

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
2015.02.12 11:11
I hereby certify the accuracy and
authenticity of this document

CRM No. M-15361 of 2009 (O/M)
Date of decision : 11.2.2015

Shri J.S. Prasad

..... Petitioner

Versus

Deputy Director, Industrial Safety and Health,
Rewari, Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. J.S. Toor, Advocate, for the petitioner.

Mr. Chetan Sharma, Assistant A.G., Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not. Yes
3. Whether the judgment should be reported in the digest ? Yes

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KULDIP SINGH, J.

Petitioner, who happens to be the Deputy General Manager of M/s Mudra Delhi Pipe Line Project (in short 'MDPLP') of Hindustan Petroleum Corporation Ltd. (in short 'HPCL') has filed this petition against the Deputy Director, Industrial Safety and Health, Rewari, Haryana, for quashing the complaints bearing No. 1230, 1233 and 1236, dated 29.5.2008, filed under Section 7 Rules 17, 18 and Sections 21, 46 and 30 Rule 88 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (in short 'Building Act 1996') (Annexure-P-7 (Colly.) and the summoning order dated 2.3.2009 (Annexure-P-8), passed by the learned Chief Judicial Magistrate, Rewari.

It is stated that the petitioner is an employee of HPCL and is holding the post of Deputy General Manager-MDPLP (Operations). The HPCL, Rewari IRD, is registered under the Factories Act, 1948 for storage and distribution of petroleum products and is holder of licence No. YNS/S-2174/5683 dated 9.6.2006 (Annexure-P-1) and the same is renewed upto 31.12.2009. The HPCL Rewari IRD sought approval under the Factories Act, 1948 for construction of the additional tanks to supplement existing storage facilities within the notified area of factory premises, vide application dated 25.8.2006. The Chief Inspector of the Factories, Haryana, vide letter dated 1.2.2007 (Annexure-P-3), granted the approval for the same. Accordingly, the petitioner started the construction work thereafter. The job was given to different contractors as per the nature of the job. The respondent inspected HPCL Rewari IRD on 31.10.2007 and prepared the Inspection Report (Annexure-P-4) under the provisions of Building Act 1996. In the said inspection report, following violations were noticed under the Building Act 1996 :-

- “a) Under Section 7, Rule 17, 18 and 21 – The management has not submitted an application in Form No. 1 along with prescribed fee for the registration of establishment.
- b) Under Section 46 – The notice of commencement of construction work has not been sent to the concerned authority as prescribed.

c) Under Section 30 Rule 88 – The muster roll is not made available on demand in respect of constructions workers found present at the time of inspection.”

HPCL IRD Rewari was directed to pay 1% amount of the total construction cost on the basis of the said Inspection Report dated 31.10.2007 (Annexure-P-4).

A show cause notice under Sections 47, 48 and 50 of the 1996 Act was issued to the petitioner on 20.3.2008 (Annexure-P-5).

A detailed reply was given. It is stated that under Section 2(d) of the said Building Act 1996, the establishment and accounts under the Factories Act, 1948, are excluded. After considering the reply, the present complaints have been filed by the respondent and the petitioner has been summoned, vide order dated 2.3.2009 (Annexure-P-8), passed by the learned Chief Judicial Magistrate, Rewari. It is stated that the said Building Act 1996 does not apply to the petitioner.

Notice were issued to the respondents. Respondent No. 1, in the reply, affirmed that the inspection was carried out and that the building violations, as stated above, were noticed and the present complaints have been filed (Annexures-P-7 Colly.). It was stated that the petitioner cannot assail liability to comply with the said Building Act 1996.

I have heard learned counsel for the parties and have also carefully gone through the file.

Admittedly, the petitioner-HPCL is registered under the

Factories Act, 1948. Section 2(d) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996, is defined as under :-

“Section 2(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, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, waterworks (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;**”

Therefore, the construction work, to which the Factories Act, 1948 applies, has been specifically excluded from the purview of the said definition.

Now, the violations, as pointed out by the respondent, are regarding non-submission of application form for registration of establishment, non-issuance of notice for commencement of construction work and muster roll being not made available. All

these requirements are covered under the Factories Act, 1948. Therefore, once the building of the petitioner is exempted under Section 2(d) of the Building Act 1996 having been registered under the Factories Act, 1948, the complaints bearing No. 1230, 1233 and 1236, dated 29.5.2008, filed under Section 7 Rules 17, 18 and Sections 21, 46 and 30 Rule 88 of the Building Act, 1996 (Annexure-P-7 Colly.), are nothing, but misuse of process of Court. There is no reason for the petitioner-Company, which is a Semi Government Company, to violate the law. Consequently, complaints No. 1230, 1233 and 1236, dated 29.5.2008, filed under Section 7 Rules 17, 18 and Sections 21, 46 and 30 Rule 88 of the Building Act 1996 (Annexure-P-7 Colly.) are quashed alongwith the order dated 2.3.2009 (Annexure-P-8), summoning the petitioner and all consequential proceedings.

Accordingly, the present petition is allowed.

(KULDIP SINGH)
JUDGE

11.2.2015
sjks