

OSHI VS PALLAGAMES LTD

2023 IND 34

THE INDUSTRIAL COURT OF MAURITIUS

Cause Number: 336/2021

In the matter of:-

OSHI

VS

PALLAGAMES LTD

SENTENCE

The Accused stands convicted with an offence of operating a factory without it being registered under the Occupational Safety and Health Act 2005 in breach of sections 88(1) and 94(1)(i)(vi) and 94(3)(b) of the Occupational Safety and Health Act 2005 coupled with section 44(2) of the Interpretation and General Clauses Act.

On the 10th September 2019, Ms Bungsy carried out an inspection at Pallagames in her capacity as a safety and health officer. She noted that the company was operational with 10 employees. It also had an electronic workshop. The company was operating without it being registered under the Occupational Safety and Health Act 2005. The main activities of Pallagames were gaming activities but the electronic workshop stood existent for repairs of gaming machines.

The version of the Accused is contained in a statement given to the Occupational Safety and Health Division of the Ministry of Labour, Industrial Relations, Employment and Training, and through his statement in Court. The representative of the Accused explained, in the statement, that the company was not registered as there was no proper follow-up at the management level of the company. He admitted to the offence and averred that an application for registration of the factory was made to the Ministry on the 12th September 2019, with payment effected on the next day. The Accused as represented by Senedhun, tendered his apologies to the Court. The factory now has the necessary permit to operate.

The penalty applicable in relation to the present offence as contained in section 94(3)(b) of the Occupational Safety and Health Act is a fine not exceeding 75,000 rupees and to imprisonment for a term not exceeding one year.

The general principles in relation to sentencing can be gathered in the dicta in the case of **A. MOSAHEB VS THE STATE (2010) SCJ 150**, namely 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*”. Also, each case depends on its own facts and the sentence must be proportionate to the case. **(RE: HOSSEN VS THE STATE (2013) SCJ 367)**.

The present case falls under the Occupational Safety and Health Act (OSHA) and it must be remembered 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*”. **(RE: GENERAL CONSTRUCTION COMPANY LIMITED v OCCUPATION, SAFETY AND HEALTH INSPECTORATE, MINISTRY OF LABOUR, INDUSTRIAL RELATIONS AND EMPLOYMENT)**.

In relation to sentencing approach, the Court has a duty to balance the seriousness of the offence and the mitigating factors in favour of the Accused. On a scale of gravity, this offence does not reach the high benchmark. I have borne in mind that the Accused company is at his first encounter with the Law. It has a clean record. Also, the Accused entered a timely guilty plea and made a clean breast of events since the beginning. I have noted that the main activities of the company would be gaming activities and the company is now endowed with the necessary licence to operate such that the mitigating factors in this case are strong.

In view of the above, and bearing in mind the nature of the offence as well as the mitigating factors, I order the Accused to pay a fine of Rs 2000, together with Rs 200 as costs.

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

Sentence delivered on: 15th May 2023

