(1977) 06 CAL CK 0034

Calcutta High Court

Case No: Civil Revision No. 311 (W) of 1972

Greaves Foseco Ltd.		APPELLANT
	Vs	
Chief Inspector of Factories		RESPONDENT

Date of Decision: June 17, 1977

Acts Referred:

- Constitution of India, 1950 - Article 226(3)
- Factories Act, 1948 - Section 100, 100(2), 2, 54, 6
- West Bengal Factories Rules, 1958 - Rule 13, 4, 7

Citation: (1977) 1 CALLT 388 : (1977) 2 ILR (Cal) 151

Hon'ble Judges: Chittatosh Mookerjee, J

Bench: Single Bench

Advocate: D.N. Mukherjee and Sushil Kumar Datta, for the Appellant;Ramendra Nath Dutt, for the Respondent

Judgement

Chittatosh Mookerjee, J.

The Petitioner is a company registered under the Indian Companies Act, 1956 and it has a factory at Taratala Road, Calcutta. The Petitioner has, inter alia, prayed for a writ in the nature of mandamus commanding the Chief Inspector of Factories, Government of West Bengal and other Respondents to this Rule to accept the appointment of Mr. Pradip Kumar Sandell as the occupier of the Petitioner"s factory at Taratala Road, Calcutta, for the year 1973. The Petitioner has also prayed for a writ of certiorari, inter alia, for quashing the criminal proceeding in Case No. C/3135/73 against M.F.C. Elliott and also for a writ in the nature of prohibition prohibiting the Respondents to forbear from proceeding with the said criminal case against M.F.C. Elliott. In brief, the case of the Petitioner is that the Respondents have acted illegally and without jurisdiction by refusing to accept the Petitioner"s nomination of Pradip Kumar Sandell as the occupier of the Petitioner"s factory at Taratala Road, Calcutta, within the meaning of Section 2(n) of the Factories Act, 1948 and by treating M.F.C. Elliott, who was one of the Directors of the

Petitioner''s company as the occupier of the said factory.

2. The facts of the case may be briefly stated. On July 1, 1962, the Petitioner company, which was then known as Greaves Foundry Services Limited, had made an application to the Respondent No. 1 for registration and grant of a licence under the Factories Act and also gave a notice of occupation specified in Sections 6 and 7 of the Factories Act, 1948. In col. 9 of the said application in Form 2, the name of M.F.C. Elliott was mentioned as the person nominated as the occupier u/s 100 of the Act. A list of names and addresses of the Directors of the said company was submitted which showed that the said M.F.C. Elliott was one of the Directors of the Petitioner company. The Respondent No. 1, accordingly, granted licence No. 88-TP/X/62 dated August 11, 1962, to the Petitioner company. Thereafter, the Petitioner company obtained successive renewals of the said licence from the Respondent No. 1. The original application for grant jot licence and also for renewal applications upto the year 1971 were signed by the aforesaid Director of the company as the occupier.

3. On January 12, 1973, an application in Form 2 for renewal of the said factory licence issued in the name of M.F.C. Elliott was again mentioned as the occupier u/s 100 of the Factories Act. In col. 7 the name of Pradip Kumar Sandell was mentioned as the Manager of the company for the purpose of Factories Act. The Chief Inspector of Factories by his letter dated March 13, 1973, informed the Petitioner company that the said form had not been signed by the occupier. A form was enclosed to the said letter for signature of the occupier. On April 18, 1973, Pradip Kumar Sandell as the Works Manager of the Petitioner company wrote a letter to the Chief Inspector of Factories stating that due to oversight in col. 9 of the Form the name of the occupier had been mentioned as M.F.C. Elliott, whereas the name of the said Pradip Kumar Sandell should have been mentioned. In support of the said claim a certified copy of a Power of Attorney in favour of Pradip Kumar Sandell was furnished. The application for renewal of the factory licence for the year 1973 was re-submitted with Pradip Kumar Sandell''s name r as the occupier.

4. On May 17, 1973, the Chief Inspector of Factories, Government of West Bengal, the Respondent No. 1, wrote a letter to the Petitioner company advising to nominate one of the Directors of the Petitioner company as an occupier of the factory. The Respondent No. 1 declined to accept the nomination of Pradip Kumar Sandell as an occupier because he was not a Director of the Petitioner company. The Works Manager of the Petitioner company in reply requested the Respondent No. 1 to return the application for renewal of the licence for the year 1973 to enable the Petitioner to get it signed by one of their Directors as the occupier. On August 20, 1973, the Chief Inspector of Factories forwarded a duplicate copy of Form 2 dated January 12, 1973, for signature of the occupier.

5. On November 19, 1973, the Works Manager of the Petitioner company again submitted the said renewal application in Form 2 for the year 1973 signed by Pradip Kumar Sandell as the occupier. In col. 9 of the form his name was mentioned. The Works Manager furnished to the Respondent No. 1 an extract from the minutes of the 104th

meeting of the Directors of the company held on October 8, 1973. The Directors by the said resolution had resolved that

Mr. Pradip Kumar Sandell, Manager of the Company''s factory at Taratala Road, Calcutta, in whom are vested the necessary authority and powers for running the said factory with ultimate control over the affairs thereof as per the requirements of the Factories Act, 1948, be and is hereby appointed as the Occupier of the said Factory within the meaning of that term defined in the said Act.

6. The Respondent No. 1 did not make any endorsement upon the said Form 2 that the Petitioner''s licence for the year 1973 be renewed.

7. On November 29, 1973, an Inspector of Factories, West Bengal, filed a petition of complaint in the Court of the Police Magistrate, Alipore, 24-Parganas, against the said M.F.C. Elliott as the occupier and Pradip Kumar Sandell as the Manager of the Petitioner''s factory at Taratala Road, Calcutta, inter alia, praying that process be issued u/s 92 of the Factories Act for the alleged contravention of Section 54 of the Factories Act, 1948. The learned Police Magistrate had summoned the aforesaid two person to appear before him on January 9, 1974.

8. On February 7, 1974, the Petitioner company obtained the present Rule. On the prayer of the Petitioner company an interim order was granted staying further proceedings in the aforesaid criminal case against M.F.C. Elliott and Pradip Kumar Sandell. During the pendency of this Rule the Petitioner company had obtained renewal of its factory licence for 1974 and the succeeding years. In these renewal applications the name of Pradip Kumar Sandell and thereafter the name of one Sitangshu Sekhar Bhattacharya were mentioned as the occupiers of the Petitioner''s factory. The said renewal of the Petitioner''s licence for 1974 and subsequent years are not the Subject-matter of the present Rule.

9. The only point in this Rule is whether the Respondents have acted illegally and in contravention of Sub-section (2) of Section 100 of the Factories Act, 1948, by refusing to accept the nomination of Pradip Kumar Sandell as the occupier of the Petitioner''s factory at Taratala Road, Calcutta, for the year 1973.

10. Section 2(n) of the Factories Act, 1948, defines ''occupier'' of a factory as the person who has the 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. The Supreme Court in John Donald Mackenzie and Another Vs. The Chief Inspector of Factories, Bihar, Ranchi and Others, observed--

undoubtedly the expression ''occupier'' is not to be equated with owner. But it must me borne in mind that the ultimate control over the factory must necessarily be with an owner unless the owner has completely transferred that control to another person.

In John Donald Mackenzie and Anr. v. The Chief Inspector of Factories Bihar and Ranchi and Ors. the Supreme Court upheld the decision of a Division Bench of the Patna High Court which had dismissed a writ application made by the Manager of Bata Factory, inter alia, for quashing the orders of the Chief Inspector of Factories, Bihar and Ranchi, refusing to accept the said Manager as the occupier of the factory. The previous Manager claiming to be the occupier of the same had obtained the said licence under the Factories Act. The licence had been renewed for several years. The Petitioner of the said case after assuming charge as the new Manager also had obtained renewal of the licence upto December 31, 1956. At this stage the Chief Inspector of Factories had intimated his decision that the Manager was not the occupier of the factory in question and the application for renewal of the licence and the notice of occupation were required to be filed by a Director of the company. A Division Bench of the Patna High Court, inter alia, held that it was within the jurisdiction of the Chief Inspector to examine if the conditions for renewal of a factory licence had been fulfilled and therefore, he has necessarily to decide whether the application has been made by the occupier and the notice of occupation has been signed by him. The Supreme Court while dismissing the appeal from the decision of the Patna High Court did not differ from the above pronouncement of the Division Bench of the Patna High Court and the Supreme Court had observed that the Petitioner did not lay before the Chief Inspector of Factories necessary materials showing that the company in some manner had transferred the entire control over the factory to the Petitioner No. 1. Therefore, the Chief Inspector of Factories was perfectly right in refusing to act on the application signed by the Manager of the factory.

11. It is a mixed question of law and fact whether a particular person has ultimate control over the affairs of factory. Actual and immediate control over the affairs of a factory does not necessarily mean ultimate control. The expression "ultimate control" means final control. Therefore, in order to determine whether a person is an occupier, the nature and extent of his control over the affairs of the factory have to be considered. The decision on the question" whether a person is an occupier may be made by ascertaining; who has the right of regulating and controlling it and who is in predominant position and has general superintendence over it. In Emperor v. Jamshedji Naserwanji Modi AIR 1931 Bom. 308, Beaumont C.J. and Murphy J. with reference to the definition of the word "occupier" under the Factories Act, 1911, held that the word "occupier" in general means the person who occupies the factory either by himself or his agent. He may be an owner, he may be a lessee or even mere licensee; but he must have the right to occupy the property and dictate how it is to be managed, therefore, the conviction of the owner of a factory who had left the whole conduct of its affairs to a Manager was upheld.

12. The Supreme Court in State of Maharashtra Vs. Jamnabhai Purshottam Assar, upheld an order of acquittal of an owner against a charge u/s 92 of the Factories Act, 1948, read with Rule 3A of the Bombay Factories Rules, 1956. The owner had closed the Factory. Thereafter, he had made over the factory to five partnership firms in return for periodical payments. The licensees carried on manufacturing process on their own and

the person who had originally established the factory had no more control over them. Therefore, he was found not to be an occupier.

13. The Petitioner was admittedly the owner of the factory in question. The Petitioner which was previously known as Greaves Foundry Services Limited by submitting application in Form 2 had obtained registration on the basis that the company was in occupation of the said factory at Taratala Road, Calcutta and had obtained renewal of the licence up to 1972. Form 2 prescribed under Rules 4, 7 and 13 of the West Bengal Factory Rules, 1958, required the name and address of the persons nominated as the occupied u/s 100 of the Act be mentioned in Clause 8 of the form and the name and address of the person nominated as the occupier u/s 100 should be set out in col. 9 of Form 2.

14. Section 100 of the Factories Act, 1948, deals with the determination of occupier for the purpose of chap. X of the Factories Act. The said chapter deals with penalties and procedure. In case a company is the occupier of a factory, according to Section 100(2), any one of the Directors of the said company may be prosecuted and punished under chap. X for any offence for which the occupier of the said factory is punishable. The proviso to Sub-section (2) enables a company to nominate one of its Directors as the occupier of the Factory for the purpose of chap. X. On a plain reading of Section 100(2) proviso it is clear that the company for the purpose of chap. X can only nominate one of its Directors as the occupier. No provision has been made for nomination of any other kind of person by a company u/s 100(2) proviso. In the instant case, the company in its original application for registration had notified in terms of Section 100(2) proviso of the Act that M.F.C. Elliott had been nominated as the occupier. Under 5. 100(2) the said M.F.C. Elliott would be deemed to be the occupier of the factory until further notice cancelling his nomination was received by the Inspector or until he ceased to be a Director or share-holder. In the instant case, the Petitioner company did not lawfully notify to the Chief Inspector of Factories cancelling the nomination of M.F.C. Elliott. Subsequently, the Petitioner factory had purported to nominate its Factory Manager, Pradip Kumar Sandell, as an occupier in terms of proviso to Section 100(2) of the Factories Act for the year 1973. The Chief Inspector had acted within his authority by proceeding to determine whether the said Pradip Kumar Sandell had the ultimate control over the affairs of the factory in question. Originally the Petitioner company had only produced a Power of Attorney in favour of said Pradip Kumar Sandell authorising him to sign all applications, documents, declarations etc. required by various authorities. The said power did not vest Pradip Kumar Sandell with the general Power of Attorney. Only in November 1973 the Petitioner company produced before the Chief Inspector of Factories a copy of the resolution of the Board of Directors vesting him with "the necessary authority and powers for running the said factory with ultimate control over the affairs thereof as per requirements of the Factories Act, 1948" and appointing him as the occupier of the said factory.

15. The Chief Inspector of Factories as already observed had powers to determine whether the said Pradip Kumar Sandell was the occupier and whether he had been duly nominated. As already observed, so long as the company is the occupier, it may choose to make any nomination, then any one of its Directors would be liable to be prosecuted and punished under chap. X for any offence for which the company as the occupier would be punishable. In case the company chooses to make nomination u/s 100(2) proviso, such nominee must be a Director of the company.

16. The Petitioner''s grievances regarding the criminal prosecution lodged against M.F.C. Elliott and Pradip Kumar Sandell cannot be entertained in this case. In the first place, persons who are accused in the said criminal case have not themselves moved this Court. They are not even parties to this writ petition. Secondly, I cannot prejudge the said criminal case; the accused persons are entitled to take appropriate defences in the said case. Therefore, they have alternative remedy. Accordingly, Article 226(3) of the Constitution would be a bar to the aggrieved persons at this stage seeking remedy against the criminal case in question.

17. In the above view, I discharge this Rule.

18. There will be no order as to costs.