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W.P.No.39692 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

W.P.No.39692 of 2015

and

M.P.No.1 of 2015

M/s.Johnson Lifts (P) Ltd.,
represented by its Corporate Head-HR,
No.1, East Main Road,
Anna Nagar West Extn.,
Chennai- 600 101.

...Petitioner

-VS-

- 1.The Director,
Industrial Safety and Health,
No.69/35, Thiru Ve Ka High Road,
Royapettah, Chennai- 600014.
- 2.M/s.Mahindra Integrated Township Limited,
The Canopy, Block A,
2nd Floor, Unit-II, 2nd Avenue,
Mahindra World City, Natham Sub (P.O),
Chengalpet-603002.

- 3.Mahindra Residential Developers Ltd.,
The Canopy, Unit-II, 2nd Floor,
Mahindra World City, Natham Sub (P.O),
Chengalpet-603002.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to writ of certiorarified mandamus calling for the records relating to the communication bearing No.L1/29352/2015 dated 30.10.2015 issued by the Director of Industrial Safety and Health the 1st Respondent herein and quash the same and consequently direct the 1st Respondent herein to declare that the petitioner Company need not register itself under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service Act 1996 (BOCW Act) as the provisions thereof are not applicable to the petitioner Company.

For petitioner : Mr.T.R.Sathiyamohan

For respondents : Mr.E.Sundaram,
Government Advocate, for R1,

Mr.R.Bharath Kumar,
for R2 and R3.

ORDER

The issue which calls a decision from this Court is whether the petitioner company which is engaged in the business of manufacture of elevators, escalators and walkalators would be covered under the



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Building and Other Construction Workers Regulation of Employment and Conditions of Service Act, 1996, (hereinafter referred as “The BOCW Act”).

2. It would be necessary to briefly allude to the facts which had led to the filing of the above writ petition. The petitioner company which is engaged in the business of manufacture of elevators, escalators and walkalators from their factories at Chennai and Nagpur caters to the large scale needs of the construction industries. They supply and install various categories of lifts, escalators and walkalators as per the requirements of the industries. The lifts, elevators and walkalators are manufactured at the petitioner company's factory premises and after they are fully manufactured, the same are moved to the place of construction and the only work to be undertaken in the construction site is the installation of these lifts, elevators or walkalators in the spaces earmarked for the said purpose where the civil works have already



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been completed by the construction workers.

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3. The petitioner company was awarded two separate contracts for design, manufacture, supply, delivery and installation and testing and commissioning of elevator works for the Residential Development Projects *viz.*, “NOVA – Phase 1 and 2, Block A to D” for installation of 16 elevators and “IRIS Court – Phase 2, 3A & 3B” for installation of 14 elevators. The said installations have been entrusted to the petitioner company by a letter of award and letter of acceptance dated 01.12.2014 and 11.04.2014, respectively. A similar contract was entered into with the 3rd respondent as well in respect of their project *viz.*, “AQUALILY – Phase 2C – Block C1 to C9” for installation of 18 elevators.

4. The petitioner company would submit that as regards the project “NOVA”, out of 16 elevators, 8 elevators were manufactured and after the completion of the construction activities of Phase 1,



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these 8 elevators were shifted and erected by the petitioner company.

In the same way, as regards the project “IRIS Court”, out of 14 elevators, 10 elevators were erected and the remaining 4 elevators are under process of manufacture. In the project “AQUALILY”, out of 18 elevators, 10 elevators have been installed and the installation of remaining 8 elevators was to be completed shortly.

5. After the erection of the elevators as mentioned above, the petitioner company approached the respondents 2 and 3 for release of payments as per the terms of the letter of award and letter of acceptance and they were informed that the payments will be released only if the petitioner company is registered under the BOCW Act. By separate letter dated 21.09.2015 to both the respondents 2 and 3, the petitioner company had clearly and categorically informed that the BOCW Act would not apply to them since they were not involved in the civil engineering or engaged in any construction activity. However, the respondents 2 and 3 insisted



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upon this registration.

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6. Thereafter, the petitioner company had made a representation to the first respondent who is the appropriate authority to clarify whether the petitioner company is covered under the provisions of the BOCW Act. The petitioner company had set out in detail the reasons as to why they would not come under the purview of the BOCW Act. However, by a communication dated 30.10.2015, the first respondent had informed the petitioner company that the erection of elevators, lifts and walkalators are part of construction activities and where the petitioner engages more than 10 building workders, they have to compulsorily register under the BOCW Act.

7. Therefore, the petitioner company had approached this Court by way of this writ petition seeking to quash the order dated 30.10.2015 passed by the first respondent and to direct the first



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respondent to declare that the petitioner company need not register itself under the BOCW Act.

8. The first respondent has filed a counter affidavit, in which, it is contended that erection and installation of the lifts are an integral part of building construction activities and it cannot be considered as a separate activity. The first respondent would submit that the expression “establishment” has been defined under the BOCW Act, which includes the contractor and since the petitioner company is a contractor for the respondents 2 and 3, they are necessarily covered under the BOCW Act. The first respondent would further submit that the technical persons who are necessary for installing and erecting the lifts, elevators, walkalators, *etc.*, would fall within the definition of the expression “building worker” under Section 2(1)(e) of the BOCW Act, which includes the technical workers as well.



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9. The first respondent would further submit that the contention of the petitioner company that they are governed by the Factories Act and Tamil Nadu Shops and Establishments Act cannot be countenanced since the scope of these two Acts is only within the factory premises and does not extend to the construction site. That apart, it is the contention of the first respondent that the petitioner company had made an application dated 19.02.2015 for registration of their establishment under the BOCW Act and therefore, the present writ petition is not maintainable.

10. During the course of arguments, the learned counsel for the respondents had submitted that the petitioner company had suppressed the filing of the application dated 19.02.2015 for registration under the BOCW Act. An affidavit dated 18.07.2024 has been filed by the petitioner to clarify the same wherein it was stated that the said omission was not an intentional omission but an oversight. It is also stated that during the months of July/August



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2015, a legal opinion has been sought for as to whether the provisions of the BOCW Act are applicable to the petitioner company and since they were advised that their company would not come under the purview of the BOCW Act, they gave a detailed representation dated 12.10.2015 to the first respondent and as the first respondent had passed the impugned order, this writ petition has come to be filed.

11. Heard the learned counsel on either side and perused the materials available on record.

12. The sum and substance of the argument of either side was on the lines as stated by them in their respective affidavit.

13. In order to answer the issue on hand, it would be necessary to look into the objective for which the BOCW Act has been enacted. The BOCW Act has been described as an Act to



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regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto. In the statement of objects and reasons, it has been stated as follows:

“It is estimated that about 8.5 million workers in the country are engaged in building and other construction works. Building and other construction workers are one of the most numerous and vulnerable segments of the unorganised labour in India. The building and other construction works are characterised by their inherent risk to the life and limb of the workers. The work is also characterised by its casual nature, temporary relationship between employer and employee, uncertain working hours, lack of basic amenities and inadequacy of welfare facilities. In the absence of adequate statutory provisions, the requisite information regarding the number and nature of accidents is also not forthcoming. In the absence of such information,



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it is difficult to fix responsibility or to take any corrective action.”

Therefore, it is clear that the object for which this Act has been enacted by the Parliament is to safeguard the casual and temporary workers who are mostly unaccounted in their construction arena. The Act applies to the workers engaged in building or other construction activities. Section 1(4) of the BOCW Act proves the above.

14. Before proceeding to discuss the applicability of the Act to the petitioner company, it would be useful to extract certain provisions of the Act.

14.1. Section 2(1)(d) of the BOCW Act reads as follows:

“2(1)(d) “building or other construction work” means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage,



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embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948 (63 of 1948), or the Mines Act, 1952 (35 of 1952), apply.”

14.2. Section 2(1)(e) defines the expression “building worker”

as follows:

“2(1)(e) “building worker” means a person who is employed to do any skilled, semi-



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skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, in connection with any building or other construction work but does not include any such person-

(i)who is employed mainly in a managerial or administrative capacity; or

(ii)who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;”

14.3. Section 2(1)(g) defines the expression “contractor” as follows:

“2(1)(g) “contractor” means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods



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or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment; and includes a sub-contractor.”

14.4. Section 2(1)(j) defines the expression “establishment” as follows:

“2(1)(j) “establishment” means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other constructions work; and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakhs.”

A conjoint reading of the above provisions makes it clear that the



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Act applies to the persons who are engaged in the building and other construction activities.

15. The petitioner company engaged only for erection and installation of lifts / elevators / walkalators and is not involved in the construction activities. They are required to install the lifts / elevators in a shaft which is already constructed. The work of the petitioner company is only to fit the lifts / elevators into this shaft viz., the shaft which was already put up by the civil contractor. The building contractor marks places for keeping staircases and earmarks specific places in the superstructure for the purpose of installation of the lifts / elevators. The petitioner company enters in only after the completion of the construction activities in the site. The petitioner company brings the equipment for assembling the parts and installing the lifts and commissioning the same. For this purpose, for the assemblage, installation and commissioning of the lifts, just 2 or 3 technicians and technical specialists are required and no other



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person is required. Therefore, terming the petitioner company as contractor involved in building and other constructional activities may not be in tune with the provision of the BOCW Act.

16. As already stated, the petitioner company, during the erection, installation and commissioning of the lifts are not excepted to do any civil works for the aforesaid purpose. Therefore, taking note of the object of the Act and the definition of the expression extracted *supra*, the petitioner company does not fall within the purview of the BOCW Act. The above fact has also been seen from the Rules framed under the Act, particularly, when taking note of the equipments that are referred to from Rule 55 onwards.

17. If the interpretation given in the counter affidavit is considered, then, the persons installing CCTV cameras, air conditioners, R.O. system, etc., could also come within the ambit of the Act which is not the intention of the Act. As stated earlier, the



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Act was intended to protect those building workers who are unaccounted for and who are involved in the actual construction activities day in and day out. Therefore, it is declared that the BOCW Act would not apply to the petitioner company.

Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, connected M.P. stands closed. No costs.

24.07.2024

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
ssa



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To

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P.T.ASHA, J.,

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