

'Occupier' in the Factories Act

THE following are the duties, obligations and responsibilities of an occupier:

Notice by occupier (Sec. 7): The occupier shall, at least 15 days before he begins to occupy or use any premises as a factory and at least 30 days before the date of resumption of work in case of seasonal factories (factories working for less than 180 days in a year), send to the Chief Inspector a written notice containing: a) the name and situation of the factory; b) the name and address of the occupier; c) the name and address of the owner of the premises or building (including the precincts thereof); d) the address to which communications relating to the factory may be sent; e) the nature of the manufacturing process - i) carried on in the factory during the last 12 months in the case of factories in existence on the date of the commencement of the Act; and ii) to be carried on in the factory during the next 12 months in the case of all factories; f) the total rated horse power installed or to be installed in the factory, which shall not include the rated horse power of any separate stand by plant; g) the name of the manager of the factory for the purpose of this Act; h) the number of workers likely to be employed in the factory; i) the average number of workers per day employed during the last 12 months in the case of a factory in existence on the date of the commencement of this Act; and j) such other particulars as may be prescribed.

Whenever a new manager is appointed, the occupier shall send to the Inspector a written notice with a copy to the Chief Inspector within seven days from the date on which such person takes over charge. During a period for which no person has been designated as manager of a factory or when a person designated as manager does not manage the factory, the occupier shall be deemed to be the manager of the factory.

In the J. K. Industries Ltd case, the Supreme Court observed that the provisions of Sec.s 7 and 7A, when considered in the light of proviso (ii) to Sec. 2(n), leave no manner of doubt that it is a statutory obligation under Sec. 7 of the Act after 1987 to nominate the occupier before he occupies or begins to use the premises to run the factory and, in the case of an existing factory, seek the renewal of the licence to continue to operate the factory. It is only when this statutory requirement is fulfilled that the factory would be given the licence or its licence shall be renewed in the case of existing factories.

General duties of an occupier: Inserted by an amendment in 1987, Sec. 7A provides that every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory. The duties of the occupier shall include:

- a) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
- b) the arrangement in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- c) the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
- d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks; and

e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

Every occupier shall prepare and, as often as may be

appropriate, revise a written statement of his general policy with respect to the health and safety of the workers at work and the organisation and arrangement for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed (Sec. 7A).

Provisions relating to

hazardous processes in factories

i) The occupier of every factory involving a hazardous process shall disclose all information regarding dangers, including health hazards, and the measures to overcome such hazards arising from the exposure to, or handling of, the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory, the Chief Inspector, the local authority within whose jurisdiction the factory is situated, and the general public in the vicinity. The information shall include accurate information as to the quantity, specifications and other characteristics of wastes and the manner of their disposal (Sec. 41B);

ii) The occupier shall, at the time of registering the factory involving a hazardous process, lay down a detailed policy with respect to the health and safety of the workers employed therein and intimate such policy to the Chief Inspector and the local authority (Sec. 41B);

iii) Every occupier shall, with the approval of the Chief Inspector, draw up an on-site emergency plan and detailed disaster-control measures for his factory and make known to the workers employed therein and to the general public living in the vicinity of the factory the safety measures required to be taken in the event of an accident taking place (Sec. 41B);

iv) Every occupier of a factory shall within a period of 30 days before the commencement of a hazardous process inform the Chief Inspector of the nature and details of the process in the prescribed form and manner. Contravention of the provision by the occupier may result in the licence of the factory liable for cancellation (Sec. 41B);

v) The occupier of a factory involving a hazardous process shall, with the previous approval of the Chief Inspector, lay down measures for the handling, usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicise them in the manner prescribed among the workers and the general public living in the vicinity (Sec. 41B);

vi) Every occupier of a factory, involving any hazardous process, shall a) maintain accurate and up-to-date health records or, as the case may be, medical records of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported, and such records shall be accessible to the workers subject to such conditions as may be prescribed; b) appoint persons who possess qualifications and experience in handling hazardous substances and the competence to supervise such handling within the factory and to provide

at the working place all the necessary facilities for protecting the workers in the manner prescribed (Sec. 41C);

vii) The occupier shall, in every factory where a hazardous process takes place, or where hazardous substances are used or handled, set up a safety committee consisting of equal number of representatives of workers and management to promote cooperation between the worker and the management in maintaining proper safety and health at work and to review periodically the measures taken on the behalf (Sec. 41G); and

viii) It shall be the duty of the occupier to take immediate remedial action if he is satisfied about the existence of imminent danger to the lives or health of the workers employed in any factory engaged in a hazardous process due to any accident. He shall also send a report of the action taken to the nearest Inspector of Factories. If he is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall refer the matter to the nearest Inspector of Factories whose decision on the question of the existence of such imminent danger shall be final (Sec. 41H)

General provisions

i) In every factory wherein 500 or more workers are ordinarily employed, the employer shall employ in the factory prescribed number of welfare officers (Sec. 49);

ii) The Chief Inspector, or the Director General of Factory Advice Service and Labour Institute, or the Director General of Health to the Government of India, or officers authorised by them may, after giving a notice in writing to the occupier, undertake safety and occupational health surveys. The occupier shall afford all facilities for such survey, including facilities for the examination and testing of plant and machinery and collection of samples and other data relevant to the survey (Sec. 91A); and

iii) The occupier has to submit required returns, occasional or periodical, to the prescribed authorities (Sec. 110).

Penal provisions

i) The occupier and manager shall each be guilty of an offence and punishable with imprisonment for a term which may extend to two years or with fine which may extend to Rs. 1 lakh or with both for any contravention of any of the provisions of the Act or any of the rules made thereunder. In case the contravention is continued after conviction, with a further fine which may extend to Rs. 1,000 for each day during which the contravention so continues (Sec. 92). Sec. 92 contemplates a joint liability of the occupier and the manager for any offence committed irrespective of the fact as to who is directly responsible for the offence.

ii) In case the occupier is again guilty of an offence involving contravention of an offence punishable under Sec. 92, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to three years or with fine which shall not be less than Rs. 10,000 but which may extend to Rs. 2,00,000, or both (Sec. 94).

iii) Sec. 95 lays down penalty of punishment with imprisonment for six months or fine of Rs. 10,000 or both for wilfully obstructing an Inspector in the exercise of any powers conferred on him by or under this Act or failing to produce any registers and other documents to him on demand or concealing or preventing any workers from appearing before or being examined by the Inspector.

iv) Sec. 96A provides punishment with seven years imprisonment or fine which may extend to Rs. 2,00,000 for the non-compliance with, or contravention of, any of the provisions of Sec. 41B, 41C or 41H or rules made thereunder by any person. In case the failure or contravention continues, with additional fine which may extend to Rs. 5,000 for every day during which such failure or contravention continues after the contravention for the first such failure or contravention. If such failure continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to 10 years.

v) The court may, in addition to awarding any punishment, require the occupier to take measures so specified for remedying the matters in respect of which the offence was committed (Sec. 102).

Sec. 104A provides that the onus is on the person who is alleged to have failed to comply with such duty to prove that he has taken all measures or it was not reasonably practicable.

Exemption of occupier from

liability in certain cases

Where the occupier is charged with an offence punishable under the Act, Sec. 101 entitles him to make a complaint and give not less than three clear days' notice to the prosecutor in writing, of his intention to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge. The occupier proves to the satisfaction of the court that he has used due diligence to enforce the execution of the Act, and that the said other person committed the offence in question without his knowledge, consent or connivance, the occupier shall be discharged from any liability under the Act.

The legislature has taken care to dilute the rigour of Sec. 92 by providing an exception to the strict liability rule by laying down a third-party procedure in Sec. 101 of the Act.

This section in a way is an exception to the general rule and enables the occupier or the manager of the factory to extricate himself from punishment by establishing that the actual offender is someone else and giving satisfactory proof of facts as are contemplated by Sec. 101. Under Sec. 101, a provision for three days' advance notice to the prosecutor has been added. After a complaint is made by the Inspector of Factories against the manager or occupier under Sec. 92 of the Act for contravention of any of the provisions of the Act, the manager or occupier is entitled to complain against the actual offender before the court and if he does so, the actual offender is given a notice and brought before the court and the trial then proceeds against both the persons complained against because the section contemplates both sets of complaints (one filed by the Inspector of Factories and the other by the manager or the occupier) and both the accused (one as named by the Inspector of Factories and the other as named by the manager or occupier) being brought before the court at the same time.

The carriage of proceedings is with the original complainant (Inspector of Factories) and the onus also lies on him of proving that an offence has been committed. Both the parties complained against (one by the Inspector and the other by the manager or occupier) are entitled to cross-examine the prosecution witnesses at this stage and also lead evidence to disprove the charge.

If the prosecution fails to prove the offence, both of them would be acquitted. However, if the offence is proved, then the trial court shall record an order to that effect and the

occupier or manager shall be afforded an opportunity to extricate himself from the liability, provided he can give satisfactory proof of the facts required by Sec. 101.

The onus of proof, at that stage, is shifted to the manager or the occupier. He is entitled to call evidence as well as give evidence himself. The alleged actual offender would have a right to cross-examine the manager or the occupier as the case may be. He would also be entitled to call evidence. Even where the occupier establishes that the actual offender is the person named by him, he must still prove to the satisfaction of the court that he had used due diligence to enforce the execution of the Act and that the said other person committed the offence in question without his knowledge, consent or connivance.

In the J. K. Industries Ltd case, the Supreme Court held that in the scheme of Sec. 101 - that the occupier or manager should be relieved from liability only if the actual offender could be brought to court - the presence of the actual offender, on whom the burden has been shifted by the occupier or the manager, would be necessary at the time of trial; and a period of three months has been prescribed by the legislature within which the actual offender should ordinarily be brought before the court by the process of law. If that cannot be done, the trial against the occupier or the manager, as the case may be, cannot be allowed to be protracted indefinitely and it is difficult to see how any fault can be found with this provision.

Sec. 117 provides that no suit, prosecution or other legal proceeding shall lie against any person for anything which is done or intended to be done in good faith under the Act. The section protects persons from unnecessary harassment for acts done or intended to be done in good faith. The Supreme Court in State of Gujarat vs Kansara Manilal Bhikalal observed that it is hardly possible to apply Sec. 117 to a case in which the provisions of the Act or the rules made thereunder are contravened by reason of sheer neglect on his part to acquaint himself with the requirements of the law.

Procedure for obtaining Licence of Factory.

Step 1 Registration...

Requirement.... Form 2, Resolution of Occupier, Memorandum & Articles of Association or Partnership Deed (as applicable), Factory Premises Rent or Purchase Agreement, Payment of Licence Fee.

Step 2 Approval of Factory Plan..

Requirement : Factory Plan with Building and Machine Layout (2 copies), Process Flow Chart, List of Raw Material and Finish Product, MSDS of Chemicals and Solvents along with quantity to be stored in the factory premises.

Step 3 Compliance of the condition under which plans are approved submit to Joint Director of DISH.