M/S. Baspa Organics Limited. vs United India Insurance Company ... on 14 February, 2020

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Bench: R. Subhash Reddy, Mohan M. Shantanagoudar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 13401 OF 2015

M/S BASPA ORGANICS LIMITED ...APPELLANT

VERSUS

UNITED INDIA INSURANCE COMPANY LTD. …RESPONDENT

JUDGMENT

MOHAN M. SHANTANAGOUDAR, J.

The present appeal arises out of the judgment dated 21.07.2015 passed by the National Consumer Disputes Redressal Commission, New Delhi ("National Commission") dismissing the consumer complaint (Original Petition No. 48 of 2004) filed by the Appellant herein.

2. The facts giving rise to this appeal are as follows:

> 2.1 One M/s Shrirang Agro Chemical Pvt. Ltd., having its factory premises in Tarapur, Thane District, was engaged in the business of manufacturing a chemical called Cyper Methnic ARORA Date: 2020.02.14 16:47:11 IST Reason:
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> Acid Chloride ("CMAC"), an intermediate product used in growing cash crops. The said factory premises had become a sick unit, and was auctioned off by the Maharashtra State Financial Corporation ("MSFC"). The bidding took place on 14.03.2001, and on 15.03.2001, the Appellant was declared the highest bidder, having

quoted a price of Rs. 4 crores. 2.2 The Appellant commenced production of CMAC in November 2001. The previous company (Shrirang Agro Chemical Pvt. Ltd.) had taken an insurance coverage from the Respondent, and the Appellant continued this coverage. To this end, after inspecting the plant and machinery, a Fire and Special Perils Policy was issued by the Respondent from 12.11.2001 to 11.12.2001 insuring the subject premises for a total Insured Declared Value of Rs.12.5 crores. The said policy was continued for the period between 12.12.2001 and 11.01.2002 as well.

2.3 On 03.01.2002, a fire broke out at the factory premises, based on which the Appellant filed a claim with the Respondent. On 30.01.2004, based on reports from the three surveyors, the Respondent repudiated the claim of the Appellant on two grounds. It was held, firstly, that the Appellant had purchased the factory premises for only Rs. 4 crores, but had overvalued it and taken a policy for an excessive value of Rs. 12.5 crores, and secondly, that the Appellant suppressed the material fact of not being duly licensed for the storage and use of Hexane at the factory. Aggrieved by such repudiation, the Appellant filed a consumer complaint before the National Commission.

3. The National Commission dismissed the Appellant's complaint, holding that the repudiation was justified on both the above counts, i.e., that the Appellant had overstated the value of the factory while taking insurance, and that the Appellant was operating without obtaining the requisite licence for the storage of Hexane. It is against this dismissal that the Appellant has approached this Court by way of an appeal under Section 23 of the Consumer Protection Act, 1986.

4. Learned Senior Counsel appearing on behalf of the Appellant, Shri S.S. Naphade, argued against the appointment of the third surveyor, S.B. Nalluri & Associates ("third surveyor"). He contended that once the second surveyor, Mehta and Padamsey Surveyors Pvt. Ltd. ("second surveyor"), had clearly assessed the loss and submitted a detailed report wherein it had ruled out any mala fides on part of the Appellant, there was no occasion to appoint the third surveyor.

Learned Senior Counsel also relied on the notification dated 21.11.2001 issued by the Ministry of Petroleum and Natural Gas in exercise of its powers under the Essential Commodities Act, 1955 ("the Essential Commodities Act"), to argue that the Appellant was exempt from obtaining a licence for storage of Hexane, since according to him, the Appellant had stored less than 20 kilolitres of Hexane. It was submitted that the said notification clearly stipulated that there was no requirement of a licence for storing up to 20 kilolitres of Hexane.

5. On the other hand, learned Senior Counsel appearing on behalf of the Respondent, Shri P.P. Malhotra, contended that repudiation of the claim was justified, inasmuch as the Appellant had not disclosed that it was not in possession of the requisite licence for storing Hexane. It was contended that the Appellant was required to obtain a licence as per either Article 3 or Article 7 of the First Schedule to the Petroleum Rules, 1976 ("1976 Rules").

5.1 It was further argued that even assuming that the aforementioned notification dated 21.11.2001 exempted the Respondent from obtaining a licence for storing Hexane up to 20 kilolitres, the second surveyor's report, against which the Appellant had not raised any objection, was categorical in its finding that the factory premises held over 90 kilolitres of Hexane, out of which 79.152 kilolitres of Hexane had suffered damage. Thus, no reliance could be placed on the exemption under this notification in the instant facts and circumstances. 5.2 Learned Counsel also argued in favour of the finding of the National Commission with respect to overvaluation of the subject factory by the Appellant while taking insurance.

6. At the outset, we must observe that we are at a loss to understand why the insurance policy was taken by the Appellant for only one month and extended thereafter, again, for only one more month. It is also quite perplexing as to why the Respondent agreed to issue a policy for such a short period of time, and no plausible reasons are forthcoming from the records to explain the peculiar nature of this transaction.

7. Be that as it may, upon perusing the material on record and after hearing the learned counsel, we find that two issues arise in the instant case, to determine whether repudiation of the claim was justified for breach of policy terms:

> (i) whether the Appellant was not duly licensed to store Hexane, and therefore had suppressed a material fact, thus breaching Clause 1 of the policy, and
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> (ii) whether the Appellant overvalued the subject factory while taking insurance, amounting to fraud under Clause 8 of the policy.

8. In this regard, we find it relevant to reproduce the said clauses of the insurance policy:

> "1. This policy shall be voidable in the event of mis- representation, mis-description or non-disclosure of any material particular.
>
> xxx
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> 8. If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof or if any fraudulent means or devices are used by the insured or any one acting on his behalf to obtain any benefit under the policy or if the loss or damage be occasioned by the willful act, or with the connivance of the insured, all benefits under this policy shall be forfeited."
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> 9. With respect to the question of licensing, the Respondent's case is that the Appellant had not disclosed that it had stored Hexane without having obtained a licence for the same, as required under the 1976 Rules. In this respect, the Respondent has relied on Articles 3 and 7 of the First Schedule to the 1976 Rules. Articles 3 and 7 specifically refer to petroleum Class A, which is defined as follows under Section 2(b) of the Petroleum Act, 1934 ("the Petroleum Act"):

> "(b) "petroleum Class A" means petroleum having a flash-point below twenty-three degree centigrade".
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> 10. To show that Hexane falls within Class A, learned Counsel for the Respondent has drawn our attention to literature from the National Fire Protection Association ("the NFPA"), an international non-profit organisation working towards eliminating death, injury, property and economic loss due to fire. As per the records of physical properties of selected chemicals prepared by the NFPA, the flash point of n-Hexane is
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> -23°C.1 Admittedly, the substance being stored by the Appellant was n-Hexane, or normal Hexane. Indeed, as per nomenclature adopted by the International Union of Pure and Applied Chemistry, the substance carrying the molecular formula C 6H14 is known as "Hexane" or "n-Hexane". 2 This is also supported by Bretherick's Handbook of Reactive Chemical Hazards , referred to by the Respondent, which notes that Hexane, NFPA 497, Recommended Practice for the Classification of Flammable Liquids, Gases, or Vapors and of Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas (2017 edition).

National Center for Biotechnology Information, PubChem Compound Database, available at https://pubchem.ncbi.nlm.nih.gov/compound/Hexane. having the formula C6H14, has a flash point of -23°C. 3 Since the flash point of the substance is well below 23°C, it can safely be said that it falls under the category of petroleum Class A.

11. Against this backdrop, we find it useful to refer to the relevant Articles of the First Schedule to the 1976 Rules, which were the rules in force as on the date of the incident:

> FIRST SCHEDULE Article Form Purpose Authority Fee of for empower licence which ed to granted grant licence 3 X To import District Rs. 20 for every and store Authority calendar year or petroleu part thereof.

m Class A in quantity not exceedin g 300 litres.

	xx	xx	xx	xx	xx
6		XIII	To import and store petroleu m in an installati on.	Chief Controller or Controller of Explosives	a

BRETHERICK'S HANDBOOK OF REACTIVE CHEMICAL HAZARDS, Vol. I, 2032 (PG Urben ed., 7th edition, 2006).

			authorised in this behalf by the Chief Controller.	
7	XIV	To import and store otherwise than in bulk (a) petroleum Class A in quantities exceeding 300 litres, (b) petroleum Class B in quantities exceeding 25,000 litres (c) petroleum Class C in quantities exceeding 45,000 litres or (d) partly one class and partly two class of petroleum		Petroleum Class B – When stored in bulk or with any other class of petroleum or when stored in quantities exceeding 25,000 litres. The same fee as laid down for petroleum Class A.

m.

12. Before looking into whether the Appellant was required to obtain a licence under the provisions reproduced above, it is relevant to note that the Appellant has not challenged the second surveyor's report, or its finding that the factory premises contained over 90 kilolitres of Hexane, out of which 79.152 kilolitres were damaged. On the contrary, the Appellant seeks to rely on the report heavily.

13. The Respondent has contended that the Appellant was required to obtain a valid licence under the Petroleum Act and the 1976 Rules. In this regard, it is pertinent to note that Section 8 of the Petroleum Act makes it clear that storage of small quantities of petroleum Class A does not require any licence. It reads:

> "8. No licence needed for import, transport or storage of small quantities of petroleum Class A.—(1) Notwithstanding anything contained in this Chapter, a person need not obtain a licence for the import, transport or storage of petroleum Class A not intended for sale if the total quantity in his possession does not exceed thirty litres. (2) Petroleum Class A possessed without a licence under this section shall be kept in securely stoppered receptacles of glass, stoneware or metal which shall not, in the case of receptacles of glass or stoneware, exceed one litre in capacity or, in the case of receptacles of metal exceed twenty-five litres in capacity." 13.1 Therefore, it is evident that for the storage of petroleum Class A less than 30 litres in quantity, no licence is required under the Petroleum Act or rules thereunder. As per Article 3, a licence issued by the District Authority is required for importing and storing petroleum Class A in a quantity not exceeding 300 litres. Thus, the Respondent may be justified in arguing that for storage of petroleum Class A ranging from 30 litres to 300 litres in quantity, a licence under Article 3 may be required. However, in the instant case, it is clear that the Appellant had stored much more than 300 litres of Hexane, and therefore, a licence under Article 3 would not be sufficient.
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> 14. The Respondent also drew our attention to Article 7 of the 1976 Rules to further its argument on the requirement of the licence. Article 7 deals with storage of certain forms of petroleum otherwise than in bulk. The expression " petroleum in bulk" is defined in clause (xv) of Rule 2 of the 1976 Rules as follows:
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> "(xv) "petroleum in bulk" means petroleum contained in a tank irrespective of the quantity of petroleum contained therein" (emphasis supplied)

14.1 In turn, the term "tank" is defined in clause (xxii) of Rule 2 in the following manner:

> "(xxii) "tank" means a receptacle for petroleum exceeding 1000 litres in capacity"

15. From the definitions reproduced above, it becomes evident that irrespective of the quantity of petroleum, when petroleum is stored in a tank, it is referred to as " petroleum in bulk" under the 1976 Rules. As mentioned earlier, Article 7, on which the Respondent seeks to place reliance, deals with the grant of a licence for storage of petroleum otherwise than in bulk, i.e. otherwise than in a tank. In other words, for petroleum Class A exceeding 300 litres, a licence under Article 7 is required when it is not being stored in receptacles exceeding 1000 litres in capacity.

16. In this regard, we may also refer to Condition 2 of Form XIV of the Second Schedule to the 1976 Rules. Form XIV corresponds to the licence granted under Article 7 of the First Schedule, and Condition 2 of the said Form reads as follows:

> "2. The petroleum shall be stored only in the storage shed which shall be constructed of suitable non- combustible materials, provided that when no petroleum Class A is stored, the beams, rafters, columns, windows and doors may be of wood." (emphasis supplied) 16.1 In turn, the term "store shed" is defined in clause (xxi) of Rule 2 as follows:
>
> "(xxi) "store shed" means a building used for the storage of petroleum otherwise than in bulk, whether forming part of an installation or not, but does not include a building used for the stores of petroleum exempt from licence under Sections 7,8 or 9 of the Act" 16.2 A store shed, therefore, is a building where petroleum is stored otherwise than in bulk, i.e., otherwise than in receptacles with a capacity of over 1000 litres. Most significantly, clause (xxi) of Rule 2 states that a store shed may be a part of an "installation". At this juncture, it is relevant to note that this term is also defined under the 1976 Rules, in clause (xiv) of Rule 2:
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> "(xiv) "installation" means any premises wherein any place has been specially prepared for the storage of petroleum in bulk, but does not include a well-head tank or service station"

17. Upon reading the definitions of "store shed" and "installation" together, it becomes clear that " installation" carries a much broader meaning. In order for any premises to be an "installation" under the 1976 Rules, it must necessarily contain a place specially prepared to store petroleum in bulk. In other words, such a place must have the capacity to hold receptacles with a capacity of 1000 litres or more (which would be nothing but a "tank" as defined under the 1976 Rules). At the same time, an installation may also have the capacity to store petroleum otherwise than in bulk. An installation, therefore, may consist of both tanks and storage sheds, or it may consist only of tanks.

18. In the instant case, the second surveyor had clearly stated that the Hexane had leaked from the tanks in which it was stored. However, it is not clear from the material on record whether or not the term "tank" was assigned the same meaning as under the 1976 Rules. If the tanks referred to by the second surveyor were receptacles that could not store more than 1000 litres of petroleum, then they would not constitute "tanks" under the 1976 Rules, and the petroleum stored in such tanks would fall under the category of petroleum stored "otherwise than in bulk". In such a case, a licence would be required under Article 7.

19. At this stage, we may fruitfully refer to the application preferred by the Appellant to obtain a licence under Article 6 of the First Schedule to the 1976 Rules, which pertains to the import and storage of petroleum in an installation, vide letter dated 22.10.2001. In its response to the above application, the Controller of Explosives, Nagpur noted vide letter dated 05.11.2001, that the drawings of the site and layout of the proposed installation had been approved, subject to the condition that the pump/motor to be incorporated were flame proof, in accordance with IS:2148. Further, the Appellant was asked to submit certain documents that were necessary in connection with the grant of the licence applied for, such as an application under Form VIII (which is an application for the grant, amendment, renewal, or transfer of a licence to import and store

petroleum), a Safety and Test Certificate required under Rule 130 and 126 of the 1976 Rules issued by a competent person, a No-Objection Certificate from the Local District Authority along with the site plan duly endorsed by such authority, and so on. Additionally, the Appellant was directed to comply with the provisions of the Solvent, Raffinate and Slop (Acquisition, Sale, Storage and Prevention of Use in Automobiles) Order, 2000 ("the 2000 Order").

20. The above communication clearly indicates that even the Controller of Explosives was of the opinion that the premises where the Appellant was storing Hexane amounted to an "installation". As we have discussed supra, for a premises to be considered as an installation, it must contain a place prepared to hold "tanks" as defined under the 1976 Rules. This strongly suggests that the "tanks" referred to by the second surveyor were indeed "tanks" as envisaged under the 1976 Rules. In our considered view, this shows that the Appellant may well have been required to obtain a licence under Article 6 itself.

21. It is not the case of the Appellant that it provided the documents stipulated by the Controller of Explosives. No further communication between the Appellant and the said authority has been placed on record either. There is nothing on record to show that a licence under Article 6 was granted to the Appellant.

22. In light of the above discussion, we are of the view that the Appellant was required to obtain a licence under the 1976 Rules for the storage of Hexane, be it under Article 6 or 7, and has failed to show that it possessed any such licence.

23. Having examined the scheme of the 1976 Rules with respect to licensing requirements, we may now turn to the Appellant's contention that it was exempt from obtaining a licence under the said rules, by virtue of the notification dated 21.11.2001 issued by the Ministry of Petroleum and Natural Gas, amending the 2000 Order. The relevant clause of the amended order that is being relied upon by the Appellant is as follows:

> "3. Restriction on sale and use of solvents, raffinates, slops and other product:-
>
> (1) No person shall either acquire, store or sell solvents included in the Schedule, without a licence issued by the State Government or the District Magistrate or any other Officer authorised by the Central or the State Government;

Provided that no such licence shall be required for consumption of 50 KLs per month or less and storage of 20 KLs or less of solvents listed in the Schedule combined."

24. Evidently, there is an exemption carved out in the proviso dispensing with the need for a licence in the cases laid down thereunder. Significantly, Hexane is mentioned in the Schedule referred to in the above clause, making it clear that the substance is governed by the same. The Appellant seeks to argue that pursuant to the above proviso, it was not required to obtain a licence under the 1976 Rules for the storage of Hexane on its premises. In order to determine whether the reference to a "licence" in the said clause includes licences under the Petroleum Act, it is essential to examine the

background and scheme of the 2000 Order.

25. A glance at the notification dated 21.11.2001, amending the 2000 Order, as well as the said order itself, reveals that both were issued in exercise of the powers of the Central Government under Section 3(1) of the Essential Commodities Act. This statute, as is evident from its Statement of Objects and Reasons, was enacted to provide for the control of the production, supply and distribution of and trade and commerce in certain commodities, in the interest of the general public. Further, Section 3 empowers the Central Government to pass orders providing for the regulation or prohibition of the production, supply and distribution of any essential commodity, and trade and commerce therein, under certain conditions. Section 3(1), in particular, reads as follows:

> "3. Powers to control production, supply, distribution, etc., of essential commodities.□(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein."

26. Clearly, orders under Section 3(1) may pertain to the following objectives:

> (i) maintaining or increasing supplies of any essential commodity;
>
> (ii) securing the equitable distribution and availability at fair prices of such commodity; or,
>
> (iii) securing any essential commodity for the defence of India or the efficient conduct of military operations.

27. Furthermore, Section 3(2) contemplates particular aspects with respect to which orders may be passed in exercise of the power under Section 3(1). In this regard, it is relevant to refer to clause (d) of Section 3(2):

> "(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide□xxx
>
> (d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity".

28. Thus, it is clear that the Central Government has the power to pass orders under the Essential Commodities Act to provide for licensing regimes governing the storage of an essential commodity, in pursuance of the three objectives set out in Section 3(1). The 2000 Order, in our considered view, is one such order, providing for a licensing regime regulating the acquisition, sale, storage and prevention of use in automobiles of solvents, raffinates and slops, particularly for the purposes of

the Essential Commodities Act. There is nothing in the said order to suggest that it intends to replace or modify any other existing licensing regime under any other law in force, including the Petroleum Act and the rules formulated thereunder.

29. In fact, we find that the notifications issued in pursuance of the 2000 Order set to rest any residual doubt in this regard. For instance, a perusal of G.R.S. 578(E), an order dated 30.06.2000 issued by the Central Government under Clause 3 of the 2000 Order, clearly reveals that the licence being referred to under the order is the Solvent, Raffinate and Slop Licence. The said notification reiterates that the said licence is to be issued by the State Government, District Magistrate, or the officer authorised by the Central or State Government, as also mentioned in Clause 3(1) of the 2000 Order.

30. There cannot be any dispute that the licence issued under the Essential Commodities Act and control orders are for a different purpose altogether compared to the Petroleum Act. Thus, it is clear that the licensing regime envisaged in clause 3 of the 2000 Order, and the exemption granted thereto, is in addition to the licensing requirements under the Petroleum Act. The direction of the Controller of Explosives vide letter dated 05.11.2001 to comply with the requirements under the 2000 Order is an additional requirement to be complied with in order to obtain a licence under the Petroleum Act. It cannot be said that an exemption from obtaining a licence under the 2000 Order would amount to an exemption to obtain a licence under the Petroleum Act. Hence, even assuming that the Appellant was exempt from obtaining a licence under the 2000 Order by virtue of the said exemption, the Appellant was still required to obtain a licence in accordance with the 1976 Rules. We hasten to add here that, as already mentioned supra, the quantity of Hexane stored by the Appellant was more than 20 kilolitres. Hence, the Appellant was required to obtain a licence under the 2000 Order as well.

31. From the above discussion, it is evident that the 1976 Rules prescribed that a licence had to be obtained for the purposes of storing Hexane of the quantity involved in the instant case, and the Appellant has failed to comply with this requirement. In the absence of such a licence, the Appellant could not have lawfully stored Hexane. Therefore, we are of the view that the non-disclosure of the non-possession of a licence was of a material nature, and constituted a violation of Condition 1 of the insurance policy. As a result, we are inclined to affirm the finding of the National Commission that the Respondent was justified in repudiating the claim of the Appellant on this ground.

32. The second issue, regarding the overvaluation of the subject factory, was not seriously argued by either party. Moreover, it is a question of fact, which this Court generally does not probe deeply. Thus, we shall refrain from examining the merits thereof. The same is also unnecessary in light of our above finding that the repudiation of the instant claim was justified on the ground pertaining to the Appellant lacking a licence for storing Hexane under the Petroleum Act and 1976 Rules.

33. Before we part with this matter, we may note that some objection was raised by the Appellant against the appointment of the third surveyor by the Respondent. Suffice it to state that the appointment of the third surveyor was for the limited purpose of examining whether the Appellant was in possession of the requisite licences for the storage of Hexane. Moreover, neither did the

findings of the third surveyor disturb the findings of the second surveyor, nor were they material to the conclusion against the Appellant arrived at by the National Commission. The second surveyor had given a categorical finding that about 90 kilolitres of Hexane were stored in the factory premises, and this finding has not been challenged by the Appellant. At the same time, while the findings of the third surveyor supplement the reasoning of the National Commission vis-à-vis the absence of a licence under the Petroleum Act and 1976 Rules, they are not crucial to this conclusion, inasmuch as the Appellant itself never contended that it was in possession of the requisite licences for the storage of Hexane. As a result, we find that irrespective of whether or not the appointment of the third surveyor was proper, the findings of the said surveyor do not materially affect the outcome of the instant case.

34. In light of the above discussion, we find no reason to interfere with the conclusion in the impugned judgement of the National Commission that the repudiation of the claim was justified for breach of Clauses 1 and 8 of the insurance policy.

35. The instant appeal is therefore dismissed. Ordered accordingly.

.....J. (MOHAN M. SHANTANAGOUDAR)
.....J. (R. SUBHASH REDDY) New Delhi;

February 14, 2020