(1975) 11 GUJ CK 0020

In the Gujarat High Court

Jyoti Switchgears Ltd. APPELLANT

Vs

Chief Inspector of Factories and Another RESPONDENT

Date of Decision : 13-11-1975

Acts Referred:

Factories Act, 1948 — Section 100, 2(n), 2(n)

Citation : (1977) 18 GLR 94

Hon'ble Judges : N.H. Bhatt, J;A.D. Desai, J

Bench : Division Bench

Judgement

N.H. Bhatt, J.—This petition is directed against the refusal to renew the licence of the petitioner-Company, Jyoti Switchgears Ltd., by the Chief Inspector of Factories, Gujarat State, the respondent No 1. herein. The petitioner will hereinafter be referred to as "the Company" and the respondent No. 1 as "The Chief Inspector".

2. The company had come to be registered under the Factories Act and was granted a licence under the Act for the purpose of running a factory. When the original application had come to be filed, it was signed by the then Chairman of the Board of Directors of the Company, who had signed as an occupier of the Company, because at that time there was no Managing Director nor were there the Managing Agents. The licence came to be renewed year after year upto 1974 and an application was given on behalf of the Company on 10th October 1974 for renewal of the said licence for the year 1975. The said application was given in Form No. 3 prescribed by the Gujarat Factories Rules, 1963, hereinafter referred to as "the Rules" for brevity''s sake. The said application had been signed by one Shri A.D.G. Chauhan as the "occupier" and Manager of the Factory. However, the Chief Inspector by his letter dated 25th August 1975 received by the Company on 27th August 1975 returned the said form to the Company with a suggestion that the form duly signed by one of the Directors of the factory be submitted to him for necessary renewal. The Company thereafter addressed a detailed letter on 8th September 1975 requesting the Respondent No. 1 that Shri A.D.S.

Chauhan, who was the Manager of the Company, was in the ultimate control of the factory as per the Resolution dated 9th August 1973 passed by the Board of Directors of the Company and so in terms of Section 2(n) of the Factories Act, 1948 he was the "occupier". Simultaneously with the application for renewal, a move was made to get the original application for registration as amended in Column No. 10 by substituting the name of Shri A.D.S. Chauhan as the occupier of the Factory. As the Chief Inspector, the respondent No. 1, did not think it fit to- renew the licence of the Company for the year 1975, the present petition has come to be filed for two prayers, namely (1) Column 10 of Form No. 2 under the Gujarat Factories Rules, 1963 be declared null and void and beyond the rule-making power of the State Government; and (2) a writ of mandamus under Article 226 of the Con stitution be issued quashing and setting aside the order contained in the letter of the first respondent dated 25th August 1975 and further directing the first respondent to renew the licence of the petitioner on the strength of its original application signed by said Shri A.D.S. Chauhan as the "occupier" of the said factory.

3. Mr. K.H. Kaji, appearing for the Company, took us through the various facts including the resolution of the Board of Directors which was submitted to the respondent no. 1 along with the application for amending the particulars of the original application for registration and licence. On'' behalf of the respondent no. 2. Mr. G.T. Nanavati tried to Uphold the stand taken by the first respondent. Mr. Nanavati contended that the term ''occupier'' as defined in Section 2(n) of the Factories Act in the context of various other provisions of the Act should be interpreted to mean either a director in the case of a public company or a shareholder in the case of a private company and a manager, according to him, could not be ever appointed as an "occupier".

4. Mr. Nanavati invited our attention to Sections 92, 100 and 101 of the Factories Act and contended that the penal liability on an "occupier" occurring on account of the breach of any of the provisions of the Act or Rules is to result into the liability of the "occupier" who in terms of Section 100 of the Act would be none other than either a Director in the case of a public company or a shareholder in the case of a private Company. The whole argument of Mr. Nanavati proceeds on an erroneous approach to the definition. The term ''occupier'' for the purposes of Chapter X has got a different connotation altogether. Even if there be a duly appointed "occupier" holding the ultimate control over the Factory, as far as the penal consequences are concerned, under Chapter X of the Act, the Director of a public company or a share-holder of a private Company cannot escape the liability. Section 92 of the Act also does not control the definition given in Section 2(n) of the Act. It simply lays down that if in or in respect of any factory there is any contravention of any of the provisions of this Act or of any rule made thereunder or of any order in writing given thereunder, the "occupier" and Manager of the factory shall each be guilty of an offence and punishable with imprisonment of a term provided therein. Mr. Nanavati contended that the reference to the two distinct authorities, namely, the "occupier" and the Manager

in Section 92 would presuppose that one and the same person cannot be an "occupier" or a Manager in the context of the categorical definition in Section 2(n) of the Act. This meaning cannot be had on the reading of Section 92 which proceeds on an assumption that in a given factory there are both an "occupier" and a Manager, the two positions being held by two different persons. But if in a given factory there is no Manager but only an "occupier" Section 92 does not require that the factory in order to give effect to Section 92 must have two different officers to occupy two different positions. Section 92, therefore, only means this that if in a given factory there are both an "occupier" and a Manager, both of them will be dealt with u/s 92. This Section 98 also occurs in Chapter X wherein Section 100 also is there and Section 100 very clearly lays down that for the purpose of penal liability, in the case of public or private company the Director or a shareholder respectively shall not escape the penal consequences of the company by appointing another person as an "occupier" as defined in Section 2(n) of the Act. It is, therefore, very evident even on the strength of Section 100 of the Act that the "occupier" of a factory for other purposes of the Act and Rules can be a person different from a Director or a shareholder. The letter dated 25th August 1975 written by the first respondent to the company possibly discloses the first respondent''s view that in the case of a public company, it is only the Director who can be an occupier and none else. As a matter of fact, Mr. Nanavati before us made no secret of this view of the first respondent and he sought to support his action on the basis of this interpretation, though of course there was also another limb of his argument which we shall deal with a little later on.

5. The definition of an ''occupier came to be examined by the Supreme Court in the case of John Donald Mackenzie and Another Vs. The Chief Inspector of Factories, Bihar, Ranchi and Others, . In that case of the Bata Shoe Company, the appellant before the Supreme Court claimed to be the Manager of the company and had applied for renewal of the licence, but it was never disclosed either to the Chief Inspector of Factories in the initial stages or the High Court in the course of the writ proceedings that said Mr. Mackenzie was put in the ultimate control of the affairs of the factory. In that case no doubt the Chief Officer of Factories refused to entertain the application of the so-called Manager occupier by recourse to Section 100 of the Factories Act, as was done by Mr. Nanavati for the respondent no. I, in the case before us. However, the Supreme Court upheld the decision of the Chief Inspector of Factories only on the ground that the applicant for renewal of the licence, Mr. Mackenzie did not show either to the Chief Inspector of Factories or to the High Court that he was put in the ultimate control of the Factory. While dealing with this plea, the Supreme Court has made the following pertinent observations:

Undoubtedly, the expression ''occupier'' is not to be equated with ''owner'' (emphasis supplied by us) (Note: this would negative the contention of Mr. Nanavati that a director alone can be the occupier).

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 therefrom that any document was executed by the company or any resolution was passed by it vesting the control in the petitioner no. 1 (emphasis supplied by us)

The above clean-cut laying down of the principles of law by the Supreme Court clinches the questions once for all. The authority lays down in very unequivocal terms that it is not necessary that an owner must necessarily be an "occupier" and that the "occupier" must necessarily be an owner or a Director. It further lays down that if by a resolution, a Company puts any officer in the ultimate control of the affairs of the factory, the Officer would and can be an "occupier" in terms of the Factories Act, 1948. This proposition of law laid down by the Supreme Court is the law of the land and no argument contrary to it can ever be entertained.

6. As observed by the Supreme Court in the abovementioned decision, it will be a question of fact whether a man claiming to be an "occupier" is a person falling under the definition given in Section 2(n) of the Act. What the definition requires is that the man claiming to be an "occupier" must have ultimate control over the affairs of the factory. In the present case, we have got the elaborate resolution of the Board of Directors passed at its meeting on 9th August 1973. The said resolution confers on the petitioner various powers which are re-produced below:

(a) Power to maintain plant and Machinery and to incur necessary expenses including the power to purchase materials and components for this purpose and put the equipment to the efficient and effective use for which the factory is constructed, as per the approved budget and the policy of the company from time to time.

(b) Power to incur necessary expenses for preserving safety of workmen as required under the Factories Act;

(c) Power to recruit workers for the purpose of production of goods and running and maintenance of the Plant and Factory and to see that the manpower is effectively employed for the purpose for which the factory is constructed, as per empower planning, wage and salary budget approved by the company and according to the policy and procedure laid down by the company from time to time.

(d) Power to dismiss, retrench, lay off, relieve and to take other disciplinary actions against workers in connection with the day-to-day administrative, factory and production on matters.

(e) Power to maintain the factory in working order and to comply with vari ous provisions of the Factories Act. Industial Disputes Act and other State and Central Legislations with regard to labour and factory administration.

(f) Power to operate Bank Account by signing cheques jointly with other authorised persons upto the value of Rs. 2000/- in each individual case and to accept cheques and other negotiable instruments drawn in favour of the company upto any amount.

(g) Power to apply for Import Licence for the purposes of importing raw materials, components and other capital goods for running, maintaining and expansion of the factory.

(h) Power to attend as a representative of the factory at various Trade Associations, Government and Semi-Government bodies and other institutions.

(i) Power to make necessary alterations and expansions etc., with respect to factory lay out, factory building etc., which are not major in character and which are necessary for the purpose of business of the factory as per the approved budget.

(j) Power to pass on receipt with regard to the payment received by the company in the usual course of its business.

(k) Power to obtain services of power, water, telephone, telegram and post from concerned authorities with prior approval of the Board of Directors.

(l) Power to purchase raw materials and components for the purpose of working of the factory for manufacturing the products within the approved budget and as per the procedure of the company.

7. Mr. Nanavati, however, contended that the second reason that prompted the first respondent to turn down the request of the petitioner was that this resolution did not confer on the first petitioner the ultimate control of the affairs of the factory. We have very carefully gone through the series of powers conferred on the first petitioner by that resolution and we are satisfied that the totality of powers is conferred on him and that the first petitioner was having ultimate control over the affairs of the factory, as far as the running of the factory was concerned. The powers conferred on him included the power to maintain the Plant and Machinery, to incur necessary expenses including the power to purchase materials and components for this purpose, the power to incur necessary expenses for preserving safety of the workmen as required under the Factories Act, the power to recruit and conduct disciplinary proceedings including other steps for the purpose of laying off or retrenching members of the staff. The powers conferred on: him are practically exhaustive and we do not find that any important power concerning the- management and affairs of a factory is left out. In this view of the matter, we are satisfied that the

first petitioner was clothed with the ultimate power regarding the affairs of the factory and that he was rightly claiming to be an "occupier" on whose application the question of renewal of licence could and should be considered. The second ground, therefore, urged by Mr. Nanavati that on the question of fact there was no ultimate control of the first petitioner over the affairs of the company cannot be sustained.

Mr. Nanavati had referred to the case of Inder Sen Roy v. State of Maharashtra, reported in 1975 LLJ 359. But the said case has no application to the facts of the present case because the case rested on the interpretation of Section 100 of the Factories Act which has no place in the picture while interpreting Section 2(n) of the Act.

8. Mr. Kaji for the company, however, had sought that column No. 10 of form No. 2 must be declared to be beyond the rule-making power of the State Government. But the said column No. 10 of form No. 2 does not in any way lay down that only a Director or a shareholder or an owner of the factory can be an "occupier." As a matter of fact, a close look at the form would show that various categories of persons are referred to there for the purposes of Section 100 of the Factories Act and, therefore, we do not find in column No. 10 anything provided contrary to Section 2(n) of the Factories Act and consequently the said prayer is not required to be granted.

9. The result is that the petition succeeds. The decision of the respondent No. 1 as incorporated in the letter dated 26th August 1975, Annexure D to the petition, is hereby quashed and the respondent no. 1 is hereby directed to dispose of immediately the petitioners'' application for renewal of licence for the year 1975 under the Factories Act, 1948 in accordance with law. Rule is thus made absolute, with costs.

