

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 2582 OF 2006

B.M.K. Bajpai, S/o Late Shri I.D. Bajpai, aged about 61 years, Ex-Executive Director (Works), Steel Melting Shop No.1, Bhilai Steel Plant, Bhilai, District Durg (C.G.)

... Petitioner

Versus

State of Chhattisgarh (Labour Department), through: Factory Inspector/Deputy Director, Industrial Health & Safety, Durg (C.G.)

... Respondent

And

WRIT PETITION (L) NO. 1427 OF 2007

B.M.K. Bajpai, S/o Late Shri I.D. Bajpai, aged about 61 years, Ex-Executive Director (Works), Steel Melting Shop No.1, Bhilai Steel Plant, Bhilai, District Durg (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh (Labour Department), through: Factory Inspector/Deputy Director, Industrial Health & Safety, Durg (C.G.)
2. Industrial Court, D.K.S. Bhawan, Raipur (C.G.)

... Respondents

For Petitioners	:	Mr. Kashif Shakeel, Advocate.
For Respondent-State	:	Mr. D.R. Minj, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

C A V Order

Reserved on : 21/08/2017

Delivered on : 25/08/2017

1. These are the two writ petitions assailing the orders passed by the State Industrial Court on 13.10.2005 in Criminal Appeal No. 12/M.P.I.R.Act/IV/2003 and on 28.3.2006 in Criminal Appeal No. 11/M.P.I.R.Act/IV/2003.
2. Since the facts and grounds raised in the two writ petitions are similar in nature and the Petitioners also in both the writ petitions being the same person, this Court is inclined to decide both the writ petitions by this common order.

3. To briefly narrate the facts, the case of the Petitioner is that the Petitioner at the relevant point of time was the Executive Director of Bhilai Steel Plant (in short, 'BSP'), Bhilai at District Durg. That as per the provisions of the Factories Act, 1948 (in short, 'the Act of 1948') he was also the "occupier" as is defined in Section 2(n) of the Act of 1948.

4. Two accidents took place; one on 10.10.2000 and the other on 17.10.2000. Writ Petition No. 2582 of 2006 is in respect of the accident that took place on 10.10.2000 and Writ Petition (L) No. 1427 of 2007 pertains to the accident that took place on 17.10.2000. In the accident that took place on 10.10.2000, two casualties took place, i.e., one D. Kotesb and another one Punjab Rao, succumbed to the injuries that were caused from the said accident. In the second accident that took place on 17.10.2000, there was one causality and four persons were injured, i.e., one Ramnath Singh died from the accident, whereas Puran, Y.B. Birole, Kunwar Singh and P. Tulsi Das sustained injuries.

5. Subsequently, the Industrial Health and Safety Department of the State Government issued notices on 11.10.2000 and 18.10.2000 seeking explanation in respect of the two accidents from the Petitioner. Later on, the Factory Inspector made an inspection on 16.10.2000 and 18.10.2000 at the plant where the two accidents occurred. Based on the inspection, notices were issued in respect of the breach of the conditions particularly the safety related issues envisaged under the Factories Act and rules framed therein. Such notices were issued on the same date on which the inspection was carried.

6. The establishment of the BSP subsequently filed a detailed reply to the General Manager, Safety, at the plant at BSP, on 24.10.2000, categorically bringing to the notice of the authorities from the State Industrial Safety Department that there has been no lapse on the part of

the Petitioner or on the part of the establishment of the BSP in the accident which occurred on the two dates. That it was the first of its kind of accident and that the management had taken all necessary precautions and steps ensuring the safety aspects.

7. Later on, the Factory Inspector initiated prosecution case against the Petitioner by filing two separate prosecution cases before the Labour Court where the two cases were registered as Criminal Case No. 11/F.A./2001/Cri. and Criminal Case No. 21/F.A./2001/Cri., alleging violation of the provisions of Section 7A of the Act of 1948 for which the Petitioner could also be punished under Section 92 of the said Act. The matter was put to trial before the Labour Court and on behalf of the prosecution, the State Government, the Factory Inspector one Shri M.K. Agrawal, who had inspected the place of accident, examined himself and there was no other witnesses examined on behalf of the prosecution. Thereafter, the matter was closed and after hearing the counsels of either side, the Labour Court, which also has the powers that of a Judicial Magistrate First Class, vide its judgment dated 26.3.2003 and 25.3.2003, acquitted the Petitioner from the charges levelled.

8. The State Government thereafter challenged the judgment of acquittal passed by the Labour Court before the appellate Court i.e. the State Industrial Court where the appeals were registered as Criminal Appeal No. 12/M.P.I.R.Act/IV/2003 and Criminal Appeal No. 11/M.P.I.R.Act/IV/2003. After hearing the counsel for the parties and considering the evidence and defence which have been taken by either of the parties, the State Industrial Court, vide its judgment dated 13.10.2005 and 28.3.2006, applying the same analogy in both the cases, allowed the appeals of the State Government setting aside the judgment of acquittal and further went on convicting the Petitioner after holding him guilty of the

offence punishable under Section 92 of the Act of 1948 for failing to comply with the provisions of Sections 7A(1) and 7A(2)(a) & (b) of the M.P. Factories Rules. While holding the Petitioner guilty, the Court while convicting the Petitioner imposed the sentence of payment of fine of Rs.1,00,000/- with default stipulation of R.I. for six months if not depositing the fine amount, each in both the cases.

9. It is this order of conviction and sentence imposed by the State Industrial Court by the two impugned judgments which have been assailed by the Petitioner through the present writ petitions.

10. Shri Kashif Shakeel, learned Counsel for the Petitioner, assails the impugned judgments on the ground that once when there was a judgment of acquittal in favour of the Petitioner unless there is a strong case made out by the State Government showing the finding arrived at by the Trial Court to be a perverse finding or the conclusion reached as erroneous, contrary to the evidence which have come on record, the appellate Court should not as a matter of routine set aside the judgment of acquittal passed by the Trial Court. It was further contended by the Counsel for the Petitioner that the entire prosecution case itself would get demolished for the simple reason that in the instant case the complainant, the investigating officer and the witness to prove the case is one and the same person and that apart from the deposition of the Factory Inspector there is no other evidence or proof adduced by the prosecution to prove the charges levelled against the Petitioner. It was further the contention of the Counsel for the Petitioner that from the reply to the show cause notice that was submitted it was explained in detail by the department of BSP that the accident did not occur because of a human error. It was further contended that in the reply to the show cause notice, they had specifically brought out to the notice of the authorities concerned in respect of various safety

measures which had been undertaken by the BSP ensuring the safety of the employees as well in the plant. It was further contended through the said reply, that the authorities concerned of BSP were still investigating/enquiring as to how the accident arose as there was no apparent reason which could be detected as the cause for the accident occurred. According to the Counsel for the Petitioner, it appeared that the accident occurred because of some chemical reaction that had taken place in the molten metal. Lastly, it was contended by the Counsel for the Petitioner that the prosecution has not been able to lead sufficient evidence to show the negligence on the part of the Petitioner or any of the officers. In support of his contentions, learned Counsel for the Petitioner has first relied upon the judgments of the Hon'ble Supreme Court in *Chandrappa & Another v. State of Karnataka*¹ and *Noor Aga v. State of Punjab & Another*² and then the judgment of this High Court in the case of *R.B. Singh v. State of Chhattisgarh*³.

11. Learned Counsel for the State, however, opposes the petitions and referring to the judgments of the Industrial Court submits that the findings of the Industrial Court do not warrant any interference as the findings are by itself self-explanatory and it has given specific reasons for reversing the finding of the Labour Court. It was further contended by the State Counsel that the perusal of the judgments of the Industrial Court would further reflect that the findings arrived at by the Industrial Court were in fact the correct position of law and which perhaps has not been delve into by the Labour Court during the conducting of the trial.

12. Having considered the rival contentions put forth on either side and on perusal of the records what is required to be appreciated is, the undisputed factual matrix of the case. Some of the undisputed facts are:

1 2007 (4) SCC 415

2 2008 (16) SCC 417

3 Criminal Revision No. 55 of 2005, decided on 23.11.2009.

- (i) the accident took place on two of the dates i.e. on 10.10.2000 and 17.10.2000,
- (ii) the causalities and the injuries that occurred from the said accidents,
- (iii) an inspection being conducted by the Factory Inspector on 16.10.2000 and 18.10.2000,
- (iv) notices under the provisions of the Act of 1948 by the Factory Inspector alleging violation of the provisions of Section 7A read with Section 92 being issued,
- (v) the reply notice to the being submitted by the establishment of the BSP, and
- (vi) thereafter the prosecution cases being initiated against the Petitioner.

What is also not in dispute is the fact that after the presentation of the complaint by the Factory Inspector, in the course of the recording of evidence, the Factory Inspector examined himself and no other officer except the Factory Inspector was examined. The entire prosecution case is based on the notice issued by the department and the evidence led by the Factory Inspector himself.

13. What is relevant at this juncture is, whether the finding of the Industrial Court reversing the judgment of acquittal of the Labour Court was legal, proper or justified, or not.

14. For better appreciation of the finding of the Industrial Court, it would also be relevant to quote Section 104A of the Act of 1948:

“104A. Onus of proving limits of what is practicable, etc.—In any proceeding for an offence for the contravention of any provision of this Act or rules made thereunder consisting of a failure to comply with a duty or requirement to do something, it shall be for the person who is alleged to have failed to comply with such duty or requirement, to prove that it was not reasonably practicable or, as the case may be, all practicable measures were taken to satisfy the duty or requirement.”

15. A plain reading of the said provision would by itself clearly indicate that the onus of proving has been casted upon the person against whom it is alleged to have failed to comply with the provisions of the Act of 1948.

What is all the more required to be appreciated is the fact that after the Factory Inspector has recorded his evidence, the usual practice and procedure is, permitting the defence to lead evidence. However, from the records, it reflects that in both the cases before the Labour Court where the Petitioner was being prosecuted for the offence under the provisions of the Act of 1948, after the statement of the accused under Section 313 of CrPC was recorded, the case was fixed for the evidence by the defence, if any. However, vide order-sheet, dated 21.3.2003 and 15.1.2003, respectively, in both the cases, there was a categorical statement at the behest of the counsel for the petitioner-accused that they do not intend to lead any evidence in defence. It is only thereafter that the case went in for final arguments and thereafter the judgement of acquittal was passed. Once when the petitioner-accused himself has taken a conscious decision not to lead any evidence to substantiate their defence this by itself would mean that there was nothing which the Petitioner wanted to be brought before the Court below to counter the statement made by the Factory Inspector. In the absence of any material in rebuttal to the evidence of the Factory Inspector, his version cannot be disbelieved.

16. It is at this juncture that the provision of Section 104A of the Act of 1948 comes into play and has its relevance. Going through the provision of Section 104A, as reproduced in the preceding paragraph, would clearly show that prior to 1.12.1987, the said provision was not part of the Act of 1948. It is only by virtue of an amendment brought in the year 1986 that such a provision was enacted. The very purpose of bringing in this amendment was perhaps with an intention of shifting the onus of establishing the fact that there was no failure on the part of the accused persons in complying with the duties and requirements so far as ensuring the safety measures required to be undertaken by the management. What

was also intended was that it should also be proved and established by the accused persons that it was reasonably not practicable and all practicable measures were taken care of insofar as the duties and responsibilities pertaining to the safety aspect is concerned.

17. It is this requirement of law as per Section 104A of the Act of 1948 which has not been availed by the Petitioner during the course of trial. Having waived and acquiesced of the right to lead evidence by voluntarily giving it up during the course of trial, the Petitioner now cannot turn around and cry foul alleging that the case of the prosecution has not been sufficiently proved.

18. So far as the ground that the prosecution case stands vitiated for the reason that it was the same person who had issued the show cause notice, the complainant before the Labour Court, the prosecutor as well as the sole witness before the Labour Court, all being one and the same person, this Court does not find any illegality in the same as the Factory Inspector is the person who is supposed to and the authorised person under the Act of 1948 to perform or discharge all these duties. It is not a case where he had conducted himself as a proxy or was representing some one else. Thus, the said ground stands negated.

19. As regards the two judgments of the Hon'ble Supreme Court which have been relied upon by the Petitioner, i.e., *Chandrappa* (supra) and *Noor Aga* (supra), those are decisions rendered under entirely different statutory provisions and that under both the statutes, in consideration in those two judgments, there was no provision of law *pari materia* or even similar to one like Section 104A of the Act of 1948, on the basis of which it could be said that the proposition of law propounded in the two judgments could be made applicable in the present case.

20. Minus the provision of Section 104A of the Act of 1948, perhaps the arguments raised by the Petitioner would have become an arguable claim, but with the introduction of Section 104A where the onus of proving the fact of there being no failure on the part of the management or the accused in the compliance of the Act of 1948, further the absence of any proof being brought before the Court regarding the practicable measures all that were taken care of and the reasonably not practicable aspects, it cannot be said that the finding of the Industrial Court is bad in law.

21. Likewise, the judgment of R.B. Singh (supra) of our High Court relied upon by the Petitioner also is distinguishable on its own facts, for the reason that the provision of Section 104A has not been discussed or considered nor was it the stand of the State Government. Thus, the judgment in R.B. Singh case (supra) is distinguishable.

22. In view of the aforesaid reasons, this Court is of the opinion that no strong case for interfering with the impugned judgments of the Industrial Court has been made out by the Petitioner and the two writ petitions therefore being devoid of merits deserve to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge