

HR Law Hotline

February 06, 2008

EMPLOYMENT LAW: GRAVEYARD SHIFT FOR CEOs

A recent decision of the Supreme Court of India ("SC") is likely to cause some concerns in the information technology ("IT") sector in India. The SC, on January 29, 2008, dismissed the appeal of Som Mittal, managing director ("MD") of a leading IT company in Bangalore, against a lower court's order, declaring that the MD could be prosecuted for violating labour laws. As a matter of background, in December 2005, a woman employee of the company was raped and murdered while on her way to the office from her residence, at 2.00 a.m. Following the incident, a complaint was filed against the MD for violating labour laws for employing women at night and the local authorities took cognizance of such offence. The MD filed a petition in the High Court of Karnataka to quash the complaint, which petition was dismissed in 2006 by the High Court of Karnataka, leading to an appeal to the SC.

LAWS VIOLATED:

The Karnataka Shops and Commercial Establishments Act, 1961 ("KSCEA"), which applies to shops and establishments located in the State of Karnataka, *inter alia* regulates the opening and closing hours of establishments. Further, section 25 of the KSCEA prohibits employment of women and young persons after 8.00 p.m. and before 6.00 a.m. However, the State Government issued a notification in 2003 making an exception for IT and IT-enabled services ("ITES") sectors with a view to facilitate this industry. As per the notification, employers of IT and ITES establishments who wish to employ women employees during night shifts are required to make an application to the labour authorities for an exemption.

While granting an exemption, the labour authorities prescribe several conditions that need to be complied with by the employer, including provision of transport facilities from the residence to workplace and back with adequate security. In the present case, the employee was allegedly not provided with such transport facilities by her employer and was using local transport when the offence was committed. As a result, the magistrate took cognizance of the complaint directly against the MD of the organisation. This was in view of the fact that the definition of 'employer' under the KSCEA includes a person acting in the general management or control of an establishment.

IMPLICATIONS:

The SC judgment is likely to lead to greater awareness among the management to personally ensure that their organization complies with all applicable labour laws. The management is also likely to adopt certain best practices to ensure the safety of the employees, not just in the workplace but also while traveling to and from the office. On the other hand, this judgment may lead to review of the existing policies of employing women during night shifts due to the safety and security requirements prescribed under law. There also continues to be some uncertainty in the approach to be adopted by the management in situations where women employees refuse to utilize the transportation and/or security facilities provided by the company.

Source: Criminal Appeal No. 206 of 2008 [SLP (Crl.) No. 1719 of 2006]

- Radhika Iyer & Vikram Shroff

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