(2017) 01 JH CK 0133

In the Jharkhand High Court

Case No : 358 of 2014

Ambika Singh and Others APPELLANT

Vs

Smt. Rama Devi and Others RESPONDENT

Date of Decision : 17-01-2017

Acts Referred:

Citation : (2017) 01 JH CK 0133

Hon'ble Judges : Aparesh Kumar Singh

Bench : SINGLE BENCH

Advocate : Sunil Kr. Sinha

Judgement

1. Heard learned counsel for the petitioners and the State.

2. Petitioner no. 1 is stated to be a registered union of the Government contractor of district Seraikella Kharsawan. Other petitioners are registered contractor of various work departments of the Government of Jharkhand.

3. The cause raised by way of the instant petition is in relation to deduction of 1% labour cess under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

4. Petitioners contend that the respondent-Department/ Employer have in previous NITs floated by them not chosen to include 1% as labour cess in the estimate of construction though the contractors executing such work have been made to pay 1% labour cess from the running bills. They have, therefore, sought refund of the amount from the respective departments by making representation, which they seek to be decided by the concerned department. They rely upon a communication of the Labour, Employment and Training Department, Government of Jharkhand bearing no. 4013 dated 13.09.2010 which conveyed the respective Work Departments or other instrumentality and agencies engaged in execution of such work to include component of 1% Labour Cess in bill of quantity and estimate for construction. This though was not incorporated in the estimate of NITs issued earlier by the respondent-Rural Works

Department but as per the counsel for the petitioners now it is mandatory part of the estimate.

5. Obviously grievance of the petitioners relates to the period where the component of 1% Labour Cess in terms of the Act of 1996 was not part of the estimate. They, therefore, have sought direction upon the respondent to consider their representation and make refund of Labour Cess deducted from the running bills.

6. The Scheme of the BOCW Act came up for consideration before the Hon''ble Supreme Court in the case of National Campaign Commtt., C. L. Labour Vs. Union of India & Ors. in Writ Petition (C) No. 318 of 2006 and in the case of Dewan Chand Builders and Contractors Vs. Union of India and Ors. reported in (2012) 1 SCC 101. The Hon''ble Supreme Court upon consideration of the scheme of the Act recognized the noble purpose behind the said Act to ensure welfare of the building and construction workers in order to provide basic human dignity enshrined in Article 21 of the Constitution. In the recent judgment rendered by the Apex Court in the case of Lanco Anpara Power Ltd. Vs. State of Uttar Pradesh and Ors. reported in (2016) 10 SCC 329, once again the applicability of the Act of 1996 to the construction workers of civil works/factory buildings/buildings intended to set up as factories were called for scrutiny on the plea of the appellant that in case of such construction activity for setting up a factory, the benefit of BOCW Act 1996 and BOCW Welfare Cess Act, 1996 was not available to the workers. The Hon''ble Supreme Court while dealing with the plea of the appellant in the light of the provisions of two Acts of 1996 had occasioned to rely upon the opinion rendered in the case of Dewan Chand Builders and Contractors (Supra) quoted as well at para 29 of report as under:-

"29. The Scheme of the BOCW Act came up for consideration by this Court in Dewan Chand Builders and Contractors V. Union of India . Recognising that the noble purpose behind the said Act is to ensure welfare of the building and construction workers in order to provide basic human dignity enshrined in Article 21 of the Constitution, the Court observed as under. "10. It is thus clear from the scheme of the BOCW Act that its sole aim is the welfare of building and construction workers, directly relatable to their constitutionally recognised right to live with basic human dignity, enshrined in Article 21 of the Constitution of India. It envisages a network of authorities at the Central and State levels to ensure that the benefit of the legislation is made available to every building and construction worker, by constituting Welfare Boards and clothing them with sufficient powers to ensure enforcement of the primary purpose of the BOCW Act. The means of generating revenues for making effective the welfare provisions of the BOCW Act is through the Cess Act, which is questioned in these appeals as unconstitutional. 17. It is manifest from the overarching schemes of the BOCW Act, the Cess Act and the Rules made thereunder that their sole object is to regulate the employment and conditions of service of building and other construction workers, traditionally exploited sections in the society and to provide for their safety, health and other welfare measures. The BOCW Act and the Cess Act break new ground in that, the liability to pay cess falls not only on the owner of a building or establishment, but under Section 2(1) (i)(iii) of the BOCW Act ''in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor''; The extension of the liability on to the contractor is with a view to ensure that, if for any reason it is not possible to collect cess from the owner of the building at a stage subsequent to the completion of the construction, it can be recovered from the contractor. The Cess Act and the Cess Rules ensure that the cess is collected at source from the bills of the contractors to whom payments are made by the owner. In short, the burden of cess is passed on from the owner to the contractor."

7. The concluding sentence of the quoted portion clearly indicates that burden of cess is passed on from the owner to the contractor.

8. Counsel for the petitioner also does not dispute the legal position in law. The ultimate liability to pay cess is upon the contractor. In such state of facts whether BOQ or estimate for construction of certain woks under the respondent-Rural Works Department did include 1% Labour Cess as component earlier or not or that it was made part of it now, does not make any difference so far as the liability of payment upon the contractor is concerned. Therefore, prayer of the petitioner to direct the respondent to make refund of the amount of 1% deducted as Labour Cess from the running bills would not be proper in the eye of law. Therefore, petitioners have failed to make out a case for interference. Accordingly, the writ petition is dismissed.