SCHOLEDGE INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY & ALLIED STUDIES
VOL. 1, ISSUE 3 (DECEMBER 2014) ISSN-2394-336X

AN ANALYTICAL APPROACH TO THE APPLICABILITY OF RYLANDS DOCTRINE IN INDIA FOR ASCERTAINING LIABILITY IN CASE OF INDUSTRIAL ACCIDENTS

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ABSTRACT
The industrial accidents are prevalent in the Indian industrial scenario. The resultant loss to the third parties is a much touted topic in the corridors of the Indian legal community. The study put light on the relevance of the Doctrine of Rylands in the Indian perspective.

INTRODUCTION

The rapid industrialization and competitiveness in industries has brought to the lime light the environmental issues in industries. The catastrophic accident in Bhopal in India in December 1984 and similar such accidents in other parts of the world in the past has also drawn lot of concern of the world community regarding the environmental issues, safety and health conditions in industries. The popular perception about industries in general has been that they are environmental unfriendly and are the principal polluters. Industries too have strengthened such a view by taking their own time in adopting to cleaner technologies and in the observance of good business practices.

The realization is yet to dawn on all the concerned that it would make perfect business sense to adopt and observe better standard technologies that cause least adverse impact on environment. Often at times one finds the industry opting to violate the regulations and pay the penalty rather than conforming to them as they find the cost of conformity to be on the higher side.

RULE IN RYLANDS V. FLETCHER

In the past all actions for environmental torts against companies and industries were governed by the principle of strict liability. Strict liability means liability without fault i.e., without intention or negligence. In other words, the defendant is held liable without fault. Absolute liability for the escape of impounded waters was first established in England during the mid-nineteenth century in the case of Rylands v. Fletcher, (1868) LR 3 330. The rule was first stated by Blackburn, J. (Court of Exchequer) in the following words:

"We think that that the rule of law is, that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default; or perhaps that the escape was the consequence of vis major or the act of God..... and it seems but reasonable and just that the neighbour, who has brought something on his own property which was not naturally there, harmless to others so long as it is confined to his own property, but which he knows to be mischievous if it gets on his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property".

This passage of Blackburn's opinion established broad liability for land owners whose land development activities result in the unexpected release of a large volume of water. The liability under this rule is strict and it is no defence to say that the thing escaped without that person's willful act, default or neglect or even that he had no knowledge of its existence. The House of Lords, however, added a rider to the above statement stating that – this rule applies only to non-natural user of the land and it does not apply to things naturally established on the land or where the thing escaped due to an act of God or an act of stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority. American courts began dealing with Rylands absolute liability soon after the House of Lords issued its Rylands opinion. The first

American jurisdiction to apply the Rylands Doctrine was Massachusetts, where a court imposed absolute liability on a defendant who allowed filthy water to percolate into a neighbor's well. Shortly thereafter, Minnesota adopted Rylands absolute liability in a case involving the breach of an underground water tunnel. For several decades following these decisions, courts and commentators in the United States largely disapproved of the Rylands doctrine.

RELEVANCE OF RYLANDS DOCTRINE IN INDIA

INDUSTRIAL DISASTERS

Bhopal Gas Disaster being the worst industrial disaster of the country has raised complex legal questions about the liability of a parent company for the act of its subsidiary, and the responsibility of multinational corporations engaged in hazardous activity and transfer of hazardous technology.

On the night of Dec. 2nd-3rd, 1984, the most tragic industrial disaster in history occurred in the city of Bhopal, Madhya Pradesh. Union Carbide Corporation, (UCC) an American Corporation, with subsidiaries operating throughout the World had a chemical plant in Bhopal under the name Union Carbide India Ltd., (UCIL). The chemical plant manufactured pesticides called Seven and Temik. Methyl Isocyanate (MIC), a highly toxic gas is an ingredient in the production of both Seven and Temik. On the night of tragedy, MIC leaked from the plant in substantial quantities and the prevailing winds blew the deadly gas into the overpopulated hutments adjacent to the plants and into the most densely occupied parts of the city. The massive escape of lethal MIC gas from the Bhopal Plant into the atmosphere rained death and destruction upon the innocent and helpless persons and caused widespread pollution to its environs in the worst industrial disaster mankind had ever known. It was estimated that 2660 persons-lost their lives and more than 2 lakh persons suffered injuries, some serious and permanent, some mild and temporary. Livestock were killed and crops damaged. Normal business was interrupted.

On Dec 7th, 1984, the first law suit was filed by a group of American lawyers in the United States on behalf of thousands of Indians affected by the gas leak. All these actions were consolidated in the Federal Court of United States. On 29th Mar. 1985 the Government of India enacted a legislation, called The Bhopal Gas Disaster (Processing of Claims) Act providing the Government of India to have the exclusive right to represent Indian plaintiffs as in India and also elsewhere in connection with the tragedy. Judge John F. Keenan of the US District Court after hearing both the parties dismissed the Indian consolidated case on the ground of forum non conveniens and declared that Indian Courts are the appropriate and convenient forum for hearing the plea of those affected.

The case moved to the Indian Courts, starting in the Bhopal High Court, till it finally reached the Supreme Court, Finally in, 1989, the Supreme Court of India came out with a over all settlement of claims and awarded U.S. $470 million to the Government of India on behalf of all Bhopal victims in full and final settlement of all the past, present and future claims arising from the disaster.

HAZARDOUS OR INHERENTLY DANGEROUS INDUSTRY

Is there any the measure of liability of an enterprise which is engaged in a hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured? Does the rule in Rylands v. Fletcher applies or is there any other principle on which the liability can be determined. This question was debated in M.C. Mehta v. Union of India, AIR 1987 SC 1086 commonly called oleum gas leak case. Before discussing this case, it may be pointed out that this case came to the limelight after it originated in a writ petition filed in the Supreme Court by the environmentalist and lawyer M.C. Mehta, as a public interest litigation.

[M.C. Mehta and another (Petitioners) v. Union of India and others (Respondents) and Shriram Foods & Fertiliser Industries (Petitioners) v. Union of India (Respondents) AIR 1987 SC 965]

The petition raised some seminal questions concerning the Arts.21 and 32 of the Constitution, the principles and norms for determining the liability of large enterprises engaged in manufacture and sale of hazardous products, the basis on which damage in case of such liability should be quantified and whether such large enterprises should be allowed to continue to function in thickly populated areas and if they are permitted so to function, what measures must be taken for the purpose of reducing to a minimum the hazard to the workmen and the community living in the neighbourhood. These questions raised by the petitioner being the questions of greatest importance particularly following the leakage of MIC gas from the Union Carbide Plant in Bhopal were referred to the Constitutional Bench of the Apex Court subsequently in another writ petition i.e., M.C. Mehta v. Union of India, AIR 1987 SC

1086 mentioned above. The pressing issue which the Supreme Court had to decide immediately in the petition was whether to allow the caustic chlorine plant of Shriram Foods & Fertiliser Industries to be restarted. The accused Company, Delhi Cloth Mills Ltd., a public limited company having its registered office in Delhi, ran an enterprise called Shriram Foods and Fertilizer Industries. This enterprise having several units engaged in the manufacture of caustic soda, chlorine and various others acids and chemicals. On December 4,1985 a major leakage of oleum gas took place from one of the units of Shriram and this leakage affected a large number of people, both amongst the workmen and the public, and according to the petitioner, an advocate practicing in the Tis Hazari Court died on account of inhalation of oleum gas. The leakage resulted from the bursting of the tank containing oleum gas as a result of the collapse of the structure on which it was mounted and it created a scare amongst the people residing in that area. Hardly had the people got out of the shock of this disaster when within two days, another leakage, though this time a minor one, took place as a result of escape of oleum gas from the joints of a pipe. The Delhi Administration issued two orders, on the behest of Public Health and Policy, to cease carrying on any further operation and to remove such chemical and gases from the said place. The Inspector of Factories and the Assistant Commissioner (Factories) issued separate orders on December 7 and 24, 1985 shutting down both plants. Aggrieved, Shriram filed a writ petition challenging the two prohibitory orders issued under the Factories Act of 1948 and sought interim permission to reopen the caustic chlorine plant.

The Supreme Court after examining the reports of the various committees that were constituted from time to time to examine areas of concern and potential problems relating to the plant as well as the existence of safety and pollution control measures etc. held that pending consideration of the issue whether the caustic chlorine plant should be directed to be shifted and relocated at some other place, the caustic chlorine plant should be allowed to be restarted by the management subject to certain stringent conditions which were specified.

When science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is certain element of hazard or risk inherent in the very use of science of technology and it is not possible to totally eliminate such hazard or risk altogether. The Court said that it is not possible to adopt a policy of not having any chemical or other hazardous industries merely because they pose hazard or risk to the community. If such a policy were adopted, it would mean the end of all progress and development. Such industries, even if hazardous have to be set up since they are essential for the economic development and advancement of well being of the people. We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose least risk or danger to the community and maximizing safety requirements in such industries.

DEPARTURE FROM RYLANDS V. FLETCHER

Subsequently in M.C. Mehta v. Union of India, AIR 1987 SC 1086, the Supreme Court sought to make a departure from the accepted legal position in Rylands v. Fletcher stating that "an enterprise which is engaged in a hazardous or inherently dangerous activity that poses a potential threat to the health and safety of persons and owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone. The principle of absolute liability is operative without any exceptions. It does not admit of the defences of reasonable and due care, unlike strict liability. Thus, when an enterprise is engaged in hazardous activity and harm result, it is absolutely liable, effectively tightening up the law.

Speaking on strict and absolute liability, the Apex Court (Hon'ble Chief Justice Bhagwati) stated:

"We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build up our own jurisprudence and we cannot countenance an argument that merely because the new law does not recognise the rule of strict and absolute liability in cases of hazardous or dangerous liability or the rule as laid down in Rylands v. Fletcher as is developed in England recognises certain limitations and responsibilities".

The industries involving hazardous processes generally handle many toxic, reactive, and flammable chemical substances in the plant operations which are potential sources of different types of hazards at the workplace. If these hazards are not managed properly, the safety and health of the exposed population is adversely affected and become vulnerable to great risk. Imposing an absolute and non-

delegable duty on an enterprise which is engaged in a hazardous or inherently dangerous industry, the Supreme Court held that "in India we cannot hold our hands back at such a situation and wait for inspirations from England hence there is a need to venture so as to evolve a new principle of liability which England Courts have not done. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken".

Further, the Apex Court held that the measure of compensation in these kind of cases must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.

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