CALCUTTA HIGH COURT

Cherry Hosiery Mills Ltd

Vs.

S.K. Ghose

Civil Revn. Case No. 777 of 1956

(Sinha, J.)

09.02.1959

ORDER

Sinha, J.

1. This is an application under the Bengal Smoke Nuisances Act (Act III of 1905). The preamble of the Act states that it is

> "An Act to amend the law relating to the abatement of nuisances arising from the smoke of furnaces or fire places in the town and suburbs of Calcutta and in Howrah and to provide for the extension thereof to other areas in Bengal".

2. The facts in this case are briefly as follows : The petitioner is a Limited Company which has been carrying on the business of manufacturing Hosiery goods since 1952. For the said purpose, it has acquired approximately three bighas of land at premises No. 21 Srinath Mukherjee Lane, Dura Dum in the suburbs of Calcutta. In the said premises, the Company has constructed four ovens. It is stated in the petition that the ovens are each two feet in diameter and fifteen inches in height and are intended to burn soft coke and charcoal in order to boil and clean hosiery fabrics. It is claimed that of these four ovens, only two are in commission and the smoke emanating there from is absolutely negligible and even when fully charged, the smoke coming out from the two ovens is much less than even ordinary domestic ovens used for cooking purposes. It is therefore submitted that the use of the ovens creates no nuisance at all and they do not come within the ambit of the said Act. On the 25th August 1955, a letter was written by the Chief Inspector and Secretary, smoke nuisance Directorate to the managing director of the petitioner company, a copy whereof is annexure 'A' to the petition. It was pointed out therein that under the said Act, it was provided that every person who intended either to construct, re-construct, alter or add to a furnace flue or chimney within the area specified under the said Act, must make an application with a detailed and fully-dimensioned working plan, together with a statement of the type of fuel to be used in each furnace, fur the approval of the Commission constituted under the Act. It was stated that a report had been received that the petitioner company had wrongfully constructed certain females and flues within the area in which the Act was enforced and was wrongfully

using them, rendering itself liable for daily and other penalties provided under the Act. Without prejudice to any action that the Commission might take in respect of the said offences, it was requested that the Company should at once submit working plans in duplicate, together with the necessary fees, for approval of the Commission. On the 30th August 1955, the Managing Agents of the petitioner Company wrote back to say that it had only four small ovens where soft coke was burnt for boiling and cleaning hosiery fabrics and so there was no smoke at all, and, that being the position, the steps suggested were not required to be taken. The answer is contained in a letter dated the 6th September 1955, written by the Chief Inspector of Smoke Nuisances, the effect that the ovens used by the Company came within the definition of "furnace" as used in the said Act and, therefore, there must be approval and sanction by the Commission before the ovens were put to use. In September 1955, it seems that working plans in duplicate were filed. By his letter dated the 19th December 1955, the Chief Inspector of Smoke Nuisances intimated to the Company that the plans as approved were being forwarded and that the approved dimensions and the approved fuel must be strictly adhered to. It was further pointed out that the chimney shown in the approved plan should be offered for inspection before erection and there should be final inspection when the erection had been completed, without which, permission would not be granted to use the chimney. On the 24th January 1956, there was further communication from the Inspector of Smoke Nuisances that the chimney shown in the approved plan had not been constructed, so that the furnaces should not be used until the matter had been regularized. Instead of conforming to the approved plan and carrying out the direction given by the Chief Inspector of Smoke Nuisances, the Company started correspondence stating that the ovens were really not nuisances, emanating very little smoke and the contention was put forward for the first time that there were a number of hosiery mills in the same locality using similar, ovens and similar fuel was being used by them for burning in the said ovens and none of them had a single chimney. It was next urged that the business was a mere cottage industry and the setting up of the chimney was generally resisted. This is a view that has not been accepted by the Smoke Nuisances Directorate and as the respondents threatened to take steps against the petitioner, this application has been made.

3. Before I proceed to indicate the points of law taken by Mr. Roy appearing on behalf of the petitioner, I must refer to the scheme of the Act and some of the provisions contained therein. As I have stated above, the Act is intended to abate nuisances arising from the smoke of furnaces and fire places in the towns and suburbs of Calcutta and Howrah. Provision has been made empowering the State Government to extend the operation of the Act beyond that limit (Section 2). The definition section (Section 3) which defines the word "Furnace" is very important and the relevant part is set out below:

> "In this Act, -
> (1) "Furnace" means any furnace or fire-place used -
> (a) for working engines by steam, or
> (b) for any other purpose whatsoever
> Provided that no furnace or fire place -
> (i) used for the burning of the dead, or
> (ii) used in a private house for *bona fide* domestic purposes other than the purpose specified in clause (a) shall be deemed to be a furnace or fireplace within the meaning of this Act".

4. Under Section 4, the State Government is-to constitute a commission called the Bengal Smoke Nuisances Commission to supervise and control the working of the Act. Under Section 5 the State Government is empowered to appoint a Chief Inspector of Smoke Nuisances and Assistant Inspectors. Section 6 empowers the State Government to prohibit the erection or use of kilns or furnaces for the manufacture of coke in specified areas. A breach of such prohibition amounts to an offence, which is punishable by fine and seizure. In some cases (Section 7) it may be a daily fine. Under Section 8, a penalty of a fine can be imposed if smoke be emitted from any furnace in greater density or at a lower altitude or for a longer time than is permitted by rules framed under the Act. I now come to Section 8A which was introduced into the Act by Section 8 of the Bengal Smoke Nuisances (Amendment) Act 1918 (Bengal Act 1 of 1916). The relevant part thereof is set out below :

> "8A(1) After the commencement of the Bengal Smoke Nuisances (Amendment) Act 1916 -
> (a) no furnace flue or chimney shall be erected, and
> (b) no furnace, flue or chimney erected prior to the commencement of the said Act shall be re-erected, altered or added to otherwise than in accordance with plans approved by the Commission.
> (2) In the event of any contravention of the provisions of Sub-Section (1), the owners of the furnace, flue or chimney, as the case may be, shall be liable to fine which may extend to one hundred rupees and if any such furnace flue or chimney is used without the permission of the Commission, to a further penalty, not exceeding twenty rupees, for every day during which such wrongful use continues".

Section 10 empowers the State Government to make rules for carrying out the objects of the Act.

5. Mr. Roy argues that the definition of "Furnace" in Section 3 of the Act is so wide and vague, that it is impossible to give effect to it and secondly that such a wide power of control is an infringement of the fundamental rights granted to the petitioner under article 19(1)(g) of the Constitution, to carry on any trade occupation or business. As regards the first point, I do not see why the definition of a "Furnace" is at all vague. That it is, wide, is deliberate on the part of the legislature and the only regret is that the Act excludes domestic chulas and fire-places which are the primary source of smoke nuisance in many parts of the city. Mr. Roy's complaint is that the wordy - "for any other purposes whatsoever" is too wide and no definition at all. The original Act contemplated two classes of furnaces. The first was the same as 2(1)(a), but the second was - "for the purpose of carrying on trade, manufacture or industry in cases not tailing under clause (a)". There were three exceptions, namely "for household or domestic purposes", for the raising of steam on ocean going steamers prior to leaving port and for burning of the dead.

6. The definition of the word "Furnace" was altered by Section 2 of the Bengal Smoke Nuisances (Amendment) Act 1916 (Bengal Act 1 of 1916). It is easy to see that in the year 1905, engines were all worked by steam. Electricity and other modes of propulsion or motivation were either not in vogue or not worth considering. It is no longer necessary in the altered circumstances however, to restrict the application of the Act to furnaces used in connection with the working of

engines. By the time that the amendment came to be effected, furnaces could be put to a variety, of uses and it was difficult then, as it would be impossible now, to invent a definition which could be said to be all-embracing, unless it was put in the form in which it appears now. In my opinion, there is no vagueness in it at all. Apart from excluding domestic uses in a private house and the burning of the dead, it was deliberately intended to bring under control all furnaces operating within the area to which the Act applies. It will be observed that the size of the oven or the volume of smoke emitted does not matter at all, save for the purposes of prosecution under Section 8. As long as the furnace comes within the definition of the Act, which speaks of its nature and not dimension, it comes within the mischief of the Act and is amenable to its control. Even in the case of domestic furnaces, the amended Act only excludes those used for *bona fide* domestic purposes in a "Private house". Those used in a public place or in a place used by the public habitually are not excluded. It is therefore no argument against the validity of the Act to say that it is too 'wide'. It was intended to be wide and the only regret is that it is not wide enough, since it excludes the domestic chula or fire place used for cooking purposes in a private house.

7. I now come to the question of the violation of the petitioner's fundamental rights under Article 19(1)(g) of the Constitution. It is argued that the petitioner has a fundamental right to carry on its trade or business in any manner it likes and it is not a "reasonable restriction" to introduce such wide measure of control. Mr. Roy points out that the business of the Company is a small one and it might even be termed a "cottage industry", so that the installation and maintenance of an elaborate system of flues and chimneys with complicated provisions for the type of fuel to be used therein, would render the whole business uneconomic. To start with, the petitioner, being a corporation is not entitled to the fundamental rights granted under Article 19, which is only available to a 'citizen'. See *Narasaraopetal Electric Corporation Ltd. v. State of Madras*[1], and *Jupiter General Insurance Co. Ltd. v. Rajflgapalan*[2], However, since the matter is of general public importance and the oneration of it is not confined to corporations, I shall endeavour to show how eminently reasonable the restrictions imposed by the Act, happen to be. For this purpose, I shall have to introduce a little historical survey. Although such a survey is not permissible for the purpose of interpreting an Act, it is relevant for the purposes of showing the background against which the law came to be enacted and the particular evil which it intended to remedy. The present Act was preceded by the Calcutta and Howrah Smoke Nuisances Act, being Bengal Act II of 1863. In 1904, the Hon'ble Mr. Carlyle a member of the Council of the Lieutenant Governor of Bengal, introduced the Bengal Smoke Nuisances Bill 1904 intended to replace toe earlier Act which had proved quite inadequate. It appears that the Bill was based upon the recommendations of one Mr. Frederick Grover an expert on the subject of smoke nuisance-control, who was sent out from England by the Secretary of State for India to examine the question on the spot. Before submitting his report he visited a number of factories in and around Calcutta and the colliery districts of Raniganj and Jherria. He examined the various sources of smoke, the qualities and quantities of coal used, the types of furnaces and the methods of their use and thereupon made his report. One of the sources of the smoke nuisance in Calcutta as reported by him was domestic fire places. Mr. Carlyle however said as follows :

[1] AIR 1951 Mad 979

[2] AIR 3.952 Punj. 9

> "In the Bill now before the Council, the first, source of smoke has been altogether excluded. It would be impossible to deal with the smoke from, native huts except by isolating areas responsible for the emission of such smoke. This is obviously

impracticable".

8. This is the genesis of the exclusion of domestic fire places from the Act. But whatever might have been the State of the City of Calcutta in 1904 and even though to-day it is scarred by ugly bustees, it would be impossible to describe it now as a city of native huts. The city has grown enormously and is considered to be one of the leading cities in the Commonwealth having a population, of nearly 6 millions. Every morning and evening, millions of domestic chulas go into operation, emitting a dense volume of smoke, which, especially in winter, stay suspended in the air and reproduce the smogs with which only western countries are said to be pestered. The time has come to re-appraise the situation in this respect and suppress the evil by extending the scope of the Act. I do not say that it is easy to introduce control of domestic furnaces. But at least the type of fuel used can be controlled and only such, fuel permitted to be used as would cause the minimum of smoke. Also the system of smoke free areas may be introduced into the city and its suburbs. Under the English Clean Air Act of 1956, twentyeight smoke control areas have been created in England and Wales, wherein it is an offence to emit smoke. An additional 44 smokeless zones have been set up by local authorities. The 'city', London's financial district has been a smokeless zone since 1955. In this particular case, we are however not concerned with a domestic fireplace but with an industrial one. In that respect it is interesting to read what the honourable Mr. Nairn Behari Sircar said on the occasion when the Bill was introduced. He said :

> "The hon'ble member in charge of the Bill has told us that the present law - for the abatement of smoke nuisance in and around this city came into existence so far back as 1863, since then as we all know, the condition of things has vastly changed. With the rapid development of Mill Industries in this part of the country, numerous furnaces and fireplaces have been erected and in the absence of proper retaliations these have, for the most part, been indifferently constructed. The innumerable chimneys that have sprung up are of all sorts, shapes and sizes, incessantly emitting thick black smoke, containing soot and solid particles of unconsumed coal; they are a contant source of considerable trouble, inconvenience and mischief to the residents in their neighborhood. In Calcutta, Wards Nos. 3 and 4 and possibly also Ward No. 2 are the worst sufferer in this respect and I can bear my personal testimony to the great annoyance to which the unfortunate residents of this locality are constantly subjected. It is a matter of surprise that something was not done, much earlier during the last 40 years, to amend the present law so as to meet the growing exigencies of the situation".

9. This was spoken in 1904. More than half a century has rolled by, but the argument is as cogent to-day as it was then and indeed the surprise of the honourable member would turn to amazement and even consternation if he could visit the city to-day and see how the condition of things has remained very much the same as it was in his time, if it has not actually grown worse. If the Mill Industry commenced to make its existence felt in 1904, we are to-day in the midst of the Industrial revolution. To say in the year of grace 1959, that any attempt to control the smoke nuisance in Calcutta or its suburbs is in any way unreasonable, is to state an absurdity. The point is completely unarguable. The real grievance is that the law in this behalf is not wide enough and that it is not worked with that sense of urgency which underlies the objects of the Act and is wan-

anted by the seriousness of the situation. The tremendous increase in the population, the introduction of the machine age and its concomitant evils, the devastating increase of lung diseases and other respiratory diseases which arise out of breathing air saturated with impurities, make it imperative that the smoke nuisance like many other nuisances which are rampant in the city should be rapidly brought under control and eventually exterminated.

10. I now come to another part of Mr. Roy's argument, namely that of discrimination. As we have seen, the petitioner Company at a very late stage discovered and made a complaint of the fact that there were a number of Hosiery Mills in the same locality consisting of similar ovens and similar fuels were being used for burning the said ovens and yet not a single one of them possessed a chimney. To this, the answer is that the Directorate of Smoke Nuisances and the Chief Inspector are not aware of the existence of such mills. I have not the slightest doubt of the fact that there are such mills and also that the Directorate and the Chief Inspector are wholly unaware of them. Unfortunately, in this application there are not sufficient particulars for me to act upon the complaint or decide effectively the question of discrimination. It appears however that so far as the suppression of the evil of smoke nuisance is concerned the machinery is not lacking. There is a limb of Government called the Directorate of Smoke Nuisances. There is a commission which is supposed to supervise the working of the Act. Then there is the Chief Inspector of Smoke Nuisoncels with a host of Inspectors to assist him in his daily task. and yet, things roll on at a leisurely pace, as if we are not living in an age of space rockets and supersonic speeds, but in a legendary "sleeping hollow'. Although there is provision for prosecution and daily fines, a leisurely correspondence goes on and of course nobody has need to be aware until told on solemn affirmation that in a congested living space, numerous mills are going on merrily, contributing their quota to the already unbearable smoke nuisance of the city and its suburbs, without erecting chimneys and using whatever fuel comes handy. The inevitable conclusion must he that the restrictions imposed by the Act are by no means too wide or unconscionably strict or constitutionally unreasonable. The fact is that they are not wide enough and not administered with that sense of urgency which is imperative and without which, this statute will like its predecessor, be very soon relegated to the limbo of oblivion, like so many other statutes relating to public health and sanitation, so bravely promulgated and so utterly wasted.

11. The rule is discharged, interim orders if any, vacated. There will be no order for costs.
Rule discharged.