

(1995) 03 MAD CK 0037

In the Madras High Court

Case No : Writ Petition No. 1200, etc of 1989

ION Exchange India Ltd.

APPELLANT

Vs

Deputy Chief Inspector of Factories

RESPONDENT

Date of Decision : 30-03-1995

Acts Referred:

Factories Act, 1948 — Section 2, 6
Tamil Nadu Factories Rules, 1950 — Rule 7

Citation : (1995) 2 CTC 156 : (1996) 73 FLR 1217 : (1996) 1 LLJ 283

Hon'ble Judges : K.A. Swami, C.J.; D. Raju, J

Bench : Division Bench

Advocate : Sanjay Mohan, for the Appellant; R. Muthukumaraswamy, G.P., for the Respondent

Final Decision : Allowed

Judgement

1. Though in some of the writ petitions the constitutional validity of Section 2(n) of the Factories Act, 1948, as amended by the Central Act 20 of

1987, has been challenged, but during the course of arguments in all these writ petitions, the learned counsel appearing for the respective

petitioners have confined their arguments only to the scope and ambit of the provisions contained in Section 2(n) of the Act, as amended by the

Central Act 20 of 1987. Therefore, we refrain from going into the contentions raised in the writ petition as to the validity of the provisions

contained in Section 2(n) of the Factories Act as amended by the Central Act 20 of 1987.

1.1. Thus, the only question that arises for consideration in all these writ petitions is as to the scope and ambit of Section 2(n) of the Factories Act,

as amended by the Central Act 20 of 1987, hereinafter referred to as the Act.

1.2. The cause for these writ petitions is that the applications filed by some of the companies and also the partnerships, for registration or renewal of the licence, as a factory, have been rejected on the ground that those applications have not been made either by a Director of the company or by a partner of the partnership firm. In some of the writ petitions, though the petitioners therein have filed applications for registration of their undertakings as factory, the same have not been disposed of by the Inspector of factories. They have come up with the writ petitions on the apprehension that their applications for registration are likely to be rejected on the ground that these applications have not been made by a Director of company or by a partner of the partnership firm, as the case may be. Therefore, they have sought for a writ in the nature of mandamus, directing the concerned Inspector of factories to consider their applications on the basis that the same has been made by the person competent to make such application.

2. Section 2(n) of the Factories, Act, as amended by the Central Act 20 of 1987 reads thus:

"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.

In the instant case, we are concerned with provisos (i) and (ii) to Section 2(n) of the Act. The contention of the petitioners is that it is open to the

owner of the factory to nominate any person to be in ultimate control over the affairs of the factory and such a person is competent to make

application under rule 7 of the Tamil Nadu Factories Rules, framed u/s 6 of the

Act and the Inspector of Factories is not right in rejecting such applications on the ground that the same have not been made either by a Director of the company in the case the owner of the factory is the company or by one of the partners in the case of partnership concern. It is further contended that the fact that provisos (i) and (ii) to Section 2(s) of the Act specifically states that one of the Directors of the company or a partner of the partnership shall be deemed to be the "occupier" does not take away the power of the Board of Directors to nominate any other person to have the ultimate control over the affairs of the factory, and similarly it does not prevent the partnership firm to nominate any other person other than a partner of the partnership as occupier to have the ultimate control over the affairs of the factory. A close reading of Section 2(s) of the Act discloses that any person who has ultimate control over the affairs of the factory can be the occupier". That being so, it is open to the owner of the factory to nominate any person to be in ultimate control over the affairs of the factory. In the absence of any such nomination or appointment in the case of company any one of the Directors will be competent to make an application for registration or renewal of the licence of the factory, and similarly any one of the partners can make an application for registration or renewal of the factory licence. The fact that provisos (i) and (ii) to Section 2(s) of the Act provide that one of the Directors of the company or any one of the partners of a partnership shall be deemed to be the occupier of the factory, does not mean that there cannot be any other person who can be appointed as an occupier of the factory, as long as such a person satisfies that he is in the ultimate control over the affairs of the factory. The role of provisos (i) and (ii) to Section 2(s) of the Act is only to see that in the case of a company a Director and in the case of partnership any one of the partners, need not prove that he is in the ultimate control over the affairs of the factory, because the statute in question itself declares that he is deemed to be the occupier of the factory. When once he is deemed to be the occupier of the factory he must be deemed to be in ultimate control over the affairs of the factory, but the same thing would not follow in a case where any other person other than a Director of the company or a partner of a partnership is named as the occupier of the factory. In that case, it has to be proved that such a person

has the ultimate control over the affairs of the factory. This particular provision came up for consideration before the various High Courts, and it is

brought to our notice, that High Court of Karnataka in *W.S. Industries India Ltd v. Inspector of Factories* 1991 II LLJ 480 kar; High Court of

Bombay in *Kirloskar Pneumatic Company Ltd. v. V.A. More* (1993-I-LLJ-805 Bom); High Court of Orissa in *Indo Flogates Ltd. v. Chief*

Inspector of Factories and Boilers 1993 II LLN 379 and High Court of Gauhati in *Wimco Ltd. and Others Vs. Union of India (UOI) and Others*,

have taken the view similar to the one taken by us, whereas the High Court of Rajasthan in *Jaipur Syntax Ltd. v. State of Rajasthan* 1991 LLR

380 and the High Court of Allahabad in 1989 II LLN 736 have taken the view that in the case of company it is only the Director who can claim to

be the occupier and he alone can make application for registration of the factory or renewal of the factory licence, and similarly in the case of

partnership firm only the partner can make application for registration of the factory, or renewal of the factory licence. We do not want to

unnecessarily burden our judgment by extracting the relevant portions from the decisions of the High Courts of Karnataka, Bombay, Orissa and

Gauhati, as we agree with the view expressed therein as to the interpretation of Section 2(s) provisos (i) and (ii) of the Act, for the purpose of

making an application for registration of the factory, or renewal of the factory licence. However, we make it clear that we find it difficult to agree

with the following observation contained in the decision of Karnataka High Court in *W.S. Industries (India) Ltd. v. Inspector of Factories* (supra),

in para 6, at page 483.

... The ratio of those decisions is that where a company is an occupier of a factory only one of the Directors can be prosecuted and punished as

the occupier of the factory and the choice and selection of that Director rests on the prosecuting agency but when a company has made nomination

as to the occupier of the factory the choice of the prosecuting agency disappears and only the nominated person will have to be prosecuted.....

For the purpose of these writ petitions, the above observations are not required, as the question of prosecution is not involved herein.

Similarly the other observation found in Para 6, at page 194 of the said decision, namely:

..... In that event, the person named in the proviso though not actually occupiers are ""deemed occupier"" and are accordingly liable depending upon the other provisions of the Act.

cannot at all be said to flow from the definition contained in Section 2(s) of the Act. In respect of similar observations contained in the judgments of the High Courts of Bombay, Orissa and Gauhati, as referred to above, we shall not be understood that we have approved those observations.

Therefore, it becomes clear that we are not in agreement with the view expressed by the High Courts of Allahabad and Rajasthan, referred to

above. Hence, it is not possible to accept the contention advanced by the learned Government Pleader, Pondicherry that the expression ""ultimate

control"" found in Section 2(s) of the Act, is associated with the expression ""ownership"" and it is only the owner, who can be construed to be in

ultimate control over the affairs of the factory. Such an interpretation would destroy the very object of Section 2(s) of the Act inasmuch as the

owner need not have ultimate control over the affairs of the factory. It is open to the owner of the factory to lease out the factory and in that event,

the lessee would be having the ultimate control over the affairs of the factory.

3. It is necessary to point out that the scope and ambit of Section 2(s) of the Act has to be determined keeping in view the object and in-tendment

of the Act. The Act intends not only to regulate labour in factories, but also to ensure health, safety, welfare of the labour, and to regulate working

hours of adults working in the factories, regulate employment of young men in factories and also to provide for annual leave with wages and other

matters connected thereto. It is to ensure proper and effective implementation of these objects and intendments of the Act, the registration of the

factory and obtaining of licence to run the factory are made compulsory. Therefore, the Act is not concerned so much as to who is the real owner

of the factory as it makes the occupier and Manager of the factory responsible for contravention of any of the provisions of the Act and the rules

made thereunder and for which they are liable to be punished with imprisonment for two years or with fine, which may extend to one lakh rupees

or with both, and if the contravention is continued after conviction with as further fine, which may extend to one thousand rupees for each day on

which the contravention is so continued. In addition to this, as special provision

is also made in respect of death or serious bodily injury causes due to contravention of the provisions relating to safety as contained in Chapter IV of the Act or the rules made thereunder. Therefore, we are of the view, that the contention advanced by the learned Government Pleader, Pondicherry, cannot be accepted and it is accordingly rejected.

4. For the reasons stated supra, we allow the writ petitions in the following terms:

(1) The orders passed by the Inspector of Factories, rejecting the applications filed for registration of the factory or renewal of the factory licence

on behalf of the company or on behalf of the partnership firm, on the ground that such applications are not made either by a Director, in the case of company, or by a partner, in the case of partnership, are quashed.

(2) The Inspectors of Factories is directed to consider those applications in the light of the observations made in this judgment. It is open to the

company or the partnership firm to nominate or appoint any other persons other than a Director or a partner as the case may be, as occupier of the

factory having ultimate control over the affairs of the factory. In such an event, it is open to the Inspector of Factories to determine as to whether

the person so named by the company or by the partnership firm other than a Director or a partner, as the case may be, has ultimate control over

the affairs of the factory.

(3) In some of the writ petitions, pursuant to the interim orders of this Court, licences have been renewed. In such cases, in future, any application

is made for registration of factory or renewal of licence, the same shall be considered and disposed of in accordance with the directions issued in

the judgment.

(4) The question as to who should be prosecuted under the Act and the rules framed thereunder, is a matter which is left open to be considered at

the appropriate stage in the appropriate case as the same does not arise in the instant case. There will be no order as to costs.