

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 115 OF 2022

OHSSAI (Occupational Health, Safety, Sustainability Association India) Foundation	}	Petitioner
Versus		
The Principal Secretary, Ministry–Department of Labour, Government of Maharashtra and Ors.	} } } }	Respondents

Dr. Suresh T. Mane for the petitioner.

Mr. P. P. Kakade, Government Pleader
with Mr. M. M. Pabale, AGP for State.

**CORAM: DIPANKAR DATTA, CJ. &
ABHAY AHUJA, J.**

DATE: DECEMBER 6, 2022

P.C.:

1. This petition, styled as a public interest litigation (PIL), is at the instance of OHSSAI (Occupational Health, Safety, Sustainability Association India) Foundation, through its founder President and General Secretary. By instituting the PIL, appropriate writ/order/direction is sought from this Court to the respondents with regard to the "role, responsibility of the 'Safety Officers'/professionals engaged in all establishments all over Maharashtra and especially the Safety Officers responsibility (sic., responsible) in the matters of police cases due to some wrongful acts done by company or factory or by establishment/management". The respondents in

the writ petition are: (i) Principal Secretary, Department of Labour, Government of Maharashtra; (ii) Directorate of Industrial Safety and Health; (iii) Commissioner of Labour, Government of Maharashtra; and (iv) Director General of Police, Maharashtra State.

2. The trigger for the PIL is an incident referred to in paragraph 4(F) of the petition memo. We quote the same hereunder: -

“4(F) However, with great pain and anguish, the Petitioner would like to place before the Hon. Court that, the Petitioner through newspaper report published in Times of India came to know about an accident that occurred in the month of February 2022, in Pune city wherein in the crash of under construction site near Wadia Banglow, Shastrinagar, Yerwada, five construction workers dead and five were injured. The accident occurred when a huge galvanized steel wire mesh for reinforced concrete slab that was to cover the basement of the structure, caved in and trapped the victims”.

3. Referring to the provisions of section 40B of the Factories Act, 1948 (hereafter “the 1948 Act”, for short) as well as the Maharashtra Safety Officers (Duties, Qualification and Conditions of Service) Rules, 1982 (hereafter “the Rules of 1982”, for short), it is claimed that the role of the Safety Officers is purely of “advisory nature” [paragraph 4(E)]. It is further claimed that the duty of the Safety Officers is to advise and assist the employer/factory management in the fulfilment of the obligations, statutory or otherwise, concerning prevention of personal injuries and maintaining a safe working environment. At the under-construction site crash, which happened in Pune, the safety engineer/officer Mr. Imtiaz Abdul Barkat Ansari, aged 38 years old, along with

three others was arrested by the Yerwada Police Station with a case of culpable homicide not amounting to murder and other charges and since then, he has been in jail/police custody [para 4(G)]

4. It is also claimed that the role of the safety officers is merely of advisory nature, yet, in the above cited case and such other cases of any unfortunate accident occurring in future, the arrest of the Safety Officers could be avoided and if a preliminary investigation is conducted and it is found that the Safety Officer is responsible for negligence, only then he should be arrested by the police [para 4(H)].

5. Other relevant paragraphs of the writ petition read as follows: -

"5. The Petitioner organisation, being pained by Pune unfortunate accident as well as deeply hurt by the police action against the safety officer, on 07/03/2022, has submitted a representation to the Commissioner of Labour Department of Labour, Government of Maharashtra, bringing to his notice the unfortunate accident of crash of under construction site at Pune, wherein the safety officer has been arrested, requesting him for his urgent intervention in the matter of arrest of the safety officer on the pattern of the intervention by the Dy. Director of Factories and Boilers, Jaipur vide his communication dt. 07/08/2010 to the Inspector In-Charge of Jakhapur police St. Highlighting the clear advisory role and responsibility of the safety officer, as per the Orissa Factories Rules.

8. The Petitioner foundation, thereafter on such an important and serious issue had its meeting on March 25, 2022 at its registered office and after pondering over the existing rules and regulations and considering occurrence of such incidents in future, in the interest of public/workers as a whole as well as to protect the noble profession of Safety Officers and every management should take up the issue of safety seriously, decided to approach the Hon'ble Court through the PIL for

necessary guidelines/directions or orders to all concern-the Companies, Police about the significance of safety measures and role and responsibility of safety officers as laid own in Government Rules and Regulations.”

6. Based on the aforesaid pleadings, reliefs have been claimed as follows: -

“B. That this Hon’ble Court be pleased to direct all the respondents, to inform all concern about the significance of safety measures to be followed in every establishment and the advisory role of the Safety Officers.

C. That this Hon’ble Court be pleased to direct the Respondent No. 4, the DGP of Maharashtra State to issue the necessary directions to all police stations brining (sic., bringing) to their notice the Advisory role of Safety Officers under the Acts, Rules and Regulations.”

7. Appearing in support of the PIL, Dr. Mane, learned advocate, refers to the statutory provisions contained in the Factories Act as well as in the Rules of 1982 and the Maharashtra Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2007 (hereafter “the Rules of 2007”, for short) to argue that the role of the Safety Officers being purely advisory in nature, such Safety Officers ought not to be prosecuted for failure on the part of the employers of such officers/factory management to ensure safety and health at the respective work place.

8. It is the further contention of Dr. Mane that where number of employees or workers are engaged, it is the duty of the company/factory owner/establishment to have such work executed in safe working conditions taking care of the safety of the employees so that any accident of similar nature as the one in Pune [referred to in para 4(G)] can be avoided.

9. In course of hearing, Dr. Mane has invited our attention to page 39 of the writ petition, which is a letter from the Deputy Director of Factories and Boilers, Jajpur Road Division, Jajpur Road, District Jajpur, Orissa dated 7th August 2010 addressed to the Inspector In-Charge, Jakhapura Police Station, District Jajpur. Since Dr. Mane has urged us to direct the Directorate of Industrial Safety and Health to issue directions as contained in such communication, we consider it appropriate to quote the same below: -

"Sir,

It has been learned from the Management of few Kalinganagar Industries that you are inquiring about the duties and responsibilities of the Safety Officers appointed in the factory as per the statutory provisions of the Factories Act in connection with some factory related accidents.

In this connection I would like to bring it to your knowledge that;

1. A Safety officer is appointed in a factory as per Section 40B of the Factories Act 1948 and Rules 61-A of Orissa Factories Rules 1950.
2. The duties of the safety officers are purely advisory in nature who will constantly advised the management as regards to planning, organizing, job safety studies, purchasing high quality safety equipment, advise for plant safety inspection, advise on matter related to reporting to statutory authorities regarding accidents, investigation of selected accidents, advise on maintenance of statutory records on accidents and dangerous occurrence to advice and conduct safety promotional activities like safety committee, organize campaigns, competitions, contests in the matter of safety and to design and conduct suitable training and educational programme etc.

It has been further noticed that few managements are fixing responsibility on a safety officer in case

of any accidents and dangerous occurrence without going through the details of the subject which is not correct.

Under such circumstances I request you in case of any such incidents kindly do not hesitate to ask undersigned for clarification on the matter.”

10. Next, Dr. Mane places reliance on the decision of a learned Single Judge of the High Court of Karnataka at Bengaluru dated 23rd September 2019 in Crl. P. No. 6274 of 2016 (**Allaiah and Anr. vs. State of Karnataka and Anr.**) in support of the contention that vicarious liability cannot be fastened on Safety Officers for negligence on the part of the factory manager resulting in any accident.

11. Dr. Mane also contends that guidelines should be issued by this Court so that prior to registration of an offence leading to arrest of a Safety Officer, a preliminary investigation is conducted to fix accountability.

12. Dr. Mane, thus, prays that for protecting the interest of the Safety Officers, whose role is merely advisory, the Court may issue appropriate guidelines so that unnecessary and unwarranted arrests can be avoided.

13. Having heard the contentions raised by Dr. Mane with the attention and seriousness the same deserve, we find no reason to call upon the respondents to answer such contentions.

14. Section 40B of the 1948 Act provides for employing Safety Officers, reading as follows: -

“40B. Safety Officers. —(1) In every factory—

(i) wherein one thousand or more workers are ordinarily employed, or

(ii) wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory,

the occupier shall, if so, required by the State Government by notification in the Official Gazette, employ such number of Safety Officers as may be specified in that notification.

(2) The duties, qualifications and conditions of service of Safety Officers shall be such as may be prescribed by the State Government.”.

15. Thus, Safety Officers are required to be employed in every factory where more than a thousand workers are ordinarily employed or as and when a notification is issued under sub-section (1) of section 40B of the 1948 Act by the State Government. In terms of the Rules of 1982, recruitment of safety officers would be guided by Rule 5. A process of selection is envisaged therein. The qualifications required for appointment as Safety Officer are provided under Rule 3. For facility of reference, we quote sub-rules (1) and (2) of Rule 3 of the Rules of 1982 hereunder: -

“3. Qualifications and disqualifications for being appointed as Safety Officer

(1) a person shall not be eligible for appointment as a Safety Officer unless he-

(a) Possesses a degree in any branch of engineering or technology, and practical experience of working in any factory in a supervisory capacity for a period of not less than two years, or experience of not less than five years in training education, consultancy or research in accident prevention in any industry; or

(b) Possesses, -

(i) a degree in physics or chemistry or a diploma in any branch of engineering or technology; and

(ii) practical experience of working in any factory in a supervisory capacity for a period of not less than five years; and

(c) possesses adequate knowledge of Marathi language.

(2) No person shall be continued as a Safety officer unless he possesses any of the requisite qualifications prescribed in sub-rule (1) and a diploma in industrial safety, or obtains such qualifications or a diploma within the period of not more than three years from the appointed day or within such period thereafter as the State Government may by notification in the *Official Gazette* fix from time to time:

Provided that the State Government may, subject to such conditions as it may specify, relax all or any of the requisite qualifications mentioned in sub-rules (1) and (2) in favour of any person who has been working as a Safety Officer in any factory for a period of not less than five years on the appointed day and who, in the opinion of the State Government, possesses such practical experience as may be sufficient for his serving as a Safety Officer."

16. The duties of Safety Officers are to be found in Rule 8, reading as follows: -

"8. Duties of Safety Officers

(1) The duties of a Safety Officer shall be to advise and assist the factory management in the fulfilment of its obligations, statutory or otherwise, concerning prevention of personal injuries and maintaining a safe working environment. These duties shall include the following namely: -

(i) to advise the concerned departments in planning and organising measures necessary for the effective control of personal injuries;

- (ii) to advise on safety aspects in all job studies and to carry out detailed job safety studies of selected jobs;
- (iii) to check and evaluate the effectiveness of action taken or proposed to be taken to prevent personal injuries;
- (iv) to advise the purchasing and stores departments in ensuring high quality and availability of personal protective equipment's;
- (v) to advise on matters related to carrying out plant safety inspections;
- (vi) to carry out plant safety inspections in order to observe the physical conditions of work and the work practices and procedures followed by workers and to render advice on measures to be adopted for removing the unsafe physical conditions and preventing unsafe actions by workers;
- (vii) to render advice on matters related to reporting and investigation of industrial accidents and diseases;
- (viii) to investigate selected accidents;
- (ix) to investigate the dangerous occurrences reportable under Rule 115 of the Maharashtra Factories Rules, 1963 and the cases of Industrial diseases contracted by any of the workers employed in the factory reportable under rule 116 of the (said rules):
- (x) to advise on the maintenance of such records as are necessary relating to accidents, dangerous occurrences and industrial diseases;
- (xi) to promote setting up of safety committees and act as adviser to such committees;
- (xii) to organise in association with the concerned departments, campaigns, competitions, contests and other activities, which will develop and maintain the interest of the workers in establishing and maintaining safe conditions of work and procedures; and
- (xiii) to design and conduct either independently or in collaboration with the training department, suitable training and educational programmes for the prevention of personal injuries.

- (2) No safety Officer shall be required or permitted to do any work which is inconsistent with or detrimental to the performance of the duties mentioned in sub-rule (1)."

17. The duties of Safety Officers under the Rules of 2007 are not substantially different from the duties as are provided in Rule 8 of the Rules of 1982, extracted supra.

18. Having regard to the qualifications an aspirant for employment on the post of Safety Officer is required to possess, it is clear that once appointed, the incumbent would be required to advise and assist the factory management in fulfilment of its obligations, statutory or otherwise, concerning prevention of personal injuries and maintenance of safe working environment. In terms of Rule 7(4) of the Rules of 1982, a Safety Officer shall be provided with adequate technical and secretarial staff and equipment to enable him to function efficiently.

19. From the scheme of the 1948 Act as well as the Rules framed thereunder, namely, the Rules of 1982, there can be no iota of doubt that the Safety Officers are responsible for ensuring precautions to avoid accidents or any untoward incidents having the potential of causing loss to lives and limbs of workers employed in the factories. Additionally, the responsibilities of a Safety Officer do not end with advising the person in-charge of the factory or the occupier to take measures for safeguarding the lives and limbs of the workers at risk of receiving injuries, but also to carry out safety inspections to remove unsafe physical conditions as well as to prevent unsafe actions by the workers. Therefore, apart from advising the factory management to fulfil its obligations, a Safety Officer has a positive role to ensure safe working

conditions. In the event the employer/factory management has not acted on his advice, a Safety Officer has a duty to investigate dangerous occurrences and report under Rule 115 of the Maharashtra Factories Rules, 1963 as well as to promote setting up of safety committees and act as an advisor to such committees.

20. We are not persuaded to accept Dr. Mane's contention that merely because the relevant statute uses the word "advise" while describing the duties at some places, the role of a Safety Officer is merely advisory without anything more and, therefore, he would be immune from prosecution.

21. In our considered opinion, the PIL has been instituted to protect erring Safety Officers upon whom statutory duties have been entrusted by the Rules of 1982 framed under the 1948 Act to check and evaluate the effectiveness of action taken or proposed to be taken to prevent personal injuries to employees working in factories as well as to undertake safety inspections in order to observe the physical conditions of work and the work practices and procedures followed by workers as well as to render advice on measures to be adopted for removing the unsafe physical conditions and preventing unsafe actions by workers.

22. The decision cited by Dr. Mane in **Allaiah** (supra) has been perused by us. A charge-sheet under section 173(2) of the Code of Criminal Procedure, 1973 (hereafter "Cr. P.C.", for short) was filed saying that the alleged accident had taken place on account of the negligence of the occupier of the factory, which is punishable under section 92 of the 1948 Act. The petitioners before the Court, being the Shift Manager and

the HR Assistant Manager, were not accused of being responsible for the alleged act resulting in grievous injury suffered by the respondent no.2. On the basis of such charge-sheet, the Court held that since the alleged accident had taken place on account of the negligence of the occupier in not providing necessary safeguards as required under the 1948 Act, vicarious liability cannot be fastened on the petitioners. Consequently, the Court held that prosecution was maintainable only against the occupier and not against the petitioners and the proceedings initiated against the petitioners were quashed being contrary to section 338 of the Indian Penal Code.

23. We have failed to find the materiality of the decision in **Allaiah** (supra) to the facts of the present case. The High Court of Karnataka was not concerned with a case of failure to discharge duty by a Safety Officer appointed under the 1948 Act. Moreover, the decision in **Allaiah** (supra) turns on the contents of the charge-sheet that was filed under section 173(2) of the Cr. P.C. Finally, no law has been laid down therein which would have application in the present case to decide the issue raised by the petitioner.

24. Insofar as the contention of Dr. Mane that guidelines should be laid down by this Court for conducting preliminary inquiry before registration of crime is concerned, we need to look at the decision in **Lalita Kumari vs. Government of Uttar Pradesh**, reported in (2014) 2 SCC 1. In such decision, the Constitution Bench held that registration of a FIR is mandatory under section 154 of the Cr. P.C., if the information discloses commission of a cognizable offence and no

preliminary inquiry is permissible in such a situation. The Court also went on to provide illustrations where preliminary inquiry could be conducted depending upon the facts and circumstances. It was held that preliminary inquiry could be conducted in respect of offences arising out of matrimonial/family disputes, commercial disputes, medical negligence cases, corruption cases and cases of abnormal delay and laches in lodging FIR for investigation. Although Dr. Mane is right that the Court made it clear that the aforesaid illustrations are not exhaustive of all conditions which may warrant preliminary inquiry, we hasten to add that whether or not a preliminary inquiry prior to registration of FIR and investigation of the same should be conducted largely depends on the contents of the written complaint received by the police. If a cognizable offence is disclosed, the police cannot but proceed to register an FIR, the same being its mandatory duty. Even in cases of alleged criminal negligence, what information the written complaint discloses with regard to the acts of crime would have primacy. Of course, it is for the police to decide whether in a given case based on the nature of offence alleged, it ought to conduct a preliminary inquiry or not before registration of an FIR. The discretion that the police has been conferred by the relevant statute cannot be directed to be exercised in the manner the writ court directs. Hence, there can be no guidelines issued by the Court that in all cases of alleged criminal negligence by Safety Officers leading to loss of lives and limbs, there ought to be a preliminary inquiry.

25. Finally, the letter dated 7th August 2010 of the Deputy Director of Factories and Boilers, Jajpur Road Division, Jajpur Road, District Jajpur, Orissa is taken up for consideration. First of all, the federal structure of governance of the country has to be respected. The rules framed by the States of Orissa and Maharashtra under the 1948 Act have not been shown to be similar. Secondly, each State has its own peculiar problems and solutions. What the State of Orissa in a given fact situation directs may not be the proper solution when the State of Maharashtra faces such problem. Thirdly, the letter does not go so far as to support the contention of Dr. mane for a preliminary inquiry to precede the registration of an FIR. It simply requests the police to get in touch with the Deputy Director. The letter of the Deputy Director, therefore, cannot be called in aid by the petitioner.

26. In our considered opinion, the PIL has been instituted to protect erring Safety Officers. It is thoroughly vexatious and misconceived; hence, the same is dismissed.

27. The security deposited by the petitioner, in terms of the order dated 26th September 2022, stands forfeited. The Registrar General is directed to consult with the Charity Commissioner and identify any institution/organization working for upliftment of children suffering from Cancer and to make over such amount of Rs. 1,00,000/- (Rupees One Lakh only) to such institution/organization.

SALUNKE
J V

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by SALUNKE J V
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(ABHAY AHUJA, J.)

(CHIEF JUSTICE)