

Gyan Prakash Vs. General Manager, Ordnance Factory and ors.

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Court : Madhya Pradesh

Decided On : Oct-05-2006

Reported in : AIR2007MP118

Judge : A.K. Patnaik, C.J. and ;Ajit Singh, J.

Appellant : Gyan Prakash

Respondent : General Manager, Ordnance Factory and ors.

Advocate for Def. : Mr. B. D'silva

Disposition : Petition allowed

Judgement :

ORDER

1. This is a Public Interest Litigation alleging that the mandatory provisions of the Public Liability Insurance Act, 1991 and the Public Liability Insurance Rules, 1991 made thereunder are not being complied with by Respondents 1 to 11.

2. The petitioner who claims to be the Founder of the Forum for Traffic Safety and Environmental Sanitation has alleged that a number of fire accidents have taken place in the Ordnance Factories located in the State of Madhya Pradesh. He has alleged that several accidents have also taken place during storage and transportation of arms and ammunition from the said Ordnance Factories to places outside the State of Madhya Pradesh. He has stated that as a result of such

accidents, there have been huge losses of life and property. Some of these accidents have been detailed in the Writ Petition and these are accidents, which took place in March 1988 in the Central Ordnance Depot, Jabalpur, in November, 1992 in the Ordnance Factory, Itarsi, in January, 1993 in the Ordnance Factory, Khamariya, in August, 2001 in the Central Ordnance Depot, Jabalpur, in October 2001 in the Ordnance Factory, Khamariya, in November 2001 in the Ordnance Factory, Itarsi, in January 2002 in the Ordnance Factory, Khamariya, in April 2002 in the Ordnance Factory, Khamariya, and in September 2002 in the Ordnance Factory, Khamariya. Some of the accidents during storage of arms and ammunition at places outside Madhya Pradesh as mentioned in the writ petition are in January 2001 in the Sub-Ammunition Depot, Udhasar (Bikaner) Rajasthan, in April 2001 in the Ammunition Sub Depot, Memoon and in the Field Ammunition Depot, Pathankot, in May 2001 in Ammunition Sub-Depot, Bridhwal and the Field Ammunition Depot, Ganganagar, in January 2001 in the Ordnance Depot, Shakurbasti, New Delhi and in 2000-2001 in the Central Ordnance Depot, Bharatpur. The petitioner has alleged in the writ petition that these accidents have taken place on account of the explosion of explosive materials and ammunitions and that in such accidents property worth several crores has been lost. The petitioner has stated that such accident have posed a serious threat to the life and property of the public and his contention is that to cover the risk to the public from such hazardous activities carried on in the Ordnance Factories and Depots, elaborate provisions have been made in the Public Liability Insurance Act, 1991 and the Public Liability Insurance Rules, 1991 made thereunder and to ensure safety for the public, provisions have also been made in the Public Liability Insurance Act, 1991 and the Public Liability Insurance Rules, 1991 for furnishing of information to the Central Government, but these provisions of law are not being complied with by the respondents 1 to 11. The petitioner has, therefore, prayed for appropriate writs/directions to the respondents to ensure compliance with the said provisions of law.

3. At the hearing of the writ petition, Mr. B. D'silva learned senior counsel appearing for the respondents Nos. 1 to 12, 16, 17 and 18, raised a preliminary objection saying that the writ petition has not been filed by the petitioner in the public interest but for oblique motive to settle his personal scores. He submitted

that the petitioner was working as Charge-man Grade II in the respondent No. 3/Vehicle Factory, Jabalpur, and a disciplinary proceeding was initiated against him and a penalty of compulsory retirement was imposed on him with effect from 27-11-2001. He submitted that after his compulsory retirement, the petitioner has filed this petition on unsubstantiated allegations and frivolous grounds on account of personal grudge. The petitioner, on the other hand, submitted that he has filed this PIL bona fide to ensure the safety of public through compliance of the Public Liability Insurance Act, 1991 and the Public Liability Insurance Rules, 1991 and Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, as amended by the Amendment Rules, 2000, by the respondents.

4. We have considered the aforesaid submissions made by the petitioner and Mr. B. D'Silva and we are of the opinion that in this public interest litigation, the Court should not go into the allegations made by the petitioner which are disputed by the respondents. But with a view to ensure that public safety is not in jeopardy, the Court must inquire and decide whether the provisions of the Public Liability Insurance Act, 1991 and the Public Liability Insurance Rules, 1991 are being duly complied with by the respondents. This exercise by the Court in this PIL is all the more necessary considering the fact that the life and property of the public are in great danger on account of use of explosive materials in the establishments of the respondent and during transportation and storage of arms and ammunitions to places outside the State of Madhya Pradesh and accidents are alleged to have taken place in some of these establishments. Rule of law further mandates that the law made by the Parliament and the rules made under such law for safety and for compensation for loss of life and property due to accident are duly observed. We are, therefore, not inclined to dismiss this writ petition on the aforesaid preliminary objection raised by the Mr. B. D'Silva, learned senior counsel appearing for respondents No. 1 to 12, 16, 17 & 18.

5. The petitioner appearing in person submitted that under Sub-section (1) of Section 4 of the Public Liability Insurance Act, 1991 (for short 'Act'), every owner is under obligation to take out, before he starts handling any hazardous substance, one or more insurance policies providing for contracts of insurance whereby he is insured against liability to give relief under Sub-section (1) of Section 3. He

submitted that in the return filed by the respondents, it has been stated that the respondent No. 1 General Manager of the Ordnance Factory, Khamaria, Jabalpur and the respondent No. 6 General Manager of the Ordnance Factory, Itarsi, have taken out insurance policies to meet the liability under Sub-section (1) of Section 3 of the Act, but the respondent No. 2 General Manager of the Gun Carriage Factory, Jabalpur, respondent No. 3 General Manager of the Vehicle Factory, Jabalpur, respondent No. 4 General Manager of the Grey Iron Foundry, Jabalpur, respondent No. 5 General Manager of the Ordnance Factory, Katni and the Commandant of the Central Ordnance Depot, Jabalpur, have not taken out such insurance policies. He further submitted that even the insurance policies taken out by the respondents No. 1 and 6 are not in accordance with Sub-section (2A) of Section 4 of the Act, which provides that the insurance policies taken out by an owner should not be for an amount less than the amount of the paid up capital of the undertaking handling any hazardous substance and not exceeding Rs. Fifty Crore. He submitted that the insurance policies taken out by the respondents No. 1 and 6 are only for Rs. Five Crore and not for the paid up capital of the undertaking and, therefore, do not conform to the requirements of Sub-section (2A) of Section 4 of the Act. He further submitted that the insurance policies taken out by the respondents No. 1 and 6 have provided for several exceptions to the liability of the Insurance Companies in case of accident and, therefore, the said insurance policies do not cover the liability of the owners under Sub-section (1) of Section 3 of the Act. He submitted that all this would show that even the insurance policies taken out by the respondents No. 1 and 6 are not in accordance with the Act.

6. In reply, Mr. D'Silva submitted relying on para 5.5 of the return that respondents No. 1 and 6 have taken out insurance policies as required by Sub-section (1) of Section 4 of the Act and are regularly paying the insurance premium w.e.f. 1994. He submitted that Rule 10 of the Public Liability Insurance Rules, 1991 (for short 'the Rules 1991') provides that the maximum aggregate liability of the insurer to pay relief under an award to several claimants arising out of an accident shall not exceed rupees five crores and in compliance of the said rule, the respondents No. 1 and 6 have taken out insurance policies for a sum of Rupees Five Crores. He submitted that the petitioner has overlooked the provisions of the said Rule 10 of

the Rules while contending that the insurance policies taken out by the respondents No. 1 and 6 do not satisfy the requirements of Sub-section (2A) of Section 4 of the Act. He further submitted that it is not correct as has been submitted by the petitioner that the Insurance policies does not cover the liabilities of the respondents No. 1 and 6 under Sub-section (1) of Section 3 of the Act and that the said insurance policies taken out by the respondents No. 1 and 6 are not in accordance with the Act.

7. Mr. D'silva further submitted relying on the return that no hazardous substances are either manufactured or handled in the Gun Carriage Factory, Jabalpur, of which the respondent No. 2 is the General Manager and, therefore, the respondent No. 2 is not required to take out any insurance policy under Sub-section (1) of Section 4 of the Act. He submitted that similarly the respondent No. 3, who is the General Manager of the Vehicle Factory, Jabalpur, is not required to take out any insurance policy under Sub-section (1) of Section 4 of the Act, as the said Vehicle Factory does not manufacture and handle any hazardous substance. He submitted that the petitioner has alleged in the writ petition that the Vehicle Factory, Jabalpur, is discharging untreated cyanide along with its waste, which is contaminating the ground water and drinking water. But in para 5.28 of the return, the respondents have stated that no cyanide chemical is utilized in the Vehicle Factory, Jabalpur, since four years prior to filing of the return. He submitted that the M.P. Pollution Control Board have made an evaluation and analysis and submitted a report that no cyanide salts and lubricants oil etc. beyond permissible limits are present in the effluents discharged by the Vehicle Factory, Jabalpur. He further submitted relying on the return that the Grey Iron Foundry Jabalpur, of which the respondent No. 4 is the General Manager, applied for exemption from the provisions of the Act and has been granted the same by the competent authority and this fact has not been disputed by the petitioner. He submitted that the Ordnance Factory, Katni, of which the respondent No. 5 is the General Manager, does not deal with hazardous chemical exceeding the limit specified in the Manufacture, Storage and Import Hazardous Chemical Rules and, therefore, the provisions of the Act are not attracted. He also submitted relying on the return that the Central Ordnance Depot of which the respondent No. 8 is the Commandant is not a manufacturing unit but only a storage depot for military

ammunitions and explosives and no chemical substance having danger to the public is stored in the said depot.

8. Sections 3 and 4 of the Act on which reliance is placed by the petitioner are quoted here in below:

Section 3.(1) Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in Schedule for such death, injury or damage.

(2) In any claim for relief under Sub-section (1) (hereinafter referred to in this Act as claimed for relief), the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person.

Explanation,-- For the purpose of this section,

(i) 'workman' has the meaning assigned to it in the Workmen's Compensation Act, 1923 (8 of 1923);

(ii) 'injury' Includes permanent total or permanent partial disability or sickness resulting out of an accident.

Section 4(1) Every owner shall take out, before he starts handling any hazardous substance, one or more insurance policies providing for contracts of insurance whereby he is insured against liability to give relief under Sub-section (1) of Section 3.

Provided that any owner handling any hazardous substance immediately before the commencement of this Act shall take out such insurance policy or policies as soon as may be and in any case within a period of one year from such commencement.

(2) Every owner shall get the insurance policy, referred to in Sub-section (1), renewed from time to time before the expiry of the period of validity thereof so that the insurance policies may remain in force throughout the period during which such handling is continued.

(2A) No insurance policy taken out by an owner shall be for an amount less than the amount of the paid-up capital of the undertaking handling any hazardous substance and owned or controlled by that owner and more than the amount, not exceeding fifty crore rupees, as may be prescribed.

Explanation -- 'Paid-up capital' in this sub-section means, in the case of an owner not being a company, the market value of all assets and stocks of the undertaking on the date of contracts of Insurance.

(2B) The liability of the insurer under one insurance policy shall not exceed the amount specified in the terms of the contract of insurance in that insurance policy.

(2C) Every owner shall also, together with the amount of premium, pay to the insurer, for being credited to the Relief Fund established under Section 7A, such further amount, not exceeding the amount of premium, as may be prescribed.

(2D) The insurer shall remit the further amount received from the owner under Sub-section 2(c) to the Relief Fund in such manner and within such period as may be prescribed and where the insurer fails to so remit the further amount, such amount shall be recoverable from insurer as arrears of land revenue or of public demand.

(3) The Central Government may, by notification, exempt from the operation of Sub-section (1) any owner, namely.

(a) the Central Government;

(b) any State Government,

(c) any corporation owned or controlled by the Central Government or a State Government; or

(d) any local authority: Provided that no such order shall be made in relation to such owner unless a fund has been established and is maintained by that owner in accordance with the rules made in this behalf for meeting any liability under Sub-section (1) of Section 3.

9. Rule 10 of the Public Liability Insurance Rules, 1991 (in short 'the rules') on which reliance has been placed by Mr. D'Silva is also quoted hereinbelow:

10. Extent of liability.-- (1) Subject to the provisions of Sub-section (2A) of Section 4 of the Act, the maximum aggregate liability of the insurer to pay relief under an award to the several claimants arising out of an accident shall not exceed rupees five crores and in case of more than one accident during the currency of the policy or one year, whichever is less, shall not exceed rupees fifteen crores in the aggregate.

(2) In awarding relief under the Act, the Collector shall ensure that the insurer's maximum liability under the insurance policy does not exceed the limits stipulated in Sub-rule (1).

(3) Any award for relief which exceeds the amount payable under the insurance policy shall be met from the relief fund and in case the award exceeds the total of the amount of insurance and the relief fund, the amount which falls short of such sum payable shall be met by the owner.

10. It will be clear from the provisions of Sub-section (1) of Section 3 of the Act quoted above that where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in the Schedule for such death, injury or damage. Sub-section (1) of Section 4 of the Act quoted above further provides that every owner shall take out, before he starts handling any hazardous substance, one or more insurance policies providing for contracts of insurance whereby he is insured against liability to give relief under Sub-section (1) of Section 3 of the Act. But, it is clear from a reading of the said two provisions in Sub-section (1) of Section 3 and Sub-section (1) of Section 4 of the Act that the liability of the owner under Sub-section (1) of Section 3 is independent of the obligation cast on the owner in Section 4 of the Act to take out an insurance policy to cover the liability under Sub-section (1) of Section 3 of the Act. In other words, even where the owner has not taken out an insurance policy as provided under Section 4 of the Act, he will still be liable for any death or injury caused to any person other than the workman or damage to any property if such death, injury or property has resulted in an

accident as stated in Section 3(1) of the Act.

11. Sub-section (1) of Section 4 of the Act, as we have seen, cast an obligation on every owner before 'he starts handling any hazardous substance' to take out one or more insurance policy providing for contracts of insurance which would cover his liability under Sub-section (1) of Section 3 of the Act. Where, therefore, owner does not handle any hazardous substance, he is not required to take out insurance policy providing for contracts of insurance covering his liability under Section 3 of the Act. The 'expression hazardous' substance has been defined in Section 2(d) of the Act to mean any substance or preparation which is defined as hazardous substance under the Environment (Protection) Act, 1986 and exceeding such quantity as may be specified, by notification, by the Central Government. In a notification dated 24th March, 1992, the Central Government has specified the quantities of hazardous substances for which and exceeding which every owner is required to face one insurance policy under the Act. Since it is stated in the return that no hazardous substances are either manufactured or handled in the Gun Carriage Factory, Jabalpur of which the respondent NO. 2 is the General Manager and in the Vehicle Factory at Jabalpur of which the respondent No. 3 is the General Manager, respondent Nos. 2 and 3 are not required to take out any insurance policy under Section 4 of the Act to cover their liability under Sub-section (1) of Section 3 of the Act. But as stated above, even if respondents 2 and 3 have not taken out the insurance policies under Section 4 of the Act, they will still be liable for any death, injury to any person or damage to any property resulting from an accident which takes place in the Gun Carriage Factory or the Vehicle Factory at Jabalpur under Sub-section (1) of Section 3 of the Act.

12. It is also stated in the return that the Grey Iron Foundry, Jabalpur of which the respondent No. 4 is the General Manager applied for exemption from the provisions of the Act and has been granted the same by the competent authority. Sub-section (3) of Section 4 of the Act provides that the Central Government may, by notification, exempt from the operation of Sub-section (1) any owner named in Clauses (a) to (d) therein and Central Government has been named in Clause (a) of Sub-section (3). Hence, the respondent No. 4 was exempted from the operation of Sub-section (1) of Section 4 of the Act and by virtue of such exemption, was not

required to take any insurance policy provide in contracts insurance to cover his liability under Sub-section (1) of Section 3 of the Act. But the exemption granted by the Central Government under Sub-section (3) of Section 4 of the Act is only an exemption from Section 4 of the Act and is not an exemption from the provisions of Sub-section (1) of Section 3 of the Act. As a matter of fact, Rule 6 of the Rules provides that an owner of the category mentioned under Sub-section (3) of Section 4 of the Act shall, with the prior approval of the Central Government, create and establish a fund by depositing with the State Bank of India or any of its subsidiaries or any nationalized bank, a public liability insurance fund of that owner, and that such fund shall be utilized for the purpose of meeting the liabilities arising out of any claim awarded against the owner by the Collector. Therefore, notwithstanding that exemption has been granted to respondent No. 4 under Sub-section (3) of Section 4 of the Act, the respondent No. 4 would still be liable for any death or injury to any person or damage to any property as a result of any accident in the Grey Iron Foundry, Jabalpur under Sub-section (1) of Section 3 of the Act.

13. It is also stated in the return that the Ordnance Factory at Katni of which the respondent No. 5 is the owner does not deal with hazardous chemicals exceeding the limits prescribed in the Manufacture, Storage and Import of Hazardous Chemical Rules, and therefore the provisions of the Act are not attracted. As stated above, Section 2(d) of the Act states that hazardous substance means any substance or preparation which is defined as hazardous substance under the Environment (Protection) Act, 1986 and exceeding such quantity as may be specified by notification by the Central Government and the Central Government has in the notification dated 24th March, 1992 specified the quantities for which or exceeding which every owner handling the hazardous substance has to take out an insurance policy. Thus, so long as the respondent No. 5 does not handle any hazardous substance of the quantity or exceeding the quantity mentioned in the said notification dated 24th March, 1992 issued by the Central Government, the respondent No. 5 need not take out an insurance policy under Section 4 of the Act. But as we have held above, even if the respondent No. 5 who does not take out any insurance policy under Section 4(1) of the Act, the respondent No. 5 is still liable under Section 3(1) of the Act for any death or injury to any person or damage to any property as a result of any accident in the Ordnance Factory, Katni.

14. Sub-section (2-A) of Section 4 of the Act quoted above provides that no insurance policy taken out or renewed by an owner shall be for an amount less than the amount of the paid up capital of the undertaking handling any hazardous substance and owned or controlled by that owner, and more than the amount, not exceeding fifty crore rupees, as may be prescribed. Hence, the minimum amount for which the insurance policy is to be taken out is equivalent to paid up capital of the undertaking handling any hazardous substance. Sub-section (2-A) of Section 4 further states that for the purposes of this sub-section, in the case of an owner not being a company, 'paid-up capital' means the market value of all assets and stocks of the undertaking on the date of contract of insurance. Since Ordnance Factory at Jabalpur and the Ordnance Factory at Itarsi are owned not by a company but by the Defence Ministry of the Government of India, 'Paid-up capital' in the said two undertakings would be the market value of all assets and stocks of the undertakings on the date of contract of Insurance. But it will be clear from Sub-section (2A) of Section 4 quoted above that the maximum statutory limit for which the insurance policy is to be taken out is fifty crore rupees. The words 'as may be prescribed' in Sub-section (2-A) of Section 2 of the Act further makes it clear that within this maximum statutory limit of fifty crore rupees, the rules made under the Act may prescribe a lower limit. Rule 10 of the Rules quoted above provides that subject to the provisions of Sub-section (2A) of Section 4 of the Act, the maximum aggregate liability of the insurer to pay relief under the award to the several claimants arising out of an accident shall not exceed rupees five crores and in case of more than one accident during the currency of the policy or one year, whichever is less, shall not exceed rupees fifteen crores in the aggregate. The aforesaid limit of five crores to several claimants arising out of an accident and rupees fifteen crores in case of more than one accident during the currency of the policy or one year thus would be the maximum limits for which the policy of insurance has to be taken out under Section 4 of the Act read with Rule 10 of the Rules. This is not to say that in case the liability of owner arising out of one accident to different claimants under an award made under the Act in accordance with Section 3 of the Act exceeds rupees five crores or where the liability of owner out of several accidents during the currency of the policy under several awards exceeds rupees fifteen crores, the owner would not be liable for the amounts in

excess of the said limits of Rs. Five crores or Rs. Fifteen crores under the award. The limits mentioned in Section 4(1) of the Act read with Rule 10 of the Rules are the limits of the liability of the insurer to be provided in the insurance policy and not the limits of the liability of the owner. So far owners are concerned, their liability for death or injury to any person or damage to property will be determined in accordance with the provisions of Sub-section (1) of Section 3 of the Act read with the Schedule to the Act.

15. The petitioner next submitted that under Sub-section (1) of Section 7A of the Act, the Central Government is required to establish a fund to be known as the Environmental Relief Fund and Sub-section (2) of Section 7A provides that the Environmental Relief Fund shall be utilised for paying relief under the award made by the Collector under Section 7 of the Act in accordance with provisions of the Act and scheme made under Sub-section (3) of Section 7A of the Act. He submitted that Sub-section (3) of Section 7A of the Act further provides that the Central Government by notification will make out a scheme specifying the authorities in which the relief fund shall vest, the manner in which the Relief Fund is to be administered, the form and the manner in which money shall be drawn from the Relief Fund and for all other matters connected with or incidental to the relief fund and the payment of relief therefrom. He submitted that the Central Government has not yet framed a scheme as contemplated by Sub-section (3) of Section 7A of the Act but at the same time contributions for the Environmental Relief Fund have been realized by the insurance companies from the owners from time to time. He submitted that as the Central Government is not making a scheme under Section (3) of Section 7A of the Act, such contributions are not being disbursed in accordance with the provisions of the Act and the entire object of Section 7A of the Act has been frustrated.

16. In reply, Mr. D'Silva submitted that Rule 11 of the Rules provides that an owner shall contribute to the Environmental Relief Fund a sum equal to the premium payable to the insurer and such contribution to the Environmental Relief Fund shall be payable to the insurer together with the amount of premium and in accordance with Rule 11 of the Rules, contributions have been realized by the 'insurance companies from the owners. He further submitted that these contributions to the

Environmental Relief Fund are currently being held by the four Public Sector Insurance Companies and the General Insurance (Public Sector Association of India) is co-ordinating the activities and the Insurance Regulation Development Authority is drawing policy of the insurance sector. He submitted that approximately Rupees 117 crores have already been collected for the Environmental Relief Fund but the scheme to be notified under Sub-section (3) of Section 7A of the Act has not been finalized and notified due to changes in the insurance sector. Mr. D'Silva submitted the Sub-section (3) of Section 7A of the Act provides that the Central Government, may, by notification, make a scheme specifying the authority in which the relief fund shall vest and the word 'may' would mean that the Central Government may or may not make a scheme, In support of this submission, he cited the decision of the Supreme Court in the case of *The Official Liquidator v. Dharti Dhan (P) Ltd.* : [1977]2SCR964 .'

17. In *The Official Liquidator v, Dharti Dhan (P) Ltd.* (supra) cited by Mr. D'Silva, the Supreme Court was called upon to decide as to whether the use of word 'may' in Sections 442 and 446 of the Companies Act, 1956 confers only a power on the Company Court to stay or not to stay the proceedings mentioned in the said two sections of the Companies Act, 1956 or such power of the Court was also annexed with an obligation which compelled in exercise in a certain way on facts and circumstances of the case and the Supreme Court observed:..The principle laid down above has been followed consistently by this Court whenever it has been contended that the word 'may' carries with it the obligation to exercise a power in a particular manner or direction. In such a case, it is always the purpose of the power which has to be examined in order to determine the scope of the discretion conferred upon the donee of the power. If the conditions in which the power is to be exercised in particular cases are also specified by a statute then, of the fulfillment of those conditions, the power conferred becomes annexed with a duty to exercise it in that manner. This is the principle we deduce from the cases of this Court cited before us : *Bhaiya Punjalal Bhagwandin v. Dave Bhagwatprasad Prabhuprasad* : [1963]3SCR312 ; *State of Uttar Pradesh v. Jogendra Singh* : (1963)11LLJ444SC , *Gofindrao v. State of M.P.* : [1965]1SCR678 , *A.C. Aggarwal v. Smt. Ram Kali* : 1968 CriLJ82 , *Bashira v. State of U.P.* : [1969]1SCR32 and *Prakash Chand Agarwal v. Hindustan Steel Ltd.* :

It will be clear from the aforesaid Judgment of the Supreme Court that if the word 'may' carries with an obligation to exercise the power in a particular manner or direction and if the conditions in which the power is to be exercised are also specified by the statute, then on fulfillment of those conditions, the power conferred becomes annexed with the duty to exercise it in that manner. Thus, the expression 'may' in the statute may prima facie indicate a discretion vested in the authority, but the provisions of the statute in which the expression 'may' has been used, may further annex the discretion with an obligation to exercise the discretion in a particular manner.

18. Keeping in mind the aforesaid observations of the Supreme Court in the case of the Official Liquidator v. Dharti Dhan (supra), we may now examine the relevant provisions of the Act, Sub-section (3) of Section 7A provides that the Central Government may, by notification, make a scheme relating to the Environmental Relief Fund. Section 7(1) of the Act provides that on receipt of an application under Sub-section (1) of Section 6 for relief, the Collector shall after giving notice to the owner and after giving the parties an opportunity of being heard hold an inquiry into the claim and make an award determining the amount of relief which appears to him to be just and specifying the person or persons to whom such amount of relief shall be paid. Clause (b) of Sub-section (3) of Section 7 of the Act which is relevant is quoted hereinbelow:

(3) When an award is made under this section (a) the Collector shall arrange to pay from the Relief Fund, in terms of such award and in accordance with the scheme under Section 7A, to the person or persons referred to in Sub-section (1) such amount as may be specified in that scheme.

The aforesaid Clause (b) of Sub-section (3) of Section 7 of the Act quoted above would show that the Collector shall arrange to pay from the relief fund in terms of such award and in accordance with the scheme under Section 7A to the person or persons referred to in Sub-section (1) such amount as may be specified in that scheme. The use of word 'shall' indicates that the Collector has to arrange to pay from the relief fund in terms of the award and in accordance with the scheme

under Section 7A to the person or persons referred to such amount as may be specified in that scheme.

19. Section 7A of the Act and Rule 11 of the Rules are quoted hereinbelow:

7A. Establishment of Environmental Relief Fund.-- (1) The Central Government may, by notification, establish a fund to be known as the Environmental Relief Fund.

(2) The Relief Fund shall be utilized for paying, in accordance with the provisions of this Act and the scheme made under Sub-section (3), relief under the award made by the Collector under Section 7.

(3) The Central Government may, by notification, make a scheme specifying the authority in which the Relief Fund shall vest, the manner in which money shall be drawn from the Relief Fund and for all other matters connected with or incidental to the administration of the Relief Fund and the payment of relief therefrom.

11. Contribution of owner to the environmental relief fund.

(1) An owner shall contribute to the environmental relief fund a sum equal to the premium payable to the insurer.

(2) Every contribution to the environmental relief fund under Sub-rule (1) shall be payable to the insurer, together with the amount of premium.

(3) The contribution received by the insurer shall be remitted as per the scheme under Section 7A of the Act.

20. Sub-section (1) of Section 7A provides that the Central Government may, by notification, establish a fund to be known as the Environmental Relief Fund and Sub-section (2) of Section 7A states that the relief fund shall be utilised for paying in accordance with the provisions of the Act and the scheme made under Sub-section (3), relief under the award made by the Collector under Section 7. The use of word 'shall' in Sub-section (2) of Section 7A makes it clear that the Environmental Relief Fund shall be utilised for paying relief under the award made by the Collector under Section 7 of the Act in accordance with the provisions of the

Act and the scheme made under Sub-section (3). Sub-section (3) of Section 7 of the Act quoted above provides that the Central Government may, by notification, make a scheme specifying the authority in which the relief fund has been vested the manner in which the relief fund shall be administered, the form and the manner in which money shall be drawn from the relief fund and for all other matters connected with or incidental to the administration of the relief fund and the payment of relief therefrom. Unless the scheme contemplated by Sub-section (3) of Section 7A is notified by the Central Government, the relief fund cannot be utilised for payment of relief under the award made by the Collector and the provisions of Sub-section (3)(b) of Section 7 and Sub-section (2) of Section 7A of the Act would be totally frustrated. Therefore, an obligation has been cast on the Central Government to make and notify a scheme as contemplated under Sub-section (3) of Section 7A of the Act particularly when contributions for the Environmental Relief Fund have been realized from owners by the insurer under Section 4(2C) of the Act and Rule 11 of the Rules and a total amount of rupees one hundred seventy crores approximately has been realized for such Environmental Relief Fund remain unutilized and has not been disbursed in accordance with the provisions of Sub-section (3)(b) of Section 7 and Sub-section (2) Section 7A of the Act. The discretion vested in the Central Government under Sub-section (3) of Section 7A of the Act thus is coupled with a duty to make and notify a scheme once the contributions have been realized for the Environmental Relief Fund and are lying unutilized with the insurance companies.

21. The petitioner next submitted that under Section 9 of the Act any person authorized by the Central Government may, for the purposes of ascertaining whether any requirements of the Act or any rule or any direction given under the Act have been complied with, require any owner to submit to that person such information as that person may reasonably think necessary. He submitted that despite the said provision in Section 9 of the Act, the Central Government or any person authorized by the Central Government is not calling for such information from the owners, nor any owner is furnishing information in accordance with Section 9 of the Act about the accidents which have taken place from time to time. He submitted that the Court should issue directions to the respondent Nos. 1 to 6 to report to Central Government about the accidents which take place in their

establishments from time to time.

22. Section 9 of the Act on which reliance has been placed by the petitioner is quoted here in below:

9. Power to call for information.-- Power to call for information. Any person authorized by the Central Government may, for the purposes of ascertaining whether any requirements of this Act or of any rule or of any direction given under this Act have been complied with require any owner to submit to that person such information as that person may reasonably think necessary.

The aforesaid Section nowhere provides that the owners will report about the accidents which takes place in their establishments to the Central Government or any person authorized by the Central Government, but it provides that any person authorized by the Central Government may require any owner to submit to the person so authorized such information as that person may reasonably think necessary for the purposes of ascertaining whether any requirements of the Act or any rule or any direction given under the Act have been complied with. Nonetheless, under the provisions of Sections 9, 10, 11, 12 and 13 the main responsibility to ensure that the Act and the Rules are complied with by the owners is with the Central Government and the Central Government should perform this statutory duty for the safety of the life and property of the public.

23. In the result, we declare/direct that:

(i) The owner is liable to give such relief as specified in the Schedule to the Act for death, injury or damage to the property caused by an accident in the establishments of the Respondent Nos. 1 to 6 and 8 under Section 3(1) of the Act irrespective of whether they have taken out policies of insurance to cover their liability under Section 3(1) of the Act or not.

(ii) Respondent Nos. 2, 3, 4, 5 and 8 are not required to insure against their liability under Sub-section (1) of Section 3 of the Act so long as they do not start handling in hazardous substance in their respective establishments;

(iii) The insurance policies taken out by the Respondent Nos. 1 and 6 have to comply with requirements of Rule 10 of the Rules read with Sub-section (2A) of Section 4 of the Act as explained in this judgment and the Respondent Nos. 1 to 6 will take steps to ensure such compliance if their policies of insurance do not comply with the requirements of Rule 10 of the Rules read with Sub-section (2A) of Section 4 of the Act as explained in this judgment;

(iv) The Central Government shall notify the scheme contemplated under Sub-section (3) of Section 7A of the Act within three months from today.

(v) The Central Government will exercise powers conferred on them under Sections 9, 10, 11, 12 and 13 of the Act for the purposes of ensuring that the requirements of the Act and the Rules are complied with by Respondent Nos. 1 to 6 and 8.

With the aforesaid declarations and directions, the writ petition is allowed.

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