

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.W.P.No.7255 of 2017 (O&M)

Date of Decision: May 25, 2017

Jhajjar Power Limited Village Khanpur, District Jhajjar

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Puneet Bali, Senior Advocate with
Mr.Arun Gupta, Advocate,
for the petitioner.

Mr.Indresh Goel, Addl.A.G.Haryana,
for the State.

AMIT RAWAL, J. (Oral)

The petitioner-company is aggrieved of the impugned show cause notice dated 15.2.2017 (Annexure P-6) issued by the Chief Inspector of Factories, Haryana-respondent No.2 relying upon the enquiry report dated 2.2.2017(Annexure P-5) submitted by the Deputy Director, Industrial Safety and Health, Factory Wing, Panipat, whereby the petitioner is alleged to have violated the provisions of Sections 7-A and 41 of the Factories Act, 1948 (for short “1948 Act”) and Rule 66-B of the Punjab Factory Rules, 1952 (for short “1952 Rules”).

Mr.Puneet Bali, learned Senior Counsel assisted by Mr.Arun Gupta, Advocate representing the petitioner-company submits that the petitioner and the Lafarge India Private Limited (for short “LIPL”) entered

into a master agreement on 23.7.2009 followed by an ash sale agreement dated 10.5.2010 for the activity of collection and transportation of fly ash, LIPL outsourced its activity and engaged the services of a transporter-Skylite Logistics Private Limited, Jaipur (for short "SLPL").

He further submits that on 29.12.2016, an ash bulker bearing registration No.RJ-06-GA-2164 driven by deceased Sulkhan Singh was sent by the SLPL for the collection and transportation of fly ash from the delivery point. The said ash bulker entered the loading bay of the petitioner's premises around 3.00 PM. While tightening the lid, the deceased lost his balance, fell down on the ground and received serious injuries. He was taken to the Civil Hospital, Jhajjar, where he succumbed to his injuries. The intimation of the aforementioned fact was given to the Inspector of Factories on the next following day, i.e., 30.12.2016. However, in the enquiry conducted by the Deputy Director, the petitioner provided various documents including the entry pass of the vehicle, certificate of registration, fitness of vehicle, intimation to the police authorities and as well as the contractual agreement between the petitioner and the LIPL to enable them to form an opinion that deceased was not their employee, yet without noticing the aforementioned fact, the Deputy Director, Industrial Safety and Health, Factory Wing, Panipat, found it to be a fit case for violation of Section 7-A of 1948 Act.

He submits that the material provided regarding non-employment, non-engagement or relationship of employee and employer with the deceased Sulakhan Singh has not been referred to. As a fallout of the aforementioned action, show cause notice under the provisions of the Factories Act has been issued calling upon the petitioner why the legal

notice as contemplated under Section 92 of 1948 Act and the 1952 Rules be not taken against the petitioner.

Noticing all the aforementioned detailed contentions, this Court had issued notice of motion in this case, which was accepted by the learned State Counsel. However, today, Mr.Indresh Goel, learned Addl.A.G.Haryana seeks time to file reply. But the fact remains that calling upon the reply would be a farcical exercise as on bare perusal of the enquiry, *ibid*, conducted by the Deputy Director, there is hardly any discussion with regard to the defence/material placed on behalf of the petitioner with regard to any relations between the petitioner and the deceased, much less Rule 66-B of the Rules, which reads thus:-

“Rule 66-B: No machinery, plant or equipment shall be constructed, situated, operated or maintained in the factory in a manner that causes risk of bodily injury.”

As the facts reveal that the alleged dumper basically had been outsourced by the LIPL from Skylite Logistics Private Limited, Jaipur, in my view, all the documents were required to be pondered upon by the Deputy Director before any following further course of action under the 1948 Act.

Resultantly, the show cause notice dated 15.2.2017 (Annexure P-6) is set-aside and the matter is remitted back to the Deputy Director, Industrial Safety and Health, Factory Wing, Panipat, to hold a fresh enquiry by taking into consideration all the documents and the defence of the petitioner. The petitioner would be at liberty to place on record additional documents in case they choose to do so. Let this exercise be done within a reasonable period, preferably within a period of three months in accordance with law.

Writ petition stands allowed.

May 25, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No