

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI
CP.No.D-1735 of 2013

Date: Order with signature(s) of the Judge(s)

1. For hearing of CMA No. 8715 of 2013.
2. For hearing of main case.

23rd August 2021

Mr. Amer Raza Naqvi, advocate for petitioner.
Mr. Muhammad Nishat Warsi, DAG.
Mr. Ali Safdar Depar, AAG.

Learned DAG and AAG are put on notice to submit details with regard to appointments of an independent person or institution to protect the rights of the workers who are working in mines. Since this issue relates to the workers and as per learned counsel for the petitioner there are transmission lines projects in Thar Coal as well as in other areas, hence, thousands of workers are working in the fields, therefore, it will be appropriate to establish an institute to protect the rights of workers who are working in mines.

No one can deny that their job is very sensitive and in routine there happens mishaps while excavation, therefore, this is the duty of the State to ensure complete mechanism of *safety* of such workers (lives) as well to ensure proper and complete *functional* mechanism, as provided in the Mines Act 1923. Relevant sections 3 & 4 of the above Act are reproduced as under:-

3. ***Definitions.***— *In this Act, unless there is anything repugnant in the subject or context.—*

- (a) “agent” when used in relation to a mine, means any person appointed or acting as the representative of the owner in respect of the management of the mine or of any part thereof, and as such superior to a manager under this Act;
- (aa) “appropriate Government” means, in relation to mines of nuclear substances, mineral oil natural gas and liquids and substances declared by Federal Law to be dangerously inflammable, oilfields and gasfields), the

Federal Government and, in relation to other mines the Provincial Government;

- (b) *“Chief Inspector” means the Chief Inspector of Mines appointed under this Act;*
- (c) *“child” means a person who has not completed his fifteenth year;*
- (cc) *“day” means a period of twenty four hours beginning at midnight;*
- (d) *a person is said to be “employed” in a mine who works under appointment by or with the knowledge of the manger, whether for wages or not, in any mining operation, or in cleaning or oiling any part of any machinery used in or about the mine, or in any other kind of work whatsoever incidental to, or connected with, mining operations;*
- (e) *“Inspector” means an Inspector of Mines appointed under this Act, and includes a District Magistrate when exercising any power or performing any duty of an Inspector which he is empowered by this Act to exercise or perform;*
- (f) *“mine” means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to or belonging to a mine;*

Provided that it shall not include any part of such premises on which a manufacturing process is being carried on unless such process is a process for coke making or the dressing of;

- (g) *“owner”, when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof, but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability;*
- (h) *“prescribed” means prescribed by regulations, rules or bye-laws;*

- (i) *“qualified medical practitioner” means any person registered under any Act of the Central Legislature or any Provincial Legislature providing for the maintenance of a register of medical practitioners, and includes, in any area where no such last mentioned Act is in force, any person declared by the appropriate Government by notification in the official Gazette, to be a qualified medical practitioner for the purposes of this Act;*
- (j) *“regulations”, “rules” and “bye-laws” means respectively regulations, rules and byelaws made under this Act;*
- (jj) *where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a ‘relay’ and the period for which it works is called a ‘shift’;*
- (k) *“serious bodily injury” means any injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any part of the body or the permanent loss of or injury to the sight or hearing, or the fracture of any part of the body or the enforced absence of the injured person from work for a period exceeding twenty days; and*
- (l) *“week” means the period between midnight on Saturday night and midnight on the succeeding Saturday night.*

4- **Chief Inspector and Inspectors.**— (1) *The appropriate Government may, by notification in the official Gazette, appoint a duly qualified person to be Chief Inspector of Mines for the whole of Pakistan or for the Province, as the case may be, and duly qualified persons to be Inspectors of Mines subordinate to the Chief Inspector.*

(2) *No person shall be appointed to the Chief Inspector or an Inspector, or having been appointed shall continue to hold such office who is or becomes directly or indirectly interested in any mine or mining rights in Pakistan.*

(3) *The District Magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the appropriate Government;*

Provided that nothing in this sub-section shall be deemed to empower a District Magistrate to exercise any of the powers conferred by section 19 or section 32.

- (4) *The Chief Inspectors and every Inspector shall be deemed to be a public servant within the meaning of the Pakistan Penal Code.*

Section 4 of the Sindh Coal Act 2012 is also reproduced as under:-

4. ***Mining Committee.***— (1) *Government may constitute a Committee which shall be headed by the Director General Coal Mines and such other members as may be prescribed.*
- (2) *The Committee shall perform such functions and exercise such powers **as may be prescribed.***

The above provision, *prima facie*, vests jurisdiction and competence in '**Government**' to constitute a '**committee**' for purpose, as may be prescribed. This provision, *prima facie*, is aimed to deal with any situation which can't be confined to '*safety*' but shall always be deemed to include all steps, as necessary to ensure complete protection to rights and interests of the '**workers**'. Accordingly, Federation and Province shall submit complete measures taken by them with regard to establishing any institute or mining committee of the independent persons to safeguard the interest of workers of mines. The Director General Coal Mines shall be in attendance on the next date with regard to complete details of workers working in mines in whole Sindh including Thar Coal project as well as counsel for the petitioner shall place on record declaration of United Nations or resolutions to assist this Court. However, report shall include schools, hospitals and other facilities provided to the workers.

To come up on 22.09.2021.

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