

(1995) 12 MAD CK 0030

In the Madras High Court

Case No : Writ Petition No. 17601 of 1995 and W.M.P. No's. 27845 and 27846 of 1995

Larsen and Toubro Limited, ECE Construction Group,
Pondicherry

APPELLANT

Vs

The Chief Inspector of Factories, Government of Pondicherry
and Another

RESPONDENT

Date of Decision : 21-12-1995

Acts Referred:

Factories Act, 1948 — Section 100, 100(1), 101, 11, 12

Citation : (1996) 73 FLR 1125 : (1996) 1 LW 160 : (1996) 1 MLJ 192

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Judgement

A.R. Lakshmanan, J.—Heard the learned counsel for the petitioner and the learned Government Pleader for Pondicherry State, taking

notice on directions from this Court. Since the matter is directly covered by the Division Bench decision of this Court reported in ION Exchange

India Ltd. Vs. Deputy Chief Inspector of Factories, , the main writ petition itself is taken up for final hearing even at this stage of admission.

2. This writ petition relates to the interpretation of the word "occupier" found in the Factories Act, 1948. The petitioner company is situated at

Mylam Road. They are proposing to put up ""Re-rolling Mill"" at its premises at Mylam Road, Sedarapet, Pondicherry. The petitioner is engaged in

the production of Angles, challens, for steel rods and it proposes to employ about 150 workmen. The Board of Directors of the petitioner

company made an application dated 27-10-1995 to the 1st respondent herein, the Chief Inspector of Factories, to appoint the Joint General

Manager P.K. Venkatakrishnan as the "occupier" for the proposed unit in term of

Sec. 2(n) of the Factories Act. According to the petitioner, they have filled up the necessary Form No. 2 prescribed under Rules 4, 5 and 11 of the Factories Act and paid Rs. 3,200 towards the fee required under the Act. They applied for licence for the year 1996. The 1st respondent passed an order bearing No. 1-4/C1/FB/A1/95, dated 15-11-1995 rejecting the application on the ground that only a Director can be the "occupier" of the proposed unit. It is in these circumstances, the present writ petition is filed to quash the order of the 1st respondent.

3. I have heard the learned counsel appearing for the petitioner. In my opinion, the view taken by the respondent with reference to the proper interpretation of Sec. 2(n) of the Factories Act (as amended in 1987), is clearly erroneous in law. The relevant provisions of the Act before and after the amendment are extracted below :

(1) Before the amendment in 1987, Sec. 2(n) of the Act read as follows :

Sec. 2(n) : 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.

Provided that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire.

1. The owner of the dock shall be deemed to be occupier for the purpose of any matter provided for by or under.

(a) Sec. 16, Sec. 17, Sec. 11 or Sec. 12.

(b) Sec. 17, insofar as it relates to the providing and maintenance of sufficient and suitable lighting around the dock;

(c) Sec. 18, Sec. 19, Sec. 42, Sec. 46, Sec. 47 or Sec. 49 in relation to the workers employed on such repair or maintenance;

2. After the amendment in 1987, Sec. 2(n) reads as follows :

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".

The amending Act has also omitted Sec. 100 in full. Sec. 101 has not undergone any change.

4. In view of the above amended provision, I am of the view that the respondent had erroneously interpreted for demanding that in the case of the

petitioner company one of the Directors of the Board is to be the "occupier" and his name should be mentioned against Column 4 of Form No. 2

and that he should sign as "occupier" in Form No. 2. Such an interpretation is wholly unwarranted and cannot stand scrutiny. After the amendment,

the true definition of an "occupier" is to mean a person who has ultimate control over the affairs of the factory. Once this position is

understood, it is submitted that a company like the petitioner is at perfect liberty to nominate a person as "occupier" of a factory, if that person has

ultimate control over the affairs of the factory. In such circumstances, there can be no scope for the respondent to contend that a nomination

contrary to the factual position should be made or that a nomination of an "occupier" which is in accordance with the reality, should be ignored.

5. The amendment made by the Act of 1987 have already been referred to in the paragraphs supra. It would be seen what the legislature has done

is to omit Sec. 100 as it stood and to incorporate the effect of that provision in the definition of "occupier" itself. It would be seen that the wording

of provisos (1) and (iii) correspond to the provisos to Sec. 100(1) and the second proviso to the Sec. 100(2). Consequently, it stands to reason

that what now occurs as proviso (ii) to Sec. 2(n) is to be equated with the old Sec. 100(2) first proviso. In this context, the retention of Sec. 101

without any modification is significant to show that no new liability was being sought to be introduced in the law contrary to principles of civilised

jurisprudence by making a person who cannot at all be held liable for something,

as the person liable, while at the same time letting away a person who is so liable, without any liability on his part. Even under the principles of vicarious liability, such liability is only secondary and it cannot be extended to the extent of fastening a liability when, by all accounts there can be none, in the very nature of things. Therefore, I am of the view that the view taken by the respondent in regard to the Sec. 2(n) as amended is not a reasonable or acceptable one and that therefore, it will be evident when practical situation in relation to a company having many factories at different places is taken into consideration. In fact, the law being general in its application, only that interpretation can be preferred which will avoid injustice in every case. So in a multifactory situation, the Directors being located at places away from the factory, it would be absurd to imagine that a Director sitting in a Metropolitan Centre would be liable as the occupier" of a factory in a remote part of India while the person actually having control over the affairs of the said factory, under the delegation from the company, would be held not liable under the Factories Act. Such a view would not only impose an unreasonable restriction on the persons discharging duties as Directors but also would amount to a situation where the actual person having control over the affairs of the factory would have no responsibility at all for the conduct of affairs in the factory, which is not at all a desirable or acceptable situation. A view of the law which promotes such an absurd situation should be discountenanced.

6. The common word used by the new Sec. 2(n) in provisos (i) to (iii) is "deemed". It is significant to notice that the word "deemed" occurred in all the provisos of the provisos Sec. 100(1) and (2). Plainly the use of the word "deemed" provided for a situation where there was scope for such deeming. With specific reference to a company, the proviso to Sub-sec. (2) of Sec. 100 enabled a company to nominate a Director to be the occupier" of the factory and on such nomination such Director shall be "deemed" to be the "occupier". The use of the word "deemed" in the present proviso also leads to the similar situation. There is in reality no change in regard to the right of a company to nominate person as the occupier" has been widened and the exactly contrary view sought to be put on the amended section by the respondent is clearly erroneous in law.

7. From the proviso (iii) to the amended Sec. 2(n), it is clear that in the case of a

factory owned or controlled by Central Government or any State

Government or local authority, the person appointed to manage the affairs of the factory is deemed to be "occupier". There is no reason why in the

case of a factory owned by a company the legal position should be otherwise. No such violent departure is called for by the plain words in proviso

(ii). In any event, as a matter of interpretation when the section speaks of "deeming" it enacts a fiction to cover a vacuum. If in reality, there is no

such vacuum and a person exists who is a person already having ultimate control over the affairs of the factory and he is nominated as the

occupier" there can be no scope for any deeming. By failing to see the exact meaning of the expression "deemed" the respondent has committed a

serious error of law which vitiates its order.

8. As already seen a Division Bench of this Court consisting of the Hon"ble the Chief Justice and Raju, J., had already decided that Joint General

Manager can also be appointed as "occupier" which is reported in ION Exchange India Ltd. Vs. Deputy Chief Inspector of Factories, , mentioned

supra. But, the Division Bench has allowed the Writ Petitions in the following terms;

(1) The order passed by the Inspector of Factories, rejecting the application 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 Inspector 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, a 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 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 case, further, 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 hereunder, 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.

9. However, such terms as above need not be issued in this case, because, such terms are not warranted as the application for fresh licence has

been returned by the 1st respondent only for the following reasons :

1. Joint General Manager could not be nominated as occupier.
2. Any one of the Directors may be nominated as occupier under the T.A.

10. Now that the impugned order is quashed, I direct the respondents to consider the application which even according to the respondents is

otherwise in order and to grant licence to the petitioner within two months from the date of receipt of this order. The writ petition is disposed of

accordingly and there will be no order as to costs. Consequently, W.M.P. Nos. 27845 and 27846 of 1995 are dismissed as unnecessary.