



Crl.O.P.Nos.28072 to 28075 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.08.2023

PRONOUNCED ON: 21.08.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.Nos.28072 to 28075 of 2015

and

M.P.Nos.1 to 1 & 2 to 2 of 2015

Jayakar Krishnamurthy
S/o.Dr.V.Krishnamurthy,
Occupier,
M/s.UCAL Fuel Systems Ltd
E-9, E-12, Industrial Complex,
Maraimalai Nagar – 603 209
Chengalpattu Taluk,
Kanchipuram District.

...

Petitioner in all
Crl.O.Ps.

/vs/

State by Deputy Director,
Industrial Safety & Health – II,
Kancheepuram,
A-28, TANSI Building,
Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai – 32.

...

Respondent in all
Crl.O.Ps.

Prayer : Criminal Original Petitions have been filed under Section 482 of Cr.P.C.to call for the records in C.C.Nos.205, 203, 201 & 202 of 2015 on the file of the Chief Judicial Magistrate, Chengalpet and quash the same.



WEB COPY



Crl.O.P.Nos.28072 to 28075 of 2015

For Petitioner in
all Crl.O.Ps.

... Mr.V.Karthic
Senior Counsel
for Ms.Rohini Ravikumar

For Respondent in ...
all Crl.O.Ps.

Mr.Hasan Mohammed Jinna
State Public prosecutor
assisted by Mr.L.Baskaran,
Government Advocate (Crl.side)

COMMON ORDER

Since the fact of the legal issue and the parties involved in these matters are one and the same, they heard together and disposed of the same by way of common order.

2.The fact of the cases is that the petitioner is the occupier of the M/s.UCAL Fuel Systems Ltd., E-9, E-12, Industrial Complex, Maraimalai Nagar – 603 209, Chengalpattu Taluk, Kanchipuram District. On 27.01.2015, the company was inspected by the Joint Director, Industrial Safety and Health, Kanchipuram, Chennai. On inspection, he found the following contraventions as per The Factories Act, 1948 and Tamil Nadu Factories Rules, 1950;



“ In C.C.Nos.205 of 2015

***1.Section 87 Rule 95 Schedule II Item 9 (2) - for
The workers employed in Electro Nickel Plating
were not medically examined by the Certifying
surgeon once in six months.***

***2.Section 13(1) – for Fume exhaust with ducting
arrangement has not been provided to the
Aluminium Presser Die Casting Machine***

In C.C.No.203 of 2015

***1.Section 6 (1) (d) Rule (3) (5) (a) – for the
conditions mentioned in item 3(a), 3(b), 6 & 7 of
the plan approval of the petitioner's factory vide
R.Dis (D1)/10888/2012 dated 12.10.2012, was
not rectified.***

***2.Section 41 Rule 61 N – for ISI certified Nose
mask / respirators were not provided for the
safety of the workers engaged in the Shot
blasting section.***



***3.Section 87 rule 95 Schedule VIII Item 9-B (2)
– for The workers engaged in the Shot blasting
section were not medically examined by the
Certifying surgeon.***

In C.C.201 of 2015

***1.Section 2 (cb) First Schedule item 3, 17,29
read with Section 7A and Section 41B (4) – for
“Onsite Emergency Plan” was not submitted for
approval till the date of inspection on
27.01.2015.***

***2.Section 2 (cb) Annexure V item 3, 17, 29 read
with Section 7A (3) and Section 41B & 112 Rule
62B – for the petitioner has failed to prepare and
submit Health and safety policy.***

***3.Section 2(cb) Schedule I Item 3, 17, 29 read
with Section 112 Rule 62-O (1)(c)(iii) – for a
nurse, Dresser cum compounder and sweeper
cum ward boy were not appointed in each shift.***

In C.C.No.202 of 2015

***1.Section 87 Rule 95 Schedule VIII Item 4(1) –
for every shot blasting enclosure in the factory***



has been inspected by a competent person atleast once in every week.

2.Section 87 Rule 95 Schedule VIII Item 9B(1) – for the petitioner has failed to carry out medical examination for the workers engaged in shot blasting operation within 15 days from the date of their employment by the certifying surgeon.

3.Section 87 Rule 95 Schedule II item 9 (1) – for the petitioner has failed to carry out medical examination for the ten contract workers engaged in nickel plating by the certifying surgeon.”

3.For the abovesaid contraventions, show cause notice was issued by the Joint Director on 16.02.2015, for that, extension of three weeks to submit reply requested by the petitioner. Thereafter, the petitioner sent a reply on 20.03.2015. Since not satisfied with the reply given by the petitioner, the respondent obtained sanction for prosecution from the Additional Director on 21.04.2015. Thereafter, the present impugned



CrI.O.P.Nos.28072 to 28075 of 2015

complaints were filed on 24.04.2015 within a period of limitation i.e.88 days and all these criminal complaints are now under challenge.

4.The learned counsel appearing for the petitioner submitted that the petitioner is the occupier of the above said company. The company was inspected by the respondent on 27.01.2015. During the inspection, the respondent found some contraventions and issued a show cause notice requiring the explanation from the petitioner. In this regard, the petitioner sought further time to collect the data and gave a reply to the said show cause notice, thereafter, sent a reply denying all the allegations and contraventions in the show cause notice as untrue. On 20.03.2015, the petitioner gave a detailed reply to the show cause notice pointing out the anomalies between the inspection report and the reality. Without considering the said reply, a non speaking order dated 17.04.2015 was passed by the respondent for prosecution. In the said order, there was no reference to the points mentioned in response to the show cause notice. This reflects the clear non application of mind by the respondent for granting sanction for prosecution.



WEB COPY



Crl.O.P.Nos.28072 to 28075 of 2015

5.The learned counsel further submitted that in the impugned complaints, there are no averments stating that the explanation offered by the petitioner is not satisfactory. Thus, the impugned complaints are vitiated due to total non-application of mind and therefore, liable to be quashed.

6.To support his argument, the learned counsel relied upon the decisions of this Court in (i).***Inspector of Factories, Vellore Vs. Showa Engineering Ltd., Sholinghur*** reported in 2007 (4) L.L.N.828, (ii). ***K.Masthan Rao Vs. State, rep.by Inspector of Factories, First Circle, Vellore*** reported in 2014 (3) MWN (Cr.) 86, (iii).***Mr.A.Goutam Datta Vs. State by the Inspector of Factories, No.6, Ialbahadur Sastri Street, Periyakuppam, Thiruvallur and another*** reported in 2017 SCC OnLine Mad 18593 and ***Ness Wadai Vs. State of Tamil Nadu, Through its Deputy Director, Industrial Safety and Health, Ooty*** in Crl.O.P.Nos.6714 & 6826 of 2018 on 27.05.2022.



WEB COPY

7.The learned State Public Prosecutor assisted by the Government advocate (Crl.side) appearing for the respondent submitted that the explanation offered by the petitioner for the show cause notice issued by the respondent is not satisfied. The factual details as stated by the respondent in the show cause notice is denied by the petitioner in the reply. The factual details, which have been disputed by the petitioner, cannot be agitated before this Court by invoking Section 482 Cr.P.C. The petitioner have to appear before the trial Court and place all their submissions with regard to the factual dispute and thus, pleaded to dismiss all the criminal original petitions.

8.I have considered the matter in the light of the submissions made by the learned counsel for the parties and perused the materials available on record.

9.On perusal of the materials available on record, it is seen that the undisputed fact is, the respondent inspected the company on 27.01.2015 and found out the contraventions as per The Factories Act, 1948 and the



CrI.O.P.Nos.28072 to 28075 of 2015

Tamil Nadu Factories Rules 1950 as mentioned above. Hence, a show cause notice has been issued by the Joint Director to submit a reply within seven days on 16.02.2015, for that, the petitioner sought extension of three weeks time to submit reply, thereafter, they sent a reply notice to the show cause notice on 20.03.2015. Since not satisfied with the reply, sanction for prosecution was obtained from the Additional Director on 21.04.2015 and the impugned complaints were filed on 24.04.2015 within the limitation period of 88 days.

10.Now, it would be relevant to take note of the explanation given by the petitioner to the contraventions pointed out by the respondent in the show cause notice.

“1.As per section 6(1) (d) Rule 3(5) (a)

We will comply as per the instruction.

2.As per section 7(1) Rule 12 B(3)(4)

We already have approved Stability certificate by the competent person dated 11.01.2013 valid up to 10.01.2016 and the same will be submitted to your office.



3.As per section 45(3) Rule 63 (B)

***As per our training calendar 2015-2016 First
-Aid training is completed on 04.02.2015 and
list of trained first aiders is available.***

4.As per section 41 Rule 61M (3) (a)

***Already safety committee is functioning and
recently new safety committee members are
selected through election (Workmen category)
from 03.06.2013.***

5.As per section 38(2) Rule 61(12)

***As per our training calendar 2015-2016
Emergency Mock drill (Fire) is completed on
12.02.2015.***

6.As per section 38(2) Rule 61(13)

***There is no storage of Tri Chloro Ethylene in
our premiss.***



WEB COPY



CrI.O.P.Nos.28072 to 28075 of 2015

7.As per section 41 Rule (61)

Already Dust and fume mask is provided to all employees whoever working in the shot blasting area and in addition to that Respiratory mask will be provided as advised by you.

8.As per section 87 Rule (95) Schedule VIII Sub section 9B(2)

Medical examination was completed on month of February 2015 and reports are readily available.

9.As per section 87 rule 95 Schedule VIII sub section 4(1)

Monthly inspection was done by the competent person, as per your instruction we will change as weekly.

10.As per section 87 Rule 95 Schedule VIII sub section 9 B (1)



Medical Examination was done and reports are readily available.

11.As per section 87 Rule 95 Schedule II sub section 9(1)

Medical examination was done and reports are readily available.

12.As per section 87 Rule 95 Schedule II sub section 9(2)

It was under practice, and Medical examination was completed for the first half of 2015 and reports are readily available.

13.As per section 87 Rule 95 Schedule II sub section 6

We are having shower with eye wash foundation near the Electro plating area.

14.As per section 2 (cb) sub section 3,17,29 and Section 7A & Section 41B(4)



WEB COPY



CrI.O.P.Nos.28072 to 28075 of 2015

We will prepare and submit in a month of time.

***15.As per section 2 (cb) sub section 3, 17, 29
and Section 7A (3) & Section 41B & 112 Rule
62B***

***Already it is available, we will submit with in a
week.***

***16.As per section 2 (cb) sub section 3, 17, 29
and Section 7A (3) & Section 41B & 112 Rule
62(0)(1)& (i)***

***Already Medical officer was appointed to our
Occupational Health Center, approvals are
under process.***

***17.As per section 2 (cb) sub section 3,17,29 and
Section 7A (3) & Section 41B & 112 Rule 62 (0)
(1) & (iii)***

Already Nurse, Dresser cum compounder and



sweeper cum ward boy were appointed to our Occupational health Center.

18.As per section 46 Rule 67A

Periodical medical examination was done and reports are readily available.

19.As per section 46 Rule 70

Canteen Committee is maintained and successfully functioning.

20.As per section 48(1) Rule 73 to 76

Already it is available as per the prescribed rule.

21.As per section 46 Rule 72 (1) (3)

It already available

22.As per section 13(1)

It was under revamping work, within a week of time we will be commission.



WEB COPY



CrI.O.P.Nos.28072 to 28075 of 2015

In view of the above submitted facts, it is requested that the show cause notice may kindly be closed and necessary orders may be issued in this regard.

11.Further, on perusal of the complaints and the order for sanctioning prosecution, it is noticed that there is no reference to the reply submitted by the petitioner. Further, it is noticed that an appeal is provided to the petitioner under Section 107 of the Factories Act. In this case, it is clear denial to the petitioner. Section 107 of the Factories Act, 1948 reads as follows;

“107.Appeals.- (1) The manager of a factory on whom an order in writing by an Inspector has been served under the provisions of this Act or the occupier of the factory may, within thirty days of the service of the order, appeal against it to the prescribed authority, and such authority



WEB COPY



CrI.O.P.Nos.28072 to 28075 of 2015

may, subject to rules made in this behalf by the State Government, confirm, modify or reverse the order.

(2) Subject to rules made in this behalf by the State Government (which may prescribe classes of appeals which shall not be heard with the aid of assessors), the appellate authority may, or if so required in the petition of appeal shall, hear the appeal with the aid of assessors, one of whom shall be appointed by the appellate authority and the other by such body representing the industry concerned as may be prescribed:

Provided that if no assessor is appointed by such body before the time fixed for hearing the appeal, or if the assessor so appointed fails to attend the hearing at such time, the appellate authority may, unless satisfied that the failure to attend is due to sufficient cause, proceed to hear



WEB COPY



CrI.O.P.Nos.28072 to 28075 of 2015

the appeal without the aid of such assessor or, if it thinks fit, without the aid of any assessor.

3.Subject to such rules as the Stale Government may make in this behalf and subject to such conditions as to partial compliance or the adoption of temporary measures as the appellate authority may in any case think fit to impose, the appellate authority may, if it thinks fit, suspend the order appealed against pending the decision of the appeal.”

12.Thus, in this case, this Court is fully satisfied that the impugned complaints are vitiated due to non application of mind and non reflection of the reply given by the petitioner and the reason for not satisfying the reply reflected in the sanction for prosecution as well as the impugned complaints; with regard to the denial of opportunity of appeal as per Section 107 of the Factories Act, 1948 is the denial of right of the petitioner. Any prosecution launched in denial of such rights would be



Crl.O.P.Nos.28072 to 28075 of 2015

unsustainable and liable to be quashed.

WEB COPY

In view of the above, the criminal original petitions are allowed.

Consequently, connected miscellaneous petitions are closed.

Index : Yes/No

21.08.2023

Internet : Yes/No

sms

To

1.The Chief Judicial Magistrate,
Chengalpet.

V.SIVAGNANAM,J.

sms

Pre-delivery order made in
Crl.O.P.Nos.28072 to 28075 of 2015
and
M.P.Nos.1 to 1 & 2 to 2 of 2015



WEB COPY



CrI.O.P.Nos.28072 to 28075 of 2015

21.08.2023