
(2015) 10 JH CK 0012
In the Jharkhand High Court
Case No : WP(C) No. 2080 of 2015

ACC Limited

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Building and Other Construction Workers Welfare Cess Act, 1996 — Section 2(1)(d),
2(d)
Constitution of India, 1950 — Article 226
Factories Act, 1948 — Section 6, 87

Citation : (2015) 4 JLJR 618

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Kuldip Bhagat and A.K. Yadav, for the Appellant; Vikash Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Aggrieved by show cause notice dated 19.11.2014, the petitioner-ACC Ltd. has approached this Court. Initially, the said notice was not under challenge however the petitioner subsequently filed I.A. No. 3627/2015 and impugned notice dated 19.11.2014. The learned counsel for the petitioner referring to reply dated 10.12.2014 and the order passed by the Inspector of Factories, Dhanbad, submits that the petitioner by virtue of the exclusion clause in Section 2(d) of the Building and Other Construction Workers' Welfare Cess (Regulation of Employment and Conditions of Service) Act, 1996 is not liable to pay cess under the Act. The learned counsel relied on the order passed by the Hon'ble Madhya Pradesh High Court in W.P. No. 10209/2012 and order dated 4.10.2010 passed by the Hon'ble Supreme Court in Sterlite Energy Ltd. vs. State of Orissa & Ors. [S.L.P. (Civil) No. 27411/2010] to fortify his contention that notice dated 19.11.2014 issued by the Assistant Labour Commissioner, Dhanbad is without-jurisdiction and thus, liable to be quashed.

2. The learned counsel for the respondent-State of Jharkhand raises a

preliminary objection as to the maintainability of the writ petition. Referring to the stand taken in the counter affidavit, it has been submitted that the petitioner's Unit has yet to be inspected by respondent No. 2.

3. The petitioner, a Public Limited Company has its registered office at Mumbai and it owns a factory at Sindri which is commonly known as Sindri Cement Works. The petitioner for erecting the factory applied for approval of map under Section 6 of the Factories Act, 1948. The Inspector of the factories inspected the premises and submitted a report and, finally, the Chief Inspector of Factories granted approval. The petitioner asserts that production in its factory at Sindri commenced in the year 1997 and the license of the factory has been renewed every year by the competent authority.

4. Ordinarily, challenge to a show-cause notice is not entertained in the writ petition unless, the show-cause notice is wholly without jurisdiction or patently illegal. The respondent No. 2 is the person authorised under the Act to issue notice for furnishing requisite in-formations, and thus, notice dated 19.11.2014 issued by respondent No. 2 cannot be said to be illegal. The contention raised on behalf of the petitioner that the Building and Other Construction Workers Welfare Cess (Regulation of Employment and Conditions of Service) Act, 1996 is not applicable to the petitioner's unit and thus, respondent No. 2 has no jurisdiction to issue notice dated 19.11.2014, is a question of fact which at the threshold cannot be decided. In *Union of India (UOI) and Another Vs. Kunisetty Satyanarayana*, , the Hon"ble Supreme Court has held as under:--

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show cause notice vide *Executive Engineer, Bihar State Housing Board vs. Ramesh Kumar Singh*, *Special Director vs. Mohd. Ghulam Ghouse*, *Ulagappa vs. Divisional Commr., Mysore*, *State of U.P. vs. Brahm Dutt Sharma*, etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well-settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or

charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However ordinarily the High Court should not interfere "in such a matter."

In the writ petition, the petitioner has averred that its Sindri unit commenced its production in the year, 1997 and it was granted licence under the Factories Act, 1948 vide letter dated 23.5.1997 which has been renewed, year after year. The petitioner asserts that within the factory premises for expansion of the capacity an application was submitted for approval of building plan and map on 7.10.2013 as required under Section 6 of the Factories Act. The Chief Inspector of factories vide letter dated 10.1.2014 granted approval for construction of factory for its expansion. The only plea raised by the petitioner in the writ petition is that it is excluded from operation of Building and Other Construction Workers' Welfare Cess (Regulation of Employment and Conditions of Service) Act, 1996 because it has been granted licence under the Factories Act, 1948. Section 2(1)(d) of the Building and Other Construction Workers Welfare Cess (Regulation of Employment and Conditions of Service) Act, 1996 provides that "building or other construction work" defined under the said section does not include "any building" or "other construction work" to which provisions of the Factories Act, 1948 or the Mines Act, 1952 apply. The application dated 7.10.2013 submitted by the petitioner to the Inspector of factories discloses that an application for construction of proposed building/structure for "New Grinding line" within the existing cement plant was submitted. The documents annexed with the said application included layout plan for factory colony and approach road, general plant layout, plan & elevation of cement mill and plan & elevation of fly ash unloading and storage etc. The particulars of the plan disclosed by the petitioner indicates that the "Sindri expansion project" is a Brownfield project and upon commissioning of the same production capacity of the Sindri plant would be enhanced to 2.50 MTPA from 1.0 MTPA. In response to application dated 7.10.2013, a notice was issued to the petitioner on 18.1.2014 which discloses that licence granted vide letter dated 23.5.1997 was conditional however, the petitioner did not furnish compliance report along with application dated 7.10.2013. The notice dated 18.1.2014 further indicates that in-formations furnished at Sl. Nos. 1 and 2 in Annexure-1 filed along with application dated 7.10.2013 were incorrect. Several information's were required to be furnished by the petitioner which the petitioner allegedly furnished and thereafter, vide letter dated 10.1.2014, conditional permission was granted to the petitioner. The provisions under the Factories Act, 1948 are intended at regulating labour employed in factories. It provides for measures for safety, health and welfare of the workers. Chapter-X of the Factories Act, 1948 deals with penalties in cases of violation of provisions under Chapter-IV which deals with "safety" and "dangerous operations" defined under Section 87 of the said Act. Whether the construction for new building for expansion of the existing factory would be

covered under the provisions of the Factories Act, 1948, is a question of fact which, only after the petitioner furnishes relevant documents, can be decided. Merely because the petitioner submitted application for grant of sanction of map and other plans for expansion and a licence has been issued, "the building or other construction work" for the said expansion project would not automatically cover the activities thereunder under the Factories Act, 1948. At this stage, mere assertion of the petitioner that construction and other related activities for expansion project is covered under the Factories Act, 1948 and thus, it is excluded from operation of Section 2(1)(d) of the Building and Other Construction Workers' Welfare Cess (Regulation of Employment and Conditions of Service) Act, 1996, is not sufficient. The respondent No. 2 has asserted that spot verification of petitioner's unit has yet not been conducted. In view of the facts pleaded in the present proceeding and the stand taken by the respondents in the counter affidavit, I am not inclined to entertain this writ petition and, accordingly, the writ petition fails. The petitioner is directed to furnish the details, as sought through show-cause notice dated 19.11.2014 however, respondent No. 2 shall not pass final order before conducting spot verification.