

OPINION

GREENPEACE ... QUERIST

I have gone through the instructions in the case for opinion and perused the documents and papers enclosed therewith. I have also had the benefit of two conferences with the instructing advocates, Mr. Bikash Mohanty and Mr. Ajay Goyal of the Querist.

The brief facts pertaining to the opinion are as follows:

Parliament has passed the Civil Liability for Nuclear Damage Act, 2010 [hereinafter the said Act]. Relevant provisions of the said Act may be noted. Section 6 prescribes the limit of liability and is as follows:

- 6 (1) The maximum amount of liability in respect of each nuclear incident shall be the rupee equivalent of three hundred million Special Drawing Rights or such higher amount as the Central Government may specify by notification.

Provided that the Central Government may take additional measures, where necessary, if the compensation to be awarded under this Act exceeds the amount specified under this sub-section.

- (2) The liability of an operator for each nuclear incident shall be –
- (a) in respect of nuclear reactors having thermal power equal to or above ten MW, rupees one thousand five hundred crores;
 - (b) in respect of spent fuel reprocessing plants, rupees three hundred crores;
 - (c) in respect of the research reactors having thermal power below ten MW, fuel cycle facilities other than spent fuel

reprocessing plants and transportation of nuclear materials, rupees one hundred crores.

Provided that the Central Government may review the amount of operator's liability from time to time and specify, by notification, a higher amount under this sub-section.

Provided further that the amount of liability shall not include any interest or cost of proceedings.

Section 17 provides for the operator's right of recourse and reads as under:

- 17: The operator of the nuclear installation, after paying for the compensation for nuclear damage in accordance with section 6, shall have a right of recourse where:
- (a) such right is expressly provided for in a contract in writing;
 - (b) the nuclear incident has resulted as a consequence of an act of supplier or his employee, which includes supply of equipment or material with patent or latent defects or substandard services;
 - (c) the nuclear incident has resulted from the act of commission or omission of an individual done with the intent to cause nuclear damage.”

Section 48 enables the Central government to frame rules for carrying out the purposes of the said Act. Nuclear Liability For Nuclear Damage Rules have been drafted but the said rules have not been made as required by Section 48(3) of the said Act.

One of the rules proposed is Rule 24 which reads as under:

“Rule 24:

- (1) A contract referred to in clause (a) of Section of 17 of the Act shall include a provision for right of recourse for not less than the extent of the operator's liability under

subsection (2) of Section 6 of the Act or the value of the contract itself, whichever is less.

- (2) The provision for right of recourse referred to in sub-rule (1) shall be for the duration of the initial licence issued under the Atomic Energy (Radiation Protection) Rule 2004 or the product liability period, whichever is longer.”

The Convention on Supplementary Compensation for Nuclear Damage [hereinafter CSC] was adopted on 12th September 1997 by a Diplomatic Conference held 8-12 September 1997. It has been signed by India but has not been ratified.

Article 10 the Convention for Supplementary Compensation [hereinafter CSC] in the annex deals with the right of recourse. It reads as under:

“Article 10 – Right of Recourse:

National law may provide that the operator shall have a right of recourse only:

- (a) if this is expressly provided for by a contract in writing; or
- (b) if the nuclear incident results from an act or omission done with intent to cause damage, against the individual who has acted or omitted to act with such intent.”

The basic query posed in the case for opinion is whether the proposed Rule 24 and Article 10 of the Annex to CSC are valid.

I shall first deal with Rule 24. It is plain that the proposed Rule 24 is unduly restrictive as it limits the amount which can be claimed by exercise of the right of recourse to the extent of the operator's liability or the value of the contract, *whichever is less*. This would cause great hardship. To illustrate: Take a case where a major nuclear accident occurs due to the fault of the supplier and the value of the contract is say ten lakh rupees. In such a situation while the

damages paid by the operator to victims could run into crores of rupees yet the supplier will not be liable for anything more than the value of the contract i.e ten lakh rupees. A criterion such as the value of the contract has no rational nexus to the object sought to be achieved and hence there is no rational basis for curtailing supplier's liability. Moreover, in my opinion Rule 24(1) is clearly inconsistent with Section 6 of the said Act read with Section 17 inasmuch as it scales down and reduces the liability prescribed by the said Act. Consequently the said proposed Rule is ultra vires the said Act and is invalid.

According to my instructions the period provided for under Rule 24(2) works out to five years. According to the Act, the time limit to claim right to recourse by the operators against the supplier is not provided in the Act and hence it is unlimited. Therefore the proposed Rule 24(2) which restricts the time limit cannot be said to be carrying out the purposes of the said Act but is in fact in conflict with it. Therefore in my opinion Rule 24(2) is clearly ultra vires of the said Act and is invalid.

Coming to the CSC it is to be noticed that Article 10 of the annex to the CSC provides for right to recourse only for contingencies mentioned in (a) and (b). Under Section 17 (b) of the said Act the operators shall have right to recourse also where the nuclear incident has resulted as a consequence of an act of supplier or his employees, which includes supply of equipment or material with patent or latent defects or substandard services. This provision is totally omitted in the CSC and to that extent it is clearly in conflict with the said Act.

I shall now answer the queries.

Q.1 Whether the Convention for Supplementary Compensation (in short the CSC) to be ratified by India is contrary to the The Civil Liability for Nuclear Damage Act, 2010 (in short the Nuclear

Liability Act)? In case it is contrary to The Civil Liability for Nuclear Damage Act, 2010, whether the CSC or the Act would have the binding effect in case of any conflict between the two?

Ans. The annex in the Article 10 of the CSC is repugnant to section 17(b) of the Nuclear Liability Act. National law viz. the Nuclear Liability Act would prevail over the CSC and have overriding effect even if India ratifies the CSC.

Q.2 Whether the Rules notified on 11 November, 2011 under the Nuclear Liability Act, 2010 are repugnant to the parent Act?

Ans. Yes, for the reasons set out in the opinion.

Q.3 Whether the Rules should also provide that the contract between the Operator and the Supplier would be subject to the Nuclear Liability Act, 2010?

Ans. This is not strictly necessary because the Nuclear Liability Act which is the municipal law of India is binding and will prevail over the CSC. However it would be desirable if the same is done by way of abundant caution.

Generally, I have nothing further to add.

New Delhi
09th December 2011

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