

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 5514 of 2005**

1. B.M.K. Bajpayee, S/o Shri I.D. Bajpayee, aged about 61 years, Executive Director, Sintering Plant No.-3, Bhilai Steel Plant, District – Durg (C.G.)
2. S.N. Modi, Shri Surya Narayan Modi, aged about 59 years, Sintering Plant No. 3, Bhilai Steel Plant, Bhilai, District Durg (C.G.)

---- Petitioners**Versus**

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

---- Respondent**Writ Petition No. 5512 of 2005**

B.M.K. Bajpayee, S/o Shri I.D. Bajpayee, aged about 61 years, Executive Director, Sintering Plant No.-3, Bhilai Steel Plant, District – Durg (C.G.)

---- Petitioner**Versus**

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

---- Respondent**Writ Petition No. 5513 of 2005**

1. B.M.K. Bajpayee, S/o Shri I.D. Bajpayee, aged about 61 years, Executive Director, Sintering Plant No.-3, Bhilai Steel Plant, District – Durg (C.G.)
2. S.N. Modi, Shri Surya Narayan Modi, aged about 59 years, Sintering Plant No. 3, Bhilai Steel Plant, Bhilai, District Durg (C.G.)

---- Petitioners**Versus**

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

---- Respondent

For Petitioners : Mr. Kashif Shakeel, Advocate.
For State : Mr. Dheeraj Kumar Wankhede, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

07/11/2017

(1) Since common question of law and fact is involved in all the writ petitions, they are being disposed of by this common order.

(2) These writ petitions are directed against the order dated 28th July, 2005 passed by the State Industrial Court, Raipur in Criminal Appeal Nos. 26/MPIR Act/IV/2003 (arising out of Case No. 149/Factories Act/2001 (fatal), 24/MPIR Act/IV/2003 (arising out of Case No. 148/Factories Act/2001 (fatal) and 25/MPIR Act/IV/2003 (arising out of Case No. 147/Factories Act/2001 (fatal), respectively by which the State Industrial Court has reversed the order of the Labour Court acquitting the petitioners. The petitioners have been convicted for the offence punishable under Section 92 of the Factories Act, 1948 and sentenced to pay fine of Rs.75,000/- each, in default of payment of fine to undergo simple imprisonment of six months.

(3) Feeling aggrieved and dissatisfied with the order of the State Industrial Court, instant writ petitions have been filed questioning the same.

(4) Learned counsel appearing for the petitioners would submit that the State Industrial Court is absolutely unjustified in interfering with the well reasoned order of the Labour Court acquitting the petitioners of the aforesaid offence and thereby committed illegality in passing the impugned order, therefore, the impugned order deserves to be set aside and the order of the Labour Court be restored.

(5) Per contra, counsel for the State would oppose the writ petitions and support the impugned order.

(6) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and gone through the record with utmost circumspection.

(7) The petitioners are alleged to have committed breach of Rule 73(1), 73(c) and 73(d) of the M.P. Factories Rules, 1962 (in WP No. 5513/2005), Sections 7-A(1), 7-A(II) A and 32(c) of the Act, 1948 (in WP No.5512/2005) and Sections 6 & 7 of the Act, 1948 and Rule 3-A(1) and Rule 3-A sub rule (iii) of M.P. Factories Rules, 1962 (in WP No.5514/2005).

(8) The Labour Court acquitted the petitioners on the ground that the petitioners are not the occupier and Manager of the Factory and further held that at time of incident, the factory was not operational and, therefore, the prosecution has failed to prove offence beyond reasonable doubt. Feeling aggrieved and satisfied with the order of the Labour Court, the State Authorities have preferred appeal before the State Industrial Court.

(9) The State Industrial Court, by its order dated 29th July, 2005, reversed the finding recorded by the Labour Court holding that petitioners are occupier and Manager of the factory as defined in Section 2(n) of the Act, 1948 and the factory was operational at the time of incident.

(10) At this stage, it would be appropriate to notice Sections 104A of the Act, 1948, which reads as under:-

“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 practical measures were taken to satisfy the duty or requirement.”

(11) A careful perusal of the aforesaid provision would show that onus of proving has been cast upon the person against whom it is alleged to have failed to comply with the provisions of the Act of 1948.

(12) Section 104-A of the Act, 1948 was not taken into account by the Labour Court whereas Industrial Court has taken into account Section 104 -A of the Factories Act and thereby after considering the matter in great detail, the Industrial Court came to the finding that the petitioners have breached Rule 4, 3-A(1), & 3 A 3 of the M.P. Factories Rules, 1962.

(13) The said finding of fact recorded by the State Industrial Court is based on material available on record, it is neither perverse nor contrary to the record. The Industrial Court has taken a lenient view of the matter and awarded sentence to the tune of Rs.25,000/- in each of the case, in which I do not find any illegality warranting interference by this Court in the instant writ petition.

(14) Accordingly, the writ petition fails and is hereby dismissed. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

