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(2013) 1 ALT 794

Andhra Pradesh High Court

Case No: Writ Petition No. 15088 of 2000

Electronics Corporation of India Limited Hyderabad	APPELLANT
Vs	
State of Andhra Pradesh and 2 Others	RESPONDENT

Date of Decision: Sept. 20, 2012

Acts Referred:

- Atomic Energy Act, 1962 - Section 11, 12, 13, 14, 16
- Companies Act, 1956 - Section 446
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Factories Act, 1948 - Section 107, 116, 2, 2(1), 2(1)(a)
- Life Insurance Corporation Act, 1956 - Section 41

Citation: (2013) 1 ALT 794

Hon'ble Judges: Nooty Ramamohana Rao, J

Bench: Single Bench

Advocate: M. Lakshmana Sarma, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Nooty Ramamohana Rao

1. This writ petition is moved by Electronics Corporation of India Limited (for short referred to as ECIL henceforth), a Government of India Enterprise, seeking a writ of mandamus for declaring that the respondents have no power or authority to administer the provisions of the Factories Act, 1948 to the petitioner. ECIL is incorporated as a company under the provisions of the Companies Act, 1956, on 11.4.1967, having its registered office at Hyderabad. The entire share capital excepting three shares were held

by the President of India acting through the Department of Atomic Energy and the three remaining shares were also held by the public servants of Government of India looking after the affairs in the Ministry. It is thus a fully owned Government of India company. As per the Memorandum of Association, the main objects behind establishing the company are :

to acquire and take over the electronics production units of Bhabha Atomic Research Centre, Trombay; to carry on in India and elsewhere all kinds of business relating to research, development, pilot production, manufacture, assembly, fitting up, repairing, converting, overhauling, maintaining, rendering services of all and every kind and description, buying, selling, importing, exporting, exchanging, altering, hiring, letting on hire, improving, repairing and dealing in apparatus, equipment, instruments, components and materials of the following description:

Production of Analogue and digital computers and associated equipment, Micro-wave instruments and equipment such as signal generator, frequency meters, power meters, attenuators and all associated accessories.

2. It is also intended to manufacture electrical instruments and devices for nuclear power stations and other types of nuclear plants, nuclear and non-nuclear electronic instruments and devices like electronic recording/controlling/indicating instruments for the measurement and control of process variables, pneumatic instruments and devices like pressure, differential pressure and flow transmitters etc.

3. complete control panels and consoles for the centralized control of large and complex plants of all types including nuclear power stations, components and systems of all types required in industrial/military control applications, Vaccum and allied equipment, instruments.

4. All semi-conductor devices such as diodes, rectifiers, silicon controlled rectifiers, tunnel diodes, zener diodes, laser diodes etc.

5. All types of integrated/microelectronic circuits, all special types of electron tube devices such as photomultipliers, photo tubes, cathode ray tubes, digital indicating tubes.

6. All types of antennas that are required for the electronic equipment.

7. Also to establish, maintain and operate training centres, training colleges, training institutions, training hostels and other related infrastructure for imparting computer training and education and other aspects of technologies.

8. It is hardly in doubt that ECIL answers the description of a "factory" as defined in Section 2(m) of the Factories Act, 1948. Accordingly, ECIL submitted an application to the Factories Department of the State Government for grant of a license and accordingly it was granted such a license. However, when an inspection was carried out by the

Inspector of Factories of State Government at the ECIL premises on 14.5.1999, he has reported certain irregularities said to have been committed by the petitioner, including periodical non-renewal of the license and hence a show-cause notice was drawn against the petitioner. In spite of showing the necessary cause and in spite of satisfactorily explaining that the necessary inspections are carried out in accordance with the Atomic Energy Act, but, nonetheless, a criminal case, STC No. 318 of 1999 was filed before the Additional Judicial First Class Magistrate, East and North, Saroor Nagar, Ranga Reddy District against it. In that view of the matter, while taking appropriate proceedings for quashing the charge-sheet in the aforementioned criminal case by invoking the provision available u/s 482 of the Code of Criminal Procedure, simultaneously the present writ petition is also instituted on the premise that that the entire field relating to inspection of the writ petitioner-factory is covered in terms and in accordance with Section 23 of the Atomic Energy Act, 1962 and hence the respondents-State and its officials in its Factories department have no right of inspection.

9. Before proceeding any further, it should be noted that the Crl. Petition No. 1680 of 2000 moved for quashing the charge-sheet filed against the petitioner has been dismissed by this court by its judgment and order dated 29.1.2002 and then the petitioner carried the matter by way of Crl. Appeal No. 867 of 2003 there against to the Supreme Court and the Supreme Court by its judgment dated 21.07.2010 recorded a finding that there is no prima facie case made out against the appellant (the petitioner herein) for having committed the offence u/s 92of the Factories Act and hence allowed the criminal appeal and set aside the judgment rendered by this court appealed against and also quashed the criminal proceedings launched against the petitioner.

10. The only question that requires to be examined in this writ petition is whether the petitioner can be said to be regulated still by the provisions of the Factories Act, 1948 or by virtue of Section 23 of the Atomic Energy Act, 1962, the provisions of the Factories Act cease to have any further application to it.

11. Heard Sri M. Lakshmana Sarma, learned counsel for the petitioner and Sri B. Somasekhar, learned Government Pleader for Labour and Factories Department.

12. A quick scan of the provisions of the Factories Act, 1948, would be essential before the provisions of the Atomic Energy Act, 1962 are considered in detail. The Factories Act, 1948, is a consolidating legislation regulating the well being and welfare of the labour employed in various factories. It is not merely a regulatory enactment, but a social welfare legislation to protect and provide for safe and reasonable conditions of service for labour to be employed in factories across the country. Expressions such as "hazardous process", "manufacturing process", "factory" and "occupier of a factory" are defined in Sections 2(cb), 2(k), 2(m) and 2(n) respectively of this Act. There is no dispute on the count that the petitioner answers the description of a factory. Section 4 of this Act conferred power on the State Government, either on its own or on an application made in this behalf by the occupier, direct by an order in writing and subject to such conditions as

it may deem fit, that for all or any of the purposes of this Act, different departments or branches of a factory of the occupier specified in the application shall be treated as separate factories, provided that no such order shall be made by the State Government on its own motion unless an opportunity of being heard is given to the occupier. Thus, Factories Act, 1948, has conceived and contemplated for different departments or branches of a single factory to be treated as separate factories by the State Government. It is of great significance to note that no such notification emerged insofar as the factory of the petitioner is concerned. Section 6 of the Factories Act dealt with relevant aspects relating to the approval, licensing and registration of factories by it. Section 7(A) listed out the general duties thrust upon the occupier of a factory. Chapter II of the Act dealt with the inspecting staff of factories. Section 8 conferred power on the State Government by notification in the Official Gazette to appoint such persons possessing the prescribed qualifications to be inspectors for the purposes of the said Act. Section 9 detailed the powers exercisable by such Inspectors. Chapter III of the Act dealt with various aspects relating to heath conditions of labour employed in factories. Similarly, Chapter IV dealt with safety aspects of the labour in the factories and provided for all conceivable details for securing the safety of the labour. Chapter IVA dealt with the provisions relating to hazardous processes. Chapter V of the Factories Act devoted to the welfare measures to be deployed at the factories while Chapter VI dealt with the working hours of the adults at the factories. Section 67 which is included in Chapter VII specifically prohibited employment of children who have not completed 14 years of age to work in any factory. Chapter VIII of the Factories Act dealt with the annual leave with wages that are to be provided to the labour in the factories. Special provisions which are required to be made are all provided in Chapter IX of the Act. Chapter X of the Factories Act dealt with penalties and the procedure to be followed. Supplemental provisions have been incorporated in Chapter XI, which commences with Sections 107 providing for appeals. Section 116 of the Factories Act made it abundantly clear, that unless otherwise provided in the said Act, the Factories Act shall apply to the factories belonging to the central or any state government. It is therefore contended by the learned Government Pleader strenuously that even though the writ petitioner may be a company, fully owned by the central government, but, nonetheless it is covered and regulated by the provisions contained in the Factories Act, 1948. Alternatively, the learned Government Pleader would contend that even if some of the departments/units of the petitioner factory are liable to be regulated by the provisions of the Atomic Energy Act, 1962, but nonetheless there are several departments and units which are not concerned or connected with any activity relating to Atomic Energy and in such units or departments only commercial instruments or other non atomic energy related equipments are manufactured and hence such units or departments are liable to be treated as factories by themselves and even if they cannot be treated as independent factories, such units/departments must be kept open for inspection by Inspectors of Factories appointed by the State Government in accordance with Section 8 of the Factories Act and they shall not be prevented to discharge the functions liable to be discharged by them in accordance with Section 9 of the Factories Act, 1948. He, therefore, urges that this writ petition shall not be allowed in

abstract terms in which it is prayed for. The learned Government Pleader in support of his contention has illustrated that the petitioner is manufacturing Electronic Voting Machines (EVMs) and the department/unit which manufactures these EVMs is drawn far away from the main factory premises of the petitioner and it is located at Cherlapally, a clean 5 kms. away from the main factory of the petitioner. He therefore suggests that the petitioner shall not seek to avoid the inspection and scrutiny by the Inspectors of Factories appointed by the State Government.

13. There is no doubt in my mind that by virtue of the provision contained in Section 116 of the Factories Act, a factory owned by the Central Government is, otherwise, liable to be regulated by the provisions contained by the Factories Act and such a factory is also amenable for inspection of the Inspectors appointed by the State Government in terms of Section 8 of the Factories Act. But, however, so long as the State Government does not exercise the power available to it in terms of Section 4 of the Factories Act and notifies any one or more of the departments/units of ECIL, including the facility where EVMs are manufactured, as separate or independent factories, all by themselves, truncation of a composite factory into fragments for purposes of inspection would not arise.

14. It is now essential to focus our attention on the provisions of the Atomic Energy Act, 1962. The Atomic Energy Act, 1948, is repealed by the 1962 Act. The 1962 Act has provided for the development, control and use of atomic energy for the welfare of the people of India and for other peaceful purposes and for matters connected therewith. Section 2 defined various expressions found in the said enactment. Section 2(1)(a) defined the expression "atomic energy" as energy released from atomic nuclei as a result of any process, including the fission and fusion processes. "Government Company" has been defined in Section 2(1)(bb) as a company in which not less than fifty one percent of the paid up share capital is held by the Central Government. The expression "plant" is defined in Section 2(1)(e) as any machinery, equipment or appliance whether affixed to land or not. Most importantly, the expressions "radiation", "radioactive substance" or "radioactive material" are defined in Section 2(1)(h) and (i) in the following manner:

2(1) (h) "radiation" means gamma rays, X-rays, and rays consisting of alpha particles, beta particles, neutrons, protons and other nuclear and sub-atomic particles, but not sound or radiowaves, or visible, infrared or ultraviolet light;

(i) "radioactive substance" or "radioactive material" means any substance or material which spontaneously emits radiation in excess of the levels prescribed by notification by the Central Government.

15. Section 3, subject to the other provisions of the Atomic Energy Act, 1962, empowered the Central Government to produce, develop, use and dispose of atomic energy either by itself or through any authority or Corporation established by it or a Government company and carry out research into any matters connected therewith. The following is also included in the exclusive domain reserved for the Central Government u/s 3(b) i.e., to

manufacture or otherwise produce any prescribed or radioactive substance and any articles which in its opinion are, or are likely to be, required for, or in connection with, the production, development or use of atomic energy or such research as aforesaid and to dispose of such described or radioactive substance or any articles manufactured or otherwise produced.

16. At the same time, power is conferred on the Central Government exclusively in terms of Section 3(e) of this Act to provide for control over radioactive substances or radiation generating plant in order to prevent radiation hazards with a view to secure public safety and safety of persons handling radioactive substance or radiation generating plant and also ensure safe disposal of radioactive wastes. Section 5 conferred complete control on the Central Government over mining or concentration of substances containing uranium. Similarly, Section 6 restricted disposal of uranium except with the previous permission in writing of the Central Government and in accordance with such terms and conditions as it may impose. Section 8 conferred power of entry and inspection upon any person authorized by the Central Government for entering any mine, premises or land where he has reason to believe that work is being carried out for the purpose of or in connection with production and processing of any prescribed substance. Compulsory acquisition of prescribed substance, minerals and plants by the Central Government has been provided for u/s 11 and Section 12 provided for payment of compensation in such a case. Section 13 has provided for Novation of certain contracts. Most significant for our inquiry is Section 14 which conferred complete control over production and use of atomic energy upon the Central Government. Section 16 empowered the Central Government to prohibit any manufacture, possession, use, transfer by sale or otherwise, export and import and in an emergency, transport and disposal, of any radioactive substances without its written consent. Special provisions as to safety at certain premises or places in which radioactive substances are manufactured, produced, mined, treated, stored or used or any radiation generating plant, equipment or appliance is used have been carved out and provided for in great detail in Section 17 of this Act. Section 19 conferred power on the Central Government by order to prohibit entry of any person without obtaining permission into a prohibited area and taking any persons without permission or taking any photographs, sketch, pictures, drawing, map or other document from a prohibited area. Section 22 provided for special provisions as to electricity notwithstanding anything contained in the Electricity Supply Act, 1948, upon the Central Government. Contravention of the provisions contained in Sections 14, 17 and 18 are recognized as offences which shall be punishable with imprisonment for a term which may extend to five years, or with fine or both u/s 24 of this Act. Section 26 provided for cognizance of such offences. Section 28 provided for primacy to this enactment by declaring that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other enactment or other instrument having effect by virtue of any other enactment. Most vital significance for our inquiry is the provision contained in Section 23 of this Act and it reads as under:

23. Administration of Factories Act, 1948-Notwithstanding anything contained in the Factories Act, 1948, the authority to administer the said Act, and to do all things for the enforcement of its provisions, including the appointment of inspecting staff and the making of rules thereunder, shall, vest in the Central Government in relation to any factory owned by the Central Government or any authority or corporation established by it or a Government Company and engaged in carrying out the purposes of this Act.

17. It is plainly manifest that Section 23 of the Atomic Energy Act is a special provision carved out by the Parliament. It has clearly spelt out that the authority competent to administer the Factories Act, 1948 and to do all things for enforcement of the provisions of the Factories Act, including the appointment of the inspecting staff shall rest in the Central Government in relation to any factory owned by the Central Government or any authority or corporation established by it or a Government company and engaged in carrying out the purposes of the Atomic Energy Act, 1962. It is a well recognized legislative practice that while comprehensively dealing with certain special circumstances, provisions can be carved out for giving effect to or implementing the provisions of some other enactment. Parliament being thoroughly conscious and aware of the various purposes that are required to be achieved by the Factories Act, 1948, has enacted a special provision in the form of Section 23 while enacting the Atomic Energy Act, 1962. This special provision will get attracted in relation to any factory owned by the Central Government or any authority or corporation established by it or a Government company. And such a factory should be engaged in carrying out the purposes of the Atomic Energy Act, 1962. As ECIL is a Government Company owned by the Central Government, and if it is a "factory" engaged in carrying out the purposes of the Atomic Energy Act, 1962, inasmuch as, among other things, it manufactures nuclear and non-nuclear electronic instruments and special electron tube devices, photo tubes, cathode ray tubes etc., which fall within the sweep of Section 2(1)(h) of the Atomic Energy Act, 1962 then the power to secure enforcement of the provisions of the Factories Act, 1948, including the power to appoint Inspectors and consequently the discharge of functions assigned to them u/s 9 of the Factories Act switches over to the Central Government. Therefore, it is necessary to decipher carefully as to whether ECIL is carrying out any of the purposes enumerated by the Atomic Energy Act, 1962 or not. A perusal of the license granted by the Atomic Energy Regulatory Board, Government of India on 20.8.2010 which is valid up to 31.08.2015 issued to ECIL would unmistakably disclose that there is an exclusive division in ECIL which is known as "Radiation Detectors and Instrumentation Division" which manufactures 1500 Nos. of Radiation Detectors, instruments and instrumentation. There is another division of ECIL which is called "Instruments and Systems Division" which manufactures One Million (10,00,000 Nos.) energy meters, 140 nos. X-ray Baggage Systems, 400 nos. Photonics Systems, 75 Nos. Defence Systems, 50 Nos. Nuclear Industrial Instrument Systems. Similarly, "Resistors and Components Division" of ECIL manufactures One million Tantalum Capacitors. Strategic Electronics Division (SED) of ECIL manufacture Software and Hardware Integration work for defence projects. "Communication Systems Group (CNSG)" manufactures 15 systems of Electronic

Warfare systems. The said group also manufactures ST (Stratosphere & Troposphere) Radars and also 100 units of Jammers. It is no doubt true that the "Electronic manufacturing and services" division at Cherlapally also manufactures 2 lakh nos. of Electronic Voting Machines (EVMs). Apart from the above, there are several divisions in ECIL which manufacture a host of scientific and technical equipments and instruments, computers etc., which are mostly used for space research, defence warfare, communications etc.

18. A conspectus of the above manufacturing processes undertaken by the ECIL would undoubtedly disclose that ECIL deals with and accomplishes some of the purposes by using "radiation" or "radioactive substance" or "radioactive material", as defined in Section 2(1)(h) and (i) of the Act for regulating which the Atomic Energy Act, 1962 has been ushered in by the Parliament. As we have noticed, the Atomic Energy Act, 1962, deals with not only the atomic energy released from the atomic nuclei as a result of any process including fission and fusion but would also deal with Gamma rays, X-rays and rays consisting of alpha particles, beta particles, neutrons, photons and other nuclear and sub-atomic particles. Similarly, the Atomic Energy Act regulates radioactive substances or radioactive material. Hence, it is not at all in doubt, that some of the equipments, instruments and other products manufactured and rolled out of ECIL factory are exclusively liable to be regulated by the Atomic Energy Act, 1962.

19. As was already noticed, the Atomic Energy Act is also intended to ensure the safety and welfare of those who are employed in factories and mines which deal with radioactive material or substances and involved in the process of manufacturing equipments. This Act is also intended for protecting the others as well. This is the reason why primacy was accorded to this legislation over all other enactments or instruments, notwithstanding the inconsistencies contained therein, by incorporating such a provision in Section 28 of the Atomic Energy Act, 1962.

20. Factories Act, 1948 or Atomic Energy Act, 1962 is a Special Legislation:

The question as to which is a general statute and which one is a special statute is a question not all that free from difficulty to solve. But, however, the attempt at classification, set out supra, must be made with reference to the context of each case and the subject matter exclusively dealt with by each of the Statutes. A law which deals with a specified or a particular subject may still be construed as a general law in the sense that it is a law providing for general applicability laying down general rules. Incidentally, such a general statute may contain certain special provisions and also may provide for penal provisions therein. But, however, the normal presumption that goes with the general enactment is that it is not intended to create or deal with special requisites or situations, unless a contra intention to do so is clearly manifested therefrom. A special enactment passed by a legislature is supposed to have been so carved out to meet specific cases or needs or circumstances or to deal with specific situations. In passing such special laws, it is presumed that, the legislature has devoted its full attention and consequently paid

greater attention and consideration to a particular or specified subject and as a result of such pointed deliberation, the special statutes are rolled out. When there is an already made law generally dealing with a subject and there is another statute which deals with one particular subject/aspect, incidentally which may comprise of the subjects dealt with by the general law, but nonetheless, the general law is construed as yielding place to the special legislation in respect of matters exclusively dealt with by such special legislation. Thus, whenever a specific provision is found in an enactment, it is not proper to apply another general provision to such a situation. The application of the principle of Generalia specialibus non derogant has been considered by the Supreme Court in The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, and 1978 (37) FLR 280 (SC) . It is to be noted that the rule general provisions should yield to special provisions is not an arbitrary principle. Whenever a legislature, having already made a general Act afterwards makes a special Act, containing certain provisions which might be in conflict or inconsistent with the earlier general enactment, it must be assumed that the legislature had in mind full knowledge about its general enactment while making the subsequent special enactment and it expected the special enactment to prevail over the earlier general enactment. Dealing with Section 41 of the Life Insurance Corporation Act which provided that no civil court shall have jurisdiction to entertain or adjudicate upon any matter which a tribunal is empowered to decide or determine under the said Act, the Supreme Court considered the same as a special provision having the effect to overwrite Section 446 of the Companies Act which is an Act relating to companies in general Damji Valji Shah and Another Vs. Life Insurance Corporation of India and Others, Therefore, the principle which has been set at rest was that a special provision should be given effect to the extent of its scope leaving the general provision to control cases wherever the special provision does not apply. (The The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another, .Another test that is applied generally is that the later enactment normally prevails over the earlier one. Even if both the statutes are considered as special enactments, even in such a case, the special provision may prevail over the more general one. (See Sanwarmal Kejriwal Vs. Vishwa Co-operative Housing Sciety Ltd. and others,

21. When we apply these essential tests to the case on hand, it emerges that though for certain purposes the Factories Act, 1948 can be regarded as a special enactment, but nonetheless when a comparative study and analysis of it is made along with the provisions of the Atomic Energy Act, 1962, the Factories Act, 1948 is bound to be construed as a more general enactment and the Atomic Energy Act must be construed as a special enactment. Further, in Section 23 of the Atomic Energy Act, a specific reference was made to the Factories Act, 1948, and hence notwithstanding anything contained in the Factories Act, 1948, the Parliament conferred exclusive power to administer the said enactment with regard to a factory owned by the Central Government and carrying out any of the purposes of the Atomic Energy Act, 1962, on the Central Government. A proper and careful analysis of Section 23 of the Atomic Energy Act discloses that the provisions of the Factories Act have not been done away with in their application to

factories, which are liable to be regulated by the Atomic Energy Act; Instead of the State Government exercising the necessary powers for enforcing the provisions of the Factories Act, 1948, such powers become exercisable by the Central Government. The provisions of the Factories Act are kept in tact and preserved, in their applicability to a factory carrying out the purposes specified by Atomic Energy Act, 1962. The provisions of the Factories Act are bound to be complied with. But, however, the appointment of Inspectors in terms of Section 8 of the Factories Act and the duties and responsibilities entrusted to such inspectors in terms of Section 9 become exercisable insofar as such factories which are regulated by the Atomic Energy Act, only by the inspectors appointed by the Central Government. The Central Government has already entrusted the said task to ''Atomic Energy Regulatory Board'' and the said Atomic Energy Regulatory Board has been undertaking regular and periodical inspections of the factory of ECIL and each and every division/unit/department is inspected for securing compliance with the provisions of both Factories Act and Atomic Energy Act.

22. Therefore, the Inspectors of Factories appointed by the State Government in accordance with Section 8 of the Factories Act can no longer exercise power of inspection or discharge the functions entrusted to them u/s 9 with reference to the writ petitioner-factory-ECIL.

23. The writ petition, hence, stands allowed. But, however, without costs. I place on record my sincere appreciation of the enormous efforts put in by the learned Government Pleader Sri Somasekhar, to convince me to arrive at a difference conclusion than the one I arrived at.