

(1996) 11 PAT CK 0028

In the Patna High Court

Case No : CWJC No"s. 443 of 1991 (R) and 2456 of 1992 (R)

Indian Oil Corpn. Ltd. and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-11-1996

Acts Referred:

Factories Act, 1948 — Section 2

Citation : (1998) 3 LLJ 982

Hon'ble Judges : N.N. Singh, J;Aftab Alam, J

Bench : Division Bench

Advocate : Arijit Choudhary, A. Ghosh, Ashok Dhar and M.M. Banarjee, for the Appellant; V. Shivnath, G.P.II and P.K. Appu, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—Whether in the case of a Company, one of the Company"s Directors alone can be recognised as the Occupier of the factory owned by it in terms of the amended Section 2(n) of the Factories Act or is it still open to a company to designate (by completely transferring to him the ultimate control of the factory) any of its employees, other than a Director as the Occupier of the factory? This is the question raised in these two writ petitions filed on behalf of Indian Oil Corporation (Petitioner No. 1) and one of its employees posted as the Senior Depot Manager, Namkum Depot (Petitioner No. 2).

2. On September 26, 1996, the judgment in this case was reserved after it was heard on three days. In course of hearing Mr. Arijit Choudhary, learned counsel appearing on behalf of the petitioners, brought to our notice a number of decisions of the different High Courts on this point. He fairly cited not only the decisions (of the High Courts of Bombay, Orissa, Karnataka, Calcutta, Madras and Gauhati) supporting the petitioners" case but also the decisions (of the High Courts of Allahabad, Rajasthan and Patna) taking the contrary view and holding that in the case of a company it was only a Director of the Company who could be notified as the Occupier of the factory owned by the Company. At that time

September 26, 1996 we were not aware that the controversy was conclusively settled by the Supreme Court by its judgment in J.K. Industries Limited, etc. v. The Chief inspector of Factories and Boilers and Ors. 1991 I LLJ 722 delivered just a day earlier on September 25, 1996. The S.C. decision authoritatively holds that in the case of a company which owns a factory, it is only one of the Directors of the company who can be notified as the Occupier of the factory for the purposes of the Factories Act, and the company cannot nominate any other employee to be the occupier of the factory. Following the Supreme Court decision the question raised in these two applications has to be answered in the negative and against the petitioners.

3. Though the main question in these applications, stands answered against the petitioners, in fairness to them I must now consider the second contention raised by Mr. Choudhary that in terms of proviso (iii) to Section 2(n) of the Factories Act, it was still open to petitioner No. 1 to nominate the Depot Manager as the Occupier of the factory.

4. However, before examining this submission, it would be appropriate to briefly state the facts of the case and the reliefs claimed by the petitioners.

5. The reliefs claimed in the two writ petitions somewhat overlap but the petition filed later CWJC No. 2456/1992 (R) appears to be more comprehensive and practically covers all the reliefs claimed in the earlier writ petition CWJC No. 443/1991 (R). Hence, I propose to deal here with CWJC No. 2456/1992 (R) and the judgment delivered in this case will also govern and dispose of CWJC No. 443/1991(R).

6. The first petitioner, Indian Oil Corporation is a company incorporated under the Companies Act, and for all intent and purposes it is owned fully by the Central Government. The Marketing Division of the Corporation looks after the supply and distribution of petroleum and petroleum products including L.P.G. In order to ensure an effective and efficient supply system the Marketing Division is required to establish and maintain storage facilities. Among many other places in the country, the Corporation has storage facilities at Namkum in Ranchi where it has installed large storage tanks. With the object to increase the country's storage capacity of finished petroleum products to 45 days requirement during the 7th Five Years' Plan period, the Corporation undertook the installation of additional storage tanks and a new storage unit was accordingly constructed at Namkum at a distance of about 400 yards from the existing storage facility. According to the petitioners, the new storage unit was constructed after the approval of the Central Government both with regard to the project and the funds. It is an admitted position that the storage facilities are covered by the definition of "factory" as provided under the Factories Act, 1948. According to the petitioners in the past the Depot Manager posted at the Namkum Depot was duly recognised as the Occupier of the storage facility/factory by the authorities under the Factories Act and the annual licence and occupancy certificate etc. were duly issued in his name on applications made to the authorities under his

signature. It is further stated that on December 30, 1991 an application was made to the Inspector of Factories, respondent No. 3 for the renewal of the existing licence; another application was made on April 10, 1992 for licence for the new storage facilities installed at Namkum. Both the applications were signed by petitioner No. 2, the Depot Manager. The Inspector of Factories refused to grant the licence and by his letter dated April 28, 1992 (copy at annexure 8) addressed to the Director, Marketing, Indian Oil Corporation intimated that as per the provisions of Section 2(n) of the Factories Act ("the Act", hereinafter) in the case of a company any one of the Directors would be deemed to be the Occupier. After giving detailed reasons for holding this view the Inspector of Factories advised that an application form completely filled up and properly and duly signed by the Occupier (implying one of the Directors of the Company) and the Manager should be submitted for grant of licence. It was further stated that the certificate of stability granted by the Corporation's Depot Manager was also not valid as he was not authorised by the Chief Inspector of Factories, Bihar to grant any such certificate.

7. At this stage the petitioners came to this Court in CWJC No. 443/1991 (R) and in that case this Court by order dated February 6, 1992 restrained the respondents from taking any coercive steps against the petitioners on the basis of an enquiry report submitted by the Inspector of Factories, pointing out a number of violations of the provisions of the Act.

8. On May 11, 1992 the Corporation wrote to the Ministry of Petroleum and Natural Gas apprising it of the stand taken by the Inspector of Factories, Ranchi and seeking the Ministry's guidance in the matter. On May 26, 1992 the Inspector of Factories issued office order No. 2 (copy at annexure 10) granting permission to the petitioners in public interest, and "on ultra-temporary basis" till the disposal of the case before this Court to start pumping of oil and to do other allied processes in its newly constructed depot at Namkum on certain conditions. In this office order, he once again reiterated that he would recognise only the Board of Directors of the Corporation in general and the Director, Marketing in particular as the Occupier of the factory and would not recognise the local Depot Manager as the factory's occupier. On July 2, 1992 the Under Secretary to the Government of India in the Ministry of Petroleum and Natural Gas wrote to the Chief Inspector of Factories, Bihar, Patna (copy at annexure 11) stating that the Ministry had already issued notifications declaring the Unit Incharge as Occupier for the purpose of the Act. It was accordingly advised that the Officer Incharge of the Namkum depot should be treated as Occupier and the licence(s) may be issued/ renewed in the name of the Depot Incharge and his signature may be accepted as Occupier for the purposes of the Act. A circular letter (copy at annexure 12) with similar contents was also issued to the Chief Inspector of Factories of all the States and the Union territories. In response to the letter from the Ministry, the Inspector of Factories once again wrote his rejoinder to the Director, Marketing of the Corporation elaborating his stand at great length. It is at this stage that the matter rests.

9. From the contents of the letters/office order issued by respondent No. 3, it appears that according to him in the case of a company a Director alone can be recognised as Occupier within the meaning of Section 2(n) of the Act and hence he has refused to entertain the applications for renewal/grant of licence for the storage facilities at Namkum for the sole reason that the applications were not signed by the Director, Marketing but were signed by the Senior Depot Manager.

10. In order to examine the second contention raised by Mr. Choudhary it would be useful here to take a look at Section 2(n) of the Factories Act which is as under :

(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 the 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.

11. Mr. Choudhary, Learned Counsel for the petitioners submitted that petitioner No. 1 being a Government company, it was open to it to nominate the Depot Manager of the Namkum Depot as the Occupier of the factory because in terms of proviso (iii) to Section 2(n) it was the Depot Manager who was the person appointed to manage the affairs of the factory in question (the storage depot at Namkum).

12. I am unable to accept the submission and I find it without any substance for three reasons.

13. First, there is difference between a company owned by the Central Government or any State Government within the meaning of the Factories Act. In this case the petitioner company may be owned, to a very large extent, by the Central Government but the storage depot at Namkum is owned by the company and not by the Central Government. In fact, one of the objects and purposes for creating the company was that the Government Departments were not properly equipped to effectively carry on the business of supply and distribution of petroleum/petroleum products and once the Company was created it is the company and not the Central Government which establishes, owns and controls its installations, storage depots, etc., factories within the meaning of the Factories Act. It is clear to me that proviso (iii) to Section 2(n) applies only to factories which are owned and controlled directly by the Government Departments, such as Railway Workshops and the installations of the Post &

Telegraph and Defence Departments etc.; secondly proviso (ii) to Section 2(n) which deals with the question of Occupier in the case of a company does not make any distinction between a private company and a Government owned company. The case of the petitioner company being thus covered by proviso (ii) to Section 2(n), proviso (iii) has no application in this case; thirdly proviso (iii) speaks of the person appointed to manage the affairs of the factory by the Central Government. In the present case the Depot Manager has not been appointed by the Central Government but by the petitioner company and for this reason also the Depot Manager cannot be nominated as the Occupier of the Namkum depot in terms of proviso (ii) to Section 2(n). For the aforesaid reasons I am unable to accept the submission that proviso (iii) to Section 2(n) enables petitioner No. 1 to nominate the Depot Manager as the Occupier of the storage depot at Namkum.

14. I, therefore, find and hold that the directions given by the Inspector of Factories, Ranchi to the writ petitioners to the effect that only a Director of the company could file an application for the grant of licence as the Occupier of the factory and that no other employee could make such an application even if nominated by the company as an Occupier of the factory is legally sound and suffers from no infirmity and must, therefore, be upheld.

15. In the result, both the applications are dismissed, however, without any order as to costs.