OSHI VS THE MUNICIPAL COUNCIL OF CUREPIPE

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OSHI VS THE MUNICIPAL COUNCIL OF CUREPIPE

Cause Number: 165/21

THE INDUSTRIAL COURT OF MAURITIUS

In the matter of:-

OSHI

VS

THE MUNICIPAL COUNCIL OF CUREPIPE

JUDGMENT

INTRODUCTION

The Accused stands charged with an offence of failing to cause every building used as a place of work to be so designed as to protect employees from the weather, have a watertight roof, and be free from any significant amount of dampness as is liable to affect the safety of the building or the health of the employees in breach of section 34(2) and sections 94(1)(i)(vi) and 94(3)(b) of the Occupational Safety and Health Act – Act no. 28 of 2005 coupled with section 44(2) of the Interpretation and General Clauses Act. The Accused pleaded not guilty and was assisted by Counsel.

THE FACTS

On the 30th September 2020, Mr Joomun, an Occupational Safety and Health Officer, carried out a visit at the premises of the Accused situated at Avenue Queen Elizabeth II, Curepipe. He observed several workshops built next to each other with concrete block partitioning and roofs made up of corrugated iron sheets in the yard of the Accused. Amongst the workshops were the masonry, carpentry, welding, automotive and mechanical workshops.

Mr Joomun narrated to the Court that at the time of the visit, it has just rained. The weather was humid and water had accumulated on the floor in several workshops. In some

workshops, namely the mechanical and masonry workshops, the iron sheets proofing was seen hanging off the roof leaving a void in the roof structure. According to Mr Joomun there was a risk of iron sheets falling on employees. In addition, there were electrical equipment, electric wiring and socket outlets close to the water accumulation in the workshop. Mr Joomun added that there were employees working at the relevant time and there was a risk of electric shock and slip for employees.

Upon being questioned, Mr Joomun explained that if there is no watertight roof, there is the possibility of leakage leading to employees being drenched. In addition, wet equipment also has an impact on the safety of employees. He conceded that following the first visit, he effected another visit and noted that the Accused had taken remedial actions with regards the roofing. Mr Joomun agreed that the representative of the Accused, Mr Mowlah, told the Occupational Health and Safety Officer, at the time of the recording of the statement, that the Accused had advised employees not to work during rainy weather. Nonetheless, it was not put to the Accused that there were employees working in the rainy weather.

Mr Ganshyam Bhaugeerothee is a retired clerical officer of the Accused. He was also the President of the Union and he was the one to report the present matter. He was present when Mr Joomun effected the visit at the premises of the Accused on the 30th September 2023, whilst employees were working in the workshop. He confirmed under oath in Court that the corrugated iron sheets were rotten and damaged and could have collapsed. Some sheets had already flown away. The seeping of the water from the roof onto the workshops and electric equipment, constituted a risk to employees who have to lie on the floor to weld.

The version of the Accused is contained in the statement given by the representative of the Accused to Mr Joomun on the 30th October 2020. The Accused confessed to the charge levelled against it and averred that employees were advised not to work during rainy weather if there is accumulation of water in the workshops. Nonetheless, the Accused undertook remedial actions to prevent the recurrence of any risk to employees.

OBSERVATIONS

I have assessed the evidence on record. The present case is couched under section 34(2) of **THE OCCUPATIONAL SAFETY AND HEALTH ACT** which reads:

> *Every building used as a place of work shall be so designed as to protect employees from the weather, have a watertight roof, and be free from any significant amount*

of dampness as is liable to affect the safety of the building or the health of the employees.

The law

In the present case, Learned Defence Counsel has raised the point that the Prosecution has failed to put to the Accused that it had allowed employees to work despite the rainy weather and accumulation of water in the workshops of the Accused. He submitted that the evidence to the effect that there were employees working at the time of the visit of Mr Joomun, must be disregarded because the Prosecution ought to have put to the Accused the evidence which they intend to present at Trial.

On this score, I deem it to refer to the case of **THE DPP VS T P J M LAGESSE & ORS (2018) SCJ 257** which lays down the basic rule in relation to the confrontation of evidence to the Accused. The Court laid down as follows:

> *"Where there is a complaint, it would de facto imply that the suspect has to be confronted with that complaint; and if there were additional incriminating evidence gathered during the course of the enquiry those should be put to the suspect. Obviously, if the police as part of their enquiry do have incriminating evidence, the suspect has to be cautioned and informed of his right to be legally assisted, i.e. right against self incrimination and right to be legally assisted".*

Having said that, it is important to understand the complaint in this case. The complaint as per the charge put to the Accused is that the Accused failed to cause its building used as a place of work to be so designed as to protect employees from the weather, have a watertight roof, and be free from any significant amount of dampness as is liable to affect the safety of the building or the health of the employees. In other words, the duty of the Prosecution was to establish that the employees were not protected from the elements of the weather, the roof was not watertight and there was dampness such that the safety of the building or the health of the employees were at stake.

This the Accused was confronted to at the time the statement was recorded through Mr Joomun and through the pictures shown to the Accused who effectively admitted the state of the building resulting in a lack of safety to the building and employees. Therefore, all the evidence on which the Prosecution was relying to establish the charge against the Accused was put to the Accused.

It was laid down in the case of **SEETAHUL V VS THE STATE (2015) SCJ 328**, that: *"It was not incumbent at the stage of the enquiry to put each and every element of the offence to the appellant. It suffices that the version of the complainant was put to him so that he was made aware of the case against him and the evidence on which it is based so as to enable him to prepare his defence"*. A similar reasoning was applied in the case of **STATE VS RUHUMATALLY (2015) SCJ 384**, where it was held that: "(…) *the person must be given an idea which is elaborate enough concerning what is reproached of him and which constitutes a breach of the penal laws of Mauritius and to which he is being asked to answer"*.

In the present case, the Accused was confronted to the evidence with regards the state of the building which gave him an enough elaborate idea to understand the charge against him. It is the Accused who came up with a defence that the Accused had advised the employees not to work in rainy weather and in cases of water accumulation. The charge which must be put to the Accused cannot be confused with the defence raised by the Accused. If the defence of the Accused was that it had advised its employees not to work in rainy weather or in cases of accumulation of water, it cannot stand to reason that this ought to be the charge put to the Accused at the time the statement was recorded from the Accused.

To make matters worse, I have noted that the version of the Accused is contained in his statement given to the Occupational Health and Safety Officer. Such version has never been substantiated. Indeed, I have not been favoured with any policy by the Accused that employees were not requested to work in rainy weather. The Accused did not even depose to explain such a defence theory under oath and I therefore cannot attach much weight to this version of the defence. The questions, with regards the defence case, remain as to whether employees were only advised not to work in rainy weather or in cases of accumulation of water? Did the employees still work? Was there any strict written policy on the matter?

On this issue, both Mr Joomun and Mr Bhaugeerothee have undisputedly, clearly and credibly deposed that there were employees working at the material time, leaving the Prosecution case unshattered. In addition, the charge against the Accused is not limited to the health of employees only but is also extended to the safety of the building such that the offence would still persist even if the employees were absent.

In view of the above, I find that the Accused was fully aware of the charge he had to meet, with no irreparable prejudice being caused to him. **(RE: DIRECTOR OF PUBLIC PROSECUTIONS v DUCASSE C.R.G.M. (2023) SCJ 20)**.

THE FACTS

On the facts of the case, I have noted Mr Joomun deposed very well. He addressed the Court in a clear and straightforward manner and established the unsafe conditions of the roofing at the premises of the Accused which led to a direct impact on the health and safety of the workers and the building. His version remained credible and unshattered. He stood up to cross-examination without waver to explain how the leakage of the water represented a danger to the workshop, the electrical equipment and the employees. His version that there were employees working in the workshop at the material time, remained trustworthy and credible.

I have found that the real evidence through the photographs produced lent credence to the version of Mr Joomun. The latter was clear in his explanation that in some workshops, the iron sheets proofing was hanging off the roof, there was a void in the roof structure, there was water accumulation on the floor creating a danger to electrical equipment, wiring, socket and which could have led to slipping or electric shocks by employees. I have no hesitation to believe as true the version of Mr Joomun, such that I am satisfied that the Prosecution has established the poor and inadequate state of roofing of the buildings of the Accused. I can easily conclude that the Accused failed to used its building as a place of work to be so designed to protect employees, to have a watertight roof and to be free from any significant amount of dampness so as to ensure the safety of the building and the health of employees.

The version of Mr Joomun has been corroborated by the version of Mr Bhaugeerothee whose evidence has remained unquestioned. I find no reason to doubt the version of the Prosecution. Accused also confessed to the commission of the offence and this represents the best evidence that could be produced by the Prosecution against the Accused. **(RE: DPP VS J.P.AUMONT (1989) SCJ 338)**.

I therefore find that the defence has not cast any doubt on the version of the Prosecution which has clearly established the case against the Accused.

CONCLUSION

I find that the Prosecution has proved its case beyond reasonable doubt. I find the Accused guilty as charged for the offence of failing to cause every building used as a place of work to be so designed as to protect employees from the weather, have a watertight roof, and be free from any significant amount of dampness as is liable to affect the safety of the building or the health of the employees in breach of section 34(2) and sections 94(1)(i)(vi) and 94(3)(b) of the Occupational Safety and Health Act – Act no. 28 of 2005 coupled with section 44(2) of the Interpretation and General Clauses Act.

Judgment delivered by: M.GAYAN-JAULIMSING, Ag President, Industrial Court

Judgment delivered on: 25th September 2023