

M. C. Mehta and Another (Ii)

Vs

Union of India and Others

Civil Miscellaneous Petition No. 6263 of 1986 in Writ Petitions (Civil) Nos. 12739 of 1985 and 26 of 1986

(CJI P. N. Bhagwati, G. L. Oza, D. P. Madon JJ)

10.03.1986

ORDER

BHAGWATI, C.J. -

1. This application has been made by Shriram Foods and Fertiliser Industries (hereinafter referred as 'Shriram') for clarification in respect of certain conditions set out in the order passed by us on February 17, 1986 in Writ Petitions Nos. 12739 of 1985 and 26 of 1986 (Reported at (1986) 2 SCC 175). Though the application has been styled as an application for clarification, it is really and in substance, an application for modification of some of the conditions contained in the order. We passed the order permitting Shriram to restart its power plant as also plants for manufacture of caustic chlorine including its by-products like sodium sulphate, hydrochloric acid, stable bleaching powder, superchlor and sodium hypochlorite and vanaspati refined oil including its by-products and recovery plants like soap, glycerine and technical hard oil, but we made the permission subject to certain conditions which, we insisted, should be strictly and scrupulously followed by Shriram and we made it clear that if at any time it is found that any one or more of these conditions are violated, the permission would be liable to be withdrawn. There are three out of these conditions in respect of which modification is sought by Shriram on the ground that compliance with these conditions would entail certain operational and practical difficulties.

2. The first condition in respect of which modification is fought by Shriram is condition No. 2 which runs as follows : (SCC pp. 197-98, para 20)

(2) One operator should be designated as personally responsible for each safety device or measure and the head of the caustic chlorine division should be made individually responsible for the efficient operation of such safety device or measure. If at any time during examination by the Expert Committee or inspection by the Inspectorate it is found that any safety device or measure is inoperative or is not properly functioning, the head of the caustic chlorine plant as well as the operator in-charge of such safety device or measure shall be held personally responsible. Their duty shall be not merely to report non-functioning or mal-functioning of any safety device or measure to the higher authority but to see that the operation of the entire plant is immediately shut down, the safety device is urgently replenished and the plant does not restart functioning until such replenishment is completed.

It is urge on behalf of Shriram that there are more than 150 safety devices in the plant and it is not possible to have an individual operator to be made personally responsible for each safety device

and, more-over, considering the magnitude of the responsibility for efficient operation of a safety device, it would not be proper to impose such responsibility on an operator who is merely a workman but that such responsibility should be cast on an officer to be placed in charge of a group of safety devices. Shriram also submitted that the condition that 'if any safety device is found to be non-functioning or mal-functioning, the operation of the entire plant should immediately be shut down' also requires to be modified, firstly, because failure of every kind of safety device need not require the shutting down of the entire plant from the safety point of view; secondly, because the operator in-charge of any particular safety device would not have control or knowledge of the entire plant and he would not, therefore, be in a position to take a decision regarding the stoppage of the plant and, thirdly, because frequent stoppage and restart of the plant would by itself be a potent source of hazard. We find considerable force in this contention urged on behalf of Shriram. We agree that every kind of safety device installed in the plant need not require the shutting down of the entire plant in the event of its non-functioning or mal-functioning. There are three different categories of safety devices which have to be taken into account. The first category consists of safety devices which are for the entire factory including the caustic chlorine plant such as fire-tender, loud speakers, wind direction recorder, etc.; the second category consists of safety devices exclusively for the caustic chlorine plant such as neutralisation system and suction control system and the last category consists of safety devices for different components of the machinery and equipment such as load cell which is a safety device for storage tank in the caustic chlorine plant. Some of these safety devices are critical, it may not be necessary to shut down the plant in case such safety device is found to be non-functioning or mal-functioning, as for example where a safety device is attached to a component which can be easily isolated and repaired or replenished without shutting down the plant. Even where a safety device is critical and it is found to be non-functioning or mal-functioning, it may be possible to take immediate remedial action without going to the extreme of shutting down the plant, as for example, where a safety device has an effective back-up system. We also agree that it would not be practicably feasible to place one operator in charge of each safety device and it would not be desirable to place the responsibility for effective monitoring and functioning of the safety device on an operator who is merely a workman, but instead such responsibility should be cast on an officer who should be placed in charge of a group of safety devices. We would therefore direct the Committee of Experts appointed by us to scrutinise the safety devices which are installed for the entire factory as also the safety devices installed in the caustic chlorine plant for the purpose of evaluating as to which are critical and which are not critical. The criterion for determining which safety devices are critical or non-critical shall be whether the particular safety device is of such a nature as to imperil the safety of the plant in case it is found to be non-functioning or mal-functioning, so as to require immediate shutting down of the plant until the safety device is repaired or replenished. We would direct that if any safety device designated by the Committee of Experts to be critical is found not functioning or mal-functioning and a report to that effect is made by the officer responsible for such safety device, the management of Shriram will immediately shut down the operation of the plant and ensure that the plant does not restart functioning until such safety device is repaired or replenished. Even where a safety device is designed by the Committee of Experts to be non-critical in the sense that its functioning or mal-functioning need not necessarily require shutting down of the plant, the Committee of Experts will determine as to what remedial action should immediately be taken in case it is found that such safety device is non-functioning or mal-functioning and on the officer responsible for such safety device drawing the attention of the management to non-functioning or mal-functioning of such safety device, the management will immediately take the remedial action prescribed by the Committee of Experts. The Committee of Experts will also determine how and in what manner the different safety devices can be grouped together so that one officer can be made responsible for each

group of safety devices. The Committee of Experts will carry out this assignment within 7 days from the starting of the caustic chlorine plant and submit a report to this Court with copies to the petitioner and to the Delhi Administration, the Chief Inspector of Factories, the management of Shriram, Lokahit Congress Union and Karamchari Ekta Union. The officer who is placed in charge of each group of safety devices will be responsible for the non-functioning or mal-functioning of any safety devices under his charge. Besides the officer who is designated as personally responsible for each safety device or measure, the head of the caustic chlorine division would be individually responsible for the efficient operation of such safety device or measure and if at any time during examination by the Committee of Experts or inspection by the Inspectorate, it is found that any safety device or measure is inoperative or is not properly functioning the head of the caustic chlorine plant as well as the officer in-charge of such safety device shall be held personally answerable and it will be the responsibility of the head of the caustic chlorine division and the management to immediately take proper remedial action in that behalf.

3. The next contention in respect of which modification is sought by Shriram is condition No. 5 which runs as follows : (SCC pp. 198-99, para 20)

(5) The management of Shriram will obtain an undertaking from the Chairman and Managing Director of the Delhi Cloth Mills Ltd. which is the owner of the various units of Shriram as also from the officer or officers who are in actual management of the caustic chlorine plant that in case there is any escape of chlorine gas resulting in death or injury to the workmen or to the people living in the vicinity, they will be personally responsible for payment of compensation for such death or injury and such undertakings shall be filed in court within one week from today.

The contention of Shriram is that it is not clear as to who can be described as officer in actual management of the caustic chlorine plant and that this particular direction requires clarification so that the management can obtain the necessary undertaking from such officer. So far as this difficulty pointed out on behalf of Shriram is concerned, we would like to clarify that the officer whose undertaking is required to be taken under the directions given in our order dated February 17, 1986, is the officer who is the 'occupier' under the Factories Act, 1948 because he is the person who has actual control over the affairs of the factory and/or the officer who is in charge of the actual operation of the caustic chlorine plant and who is responsible to the management for the operation of the plant. But it was urged on behalf of Shriram that if we insist upon an undertaking to be given by any such officer or officers it would be impossible to secure the services of any competent officers because they would not be willing to accept employment in a situation where they are made responsible not only for their own acts or omissions but also for the acts or omissions of others over whom they have no control. It was therefore seriously contended on behalf of Shriram that the condition requiring undertaking to be given by such officer or officers should be deleted. We are unable to persuade ourselves to accept this contention of Shriram. If the contention of Shriram is - and that is the contention which has seriously been pressed on behalf of Shriram in support of their plea that the caustic chlorine plant should be allowed to be reopened - that there is no risk or hazard to the community in the operation of the caustic chlorine plant, there is no reason why the officer or officers who have ultimate control over the affairs of the caustic chlorine plant and/or who are responsible to the management for the efficient operation of the caustic chlorine plant should hesitate to give an undertaking to the court that in case of death or injury arising on account of escape of chlorine gas, they would be personally responsible. But while making this comment we are not unmindful of the fact that if absolute unlimited liability were to be imposed on any officer or officers in the employ of Shriram for death or injury arising on account of possible escape of

chlorine gas, many competent persons would shy away from accepting employment in Shriram and that would make it difficult for Shriram to have really competent and professionally qualified persons to manage and operate the caustic chlorine plant. We would therefore modify the condition prescribed by us by providing that undertaking shall be obtained from the officer who is 'occupier' of the caustic chlorine plant under the Factories Act. 1948 and/or the officer who is responsible to the management for the actual operation of the caustic chlorine plant as its head and such undertaking shall stipulate that in case there is any escape of chlorine gas resulting in death or injury to the workmen or to the people living in the vicinity the officer concerned will be personally responsible, to the extent of his annual salary with allowances, for payment of compensation for such death or injury but if he shows that such escape of gas took place as a result of Act of God or vis majeure or sabotage or that he had exercised all due diligence to prevent such escape of gas, he shall be entitled to be indemnified by Shriram.

4. So far as the undertaking to be obtained from the Chairman and Managing Director of Shriram is concerned it was pointed out by Shriram that Delhi Cloth Mills Ltd. which is the owner of Shriram has several units manufacturing different products and each of these units is headed and managed by competent and professionally qualified persons who are responsible for the day to day management of its affairs and the Chairman and Managing Director is not concerned with day to day functioning of the units and it would not therefore be fair and just to require the Chairman and Managing Director to give an undertaking that in case of death or injury resulting on account of escape of chlorine gas, the Chairman and Managing Director would be personally liable to pay compensation. We find it difficult to accept this contention urged on behalf of Shriram. We do not see any reason why the Chairman and/or Managing Director should not be required to give an undertaking to be personally liable for payment of compensation in case of death or injury resulting on account of escape of chlorine gas, particularly when we find that according to the reports of various Expert Committees which examined the working of caustic chlorine plant, there was considerable negligence in looking after its safety requirements and in fact, considerable repair and renovation with and installation of safety devices had to be carried out at a fairly heavy cost in order to reduce the element of risk or hazard to the community. We may however make it clear that the undertaking to be given by the Chairman and/or Managing Director may provide that no liability shall attach to the Chairman and/or Managing Director if he can show that the escape of chlorine gas was due to an Act of God or vis majeure or sabotage. But in all other cases the Chairman or Managing Director must hold himself liable to pay compensation. That alone in our opinion would ensure proper and adequate maintenance of safety devices and instruments and operation of the caustic chlorine plant in a manner which would considerably reduce, if not eliminate, risk or hazard to the workmen and to the people living in the vicinity.

5. The last contention in respect of which modification is ought by Shriram is condition No. 6 which provides as follows : (SCC p. 199, para 20)

(6) There shall be a committee of three representatives of Lokahit Congress Union and three representatives of Karamchari Ekta Union to look after the safety arrangements in the caustic chlorine plant. The function of this committee will be to ensure that all safety measures are strictly observed and there is no non-functioning of the safety devices and instruments and for this purpose, they will be entitled to visit any section or department of the plant during any shift and ask for any relevant information from the management. If there is any default or negligence in the observance of the safety measures and the maintenance and operation of the safety devices and instruments, this Committee will be entitled to bring such default or

negligence to the notice of the management and if the management does not heed to the same, this committee will be entitled to draw the attention of the Labour Commissioner to such default or negligence. The members of this committee will be given proper and adequate training in regard to the functioning of the caustic chlorine plant and the operation of the safety devices and instruments and this will be done within a period of 2 weeks after the nomination of three representatives on the committee is communicated by each of the two Unions to the management.

The contention of Shriram in regard to this condition is that it would not be feasible for Shriram to train the committee of representatives of the two unions (hereinafter referred to as the Committee of Workmen) to such an extent that they would acquire sufficient knowledge and expertise to ensure proper functioning of various safety devices and moreover some of the members of the Committee of Workmen would be performing essential operational duties and they cannot be permitted to leave their duties and go for inspection at any time they like without prior authorisation from the officer in-charge of the particular department in which they are working nor can they be permitted to walk into any part of the caustic chlorine plant for the purpose of inspection, because the caustic chlorine plant is high risk security area which has been cordoned off by the management and put under round-the-clock security and the entry of any person or persons to this area has to be regulated by proper authorisation. There is some force in this contention urged on behalf of Shriram. There are bound to be some safety devices and instruments of highly sophisticated nature which require technical knowledge in order to appreciate how they are functioning and it may not be possible for the Committee of Workmen to effectively supervise the functioning of such safety devices and instruments. But even so, we do not see any reason why the Committee of Workmen should not be given an opportunity of participating in this task of ensuring proper observance of safety measures. The management of Shriram can certainly give to the Committee of Workmen basic knowledge and information in regard to the operation of the safety devices and instruments, even if some of these are of a sophisticated nature. We do not subscribe to the view that workmen who have been working for years in a plant cannot acquire some elementary knowledge about the operation of various safety devices in the plant. We have known of various instances where ordinary workmen, though not highly educated, have been able to acquire sufficient expertise, through long experience, in the operation of the machinery and equipment which they are working. We do not therefore propose to modify this part of the condition imposed by us. We may however make it clear that at least two out of the three representatives who are appointed on the Committee of Workmen by each Union should be workmen who have experience of working in the caustic chlorine plant. We must also clarify, in agreement with the management, that the workmen who are members of the Committee of Workmen should not leave their duty for going on inspection without giving prior intimation to the officer in-charge and they should give at least half an hour's notice to the officer in-charge so that the essential functions which they are discharging are not disturbed. The Committee of Workmen should also give prior intimation of at least half an hour to the officer in-charge of the caustic chlorine plant that they propose to come for inspection of any particular department or departments so that the necessary safety and security precautions can be taken. With this small modification, condition No. 6 stipulated by us will stand intact.

6. We may reiterate that the permission granted by us to Shriram to reopen the caustic chlorine plant is subject to the conditions set out in our order dated February 17, 1986 as modified by this order. But if for any reason Shriram does not comply with any of these conditions and is therefore unable to reopen the caustic chlorine plant, it will be open to Shriram to restart the other plants in respect of which permission has been given by us by our order dated February 17, 1986 so long as Shriram can do so without operating the caustic chlorine plant.

7. The application will accordingly stand disposed of in terms of this order.

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