

## **Ram Chandra Sharma And Ors. vs State Of U.P. on 23 August, 1955**

**Equivalent citations: AIR1956ALL4, 1956CRILJ2, (1956)ILLJ10ALL, AIR 1956 ALLAHABAD 4, (1956) 1 LABLJ 10**

ORDER

Roy, J.

1. This is an application in revision by Ram Chandra Sharma, Brijnandan, Niranjana Lal, Keshava Chandra, Jagdish Prasad and Hoti Lal Das who have been convicted under Section 92, Factories Act, 1948, for the breach of Rr. 6 and 13, U. P. Factories Rules, 1950, framed under Section 6 of the Act and each of whom has been sentenced to a fine of Rs. 50/-. A revision had been preferred by them before the learned District Magistrate of Agra, but it was dismissed on 20-7-1953.

2. The applicants are partners of a firm styled as Niranjana Lal Ham Chand which deals in motor-cars and motor parts in Agra. The firm had a workshop in Agra. On 27-11-1952, the Inspector of Factories visited this factory and found that inside the premises seventeen adults and a boy were employed in carrying out repairs, oiling painting, etc. of motor-cars with the aid of power. He further found that no application had been made to the Chief Inspector of Factories, Uttar Pradesh, along with Treasury Chalan in Form No. 4 for registration and grant of license, as was required under Rules 6 and 13, U. P. Factories Rules of 1950.

The breach of the Rules was reported to the Chief Inspector of Factories who filed a complaint and on that complaint the applicants were convicted and sentenced in the manner stated above.

3. The only ground which has been pressed before me by learned counsel for the applicants is that it was Brijnandan Lal alone who was the occupier of the Factory and was, therefore, responsible for the breach and that therefore the other five applicants could not have been convicted under Section 92, Factories Act. It is not disputed that the Firm is styled as Niranjana Lal Ram Chand. It is further not disputed that all the six applicants are the partners of this firm.

Rule, 6, U. P. Factories Rules, 1950, provides that the occupier of every factory shall submit to the Chief Inspector an application together with Form No. 4 prescribed under Section 7 for the registration of the Factory and grant of a license, at least fifteen days before he begins to occupy or use the premises as a Factory; provided that the occupier of the premises in use as a factory on the date of the enforcement of this Rule shall submit such application within thirty days. Rule 13 of the same Rules provides that every application shall be accompanied by a treasury receipt showing that the appropriate fee has been paid. It is not disputed that there was a breach of both these Rules.

It has been contended on behalf of the applicants that since Section 2(n), Factories Act says that "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, it was only Brijnandan Lal who should be deemed to be the occupier of the Factory and not the rest.

This interpretation cannot, however, be put to the word "occupier" qua the other five applicants. This would be clear enough from the provisions of Section 100, Factories Act. That section says that where the occupier of a Factory is a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and punished under this Chapter for any offence for which the occupier of the Factory is punishable; Provided that the firm or association may give notice to the Inspector that it has nominated one of its members, residing within the Province of India to be the occupier of the factory for the purposes of this Chapter, and such individual shall, so long as he is so resident, be deemed to be the occupier of the factory for the purposes of this Chapter, until further notice cancelling his nomination is received by the Inspector or until he ceases to be a partner or member of the firm or association.

Obviously the word "occupier" in Section 2(n) of the Act will not include merely an individual. An "occupier" of the factory may be a firm or other association of individuals and any one of the individual partners or members thereof may, in view of Section 100 of the Act be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable.

In the present case the firm never gave any notice to the Inspector that it has nominated Brijnandan Lal, one of its members, to be the occupier of the factory for the purposes of Chapter X of the Factories Act. In the absence of any such notice all the partners would be individually liable. Consequently there is no force in the contention that the other five partners, except Brijnandan Lal, could not have been prosecuted under Section 92 of the Act which falls under Chapter X of the Act.

4. It has further been urged that since the breach of the Rules was in ignorance of the provisions of the Factories Act and the Rules framed thereunder, the fine imposed is somewhat excessive. In the circumstances of the present case I think the ends of justice would be met with if the fine is reduced to a sum of Rs. 20/- in each case. Consequently I allow the application in revision and, while maintaining the conviction of the applicants under Section 92, Factories Act for breach of Rr. 6 and 13 U. P. Factories Rules of 1950, I reduce the sentence of each of the six applicants to a fine of Rs./- 20.