
(1995) 06 BOM CK 0054
In the Bombay High Court
Case No : Writ Petition No. 375 of 1998

Goa Carbon Ltd. and Another	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 21-06-1995

Acts Referred:

Factories Act, 1948 — Section 2, 6, 7

Citation : (1996) 73 FLR 1387 : (1998) 3 LLJ 722

Hon'ble Judges : T.K. Chandra Shekhara Das, J;D.R. Dhanuka, J

Bench : Division Bench

Advocate : M.S. Usgaonkar and V.P. Thali, for the Appellant; G.U. Bhohe, for the Respondent

Final Decision : Allowed

Judgement

D.R. Dhanuka, J.—The petitioner-company owns a factory situate at St. Jose de Areal, Salcete, Goa. The said factory is governed by the Factories Act, 1948.

2. By its resolution dated May 6, 1988, the Board of Directors of Petitioner No. 1 passed a resolution to the effect that Mr. Ajit Sardessai, works manager of the said factory be entrusted with the ultimate control over the affairs of the said factory since none of the directors of Petitioner No. 1 was stationed at the said factory. By the said resolution, the said Mr. Ajit Sardessai was in fact appointed by the company as the "occupier" of the said factory for the purpose of the Factories Act, 1948. On July 12, 1988, the petitioner-company made an application for registration and occupation as contemplated under Sections 6 and 7 of the Factories Act, 1948, in Form No. 2 as set out in paragraphs 4 and 5 of the petition. In the said application, the name of Mr. Ajit Sardessai was shown as "the occupier".

3. By the impugned letter dated September 9, 1989, the Inspector of Factories returned the said application in Form No. 2 to the petitioners stating therein that the said application was required to be signed by one of the directors as the

"occupier" of the said factory for purpose of the Factories Act, 1948. It appears that the respondents issued the impugned letter to the petitioner-company in view of the amendment to the definition of the expression "occupier" contained in Section 2(n) of the Factories Act, 1948, effected by Amending Act 20 of 1987.

4. The petitioners have filed this petition under, Article 226 of the Constitution of India contending that the petitioners are entitled to show the name of their works manager as an "occupier" in the application made by petitioner No. 1 in Form No. 2 and the impugned action of the Inspector of Factories set out in letter dated September 9, 1988, is without authority of law. The petitioners have further contended that in any event the amendment effected in Section 2(n)(i) of the Factories Act, 1948, by Amending Act 20 of 1987 is ultra vires the Constitution.

5. The issue raised by this petition is covered by the ratio of the Division Bench judgment of this Court in the case of Kirloskar Pneumatic Co, Ltd v. V. A. More 1993 I LLJ 805. In this case, the Division Bench of our High Court held that the amended provision of Section 2(n) of the Factories Act, 1948, makes no departure from the settled position in law that the "occupier" under the Factories Act, 1948, need not necessarily be a director of the company. It appears that the only requirement of settled law is that the person to be nominated as "an occupier" for the purpose of the Factories Act, 1948, must have the ultimate control over the affairs of the factory. In view of the applicability of the ratio of the Division Bench judgment of our High Court in the above-referred case, the rule is made absolute as indicated below. The above-referred judgment of this Court is directly on the point.

6. The impugned letter/communication dated September 9, 1988, issued by the Inspector of Factories (exhibit "E" to the petition) is hereby quashed. The respondents are directed not to insist on application in Form No. 2 being signed by one of the directors of the company as an "occupier" or one of the directors of Petitioner No. 1 being shown as an "occupier" for the purpose of the Factories Act, 1948, even though the director of the company may not have the actual and ultimate control of the factory. Respondents Nos. 3 and 4 are hereby directed to accept the application of the petitioners dated July 12, 1988, in Form No. 2 as a valid application and treat the works manager of the petitioner factory as an occupier within the meaning of the expression "occupier" as defined in Section 2(n) of the Factories Act, 1948. In view of the above, it is not necessary for the Court to decide the question as to whether the said amended provision is ultra vires the Constitution of India or not. Since the said amended provision does not make any departure from the settled law on the subject, that "an occupier" need not necessarily be a director of the company, the petitioners are straightaway entitled to succeed in this petition on the basis of the ratio of the decision of this Court in Kirloskar Pneumatic Co. Ltd. v. V. A. More, (supra). The rule is thus made absolute in terms aforesaid.

7. Having regard to the facts and circumstances of the case, there shall be no

order as to costs.