appellant, Mr. S.S. Sahu, AAG, Punjab., Advocates for appearing Parties

Judgement

Permod Kohli, J. (Oral)

1. The petitioners are aggrieved of the order dated 7.6.1988 (Annexure P3) whereby the application of the petitioners for renewal of licence has not been considered and the petitioners have been asked to appoint one of the Directors as the Occupier and file a fresh application in Form No. 2 signed by the Occupier Manager and after depositing the fee, be sent to the Office of respondent No. 2.

2. The short point involved in this petition is that petitioner No. 1 is a Public Limited Company incorporated under the Indian Companies Act, 1956 and is carrying on its business activities of manufacturing of Textile items. The Company has factories at various places including at Rajpura (Punjab). Petitioner no.2 is shareholder of petitioner no.1 and petitioner no.3 is Chief Executive of the Company at Rajpura (Punjab) with the designation of Vice President and has also been nominated as Occupier of the Factory of the Company at Rajpura by virtue of power of attorney duly executed in his favour and resolution passed by the Board of Directors of the Company in the meeting held on 28.1.1988. It is stated that he has been entrusted with the ultimate control over the affairs of the factory at Rajpura and has been nominated, constituted and appointed as "Occupier" of the said factory. The factory requires the licence under the Factories Act. Such an application in the prescribed form is to be made by a person who is nominated as the Occupier of the factory and the said Occupier is

required to name another person as a "Manager" of the factory. Petitioner no.3, on being nominated as "Occupier" of the Factory at Rajpura, submitted application to respondent no. 2 for renewal of the licence for the year 1988. It is stated that the application was filed within the specified period i.e. before 1.12.1987 and was accompanied by treasury receipt regarding payment of the renewal fee. In this application, petitioner no.3 who is the Vice President of the Company and Incharge of the Factory at Rajpura has been shown as the "Occupier" of the factory. Respondent no.2 has refused to renew the licence on the ground that only a Director of the Company could be nominated as "Occupier" and none else and accordingly vide letter (Annexure P3), the petitioner Company has been asked to nominate a Director. In view of the amended provisions of Section 2 (n) of the Factories (Amendment) Act (20 of 1987), only a Director can be nominated as Occupier. The amended provisions of Section 2 (n) reads as under :

"2(n) "Occupier" of a factory means the person who has ultimate control over the affairs of the factory provided that :

(i) In the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;

(ii) In the case of a company, any one of the directors shall be deemed to be occupier;

(iii) In the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be shall be deemed to be the occupier....."

Section 100 of the unamended Act i.e. Factories Act, 1948 reads as under :

"100 Determination of Occupier in certain cases.

(1) Where the occupier of a factory is a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and punished under this Chapter for any offence for which the Occupier of the factory is punishable: Provided that the firm or association may give notice to the Inspector that it has nominated one of its members, residing within (.....) India to be the occupier of the factory for the purpose of this Chapter, and such individual shall, so long as he is so resident, be deemed to be the occupier of the factory for the purposes of this Chapter, until further notice cancelling his nomination is received by the Inspector or until he ceases to be a partner or member of the firm or association.

(2) Where the occupier of a factory is a company, any one of the directors thereof (.....) may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable :

Provided that the company may give notice to the Inspector that it has nominated (a director, who is resident within India), to be the occupier of the factory for the purposes of this Chapter, and (such director) shall, so long as he is so resident, be deemed to be the occupier of the factory for the purposes of this Chapter, until further notice cancelling his nomination is received by the Inspector or until he (ceases to be a director):....."

3. The case of the petitioners is that even under Section 2 (n) of the amended Act, any person who has ultimate control over the affairs of the factory is an Occupier and petitioner no.3 who is designated as Vice President and is declared as "Occupier" by virtue of a valid resolution of the Company and power of attorney, is the competent person to make an application for renewal of the licence.

4. I have perused the writ petition carefully. Prior to the amendment, the definition of "Occupier" under subsection (2) of Section 2 (n) is as under:

"(2) the owner of the ship or his agent or master or other officer incharge of the ship or any person who contracts with such owner, agent or master or other officer incharge to carry out the repair or maintenance work shall be deemed to be the occupier for the purposes of any matter provided for by or under section 13, section 14, section 16 or section 17 (save as otherwise provided in this proviso) or Chapter IV (except section 27) or section 43, section 44 or section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or section 108, section 109 or section 110, in relation to

(a) the workers employed directly by him, or by or through any agency; and

(b) the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer incharge or person;"

Under this definition, "Occupier" could be a person who has ultimate control over the affairs of the factory including a Managing agent who is deemed to be occupier of factory where the affairs of the factory are entrusted to a managing agent. From the aforesaid definition, it can conveniently be argued that such managing agents are the persons who have ultimate control over the affairs of the factory, may not necessarily be a Director of the Company. However, the amended definition of Section 2 (n) of the Act has brought in considerable change in the definition of "Occupier". While reiterating the factum of control over the affairs of the factory to declare a person as "Occupier" the definition has been qualified by adding three categories in proviso (1) and under Clause (ii) of Proviso (1) relating to the Companies. One of the Directors of the Company has been held to be an Occupier by deeming fiction. From a conjoint reading of Section 2 (n) with Clause (ii) of Proviso 1, the only inference that can be drawn is that the Occupier should be in ultimate control of the affairs of the factory and in case of the Company, a Director shall be deemed to be the Occupier by fiction of law. Section 100 which also provides the mode of determination of the Occupier

in certain cases, has also been amended and under subsection (2) of Section 100, it is provided that where the Occupier of a factory is a Company, one of the Directors thereof can be prosecuted and punished for any offence for which Occupier of the factory is punishable. First proviso to this sub section, however, authorizes the Company to nominate one of its Directors as an Occupier of the factory for the purposes of this Chapter by giving notice to the Inspector of its nomination as an Occupier. Thus a reading of Section 100 in conjunction with definition under Section 2 (n), it is the only interpretation as is sought to be placed by the respondents. At the time of admission of this petition, Hon"ble Division Bench of this Court passed the following order on 22.6.1988 :

"Admitted.

The petitioners may, if so advised, as an interim measure, apply for renewal of licence giving the name of a nonDirector as the occupier and the name of a Director as an alternate occupier and if the names of these two persons are submitted to the Licensing Authority, the licence shall be renewed, subject of course to the eventual order that may be passed in the writ petition, deleting one name and retaining the other, or keeping both."

Nobody has come forward to inform the court whether any application was made or not. However, from the interpretation of the provisions of Section 2 (n) read with Section 100, I am of the considered view that after the amendment, the stand of the respondents is justified. No interference is warranted.

Dismissed.