

Supreme Court of India

Occupational Health & Safety ... vs Union Of India & Ors on 31 January, 1947

Author:J.

Bench: K.S. Radhakrishnan, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO.79 OF 2005

Occupational Health and
Safety Association

... Petitioner

Versus

Union of India and others

... Respondents

J U D G M E N T

K.S. Radhakrishnan, J.

1. The Petitioner, a non-profit occupational health and safety organization, registered under the Societies Registration Act, 1860, has invoked the extra-ordinary jurisdiction of this Court under Article 32 of the Constitution of India seeking the following reliefs :-

a. To issue a writ of mandamus or any other appropriate writ, order, or direction directing the Respondents to frame guidelines with respect to occupational safety and health regulations to be maintained by various industries;

b. To issue a writ of mandamus or any other appropriate writ, order or direction directing respondents to appoint and constitute a committee for the monitoring of the working of thermal power plants in India and to keep check on the health and safety norms for the workers working in their power stations;

c. To issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to pay compensation to the workers who are victims of occupational health disorders and to frame a scheme of compensation for workers in cases of occupational health disorders;

d. To issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to notify the recommendations as contained in paragraph 35 of the Petition as guidelines to be followed by thermal power plant.

2. The Petitioner represents about 130 Coal Fired Thermal Power Plants (CFTPPs) in India spread over different States in the country, but no proper occupational health services with adequate facilities for health delivery system or guidelines with respect to occupational safety are in place. Factories Act, Boilers Act, Employees' State Insurance Act, Compensation Act, the Water (Prevention and Control of Pollution) Act, the Air (Prevention and Control of Pollution) Act,

Environmental Protection Act, etc. are in place, but the lack of proper health delivery system, evaluation of occupational health status of workers, their safety and protection cause serious occupational health hazards.

3. The Petitioner herein filed I.A. No.1 of 2005 and 2 of 2007 and highlighted the serious diseases, the workers working in thermal plants are suffering from over a period of years. The Report produced by the Petitioner would indicate that half of the workers have lung function abnormalities, pulmonary function test abnormalities, sensor neuro loss, skin diseases, asthma, and so on. This Court noticing the same, passed an interim order on 30.1.2008, after taking note of the various suggestions made at the Bar to reduce the occupational hazards of the employees working in various thermal power stations in the country. Following are the main suggestions put forward before this Court :

1. Comprehensive medical checkup of all workers in all coal fired thermal power stations by doctors appointed in consultation with the trade unions. First medical check up to be completed within six months. Then to be done on yearly basis.
2. Free and comprehensive medical treatment to be provided to all workers found to be suffering from an occupational disease, ailment or accident, until cured or until death.
3. Services of the workmen not to be terminated during illness and to be treated as if on duty.
4. Compensation to be paid to workmen suffering from any occupational disease, ailment or accident in accordance with the provisions of the Workmen's Compensation Act, 1923.
5. Modern protective equipment to be provided to workmen as recommended by an expert body in consultation with the trade unions.
6. Strict control measures to be immediately adopted for the control of dust, heat, noise, vibration and radiation to be recommended by the National Institute of Occupational Health (NIOH) Ahmadabad, Gujarat.
7. All employees to abide by the Code of Practice on Occupational Safety and Health Audit as developed by the Bureau of Indian Standards.
8. Safe methods be followed for the handling, collection and disposal of hazardous waste to be recommended by NIOH.
9. Appointment of a Committee of experts by NIOH including therein Trade Union representatives and Health and Safety NGO's to look into the issue of Health and Safety of workers and make recommendations.

4. Mr. P.P. Malhotra, learned Additional Solicitor General, submitted that the suggestions no.1 to 7 have been accepted by the Central Government stating that they are broadly covered in various existing enactments and consequently pro-occupational action would be taken for effective implementation of the relevant laws, in particular, areas covered by those suggestions. After recording the above submissions, this Court had also directed the Ministry of Labour to take steps to see that those suggestions and relevant provisions of the various Labour Acts are properly implemented to protect the welfare of the employees. Learned ASG also submitted before the Court that the Central Government would examine whether the remaining two suggestions i.e. suggestion nos.8 and 9 could be implemented and, if so, to what extent.

5. The Writ Petition again came up for hearing before this Court on 6.9.2010 and this Court passed the following order:

“Vide order dated January 30, 2008, Respondent No.1 had agreed to Guideline Nos.1 to 7.

However, time was taken to consider Guidelines Nos.8 and 9, which primarily dealt with the appointment of Committee of Experts by NIOH. The constitution of that Committee is also spelt out in Guideline No.9. Today, when the matter came up for hearing before this Court, learned Solicitor General stated that the Committee of Experts has been duly constituted by NIOH and it will submit its status report on the next occasion.

The writ petition shall stand over for eight weeks.”

6. The Government of India later placed a Report of the Committee prepared by the National Institute of Occupational Health (NIOH) titled Environment, Health and Safety Issues in Coal Fired Thermal Power Plants of the year 2011.

7. Shri Colin Gonsalves, learned senior counsel, referring to the above- mentioned Report, submitted that the Union of India as also the Committee have misunderstood the scope of the suggestion nos.8 and 9. Learned senior counsel submitted that not much importance was given to the serious health problems being faced by the workers who are working in the thermal power plants and the treatment they require as well as the payment of wages and compensation to those workers who are suffering from serious illness. Learned senior counsel pointed out that some urgent steps should be taken to ensure the health and safety of the workers, through comprehensive and timely medical examinations, follow-up treatment as well as to provide compensation for the serious occupational diseases they are suffering from. Even these vital aspects, according to the learned senior counsel, have been completely overlooked by the Committee.

8. Learned ASG submitted that the Report of the NIOH is comprehensive and all relevant aspects have been taken care of and that there are several laws to protect the health and safety of the workers who are working in the various thermal power stations in the country. Learned ASG also submitted that the Committee has recommended the need of occupational health services with

adequate facilities for health delivery system and that all power generating authorities must have well defined sector-specific occupational health safety and environmental management framework. Learned ASG also submitted that the Report would be implemented in its true letter and spirit.

9. This Court in *Consumer Education & Research Centre and others v. Union of India and others* (1995) 3 SCC 42, has held that the right to health and medical care to protect one's health and vigour, while in service or post-retirement, is a fundamental right of a worker under Article 21 read with Articles 39(e), 41, 43, 48-A and all related Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person. The Court held that the compelling necessity to work in an industry exposed to health hazards due to indigence to bread-winning for himself and his dependents should not be at the cost of health and vigour of the workman.

10. Right to health i.e. right to live in a clean, hygienic and safe environment is a right flowing from Article 21. Clean surroundings lead to healthy body and healthy mind. But, unfortunately, for eking a livelihood and for national interest, many employees work in dangerous, risky and unhygienic environment. Right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy, particularly clauses (e) and (f) of Articles 39, 41 and 42. Those Articles include protection of health and strength of workers and just and humane conditions of work. Those are minimum requirements which must exist to enable a person to live with human dignity. Every State has an obligation and duty to provide at least the minimum condition ensuring human dignity. But when workers are engaged in such hazardous and risky jobs, then the responsibility and duty on the State is double-fold. Occupational health and safety issues of CFTPPs are associated with thermal discharge, air and coal emission, fire hazards, explosion hazards etc. Dust emanates also contain free silica associated with silicosis, arsenic leading to skin and lung cancer, coal dust leading to black lung and the potential harmful substances. Necessity for constant supervision and to the drive to mitigate the harmful effects on the workers is of extreme importance.

11. India is one of the largest coal producing countries in the world and it has numerous CFTPPs requiring nearly 440 million tons of coal per year. We have about 130 CFTPPs in India. The thermal power plants generate about two-third of the electricity consumed in India, while 54.3% of the energy demand is met by coal fired power generation. The NIOH in its Report in 2011 has already made its recommendations with respect to the suggestions made by this Court in its order dated 30.1.2008. Since the Central Government has already accepted suggestions no.1 to 7, at the moment we are concerned with suggestions no.8 and 9, which we reiterate as follows :-

“8. Safe methods be followed for the handling, collection and disposal of hazardous waste to be recommended by NIOH.

9. Appointment of a Committee of experts by NIOH including therein Trade Union representatives and Health and Safety NGO's to look into the issue of Health and Safety of workers and make recommendations.”

12. The Report in para 4.1.2 has referred to various health hazards and the same is reproduced hereinbelow :-

“4.1.2 General . Use of Hazardous Material for Insulation: Certain materials such as asbestos, glass wool etc. are used for insulation. These materials are highly dangerous to human health, if inhaled or if contacted with the eye/skin surface. While handling such materials, the PPE should be provided to the workers as well as proper disposal of waste asbestos and glass wool should be ensured. Nowadays, safer substitutes, such as p-aramid, polyvinyl alcohol (PVA), cellulose, polyacrylonitrile, glass fibres, graphite are available, the use of which may be explored.

. Compliance with the provisions of the Environment (Protection) Act and its amendments from time to time applicable for the power plants with respect to emission and discharge, ash utilization and hazardous waste management should be ensured to protect the ambient environment as well as maintain safe and healthy working conditions for the workers. . The generated fly ash need to be utilized as per the CPCB annual implementation report on fly ash utilization (2009-10) that 100% utilization to be achieved by the power plants, within 5 years from the date of notification (refer to Table 17, page 48). For new CFTPPs, the fly ash utilization needs to be regulated as per the schedule given in Table 17.

. It is desirable that the coal handling facilities are mechanized and automated to the extent possible.

. Occupational health services should be provided for wide range benefit to the workers. Broadly, it should contain the facilities for occupational health delivery system with trained manpower and infrastructure including investigational facilities, environmental assessment, evaluation of occupational health status and first aid training of the workers on regular basis. These services should be independent and separate from hospital services (curative service) but should function in liaison with the curative service.

. Periodic awareness programmes regarding the health and safety with active involvement of the workers should be organized, covering each individual with the minimum annual average duration of 8 hours per worker. Regular community level awareness programmes may be organized in the vicinity of the plant for the family members of the workers. . Periodic medical examination (PME), as required under the Factories Act should be undertaken. However, the investigations performed under the PME should be relevant to the job exposures. Since coal/ash handling workers are prone to dust exposure related diseases, due attention is required to those workers. In case of need, the frequency of PME may be scheduled, based on observation of the health check-up information. Providing PPE and re-locating of job for those workers may also be considered. . As per recommendations of the Factories Act, the workers need to be examined radiologically (chest X-ray) on yearly basis.

However, in order to avoid unnecessary exposure of the human body to the radiation, the regular yearly chest X-ray is not recommended, unless urgent and essential. Considering the latency period of development of pneumoconiosis, it is recommended to undergo chest X-ray every two years for initial 10 years and based on the progression, re-scheduling may be adopted. After 10 years it should be done on yearly basis or earlier depending on the development and/or progression of the disease.

. Health records should be maintained in easily retrievable manner, preferably in electronic form. The provision should be made to recall the worker, as and when his or her check up is due. Pre-placement medical examination and proper documentation of records should be mandatory.

. A comprehensive document on environment, health and safety specific to coal based thermal power projects should be framed. It should cover the legal provisions, management system, best practices, safe operating procedures, etc. for various areas of thermal power plants. This will serve as a reference document for effective implementation of the provisions. . All CFTPPs should have environmental and occupational health and safety management systems in place, which are auditable by third party, approved by the Govt of India (Ministry of Power). Participatory management regarding health and safety at plant level may be ensured.

. The occupier of the CFTPP shall be responsible for the compliance of provisions of the Factories' Act for casual/contractual labour on health and safety issues. In case of women workers, the provisions of the Factories' Act, as applicable, shall be given attention.

13. Para 3.1.2 of the Report specifically refers to the occupational health and safety issues of workers in CFTPPs. The Report also refers to the hazards associated with (a) dust, (b) heat, (c) noise, (d) vibration,

(e) radiation, and (f) disposal of waste. After dealing with those health hazards, the Committee has stated that the hazards associated with inhalation of coal dust might result in development of dust related morbidity in the form of pneumoconiosis (coal workers pneumoconiosis, silicosis) and non-pneumoconiotic persistent respiratory morbidities, such as chronic bronchitis, emphysema, asthma, etc. Further, it also pointed out that whenever asbestos fibres are used for insulation and other purposes, the possibility of asbestosis among workers due to inhalation of asbestos fibres cannot be ruled out. The Report also says that other morbidities because of exposure to fly ash, including metallic constituents such as lead, arsenic, and mercury might also be present. Due to exposure to other chemicals used in different operations of CFTPP, the Report says, may also be responsible to adversely affect human health.

14. Report further says that occupational exposure to high heat in different thermal power plants may also cause heat related disorders, like heat exhaustion. Noise and vibration exposures in higher

doses than the permissible limits may result in noise-induced hearing loss, raised blood pressure, regional vascular disorders, musculo-skeletal disorders, human error, productivity loss, accidents and injuries. Radiation hazards particularly from the generated fly ash and its used products have also been indicated of possible health risks. Different chemicals that are often being used in CFTPPs, such as chlorine, ammonia, fuel oil, and released in the working and community environment may be responsible for wide range of acute as well as chronic health impairments. Since large quantities of coal, other fuels and chemicals are stored and used in CFTPPs, the risks of fire and explosion are high, unless special care is taken in handling the materials. It may cause fire and explosion. Further, it may also be pointed out that in various work operations for manual materials handling, the workers are subjected to high degree of physical stress, with potential risks of musculo-skeletal disorders and injuries.

15. In para 3.1.5 the Report suggests certain protective measures for health and safety and also steps to be taken for emergency preparedness on spot/off-spot emergency plans and also the measures to be adopted for social welfare.

16. We may notice, the recommendations made are to be welcomed, but how far they are put into practice and what preventive actions are taken to protect the workers from the serious health-hazards associated with the work in CFTPPs calls for serious attention. Many workers employed in various CFTPPs are reported to be suffering from serious diseases referred to earlier. What are the steps taken by CFTPPs and the Union of India and the statutory authorities to protect them from serious health hazards and also the medical treatment extended to them, including compensation etc. calls for detailed examination.

17. We notice that CFTPPs are spread over various States in the country like Uttar Pradesh, Chhattisgarh, Maharashtra, Andhra Pradesh, and so on, and it would not be practicable for this Court to examine whether CFTPPs are complying with safety standards and the rules and regulations relating to the health of the employees working in various CFTPPs throughout the country. We feel that these aspects could be better examined by the respective High Courts in whose jurisdiction these power plants are situated. The High Court should examine whether there is adequate and effective health delivery system in place and whether there is any evaluation of occupational health status of the workers. The High Court should also examine whether any effective medical treatment is meted out to them.

18. We, therefore, feel that it is appropriate to relegate it to the various High Courts to examine these issues with the assistance of the State Governments after calling for necessary Reports from the CFTPPs situated in their respective States. For the said purpose, we are sending a copy of this Judgment to the Chief Secretaries of the respective States as well as Registrar Generals of the High Courts of the following States :

a) Uttar Pradesh

b) Chhattisgarh

- c) Maharashtra
- d) Andhra Pradesh
- e) West Bengal
- f) Madhya Pradesh
- g) Bihar
- h) Orissa
- i) Haryana
- j) Rajasthan
- k) Punjab
- l) Delhi/NCT Delhi
- m) Gujarat
- n) Karnataka
- o) Kerala
- p) Tamil Nadu
- q) Jharkhand
- r) Assam

19. Report of National Institute of Occupational Health (NIOH) titled Environment, Health and Safety Issues in Coal Fired Thermal Power Plants of the year 2011 may also be made available by the Secretary General of the Supreme Court to the Registrar Generals of the High Courts of the aforesaid States. We make it clear that the Report is not at all comprehensive in certain aspects and the respective High Courts can examine the issues projected in this Judgment independently after calling for the reports about the CFTPPs functioning in their respective States. The Registrar Generals of High Courts of the aforesaid States should place this Judgment before the Chief Justices of the respective States so as to initiate suo moto proceedings in the larger interest of the workers working in CFTPPs in the respective States.

20. The Writ Petition is accordingly disposed of.

.....J.

(K.S. Radhakrishnan)J.

(A.K. Sikri) New Delhi, January 31, 2014.