

CASE NO.:
Appeal (civil) 1769 of 1994

PETITIONER:
Fertilizers and Chemi. Travancore Ltd. Emp. Assoc. & Ors.

RESPONDENT:
Law Society of India & Ors.

DATE OF JUDGMENT: 25/02/2004

BENCH:
CJI., V.N. KHARE & S.H. KAPADIA.

JUDGMENT:
J U D G M E N T

WITH

C.A. No. 1770 of 1994 & Civil Appeal No 4434 of 2004
@ SLP (c) \005\005CC No. 28455 of 1994

Kapadia, J.

Delay condoned.

Leave granted in SLP (c) \005.CC No. 28455 of 1994.

By a voluminous judgment dated 14th February, 1994 in a public interest litigation instituted by Law Society of India a Division Bench of the Kerala High Court directed Fertilizers and Chemicals, Travancore Ltd. to de-commission and empty the ammonia storage tank at Willingdon Island within three months as the said tank was vulnerable to major leaks in the event of an air crash, sabotage and earthquake.

Fertilizers and Chemicals Travancore Ltd is a public sector undertaking which manufactures chemicals fertilizers to the extent of 4% of total fertilizer production in the country. Ammonia is the chemical used as raw material in production of fertilizers like Urea, Ammonium Sulphate and Ammonium Chloride. Ammonia imported in special refrigerated ships is stored in the storage tank located in Willingdon Island. It is pumped from the ships into the storage tank at an atmospheric pressure. The tank was designed in March, 1973 and it was commissioned in August, 1976 to receive liquid ammonia from special refrigerated ships. The ammonia stored in this tank is transferred into railway wagons which carry liquid ammonia to the Cochin Division of the company where it is stored in a bigger ammonia storage tank before it is pumped to various consuming plants. The complaint of the original petitioner was of massive environmental pollution caused by the existence of the tank. The original petitioner anticipates devastating catastrophe of exterminating large population of Willingdon Island and the city of Cochin in the event of a major leak in the said ammonia tank. In this connection the original petitioner relied upon accidents which have taken place in Soviet Union and Pakistan where leakages developed in the plants injuring thousand of persons. According to the original petitioner in the Willingdon Island there is an airport which is in the vicinity of tank and if by chance an air crash take place it would lead to human tragedy. It was further stated that such leakage in existing ammonia storage tank cannot be ruled out and in which event the fire force, police, navy and district health authorities were not capable to provide adequate safety measures.

The High Court came to the conclusion that the environmental imperative is ultimately a matter of public rights and duties. That effective environmental protection and improvement is a matter of legal rights and duties. The High Court examined two questions viz. possibility of operational failure of the tank which weighs 10,000 tonnes and leakage of ammonia on account of rupture in the tank which would result in an uncontrollable devastation of the entire living population in the Willingdon Island, city of Cochin and surrounding places. The High Court further observed that major leak could be caused by air crash in the vicinity of the tank as there was an airport in the vicinity or by an act of sabotage or by earthquake which would lead to loss of human life on tragic scale. Consequently it directed the company to close down the tank and not to operate the tank in the Willingdon Island. Being aggrieved the Association has come by way of civil appeal to this Court.

Two questions arise for determination in these civil appeals viz. location of the tank and structural integrity of the tank. Since the matter is of a technical nature this Court appointed M/s Engineers India Limited (in short 'EIL'), New Delhi to re-examine all the issues and submit its report. The report dated December 24, 2003 has now been submitted. It is ordered to be taken on record. In the said report EIL has given technical details of the foundation of the tank at Annexure-II. Clause 4.1 deals with adequacy of foundation. EIL carried out a hydrostatic test under which the foundation was progressively loaded and readings were accordingly recorded. After carrying out the test EIL has opined that the tank can continue in service in its present condition subject to certain measures being taken by the company as suggested in the report to further enhance the safety in the operation of the tank. Similarly EIL also examined structural integrity of the tank, soundness of accessories and connected systems. It also took assistance of specialized agencies in this regard. EIL also examined risk factors including the location of the tank and in this connection EIL has also considered the nature of operations and the handling of the toxicity of ammonia. Based on the results of various studies carried out on the above items EIL has opined that the tank can continue in service in its present condition subject to certain measures suggested in the report. EIL further examined chronology of leak history collected from the company from January, 1985 till December, 2003 and has opined that all such leaks had developed outside the storage tank at the time of loading and unloading and not on account of failure of structural integrity. It further found that most of the leaks during the above period were on account of maintenance related problems and such leakages can be contained to a minimum with systematic planning, monitoring and improvement in system. EIL further examined the possibility of operational failure from connected systems viz. safety valves, pipes and fittings. EIL has suggested steps and measures to be taken to contain such operational failures. EIL has further commented about steps taken by the company to implement recommendations given by experts in the past to contain corrosion of components. EIL has further stated that company has undertaken from time to time safety audits. The original petitioner has relied upon observations of Dr. Campbell who has made a detailed study on the subject. However, his study has been confined to the documents on record. Dr. Campbell has not visited the site at any time. However, he is an expert and we respect his opinion. Dr. Campbell has opined that worst cases like tank rupture, terrorist attack and earthquake could occur. However, he has also opined that containment of small leakage by proper operational procedure and maintenance practices is possible. In fact, Dr. Campbell has opined that relocation of tank to new site will not solve the perceived major hazard. He considered the location of Airport as a significant risk factor. In the light of the opinion expressed by Dr. Campbell, EIL carried out a separate study on Risk

Assessment and has made suggestions as contained in the report to contain the risk factor.

Taking into account the report in its entirety, the conclusion of EIL is that the tank can continue in service in its present condition subject to certain measures being taken by the company as suggested in the report to further enhance the safety in operations.

We may deal with the arguments advanced on behalf of the original petitioner. It was contended that in the event of earthquake or terrorists attack or sabotage or an air crash into the tank from the nearby Airport there would be human tragedy caused on account of leakage of ammonia from the storage tank and, therefore, the said tank should be relocated. We do not find any merit in this argument as stated in this case. As stated by Dr. Campbell relocation is not the solution. We are mainly concerned with two issues viz. structural integrity of the tank and its operations. On both these issues EIL has recommended continuance of the tank in its present condition subject to certain measures being taken by the company. The company has taken those steps. Sabotage, attack by terrorists, earthquake etc. are all unenforceable events. We have to strike a balance between existing Utilities which exist in public interest on one hand and human safety conditions on the other hand. It is not in dispute that such plants are needed for the welfare of the Society. In modern times we have nuclear plants which generate electricity. Their structural integrity and their operations are vulnerable to certain risks. However, generation of electricity is equally important and within the prescribe limits Society will have to tolerate existence of such plants. It is for this reason that we called for a report from EIL so that they can examine the structural integrity of the tank, its operations and the measures which are required to be taken to minimize the risk factors. If the arguments of the original petitioner is accepted then no such utility can exist, no power plant can exist, no reservoir can exist, no nuclear reactor can exist. We do not discount such risks but we have to live with such risks which is counterbalanced by services and amenities provided by these utilities.

Accordingly we dispose of these appeals in terms of the report of EIL dated 24th December 2003.