

OSHI v Beijing Construction Engineering Group Co Ltd

2024 IND 73

THE INDUSTRIAL COURT OF MAURITIUS
(Criminal Side)

In the matter of:-

CN 85/2024

OSHI

v.

Beijing Construction Engineering Group Co Ltd

SENTENCE

1. The Accused company has been convicted for the following offences further to its guilty plea:

(i) failing to ensure that scaffold is effectively braced by means of longitudinal and transverse bracing systems which extend from the base to the top of the scaffold – breach of Regulation 17(1)(a) and Regulation 60 of the Occupational Safety and Health (Safety of Scaffolds) Regulations 2013 (GN 16 of 2014);

(ii) failing to ensure that any work platform provided does not have any opening except to allow access to that work platform – breach of Regulation 19(4)(a)(iii) and Regulation 60 of the Occupational Safety and Health (Safety of Scaffolds) Regulations 2013 (GN 16 of 2014);

(iii) failing to ensure that every side of a work platform, from which a person is liable to fall more than 2 metres, is provided with toe-boards and 2 or more guardrails – breach of Regulation 23(a) and Regulation 60 of the Occupational Safety and Health (Safety of Scaffolds) Regulations 2013 (GN 16 of 2014).

2. A hearing was held into the circumstances of the offences and revealed that an inspection was carried out at the Accused's construction site in Trianon on 13 April 2023 by the Occupational Safety and Health Inspectorate of the Ministry of Labour, Human Resource Development and Training whereby the above contraventions of the law were observed. Photos showing the state of affairs were produced by the prosecution (**Documents A to A2**).

3. The Accused company has admitted the breach of the law both in its out-of-court statement (**Document B**) and in Court, and apologised. In the out-of-court statement, the Accused's Human Resource Manager asserted that remedial actions have already been taken by the company.

4. In **General Construction Company Limited v. Occupation, Safety and Health Inspectorate, Ministry of Labour, Industrial Relations and Employment (2020) SCJ 40**, the Supreme Court highlighted that "*the legislator's intent behind OSHA is to ensure the safety of workers and OSHA therefore sets out the responsibilities of the employer in that regard.*"

5. Pursuant to section 94(3)(b) of the Occupational Safety and Health Act 2005 (OSHA), as an employer, the Accused company has rendered itself liable "*to a fine not exceeding 75,000 rupees and to imprisonment for a term not exceeding one year*", under each count of the information.

6. In **Mosaheb v. The State (2010) SCJ 150**, the Supreme Court 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.*" Moreover, in **Hossen v. The State (2013) SCJ 367**, the Supreme Court stressed the need to apply the principle of proportionality to reach the appropriate sentence in any given case – *vide also Lin Ho Wah v. The State (2012) SCJ 70.*

7. The certificate of previous convictions (**Document X**) filed by the prosecution, and admitted by the Accused, is long and shows convictions for cognate offences.

8. I have considered all the facts and circumstances of this case as borne out on record. I note that the Accused has admitted the charges and pleaded guilty at the earliest opportunity. Moreover, they have tendered their apologies in Court. They have also indicated that remedial measures have been taken as regards the breaches of the law. That being said, I cannot turn a blind eye to the fact than the Accused has repeatedly acted in contravention of the law, thus putting at risk the safety of its employees.

9. Bearing in mind all these factors, I sentence the Accused to pay a fine of Rs 3,000. under each count of the information. The Accused shall also pay Rs 200. as costs.

11 December 2024

M. ARMOOGUM

Magistrate