

**(2014) 3 Supreme Court Cases 547**

(BEFORE K.S.P. RADHAKRISHNAN AND DR A.K. SIKRI, JJ.)

*a* OCCUPATIONAL HEALTH AND SAFETY ASSOCIATION . . . Petitioner;

*Versus*

UNION OF INDIA AND OTHERS . . . Respondents.

Writ Petition (C) No. 79 of 2005<sup>†</sup>, decided on January 31, 2014

*b* **A. Constitution of India — Arts. 21, 39(e), 39(f), 41, 42, 14, 32 and 226 — Coal-fired thermal power plants (CFTPPs) — Occupational health hazards of persons working in — Adequacy of measures to redress — High Court being better equipped to examine relevant issues — Matter remanded to various High Courts of the country by directing them to examine the following issues — (a) whether coal-fired thermal power plants (CFTPPs) are complying with safety standards and statutory prescriptions, (b) whether there is adequate health delivery system in place, (c) whether there is any evaluation of occupational health status of workers, and (d) whether any effective medical treatment is meted out to them including compensation, etc. — High Courts directed to examine these aspects independently with the assistance of State Government concerned and initiate suo motu proceedings for this — Report of National Institute of Occupational Health (NIOH) and copy of judgment sent to High Courts for complying with said directions — However, High Courts cautioned that the report of NIOH is not comprehensive and thus High Court concerned should independently examine the issues after calling for the report about CFTPPs (Paras 11 to 19)**

*e* **B. Constitution of India — Arts. 21, 39(e), 39(f), 41, 42, 14, 226 and 32 — Right to live in a clean, hygienic and safe environment and duty of State pointed out — Double-fold duty of State to protect unfortunate workers working/living in dangerous, risky and unhygienic environment for eking out a livelihood — Necessity for constant supervision and the drive to mitigate the harmful effects on the workers (Para 10)**

*f* **C. Infrastructure Laws — Energy and Power — Thermal power plants — Coal-fired thermal power plants (CFTPPs) — Statics relating to thermal coal power industry and production, discussed (Para 11)**

*Occupational Health & Safety Assn. v. Union of India*, WP (C) No. 79 of 2005, order dated 30-1-2008 (SC); *Occupational Health & Safety Assn. v. Union of India*, WP (C) No. 79 of 2005, order dated 6-9-2010 (SC); *Consumer Education & Research Centre v. Union of India*, (1995) 3 SCC 42 : 1995 SCC (L&S) 604, referred to

*g* SS-D/52868/C

Advocates who appeared in this case :

Colin Gonsalves, Senior Advocate (Ms Divya Jyoti and Ms Jyoti Mendiratta, Advocates) for the Petitioner;

P.P. Malhotra, Additional Solicitor General (Ms Kiran Bhardwaj, N.K. Kaushal, Gaurav Sharma, Ms Sushma Suri, Ms Anil Katiyar and V.K. Verma, Advocates) for the Respondents.

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<sup>†</sup> Under Article 32 of the Constitution of India

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*Chronological list of cases cited on page(s)*

1. WP (C) No. 79 of 2005, order dated 6-9-2010 (SC), *Occupational Health & Safety Assn. v. Union of India* 550a a
2. WP (C) No. 79 of 2005, order dated 30-1-2008 (SC), *Occupational Health & Safety Assn. v. Union of India* 549a, 550a, 551h
3. (1995) 3 SCC 42 : 1995 SCC (L&S) 604, *Consumer Education & Research Centre v. Union of India* 551b

The Judgment of the Court was delivered by

**K.S.P. RADHAKRISHNAN, J.**— The petitioner, a non-profit occupational health and safety organisation, registered under the Societies Registration Act, 1860, has invoked the extraordinary jurisdiction of this Court under Article 32 of the Constitution of India seeking the following reliefs: b

**1.1.** To issue a writ of mandamus or any other appropriate writ, order, or direction directing the respondents to frame guidelines with respect to occupational safety and health regulations to be maintained by various industries; c

**1.2.** To issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to appoint and constitute a committee for the monitoring of the working of thermal power plants in India and to keep check on the health and safety norms for the workers working in their power stations; d

**1.3.** To issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to pay compensation to the workers who are victims of occupational health disorders and to frame a scheme of compensation for workers in cases of occupational health disorders;

**1.4.** To issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to notify the recommendations as contained in Para 35 of the petition as guidelines to be followed by thermal power plants. e

**2.** The petitioner represents about 130 coal-fired thermal power plants (CFPPs) in India spread over different States in the country, but no proper occupational health services with adequate facilities for health delivery system or guidelines with respect to occupational safety are in place. The Factories Act, the Boilers Act, the Employees' State Insurance Act, the Compensation Act, the Water (Prevention and Control of Pollution) Act, the Air (Prevention and Control of Pollution) Act, the Environment (Protection) Act, etc. are in place, but the lack of proper health delivery system, evaluation of occupational health status of workers, their safety and protection cause serious occupational health hazards. f g

**3.** The petitioner herein filed IAs Nos. 1 of 2005 and 2 of 2007 and highlighted the serious diseases the workers working in thermal plants are suffering from over a period of years. The report produced by the petitioner would indicate that half of the workers have lung function abnormalities, pulmonary function test abnormalities, sensor-neuro loss, skin diseases, h

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a asthma, and so on. This Court noticing the same, passed an interim order on 30-1-2008<sup>1</sup>, after taking note of the various suggestions made at the Bar to reduce the occupational hazards of the employees working in various thermal power stations in the country. Following are the main suggestions put forward before this Court:

b 1. Comprehensive medical check-up of all workers in all coal-fired thermal power stations by doctors appointed in consultation with the trade unions. First medical check-up to be completed within six months. Then to be done on yearly basis.

c 2. Free and comprehensive medical treatment to be provided to all workers found to be suffering from an occupational disease, ailment or accident, until cured or until death.

c 3. Services of the workmen not to be terminated during illness and to be treated as if on duty.

d 4. Compensation to be paid to workmen suffering from any occupational disease, ailment or accident in accordance with the provisions of the Workmen's Compensation Act, 1923.

d 5. Modern protective equipment to be provided to workmen as recommended by an expert body in consultation with the trade unions.

e 6. Strict control measures to be immediately adopted for the control of dust, heat, noise, vibration and radiation to be recommended by the National Institute of Occupational Health (NIOH), Ahmedabad, Gujarat.

e 7. All employees to abide by the Code of Practice on Occupational Safety and Health Audit as developed by the Bureau of Indian Standards.

f 8. Safe methods be followed for the handling, collection and disposal of hazardous waste to be recommended by NIOH.

f 9. Appointment of a committee of experts by NIOH including therein trade union representatives and health and safety NGOs to look into the issue of health and safety of workers and make recommendations.

g 4. Mr P.P. Malhotra, learned Additional Solicitor General, submitted that Suggestions 1 to 7 have been accepted by the Central Government stating that they are broadly covered in various existing enactments and consequently pro-occupational action would be taken for effective implementation of the relevant laws, in particular, areas covered by those suggestions. After recording the above submissions, this Court had also directed the Ministry of Labour to take steps to see that those suggestions and relevant provisions of the various Labour Acts are properly implemented to protect the welfare of the employees. The learned ASG also submitted before

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1 *Occupational Health & Safety Assn. v. Union of India*, WP (C) No. 79 of 2005, order dated 30-1-2008 (SC)

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the Court that the Central Government would examine whether the remaining two suggestions i.e. Suggestions 8 and 9 could be implemented and, if so, to what extent.

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5. The writ petition again came up for hearing before this Court on 6-9-2010 and this Court passed the following order<sup>2</sup>:

“Vide order dated 30-1-2008<sup>1</sup>, Respondent 1 had agreed to Guidelines 1 to 7. However, time was taken to consider Guidelines 8 and 9, which primarily dealt with the appointment of committee of experts by NIOH. The constitution of that committee is also spelt out in Guideline 9. Today, when the matter came up for hearing before this Court, the learned Solicitor General stated that the Committee of Experts has been duly constituted by NIOH and it will submit its status report on the next occasion. The writ petition shall stand over for eight weeks.”

b

6. The Government of India later placed a report of the Committee prepared by the National Institute of Occupational Health (NIOH) titled Environment, Health and Safety Issues in Coal-Fired Thermal Power Plants of the year 2011.

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7. Shri Colin Gonsalves, learned Senior Counsel, referring to the abovementioned Report, submitted that the Union of India as also the Committee have misunderstood the scope of Suggestions 8 and 9. The learned Senior Counsel submitted that not much importance was given to the serious health problems being faced by the workers who are working in the thermal power plants and the treatment they require as well as the payment of wages and compensation to those workers who are suffering from serious illness. The learned Senior Counsel pointed out that some urgent steps should be taken to ensure the health and safety of the workers, through comprehensive and timely medical examinations, follow-up treatment as well as to provide compensation for the serious occupational diseases they are suffering from. Even these vital aspects, according to the learned Senior Counsel, have been completely overlooked by the Committee.

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8. The learned ASG submitted that the Report of NIOH is comprehensive and all relevant aspects have been taken care of and that there are several laws to protect the health and safety of the workers who are working in the various thermal power stations in the country. The learned ASG also submitted that the Committee has recommended the need of occupational health services with adequate facilities for health delivery system and that all power generating authorities must have well-defined sector-specific occupational health safety and environmental management framework. The

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2 *Occupational Health & Safety Assn. v. Union of India*, WP (C) No. 79 of 2005, order dated 6-9-2010 (SC).

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1 *Occupational Health & Safety Assn. v. Union of India*, WP (C) No. 79 of 2005, order dated 30-1-2008 (SC)

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learned ASG also submitted that the Report would be implemented in its true  
a letter and spirit.

9. This Court in *Consumer Education & Research Centre v. Union of India*<sup>3</sup> has held that: (SCC p. 43)

“[The] right to health and medical care to protect [one’s] health and  
vigour while in service or post retirement is a fundamental right of a  
b worker under Article 21, read with Articles 39(e), 41, 43, 48-A and all  
related articles and fundamental human rights to make the life of the  
workman meaningful and purposeful with dignity of person.”

The Court held that the compelling necessity to work in an industry exposed  
to health hazards due to indigence to bread-winning for himself and his  
dependants should not be at the cost of health and vigour of the workman.

c 10. Right to health i.e. right to live in a clean, hygienic and safe  
environment is a right flowing from Article 21. Clean surroundings lead to  
healthy body and healthy mind. But, unfortunately, for eking out a livelihood  
and for national interest, many employees work in dangerous, risky and  
unhygienic environment. Right to live with human dignity enshrined in  
d Article 21 derives its life breath from the directive principles of State policy,  
particularly clauses (e) and (f) of Articles 39, 41 and 42. Those articles  
include protection of health and strength of workers and just and humane  
conditions of work. Those are minimum requirements which must exist to  
enable a person to live with human dignity. Every State has an obligation and  
duty to provide at least the minimum condition ensuring human dignity. But  
e when workers are engaged in such hazardous and risky jobs, then the  
responsibility and duty on the State is double-fold. Occupational health and  
safety issues of CFTPPs are associated with thermal discharge, air and coal  
emission, fire hazards, explosion hazards, etc. Dust emanates also contain  
free silica associated with silicosis, arsenic leading to skin and lung cancer,  
coal dust leading to black lung and the potential harmful substances.  
f Necessity for constant supervision and the drive to mitigate the harmful  
effects on the workers is of extreme importance.

11. India is one of the largest coal producing countries in the world and it  
has numerous CFTPPs requiring nearly 440 million tons of coal per year. We  
have about 130 CFTPPs in India. The thermal power plants generate about  
g two-third of the electricity consumed in India, while 54.3% of the energy  
demand is met by coal-fired power generation. NIOH in its Report in 2011  
has already made its recommendations with respect to the suggestions made  
by this Court in its order dated 30-1-2008<sup>1</sup>. Since the Central Government

h <sup>3</sup> (1995) 3 SCC 42 : 1995 SCC (L&S) 604

<sup>1</sup> *Occupational Health & Safety Assn. v. Union of India*, WP (C) No. 79 of 2005, order dated  
30-1-2008 (SC)

has already accepted Suggestions 1 to 7, at the moment we are concerned with Suggestions 8 and 9, which we reiterate as follows:

“8. Safe methods be followed for the handling, collection and disposal of hazardous waste to be recommended by NIOH. a

9. Appointment of a committee of experts by NIOH including therein Trade Union representatives and Health and Safety NGOs to look into the issue of health and safety of workers and make recommendations.”

12. The Report in Para 4.1.2 has referred to various health hazards and the same is reproduced hereinbelow: b

“4.1.2 *General*

4.1.2.1. *Use of hazardous material for insulation:* certain materials such as asbestos, glass wool, etc. are used for insulation. These materials are highly dangerous to human health, if inhaled or if contacted with the eye/skin surface. While handling such materials, the PPE should be provided to the workers as well as proper disposal of waste asbestos and glass wool should be ensured. Nowadays, safer substitutes, such as paramid, polyvinyl alcohol (PVA), cellulose, polyacrylonitrile, glass fibres, graphite are available, the use of which may be explored. c

4.1.2.2. Compliance with the provisions of the Environment (Protection) Act and its amendments from time to time applicable to the power plants with respect to emission and discharge, ash utilisation and hazardous waste management should be ensured to protect the ambient environment as well as maintain safe and healthy working conditions for the workers. d

4.1.2.3. The generated fly ash need to be utilised as per the CPCB annual implementation report on fly ash utilisation (2009-2010) that 100% utilisation to be achieved by the power plants, within 5 years from the date of notification (refer to Table 17, p. 48). For new CFTPPs, the fly ash utilisation needs to be regulated as per the schedule given in Table 17. e

4.1.2.4. It is desirable that the coal handling facilities are mechanised and automated to the extent possible.

4.1.2.5. Occupational health services should be provided for wide range benefit to the workers. Broadly, it should contain the facilities for occupational health delivery system with trained manpower and infrastructure including investigational facilities, environmental assessment, evaluation of occupational health status and first aid training of the workers on regular basis. These services should be independent and separate from hospital services (curative service) but should function in liaison with the curative service. f

4.1.2.6. Periodic awareness programmes regarding the health and safety with active involvement of the workers should be organised, covering each individual with the minimum annual average duration of 8 hours per worker. Regular community level awareness programmes may be organised in the vicinity of the plant for the family members of the workers. g

4.1.2.7. Periodic medical examination (PME), as required under the Factories Act should be undertaken. However, the investigations performed under the PME should be relevant to the job exposures. Since coal/ash handling workers are prone to dust exposure related diseases, due attention h



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- a* is required to those workers. In case of need, the frequency of PME may be scheduled, based on observation of the health check-up information. Providing PPE and relocating of job for those workers may also be considered.
- 4.1.2.8. As per recommendations of the Factories Act, the workers need to be examined radiologically (chest x-ray) on yearly basis. However, in order to avoid unnecessary exposure of the human body to the radiation, the regular yearly chest x-ray is not recommended, unless urgent and essential.
- b* Considering the latency period of development of pneumoconiosis, it is recommended to undergo chest x-ray every two years for initial 10 years and based on the progression, rescheduling may be adopted. After 10 years it should be done on yearly basis or earlier depending on the development and/or progression of the disease.
- 4.1.2.9. Health records should be maintained in easily retrievable manner, preferably in electronic form. The provision should be made to recall the worker, as and when his or her check-up is due. Pre-placement medical examination and proper documentation of records should be mandatory.
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- 4.1.2.10. A comprehensive document on environment, health and safety specific to coal based thermal power projects should be framed. It should cover the legal provisions, management system, best practices, safe operating procedures, etc. for various areas of thermal power plants. This will serve as a reference document for effective implementation of the provisions.
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- 4.1.2.11. All CFTPPs should have environmental and occupational health and safety management systems in place, which are auditable by third party, approved by the Government of India (Ministry of Power). Participatory management regarding health and safety at plant level may be ensured.
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- 4.1.2.12. The occupier of CFTPP shall be responsible for the compliance with provisions of the Factories Act for casual/contractual labour on health and safety issues. In case of women workers, the provisions of the Factories Act, as applicable, shall be given attention.”
- f* **13.** Para 3.1.2 of the Report specifically refers to the occupational health and safety issues of workers in CFTPPs. The Report also refers to the hazards associated with (*a*) dust, (*b*) heat, (*c*) noise, (*d*) vibration, (*e*) radiation, and (*f*) disposal of waste. After dealing with those health hazards, the Committee has stated that the hazards associated with inhalation of coal dust might result in development of dust related morbidity in the form of pneumoconiosis (coal workers’ pneumoconiosis, silicosis) and non-pneumoconiotic persistent respiratory morbidities, such as chronic bronchitis, emphysema, asthma, etc. Further, it also pointed out that whenever asbestos fibres are used for insulation and other purposes, the possibility of asbestosis among workers due to inhalation of asbestos fibres cannot be ruled out. The Report also says that other morbidities because of exposure to fly ash, including metallic constituents such as lead, arsenic, and mercury might also be present. Due to exposure to other chemicals used in different operations of CFTPP, the Report
- g* says, may also be responsible to adversely affect human health.
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**14.** The Report further says that occupational exposure to high heat in different thermal power plants may also cause heat related disorders, like heat exhaustion. Noise and vibration exposures in higher doses than the permissible limits may result in noise-induced hearing loss, raised blood pressure, regional vascular disorders, musculoskeletal disorders, human error, productivity loss, accidents and injuries. Radiation hazards particularly from the generated fly ash and its used products have also been indicated of possible health risks. Different chemicals that are often being used in CFTPPs, such as chlorine, ammonia, fuel oil, and released in the working and community environment may be responsible for wide range of acute as well as chronic health impairments. Since large quantities of coal, other fuels and chemicals are stored and used in CFTPPs, the risks of fire and explosion are high, unless special care is taken in handling the materials. It may cause fire and explosion. Further, it may also be pointed out that in various work operations for manual materials handling, the workers are subjected to high degree of physical stress, with potential risks of musculoskeletal disorders and injuries. a

**15.** In Para 3.1.5 the Report suggests certain protective measures for health and safety and also steps to be taken for emergency preparedness on spot/off-spot emergency plans and also the measures to be adopted for social welfare. d

**16.** We may notice, the recommendations made are to be welcomed, but how far they are put into practice and what preventive actions are taken to protect the workers from the serious health hazards associated with the work in CFTPPs calls for serious attention. Many workers employed in various CFTPPs are reported to be suffering from serious diseases referred to earlier. What are the steps taken by CFTPPs and the Union of India and the statutory authorities to protect them from serious health hazards and also the medical treatment extended to them, including compensation, etc. calls for detailed examination. e

**17.** We notice that CFTPPs are spread over various States in the country like Uttar Pradesh, Chhattisgarh, Maharashtra, Andhra Pradesh, and so on, and it would not be practicable for this Court to examine whether CFTPPs are complying with safety standards and the rules and regulations relating to the health of the employees working in various CFTPPs throughout the country. We feel that these aspects could be better examined by the respective High Courts in whose jurisdiction these power plants are situated. The High Court should examine whether there is adequate and effective health delivery system in place and whether there is any evaluation of occupational health status of the workers. The High Court should also examine whether any effective medical treatment is meted out to them. f  
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**18.** We, therefore, feel that it is appropriate to relegate it to the various High Courts to examine these issues with the assistance of the State Governments after calling for necessary reports from CFTPPs situated in their h



respective States. For the said purpose, we are sending a copy of this  
a judgment to the Chief Secretaries of the respective States as well as  
Registrars General of the High Courts of the following States:

- (a) Uttar Pradesh
- (b) Chhattisgarh
- (c) Maharashtra
- b (d) Andhra Pradesh
- (e) West Bengal
- (f) Madhya Pradesh
- (g) Bihar
- (h) Orissa
- c (i) Haryana
- (j) Rajasthan
- (k) Punjab
- (l) Delhi/NCT Delhi
- d (m) Gujarat
- (n) Karnataka
- (o) Kerala
- (p) Tamil Nadu
- (q) Jharkhand
- e (r) Assam

19. The Report of National Institute of Occupational Health (NIOH)  
titled Environment, Health and Safety Issues in Coal-Fired Thermal Power  
Plants of the year 2011 may also be made available by the Secretary General  
of the Supreme Court to the Registrars General of the High Courts of the  
aforesaid States. We make it clear that the Report is not at all comprehensive  
f in certain aspects and the respective High Courts can examine the issues  
projected in this judgment independently after calling for the reports about  
CFTPPs functioning in their respective States. The Registrars General of the  
High Courts of the aforesaid States should place this judgment before the  
Chief Justices of the respective States so as to initiate suo motu proceedings  
in the larger interest of the workers working in CFTPPs in the respective  
g States.

20. The writ petition is accordingly disposed of.

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