

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CRM-M-24054-2014 (O&M)

M/s Rapid Metro Rail Gurgaon South Limited and others
..... Petitioners

Vs.

Er. Deepak Malik, Asst. Director, Industrial Safety and Health and others
..... Respondents

2. CRM-M-24064-2014 (O&M)

M/s Rapid Metro Rail Gurgaon Limited and others
..... Petitioners

Vs.

Er. Deepak Malik, Asst. Director, Industrial Safety and Health and others
..... Respondents

3. CRM-M-24065-2014 (O&M)

IL & FS Engineering and Construction Company Limited
..... Petitioner

Vs.

Er. Deepak Malik, Asst. Director, Industrial Safety and Health and others
..... Respondents

4. CRM-M-22522-2015 (O&M)

M/s Rapid Metro Rail Gurgaon South Limited and others
..... Petitioners

Vs.

Er. Deepak Malik, Asst. Director, Industrial Safety and Health and others
..... Respondents

Dated of Decision: 26.07.2023

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Siddharth Dias, Mr. Mannu Chaudhary and
Mr. Gursher Bhandal, Advocates, for the petitioners.

Mr. Randhir Singh, Addl. A.G, Haryana.

DEEPAK GUPTA, J.

This order shall dispose of four petitions referred above, as similar facts and questions of law are involved therein.

2. Petitioners have sought to quash the criminal complaints filed by the respondents against them in the Court of Id. Chief Judicial Magistrate, Gurgaon, seeking their prosecution under Sections 47, 48 and 50 of the *Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996* [for short ‘the BOCW Act, 1996’], for violation of the various provisions of the aforesaid 1996 Act and *Haryana Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2005* [for short ‘the 2005 Rules’].

3. Inspections were conducted by the respondents at the site of the petitioners on different dates, alleging various violations of the BOCW Act, 1996, in respect of which different complaints have been filed, all of which are subject matter of challenge in these petitions. Following table provides necessary details:-

Case No.	Complaint No.	Date of Inspection
CRM-M-24054-2014	513/2014	13.12.2013
CRM-M-24064-2014	06/2013	04.01.2013
CRM-M-24065-2014	630/2013	26.02.2013
CRM-M-22522-2015	1195/2014	15.05.2014

4. For ready reference, facts are being noted from CRM-M-24054-2014.

5. As per the complaint (Annexure P8) filed before Id. CJM, Gurugram, inspection was carried out by a team of Director Industrial Safety and Health, Gurugram-I on 13.12.2013 at the establishment of petitioner No.1, which found non-registration of petitioner No.1 under the BOCW Act, 1996. Various other violations of the Act were also noticed, which were not rectified and therefore, prosecution of the petitioners-accused was sought under Sections 47, 48 and 50 of the BOCW Act, 1996. Id. CJM, Gurugram, without taking any preliminary evidence, issued notice to the accused-petitioners to face prosecution, vide order dated 31.03.2014 (Annexure P-9).

6. It is contended by learned counsel that petitioners are companies incorporated under the Companies Act, 1956, which are promoted by Infrastructure Leasing and Financial Services Limited [IL & FS Ltd.]. The Rapid Metro Rail, Gurugram Ltd. is a Special Purpose Vehicle [SPV], being the concessionaire for the project, created to provide speedy transport from National Highway-8 to Sikanderpur Delhi Metro Phase-I. Petitioner No.1 is also the special purpose vehicle for Phase-II of the project connecting Sikanderpur Delhi Metro to Sector 56 Gurugram and so, in order to execute the work of the Metro Rail Project, petitioner No.2 being the contractor for the project was incorporated with sole object of focusing on the Urban Rail Transit Projects.

7. It is contended further that for execution of the Rapid Metro Rail Project at Gurugram, a Memorandum of Understanding was signed on 15.12.2011 amongst Government of India, Government of Haryana and Delhi Metro Rail Corporation Limited, which clarifies that project is to be

governed by the provisions of Metro Railway (Construction of Workers) Act, 1978 and Metro Railways (Operation and Maintenance) Act, 2002 and/or such other legislation made from time to time by the Government of India. It is submitted that construction activity is going on in full swing and that the certificate of registration dated 26.09.2013 to carry out Phase II of the project was duly issued by the Registering Officer, Assistant Labour Commissioner, Central to Petitioner No.3, being the contractor in compliance with BOCW Act, 1996 and Rules made thereunder.

8. It is contended that respondent No.1 vide a letter dated 04.03.2014 (Annexure P6) in a *mala fide* manner alleged that petitioner was not registered with the appropriate Government i.e. State Government under the BOCW Act, 1996. Petitioner responded to the letter by categorically informing that establishment was duly registered with the Central Government vide letter dt.16.04.2014 (Annexure P-7). Despite the same, the impugned complaint has been filed by the respondents without having any jurisdiction.

9. Learned counsel has drawn attention towards Section 2(a) of the BOCW Act, 1996 to be read with Section 2(a) of the Industrial Dispute Act, 1947 to contend that petitioner being a railway company, so it is the Central Government, which is the appropriate authority and therefore, jurisdiction of the State Government is clearly barred. It is stated further that Rules 2005 are not applicable to the petitioners because the appropriate government for petitioner is the Central Government. Attention is further drawn towards MoU dated 15.12.2011 (Annexure P2) to contend that Metro Railway being a Railway is the Central subject and so, it is the Central

Government, which is the appropriate authority and as such, State Government has no jurisdiction to inspect the establishment registered with Central Government and so, the prosecution carried out by the State Government under the BOCW Act, 1996 or Rules 2005 is illegal and arbitrary.

10. As per the stand taken by the respondents in their reply dated 09.12.2014, the project is to be implemented with no funding from the Central Government as per Clause 9.5 of MOU and that Clause 8.5 of the MOU provides that safety standards set up by the appropriate authorities are to be strictly followed and complied with by the special purpose vehicle. It is contended that though petitioners are governed by BOCW Act, 1996 being a Central Act, but they are under obligation to comply with the said Act and Rules and as the project is in not being funded by the Government of India as per Clause 9.5, so appropriate Government is the State Government of Haryana and the inspection carried out by the respondents is perfectly legal and justified.

11. In rejoinder, petitioners submit that as they are duly registered under the BOCW Act, 1996 with the Central Government being the appropriate Government, so, they were not required to get themselves registered with the State Government nor the State Government or its officials have any jurisdiction to inspect the premises, let alone file a complaint. It is further contended that Government funding has no relevance as regards the definition of appropriate Government is concerned.

12. During proceedings, vide order dated 09.10.2018, learned State counsel was asked to clarify as to whether it is the State Government

authorities, who can take action for violation of any provisions of BOCW Act, 1996 or as to whether it was the Central Government authorities which can take any such action. On 28.03.2019. Learned State counsel relied upon *Building and other Construction Workers Related Laws (Amendment) Bill 2013* [for short '2013 Bill'], whereby certain amendments were sought to be brought about the definition of appropriate authority. Parties were asked to furnish information as to whether the said Bill had been enacted and if so, the date of its enactment and application. By way of affidavit dated 13.07.2023, Shri Shailesh Ahlawat, Assistant Director, Industrial Safety and Health Circle-1, Gurugram, it is informed by the respondents that aforesaid 2013 Bill is still pending in Parliament and the matter regarding its withdrawal is under consideration.

13. It is, thus, clear that the Building and other Construction Workers Related Laws (Amendment) Bill 2013, regarding amendment in the definition of 'appropriate authority' has not been enacted into an Act till date and so, no reliance on the said Bill can be placed by the respondents-officers of the State Government to claim the State Government to be the appropriate authority.

14. However, learned State counsel has sought to justify the action of the respondents-complainant by pleading that they were acting in the interest of unorganized labours and so, had the *locus standi* to file the complaint under Public Interest Litigation. Learned State counsel has referred to *Peoples Union for Democratic Rights and another Vs. Union of India*, 1982 AIR (Supreme Court) 1473, wherein *locus standi* and maintainability of a petition filed by a social organisation was challenged

before the Hon'ble Supreme Court and it was held that when there were violations and non observance of labour laws by the contractors and the workmen had the cause of action on account of violation of their fundamental rights, the Writ by the social organisation was maintainable.

15. Having considered submissions of both the sides at depth and having perused the record, I find merit in these petitions.

16. As it emerges on perusal of the record, Government of Haryana wanted Gurgaon Metro Rail Link connecting Sikanderpur to NH-8 in Gurgaon. The contract for the said project was awarded to M/s Rapid Metro Rail Gurgaon Ltd., by Haryana Urban Development Authority, regarding which a concession contract was signed on 09.12.2009 (referred in MoU Annexure P2). The Government of India conveyed its in-principle approval for implementation of the project subject to certain conditions, since Metro Railway is a railway and hence a central project. In this context, a Memorandum of Understanding was executed on 15.12.2011 (Annexure P2) between Government of India, Government of Haryana and Delhi Metro Rail Corporation Limited. The said MOU specifically provides in clause 1.2 that Metro Railway being a railway, hence is a central subject and therefore, the project was to be implemented under the Relevant Central Acts requiring in-principle approval of the Government of India and it is for this reason that approval of the Government of India for implementation of the project was taken.

17. Further, as per Clause 5.1 of the MOU a Special Purpose Vehicle (SPV) named M/s Rapid Metro Rail Gurugram Limited was

created for implementation, operation and maintenance of the Project.

Clause 6.1 of the MOU reads as under: -

“The Project, shall be governed by the provisions of the Metro Railway (Construction of Works) Act, 1978 and the Metro Railways (Operation and Maintenance) Act, 2002 and/or such other legislation made from time to time by the GoI.”

18. It is, thus, clear that project is to be governed by the Metro Railway Construction of Workers Act, 1978 and Metro Railway (Operations & Maintenance Act, 2002 and/or any such legislation made by the Government of India from time to time.

19. The BOCW Act, 1996 is a central Act enacted by Parliament of India, to 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. The Act provides for covering every establishment employing workers in any building or other construction work exceeding a particular limit; to define appropriate government, for registration of establishments employing construction workers and appointment of registering officers for that purpose; for providing numerous amenities etc. for the workers; and to take necessary safety, health and welfare measures for workers.

20. Section 47 of the BOCW Act, 1996 provides for penalty for contravention of the provisions regarding safety measures. Section 48 of the Act provides for penalty for failure to give notice of the commencement of the building or other construction of work; whereas, Section 50 of the Act provides for penalty of other offences. However, the question arises as

to at whose instance, cognizance can be taken by the Court in respect of any of the offences allegedly committed under the Act?

21. In this regard, Section 54 of the BOCW Act, 1996 reads as under: -

“54. Cognizance of offences. - (1) No court shall take cognizance of any offence punishable under this Act except on a complaint-

(a) made by, or with the previous sanction in writing of, the Director-General or the Chief Inspector; or

(b) made by an office- bearer of a voluntary organisation registered under the Societies Registration Act, 1860 (21 of 1860); or

(c) made by an office- bearer of any concerned trade union registered under the Trade Unions Act, 1926 (16 of 1926).

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.”

22. It is, thus, clear that complaint to prosecute an offender under BOCW Act, 1996 can be filed before the Court only by the following: -

- (a) Director General or the Chief Inspector;
- (b) with the previous sanction in writing of the Director General or Chief Inspector;
- (c) Officer bearers of any voluntary organisation registered under the Societies Registration Act, 1860; and
- (d) Officer bearers of any concerned trade union registered under the Trade Unions Act, 1926.

23. The terms ‘Director General’ and ‘Chief Inspector’ have been defined under Section 2(h) and 2(f) of the 1996 Act, which are as under: -

“2(f) "Chief Inspector" means the Chief Inspector of Inspection of Building and Construction appointed under sub- section (2) of section 42;”

“2(h) " Director- General" means the Director- General of Inspection appointed under sub- section (1) of section 42”

Thus, Chief Inspector is the person appointed under Sub-Clause (2) of Section 42 of the 1996 Act; whereas, Director General means the person appointed under Sub-Section (1) of Section 42 of the 1996 Act.

24. Section 42 of the 1996 Act, reads as under:-

42. Appointment of Director- General, Chief Inspector and Inspectors.

(1) The Central Government may, by notification, appoint a Gazetted Officer of that Government to be the Director- General of Inspection who shall be responsible for laying down the standards of inspection and shall also exercise the powers of an Inspector throughout India in relation to all the establishments for which the Central Government is the appropriate Government.

(2) The State Government may, by notification, appoint a Gazetted Officer of that Government to be the Chief Inspector of Inspection of Building and Construction who shall also exercise the powers of an Inspector under this Act throughout the State in relation to establishments for which the State Government is the appropriate Government.

(3) to (5) xxxxx (not relevant)”.

25. Thus, in relation to an establishment, for which the Central Government is the appropriate authority, it is the Central Government, who may by notification, appoint a Gazetted Officer of the Government to be Director General or the Inspector, who is to be responsible for laying down the standards of inspection and also to exercise the power of Inspector through out India. On the other hand, in relation to the establishment for which the State Government is the appropriate Government, the State Government can by notification appoint a gazetted officer to be the Chief Inspector of Inspection of buildings and construction.

26. The term 'appropriate government' is defined under Section 2(a) of the 1996 Act, which reads as under: -

2. (a) "appropriate Government" means,-

(i) in relation to an establishment (which employs building workers either directly or through a contractor) in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;

(ii) in relation to any such establishment, being a public sector undertaking, as the Central Government may by notification specify which employs building workers either directly or through a contractor, the Central Government;

Explanation.- For the purposes of sub- clause (ii)," public sector undertaking" means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act 1956 (1 of 1956), which is owned, controlled or managed by the Central Government;

(iii) in relation to any other establishment which employs building workers either directly or through a contractor, the Government of the State in which that other establishment is situate;

27. Thus, in relation to an establishment employing building workers directly or through a contractor, in respect of which appropriate Government under the Industrial Dispute Act, 1947 is the Central Government, it is said said central government which will be the appropriate government within the meaning of Section 2(1) (a) of the BOCW Act, 1996. Section 2(1) of the Industrial Dispute Act categorically states that for any industry carried out by railway company, the appropriate Government is the Central Government.

28. As noticed earlier that it is clearly provided in Clause 1.2 of MOU (Annexure P2) executed between Government of India, Government of Haryana and Delhi Metro Rail Corporation Limited, that metro railway is a railway and hence a Central subject.

29. Having regard to the aforesaid legal provisions, there can be no doubt in holding that it is the Central Government, which is the appropriate Government within the meaning of Section 2(a) of the BOCW Act, 1996 for the purpose of project being carried out by the petitioners and therefore, prosecution for violation of any provisions of the BOCW Act, 1996 can be launched only as per Section 54 of the said Act either by the Director General or by the Chief Inspector or by anybody with their previous sanction; and not by any officers of the State Government, as is being done in the present case.

30. The contention of Id. State counsel that since the welfare and safety of the workers is involved and so, complaint can be treated as a Public Interest Litigation launched by officers of the State Government, is highly misconceived because criminal prosecution cannot be launched by unauthorised persons under the guise of PIL.

31. Similarly, another contention of the respondents that as funding for the project is being provided only by the State Government and not by the Central Government and so, the respondents-officers of the State Government can seek the implementation of the BOCW Act, 1996, has also no merit, as funding has nothing to do with the criminal prosecution sought to be sought by the respondents under the said Act.

32. In the present case, the complaint (Annexure P8) has been filed by the officers of Industrial Safety and Health of the Haryana Government without seeking any sanction from the Director General or the Chief Inspector as appointed under Section 42 of the BOCW Act, 1996, and therefore, the Court could not take cognizance in the complaint. The

complainants/respondents cannot claim themselves to be voluntary organisation under the Societies Registration Act or a trade union under the Trade Union Act and so, they cannot take any shelter under Sub-Clauses (b) or (c) of Section 54 (1) of the 1996 Act so as to justify filing of the complaint.

33. Thus, looking from any angle, the complaint having been filed by unauthorized persons, no cognizance thereof could have been taken by the Court of Id. CJM, Gurugram. Consequently, petitions are allowed. All the 4 complaints in question along with the consequential proceedings arising therefrom, are hereby quashed.

34. A photocopy of this order be placed on the files of connected cases.

(DEEPAK GUPTA)
JUDGE

26.07.2023

Vivek

1. Whether speaking/reasoned?

Yes/No
2. Whether reportable?

Yes/No