

(1989) 07 AHC CK 0092

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15223 of 1989

Bhatia Metal Containers (Pvt.) Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-07-1989

Acts Referred:

Factories Act, 1948 — Section 2
Factories Act, 1948 — Section 2
Factories Act, 1948 — Section 2

Citation : (1990) 60 FLR 58 : (1990) 2 LLJ 534

Hon'ble Judges : S.D. Agarwala, J; R.R. Misra, J

Bench : Division Bench

Advocate : Y.K. Sinha, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Agarwala J.

1. This petition under, Article 226 of the Constitution of India is directed against an order dated 10th March, 1989 by which the Director of Factories, U.P. Kanpur, has asked the petitioner company to give the name of a Director who would be deemed to be an occupier of the petitioner.

2. Section 2(n) of the Factories Act, 1948 defines an "occupier". It reads as under:

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

Proviso (ii) to Sub-section (n) of Section 2 of the Act is relevant for the purposes of this Act. It reads as under:

"Proviso (ii). In the case of a company, any one of the Directors shall be deemed to be the occupier."

3. From a reading of the definition of "occupier" in Section 2(n) of the Act read

with the second proviso, it is clear that in the case of a company, one of the Directors shall be deemed to be an "occupier". This amendment in the definition of the word "occupier" has been brought about by Act No. 20 of 1987. The intention of the Legislature is clear that in the case of a company, one of the Directors has to be deemed to be an occupier. It does not permit a company to nominate anybody else for the purposes of the Act other than one of the Directors to be a person who has ultimate control over the affairs of the factory. This was not the intention of the Legislature. In our opinion, one of the Directors of the company alone can be deemed to be the occupier of the factory. The Director of Factories was, therefore, justified in asking the company to give the name of one of its Directors who would be deemed to be an occupier of the factory.

4. The petitioner is a Private Limited Company. It clearly is governed by the second proviso to Sub-clause (n) of Section 2 of the Factories Act. In the circumstances, we do not find any merit in this petition. It is, accordingly, dismissed.