

OSHI v Seaview Limited

2024 IND 22

THE INDUSTRIAL COURT OF MAURITIUS
(Criminal Side)

In the matter of:-

CN 59/2023

OSHI

v.

Seaview Limited

SENTENCE

1. Following its guilty plea, the Accused company was convicted for the offence of failing to apply for the renewal of the certificate of registration of a factory not later than 30 days before the expiry of the certificate in breach of section 88(4), coupled with section 94(1)(i)(vi), of the Occupational Safety and Health Act 2005 (OSHA).

2. The facts of the case are that an inspection by the Occupational Safety and Health Inspectorate of the Ministry of Labour at the place of business of the Accused company situate at Sunset Boulevard, Coastal Road, Grand Baie on 04 February 2022 revealed that the company was operating despite the expiry of its certificate of registration of factory. The certificate had expired since 31 December 2021. The Accused company was booked accordingly. On 16 February 2022, the Accused applied for a renewal of certificate which was approved on 03 March 2022.

3. In its out-of-court defence statement, the Accused, through its duly authorised representative, asserted that the company was involved in the preparation and sale

of food and that 12 workers were on site at the time of the inspection. The Accused readily admitted having failed to renew its certificate of registration of factory. The needful was subsequently done. In Court, the company's representative apologised.

4. According to section 88(4) of the OSHA, "*any person who wishes to renew a certificate of registration of a factory shall apply to the Permanent Secretary for the renewal not later than 30 days before the expiry of the certificate, in the form set out in the Fifteenth Schedule.*" Moreover, any person who contravenes that provision shall commit an offence – *vide* section 94(1)(i)(vi) of the OSHA. Pursuant to section 94(3)(b) of the OSHA, the Accused is liable "*to a fine not exceeding 75,000 rupees and to imprisonment for a term not exceeding one year.*"

5. In **Mosaheb v. The State (2010) SCJ 150**, the Supreme Court highlighted the need to individualise sentences and held that "*the sentence in each case has to be determined in accordance with the facts and circumstances surrounding the commission of the particular offence and the other relevant personal circumstances of an accused party.*" In **Hossen v. The State (2013) SCJ 367**, the Supreme Court referred to the principle of proportionality which must imperatively be applied in order to reach the appropriate sentence in any given case.

6. I have considered the circumstances of this case. I am of the view that the offence for which the Accused stands convicted is of an administrative nature and is at the lower end of the scale of gravity of offences contemplated by the OSHA. I note that the Accused has a clean record. It has now complied with the provisions of the law and obtained the required certificate. The Accused's representative was all throughout the process apologetic and has offered a timely guilty plea. In the light of all the above, I order the Accused to pay a fine of Rs 2,500., together with Rs 200. as costs.

14 June 2024

M. ARMOOGUM

Magistrate