

(1961) 04 SC CK 0033
In the Supreme Court Of India
Case No : Civil Appeal No.399 of 1959

John Donald Mackenzie and Another	APPELLANT
Vs	
The Chief Inspector of Factories, Bihar, Ranchi and Others	RESPONDENT

Date of Decision : 17-04-1961

Acts Referred:

Factories Act, 1948 — Section 100, 2

Citation : AIR 1962 SC 1351 : (1961) 3 FLR 342 : (1961) 2 LLJ 412

Hon'ble Judges : Raghubar Dayal, J;K. Subba Rao, J;J. R. Madholkar, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

J.R. Mudholkar, J.—This is an appeal from the judgment of the High Court of Patna dismissing the petitioner's petition under Articles 226 and 227 of the Constitution.

2. Petitioner No. 1 has described himself as the Manager and Occupier of the Bata Shoe Co's factory at Digha in Bihar. The petitioner No. 2 is the Bata Shoe Co., Private Ltd. Calcutta. The Chief Inspector of Factories, Ranchi, called upon the occupier' of the Bata Shoe Co.'s factory at Digha by letter dated September 6, 1956, to renew the factory's license for the year 1957 by making an appropriate application within 60 days of the expiry of the licence for the previous year ending on December 31, 1956, and drew his attention to Rule 7 of the Bihar Factories Rules, 1950. At the end of that letter he added the following note:

"Note: There have been a lot of mistakes found in last years in the application for renewal and in the notice of occupation which created a lot of difficulties in renewing the licence by this office. Please be careful while filling up these informations....."

On receipt of this letter an application for the renewal of the licence was sent to the Chief Inspector of Factories. This application was signed by the first petitioner

Mackenzie. Upon receiving this application the Chief Inspector addressed a letter dated November 20, 1956, in which he stated that Mackenzie appears to be only the manager of the factory and pointed out that the application as well as the notice of occupation are required to be signed by the occupier. He drew the attention of the Factory to Section 2(n) and Section 100 of the Factories Act, 1948, and observed:

"In Section 100 the criterion for determining as to who was the occupier of a factory has been very clearly specified and in my opinion there should be no difficulty in understanding the same.

In case there is any managing agency of the factory, the managing agents would be treated to be the occupier which means the directors of the firm of the managing agents. Also as provided in Sub-section (2) of Section 100 in case of a company the directors or the shareholders are to be treated as the occupiers."

He then enquired from the factory whether Mackenzie was one of the directors of the company and said that if he was not a director a fresh application signed by the occupier should be submitted within 15 days of the receipt of the letter. One Chatterji who described himself as Chief Secretary of the Bata Shoe Co., sent a reply to the Chief Inspector of Factories on November 22, 1956, in which he pointed out that "occupier" is not equivalent to owner but means only a person who has control over the affairs of the factory. He also observed:

"We have factories at various places and our Digha Branch Factory is in charge of Mr. J. D. Mackenzie who is the person having ultimate control of the affairs of the factory. Mr. Mackenzie is therefore in our submission, the occupier within the meaning thereof as defined by Section 2(n)"

He called upon the Chief Inspector, therefore, to renew the licence. The Chief Inspector, in his reply dated December 20, 1956, stuck to the interpretation of the relevant provisions of the law placed by him in his earlier communication and again called upon the factory to submit an appropriate application for renewal of the licence of the factory. Treating this as an order of the Chief Inspector of Factories the petitioners moved the High Court at Patna for quashing it. Various contentions were raised before the High Court on behalf of the petitioners but they were rejected. They have, therefore, come up to this Court in appeal.

3. The only point pressed before us on behalf of the petitioners is that the petitioner No. 1 Mackenzie had the ultimate control over the affairs of the factory and, therefore, he must be regarded as the occupier as defined in Section 2(n) of the Factories Act. That section defines "occupier" thus :

"'occupier' of a factory means the person who" has ultimate control over the affairs of the factory, and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory."

Undoubtedly, the expression "occupier" is not to be equated with "owner". But it must be borne in mind that the ultimate control over a factory must necessarily

be with an owner unless the owner has completely transferred that control to another person. Whether that was done in the present case would be a question of fact. It was for the petitioners who contended that petitioner No. 1 was the manager of the factory and had the ultimate control thereof, to lay before the Chief Inspector of Factories the necessary material for showing that the company had in some manner transferred the entire control over the factory to the petitioner No. 1. They did nothing of the kind. We have been taken through the correspondence which passed between the petitioners and the Chief Inspector of Factories but it does not appear there from that any document was executed by the company or any resolution was passed by it vesting the ultimate control in the petitioner No. 1. Two specific queries were put by the Chief Inspector in his letter dated November 20, 1956. One was whether any managing agents had been appointed for the factory and the other was whether Mackenzie was one of the directors. No reply was given to either of these queries by Chatterjee in his letter dated November 22, 1956, which purported to be a reply to the Chief Inspector's letter of Nov. 20, 1956. In the circumstances, therefore, the Chief Inspector of Factories was perfectly right in refusing to act on the application signed by Mackenzie and in requiring the factory to file a proper application for renewal of the licence.

4. Even when the matter went up before the High Court no attempt was made to show that the ultimate control of the factory was transferred to Mackenzie either by execution of a document or by passing a resolution. In the circumstances the High Court was right in dismissing the petition. The appeal is, therefore, dismissed with-costs.