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"DECONSTRUCTING THE DEGREES OF LIABILITY: STRICT V. ABSOLUTE."

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I. INTRODUCTION:

A recent statement made by the National Green Tribunal *("NGT"),* in process of its suo moto cognizance[1], stirred up a debate amongst the citizens of India. The NGT, while directing LG Polymers India Pvt. Ltd. ***("LG Polymers")*** to deposit INR 50 crores for damages caused in the 'Vizag Gas Leak', justified the amount by stating that leakage of such hazardous styrene gas attracts the principle of 'strict liability'. This led to great protest in disagreement, by individuals who were of opinion that, LG Polymers should have ideally been held 'absolutely liable', on account of the nature of the case and legal precedents in similar disasters. This matter stems from a styrene gas leak on May 7, 2020, from a chemical plant owned by LG Polymers India, in Vizag.

The leaked gas killed a few citizens, and sickened over a 1000, while also greatly damaged the environment surrounding it. The NGT has also established a committee to further probe into the matter. However, the debate of strict v. absolute liability still continues. Absolute liability, a later developed principle in India, is deeply engraved in the Indian jurisprudence by means of several landmark precedents. Although it has a wide ambit and is attracted in

[1] In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Vishakhapatnam in Andhra Pradesh, Original Application No. 73 of 2020.

several instances like: escape of dangerous things or animals, use of dangerous items, dangerous premises and persons professing skill, this particular article aims to highlight this liability in light of 'escape of dangerous things'. These two principles i.e. strict and absolute liability, having their roots in the law of torts and stemming from similar situations, have mild differentiating factors. However, application of which one of them would be deemed appropriate in a particular case, has always been a matter of debate in India, since the very inception of the latter principle.

II. STRICT LIABILITY:

The principle of strict liability roots from the English case, ***Rylands v. Fletcher***[2]. The rule derived from this case is also commonly known as 'The Wild Beast Theory'. This rule primarily states that a person, who for his own purposes, brings on his land, and further accumulates anything which is likely to cause mischief if it escapes, then such a person keeps such thing at his peril and is prima facie answerable for all the adverse consequences due to its escape. Delving deeper into intricacies of the case, it is relevant to analyze the facts, which led to evolution of this rule. The plaintiff was working on a leased coal mine, adjacent to which, the defendant desired to erect a water reservoir and employed independent contractors to do so. While excavating the soil, these contractors discovered some disused shafts and passages, which communicated with old workings of the plaintiff's mine, but they deliberately failed to fill these shafts with earth so as to withstand the pressure of the water in the reservoir. Naturally, these disused water shafts gave way and collapsed downwards, shortly after the reservoir was partly filled with water. As a result, water flooded the plaintiff's mine making it unfit for mining, and he sued the defendant for damages. The eminent question here was that, although the defendant was not directly responsible himself, could he be held liable for the negligence of the contractors? The court while pronouncing the question of negligence as immaterial stated that when the defendant brought water into the reservoir, he did so at his peril, and hence was liable if it escaped and subsequently caused damages. Hence the rule of strict liability emphasizes that when a man artificially brings

[2] Rylands v. Fletcher, [1868] UKHL 1.

something dangerous on his land for accumulation, he has the positive duty of ensuring the safety of his neighbours, irrespective of whether he is aware or unaware of its dangerous nature. The liability also exists irrespective of ownership of the land and possible precautions taken prior, to prevent the damage.

Deductively, the two requisites of strict liability are:

(1) There must be some non-natural use of land by way of bringing and collecting something dangerous, or bringing the land under special use, exposing the environment around, to possibilities of dangerous mishaps; and

(2) The dangerous thing brought onto land must escape.

There are however, certain defences which could be potentially pleaded by the accused in case of strict liability, which is also the primary distinguishing factor between strict and absolute liability:

(1) Act of God or vis major:

The ***Rylands v. Fletcher*** rule is inapplicable when the escape is on account of some superior, irresistible act of nature, which could not be foreseen or avoided with any degree of human precaution.

(2) Malicious act of a third party:

The rule does not apply to wrongful or malicious acts of a stranger.

(3) Plaintiff's own fault:

Carelessness or negligence of the plaintiff himself can be pleaded in order to avoid being held strictly liable.

(4) Common benefit of both parties:

The principle of strict liability cannot be applied when the non-natural use of land was done with the consent of the plaintiff, for the mutual benefit of the plaintiff and the defendant.

(5) Statutory Authority:

When the defendant is authorized to accumulate the dangerous thing on land on account of a law or statute, he cannot be held strictly liable for its escape.

III. ABSOLUTE LIABILITY:

With passing time, the principle of strict liability proved to be deficient in protecting citizens' rights in an industrialized economy like India. Negligent corporations and individuals were escaping liability by pleading the defences available in the Rylands v. Fletcher rule. To address this problem, the Supreme Court of India *("SC"),* in 1987, laid down the principle of absolute liability, in the landmark case of ***M.C. Mehta v. Union of India & Ors.***[3] ***("M.C. Mehta's Case"),*** also famously known as the Oleum Gas Leak Case. This principle iterates that any person engaged in any hazardous or inherently dangerous activity which results in harm or danger in the process, will be held absolutely liable for the harm or the damage so occurred, irrespective of any precautions taken. It is pertinent to analyze the facts leading to the laying down of this historic rule.

The city of Delhi, was affected by severe leakage of oleum gas on the 4th and the 6th of December, 1985. This leak was traceable to one of the units of Shriram Foods and Fertilizers Industries belonging to the ***Delhi Cloth Mills Ltd.*** Consequently, M.C. Mehta, an advocate and a leading consumer activist, filed public interest litigation in the SC, in order for the judiciary to examine the true scope of Article 21 and 32 of the Constitution in light of this Oleum Gas Leak Case.

The court then while laying down the norms determining the absolute liability of large enterprises engaged in the manufacture and sale of hazardous products, pronounced that the defendant was liable for the damages. This principle of absolute liability, inherent in Article 21 of the Constitution, states that a person involved in hazardous activity, resulting in damages, is prohibited from pleading any defense against such liability. Thus, evolved the principle of absolute liability – absolute in its true sense, without any exceptions. Giving statutory recognition to absolute liability, the Parliament enacted the Public Liability Insurance Act, in 1991. The primary objective of this act is to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while

[3] M.C. Mehta v. Union of India and Ors., AIR 1987 SC 1086.

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handling any hazardous substance. This act prescribes that, any person involved in hazardous activities, should have insurances and policies in place, in order to insure against liability and provide compensation to the victims in case any accident occurs, due to such activity.

IV. STRICT LIABILITY V. ABSOLUTE LIABILITY:

While laying down the principle of absolute liability in M.C. Mehta's Case, the SC dealt with the differences between the rule of strict and absolute liability. Firstly, the rule of strict liability is subject to certain exceptions like, act of God, an act of third party, plaintiff's contributory negligence, common benefit of own parties and statutory authority. Whereas, the rule of absolute liability offers no exception, and the same was held in ***Union of India v. Prabhakaran Vijay Kumar***[4]**.** Secondly, the rule of absolute liability does not mandate the 'dangerous thing' to escape, and can apply if an injury is caused within the premises. This is not the case in the rule of strict liability, which requires the dangerous substance to escape, from the premises where it was accumulated. Further, the rule of strict liability applies only when there is a non-natural use of the land. However, a person will be held absolutely liable if a person is engaged in natural or non- natural use of land. Lastly, in case of strict liability, compensation is payable as per the nature and quantum of damage caused. Whereas under absolute liability, the damages to be paid are exemplary in nature and its quantum depends on the magnitude and financial capability of the organisation.

V. JURISPRUDENTIAL ANALYSIS:

V.I CHARAN LAL SAHU V. UNION OF INDIA[5]:

The SC affirmed the ruling in M.C. Mehta's Case and applying the principle of absolute liability on account of damage caused, it held that ***"If the enterprise is permitted to carry on a hazardous or dangerous activity for its profit, the law must presume that such permission***

[4] Union of India v. Prabhakaran Vijay Kumar, (2008) 9 SCC 527.
[5] Charan Lal Sahu v.Union of India, AIR 1990 SC 1480.

is conditional on the enterprise absorbing the cost of any accident arising on account of such activity as an appropriate item of its overheads." This highlights that the rule of absolute liability is '*absolute and non-delegable*'. The ruling in M.C. Mehta's Case was relied on to ascertain the quantum of damages.

V.II UNION CARBIDE CORPORATION AND ORS. V. UNION OF INDIA AND ORS[6]:

This case is popularly known as the Bhopal Gas Leak Case. In December 1984, a Union Carbide pesticide plant in Bhopal leaked over forty tons of the poisonous gas, methyl isocyanate into the environment surrounding the plant, killing thousands of people and permanently injuring many. The Indian government exercised powers under the ***Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985*** and initiated proceedings in Bhopal, in which an amount of INR 350 crores was awarded as compensation. But ***Union Carbide Corporation ("UCC")*** preferred an appeal to the Madhya Pradesh High Court, which reduced the compensation amount to INR 250 crores. The Indian government as well UCC challenged the High Court's decision before the SC. The matter was settled between the parties in a court assisted settlement and criminal proceedings were quashed. This settlement and dropping of criminal charges was then challenged and the SC eventually set aside the termination of criminal proceedings. With regards the quantum of compensation, it was argued that the principle down in M.C. Mehta's Case should have been followed.

The court opined that ***"The settlement cannot be assailed as violative of Mehta principle which might have arisen for consideration in a strict adjudication. In the matter of determination of compensation also under the Bhopal Gas Leak Disaster (P.C) Act, 1985, and the Scheme framed thereunder, there is no scope for applying the Mehta principle inasmuch as the tort-feasor, in terms of the settlement - for all practical purposes-stands notionally substituted by the settlement-fund which now represents and exhausts the liability of the alleged hazardous entrepreneurs viz., UCC and UCIL. We must also add that the Mehta principle can have no application against Union of India in as much as***

[6] Union Carbide Corporation and Ors.v. Union of India and Ors., AIR 1992 SC 248.

requiring it to make good the deficiency, if any, we do not impute to it the position of a joint tort-feasor but only of a welfare State. There is, therefore, no substance in the point that Mehta principle should guide the quantification of compensation to the victim-claimants."

V.III INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION AND ORS. V. UNION OF INDIA AND ORS[7]:

The SC followed the principle in M.C. Mehta's Case and held that "***once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity.***" It was one of the first cases to apply the 'Polluter Pays Principle' and went on to say that it is the responsibility of the offending industry to pay the cost to individual sufferers, as well as, the cost of reversing the damaged ecology.

VI. CONCLUSION:

It can be concluded that, the ***NGT*** correctly applied the Polluter Pays Principle in the ***LG Polymers (Vizag Gas Leak) case,*** but in light of the ***M.C. Mehta's Case,*** erred in holding the company strictly liable. Firstly, styrene gas is a 'hazardous chemical' under ***Rule 2(e) plus Entry 583 of Schedule I of the Manufacture, Storage and Import of Hazardous Chemical Rules 1989***. Hence, LG Polymers was engaged in a hazardous activity involving accumulation of this gas at its chemical plant, which caused severe damage due to its escape, and thus the rule of absolute liability should be applicable.

Secondly, the application of strict liability necessitates the cause of the leak to be known as there is room for exceptions, while this requirement is not necessary for application of absolute liability principle, as it offers no exceptions. Since there are various theories with respect to the styrene gas leak, with no discovery of a definite cause, the question of it falling

[7] Indian Council for Enviro-Legal Action and Ors. v. Union of India and Ors., AIR 1996 SC 1446.

under any defense does not arise, and hence application of absolute liability would be ideal. Moreover, the ***NGT*** has acted ***ultra vires Section 17 of the National Green Tribunal Act, 2010,*** which directs the NGT to apply the 'no-fault principle' even in cases of accident.

In today's industrial world, the principle of strict liability is highly inadequate to protect the citizens' rights. The ***NGT's*** order slapping strict liability is a step backward and paves a way for ***LG Polymers*** to easily escape such liability. The ***Andhra Pradesh High Court***, taking ***suo moto cognizance*** of the case, seized ***LG Polymer's*** company premises, restrained movement of assets and implemented a travel ban on directors, yet the company has not been expressly held absolutely liable. Application of degree of liability forms an eminent part of that particular judgement, as well as, affects future jurisprudence, by serving as a judicial precedent.

Hence, it will be interesting to note how the ***LG Polymers*** case will eventually pan out, and one can only hope that the judiciary proceeds with great care and caution with respect to the same.