

(2014) 08 SC CK 0054

In the Supreme Court Of India

Case No : Criminal Appeal Nos. 1668-1670 of 2014 (Arising out of SLP (Crl.) Nos. 5340-5342/2007)

J.J. Irani

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Bihar Factories Rules, 1950 — Rule 62, 8, 96
Constitution of India, 1950 — Article 32
Factories (Amendment) Act, 1987 — Section 41B(4)
Factories Act, 1948 — Section 106, 21(1), 38, 6(1), 88(1)

Citation : AIR 2014 SC 3735 : (2014) 4 AJR 362 : (2015) 1 ALT(Cri) 111 : (2014) 3 Crimes 401 : (2014) 143 FLR 25 : (2014) 3 JLJR 563 : (2014) 4 LLJ 1 : (2014) 3 LLN 299 : (2014) LLR 897 : (2014) 9 SCALE 280 : (2014) 9 SCJ 478 : (2014) 4 SCT 159 : (2015) 1 SLJ 142

Hon'ble Judges : Sudhansu Jyoti Mukhopadhaya, J; Sharad Arvind Bobde, J

Bench : Division Bench

Final Decision : Allowed

Judgement

JUDGMENT

Sharad Arvind Bobde, J.—Leave granted.

2. In this batch of appeals, the Appellants have challenged the judgment and Order of the High Court of Jharkhand at Ranchi dated 15th June, 2007 allowing the three Criminal Revision Nos. 212-214 of 1990 filed by the State, and reversing the Order dated 29.06.1990 of the Chief Judicial Magistrate, Jamshedpur and further directing the Chief Judicial Magistrate, Jamshedpur to proceed against the Appellants in accordance with law. Since they arise out of the same incident they have been taken up together for disposal.

3. The only question that arises in these appeals is whether the complaint made by the Inspector of Factories that the Appellants have allegedly committed offences was made within three months of the date on which the alleged

commission of the offence came to the knowledge of the Inspector, as required by Section 106 of the Factories Act, 1948 (hereinafter referred to as 'the Act'). At the relevant time the Appellant No. 1-Dr. J.J. Irani was "Occupier" and the Appellant No. 2-Mr. P.N. Roy was "Manager" of the factory within the meaning of the Act.

4. On 3rd March, 1989, the Tata Iron and Steel Company Limited (TISCO) celebrated the 150th birthday of Mr. J.N. Tata, as Foundation Day. They constructed temporary Pandals at the main gate of the Factory premises. All of a sudden a fire broke out and two of the Pandals, where guests were seated, were badly gutted. There was panic due to the fire. As a result 18 to 20 persons died on the spot and a larger number were admitted with burn injuries at the Tata Hospital, some of whom later succumbed to their injuries. The injured and the dead were mainly employees of TISCO, its officers and their family members.

5. As required by Section 88(1)1 of the Act read with Rule 96 of the Bihar Factories Rules, 1950 (hereinafter referred to as 'the Rules') formal notice of intimation of the accident was given to the Inspector of Factories. In pursuance of the Notice on 5th and 6th March, 1989, the Chief Inspector of Factories of the then State of Bihar and the Deputy Chief Inspector of Factories, Jamshedpur, conducted a preliminary investigation. These Officers submitted a Report to the Commissioner of Labour, Patna on 08.03.1989. Before submitting the Report a preliminary inquiry was conducted, photographs of the Pandals and other affected areas were taken, Pandals were measured, and distances between Pandals and Roads were also measured. A list of those dead and injured was prepared and the cause of the accident was gone into and ascertained. Apparently, the cause was a high powered cracker fired on the occasion, which fell on roof of one of the Pandals made of combustible material, and started the blaze. The officers also determined the factors that prevented the stopping of the fire, such as the narrowness of the pathways and the distance of the fire hydrants from the place of occurrence and the seating arrangement because of which it was not possible for the guests to escape from the site. The Chief Inspector of Factories, who signed the preliminary report, recommended to the State Government that a Committee be constituted u/s 90 of the Act for conducting a detailed investigation into the cause of the accident. The preliminary report records that the Committee should be constituted by the State Government under the Chairmanship of the Chief Inspector of Factories in which other Members shall be (1) Dy. Chief Inspector of Factories, Jamshedpur as Co-ordinator; (2) Dy. Chief Inspector of Factories, Ranchi as Member; (3) Dy. Chief Inspector of Factories, Patna as Member; and (4) Chief Security and Fire Extinguisher Officer, Barauni Oil Refinery, Begusarai as Member.

6. It is of significance that the Factory Inspector, Jamshedpur Circle, who filed the complaint was part of the team that conducted this preliminary detailed investigation (vide para 9 of the letter dated 08.03.1989).

7. In pursuance of the recommendation of the Preliminary Report, the State

Government constituted a three Member Committee u/s 90 of the Act consisting of (i) Chief Inspector of Factories, Bihar (Ranchi) as Chairman; (ii) Dy. Chief Inspector of Factories (Jamshedpur) as Member; and (iii) Chief Safety and Fire Officer (Begusarai) as Member. The Government further directed the Committee to submit its report within two months of its constitution. Instead of submitting the report in two months, the Committee concluded its inquiry by 03.09.1989. Two of its Members signed the Report on 26.09.1989. The third Member signed on 16.03.1990. The Report is said to have been handed over to the Inspector of Factories on 23.04.1990.

8. On 07.05.1990, three criminal complaints were filed under different provisions of the Act by the Inspector of Factories, Jamshedpur Circle-I, Jamshedpur, which are as under:

(i) Complaint No. 224 of 1990-(along with detailed statement in support of the petition of complaint) alleging contravention of provisions of Section 6(1)(aa) of the Factories Act read with Rule 8 of the Bihar Factories Rules, 1950, for not submitting the plans of Pandals and structures (6 in number) constructed inside the premises of TISCO for the 150th Birthday celebrations of J.N. Tata (near the main gate around the statue of J.N. Tata and not getting the same approved by the Chief Inspector of Factories).

(ii) Complaint No. 225 of 1990 (along with detailed statement in support of petition of complaint) for violating the provisions of Section 38 of the Factories Act, 1948, read with Rule 62 of the Bihar Factories Rules, 1950 by not taking precautions in case of fire as envisaged u/s 38 of the Factories Act, 1948 read with Rules 62 of the Bihar Factories Rules, 1950 such as safe means of escape in the event of fire for all persons, and by not providing necessary equipment and facilities for extinguishing fire; and

(iii) Complaint No. 226 of 1990 (along with detailed statement in support of petition of complaint) for violating the provisions of Section 41B(4) of the Factories (Amendment) Act, 1987 by not drawing up with the approval of the Chief Inspector of Factories, Bihar, an "on-sight" Emergency Plan and Disaster Control for the Pandals and structures (6 in number) constructed inside the factory (TISCO), near its main gate around the statue of its founder Shri Jamshedji Tata for celebrating his 150th Birthday, and constructing such pandals and structures of highly combustible material-an actual fire hazard.

9. The dispute in these appeals centers around the question whether the filing of complaint on 07.05.1990 was within three months of the date on which the alleged commission of the offence came to the knowledge of the Inspector (vide Section 106 of the Act).

10. There is no dispute about the meaning of the term "commission of the offence" or "knowledge," hence the question is essentially: when did the Inspector come to know of the commission of the offences? Section 106 of the Act reads as follows:

Section 106: Limitation of prosecution: No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector:

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

[Explanation: For the purpose of this section-

(a) in the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues;

(b) where for the performance of any act time is granted or extended on an application made by the occupier or manager of a factory, the period of limitation shall be computed from the date on which the time so granted or extended expired.]

11. The Respondent-State claims that the Inspector of Factories, who filed the complaints, came to know of the commission of the offences on 23.04.1990, when the Report of the Committee, constituted u/s 90 of the Act, was received by him. According to the Appellants, who are accused, by virtue of the Occupier and Manager of the Factory within the premises of which the accident occurred, the complaint is clearly barred by the limitation of three months provided by Section 106 of the Act because the Inspector of Factories had knowledge of the commission of the offence as early as 05.03.1989 when he conducted the preliminary investigation into the accident between 5th and 6th March, 1989 along with the Chief Inspector of Factories and Dy. Chief Inspector of Factories, Jamshedpur. In any case, he had been directed to carry out an intensive investigation, and having been inducted into the Committee u/s 90 of the Act on 8.3.1989, he knew of the alleged commission of the offence much earlier. According to the Respondent-State the copy of the inquiry report and the Government's letter were handed over to the complainant on 23.04.1990 by the Chief Inspector of Factories under cover of letter dated 21.04.1990, and therefore 23.04.1990 must be taken as the date on which the complainant came to know about the commission of the offence alleged against the Occupier and Manager of the Factory. It was argued also before the High Court that he was directed by the letter of the Government to file a complaint for that prosecution and accordingly he filed the complaint on 7.5.1990. According to the Respondent, the complaint has been filed well within three months from 23.4.1990 on 7.5.1990.

12. The Chief Judicial Magistrate, who heard the complaint found that the Factory Inspector-Complainant, had knowledge of the occurrence at least on 5.3.1989 when a detailed inquiry was conducted by the Chief Inspector of Factories. The Chief Judicial Magistrate, therefore, dismissed the complaint as being barred by limitation holding that the offence was not a continuing offence and that the

limitation be reckoned from 5.3.1989 i.e. the date of knowledge.

13. The High Court accepted that the starting point for limitation was the date of knowledge of the commission of offence but took the view that in the present case the date of accident and the date of knowledge of the commission of the offence are different. The High Court relied on the decision of this Court in P.D. Jambekar Vs. State of Gujarat, in which this Court observed as follows:

As Section 106 makes the date of knowledge of the commission of the offence the starting point of the period of limitation, we find it difficult to read the section so as to make the date on which the Inspector would or ought to have acquired knowledge of the commission of the offence had he been diligent, the starting point of limitation, especially where, as here the statute does not provide for an inquiry into the accident much less the period with which the inquiry has to be made. It is only in the jurisprudence of Humpty Dumpty that we can equate the "date on which the alleged offence came to the knowledge of an Inspector" with the date on which the alleged offence ought to have come to his knowledge. We think that the High Court was right in its conclusion (para 8).

14. The High Court took the view that it cannot be said that the complainant came to know of the commission of the offence in the preliminary inquiry conducted on 5.3.1989 by the Chief Inspector of Factories in his presence by distinguishing the difference between "knowledge of an accident" and "knowledge of commission of the offence." The High Court observed that the complainant could have known of the breach only when the cause of accident, which was inquired into, was reported by the Chief Inspector of Factories in his report, which was received by the complainant on 23.04.1990; and it was only from the inquiry report that it could be gathered that the accident of fire took place because of breach of provisions of law.

15. We have heard the matter and considered the issue at length and we find ourselves unable to uphold the reasoning of the High Court. Jambekar's case (supra) is of no assistance in deciding the present case. In that case this Court accepted that from a reading of the report of the incident it was difficult for anyone to come to the conclusion that an offence u/s 21(1)(iv)(c) has been committed. The Inspector's statement that the report did not convey to him any knowledge that the offence was committed was accepted and this Court concluded that the Inspector did not acquire the knowledge of the 'commission of the offence' when he received the report. The case before us is entirely different. Here the Inspector was himself part of the team, which conducted the preliminary inquiry between 5th and 6th March, 1989. As observed earlier, the inquiry is a detailed investigation going into all aspects of the occurrence. In these circumstances it is not possible to hold that the Inspector of Factories, who undertook a detailed inquiry into the accident along with the Chief Inspector of Factories, remained ignorant that the offences in question have been allegedly committed. It is proper to assume that an officer, conducting an investigation, comes to know what has happened, that being the only purpose of the

investigation.

16. We find that it has not been disputed at any stage that the complainant was not associated with and did not participate in the preliminary investigation from 5th to 6th March 1989 along with the Chief Inspector of Factories. This is obvious from the letter/report of preliminary investigation dated 08.03.1989. The Inspector must be taken as having acquired knowledge of the alleged commission of the offence soon before or at least on 08.03.1989, when the report of preliminary investigation was sent to the Commissioner of Labour, Bihar. In fact, a perusal of allegations of the offence against the Appellants, makes it clear that an inquiry or investigation at the site of the accident was not necessary in order to gain knowledge of the alleged breach. For instance, the failure to submit "Plans of Pandals and Structures" as required u/s 6(1)(aa) of the Act read with Rule 8 of the Bihar Factory Rules, 1950; not drawing up an "on-sight" Emergency Plan and Disaster Control for the Pandals and Structures as required u/s 41B(4) of the Factories (Amendment) Act, 1987 are alleged breaches, which could have been ascertained even from the office record of the Inspector. The third breach is not taking precautions in case of fire as envisaged u/s 38 of the Factories Act, 1948 read with Rule 62 of the Bihar Factories Rules, 1950 or providing a safe means of escape in the event of fire for all persons, and providing necessary equipment and facilities for extinguishing fire, can be easily and must have been ascertained at the first inspection of the site. We are clearly of the view that it was not necessary for the Inspector to have waited to receive the report on 23.04.1990 from the Government under cover of the letter dated 21.04.1990 directing him to file a complaint for the prosecution of the Appellants. We thus agree with the view of the learned Chief Judicial Magistrate, Jamshedpur and disagree with the view of the High Court.

17. Mr. Tapes Kumar Singh, learned Counsel appearing for the State/ Respondent pointed out that whilst these Criminal Revision Petitions against the judgments of the Chief Judicial Magistrate in the three criminal cases were pending in the High Court, Writ Petition 232 of 1991 was filed Under Article 32 of the Constitution of India against State of Bihar, TISCO and its directors and officers to which the Inspector of Factories, Jamshedpur was also a party. This Writ Petition was filed by victims on behalf of themselves and all other persons affected by the fire. A prayer was made in the Writ of Mandamus ordering prosecution of Directors and Officers of TISCO for negligence in organizing of the function. A prayer for appropriate compensation was also made in the said Writ Petition. By Preliminary Order dated 15.12.1993, this Court after laying down certain principles of compensation directed that the retired Chief Justice Mr. Chandrachud should determine the compensation. It was then directed as follows:

Pending further orders, the following criminal cases shall be stayed:

1. G.R. Case No.: 365-A/89 pending in the Court of Sub-Divisional Magistrate, Jamshedpur.

2. Crl. Rev. Nos. 212, 213 and 214 of 1991 pending before Ranchi Bench of the Patna High Court.

18. Chief Justice Chandrachud (Retd.) eventually assessed the compensation in November, 2000 for an aggregate sum of Rs. 5.47 crores. Finally, this Court disposed of the Writ Petition on 16.8.2001 [reported as Lata Wadhwa and Others Vs. State of Bihar and Others, after observing that Criminal Revision Petitions had been stayed by its earlier Order dated 15.12.1993. This Court then enhanced the aggregated compensation amount by adding a certain amount on compassionate grounds. The Writ Petition was accordingly disposed of.

19. It was argued by Mr. Tapesch Kumar Singh that the above sequence of events meant that the Criminal Revisions before the High Court remained stayed notwithstanding the disposal of the Writ Petition Under Article 32 of the Constitution, and therefore, it could not have proceeded to decide the matter. We fail to understand this submission coming from the State. In the first place, there is no warrant for assuming, unless specifically directed or necessarily intended, that an interim order such as the Stay of proceedings before a lower forum continues even if the proceedings in the higher forum is disposed of. This Court has made observations to that effect in Prem Chandra Agarwal and Another Vs. U.P. Financial Corp. and Others, . In any case, in this case the parties understood that the true position was that the Stay had ceased to operate and argued the matter on that understanding before the High Court. What is more surprising is that this contention comes from the State, which has succeeded before the High Court. Accordingly, we see no reason whatsoever to consider this submission any further. We are informed that in pursuance of the Order of this Court in Lata Wadhwa and Others Vs. State of Bihar and Others, the TISCO has deposited an amount of Rs. 6.95 crores in the Registry of the Supreme Court. Shri F.S. Nariman, learned senior Counsel, appearing for the Appellants has very fairly submitted that the Appellants and TISCO have no grievance whatsoever in making any payment to the victims by way of compensation since the accident was a terrible tragedy. Shri Nariman submitted that the TISCO has not treated any litigation in this matter as an adversarial litigation.

20. In the result, appeals are allowed. The judgment and Order of the High Court dated 15.6.2007 is set aside and Criminal complaints are dismissed.

1 Section 88 requires the authority, who receives the Notice, to make an inquiry into the occurrence within one month of the receipt of the Notice.