(2009) 01 MP CK 0058

In the Madhya Pradesh High Court

Gannon Dunkerley and Co. Ltd. APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2009) ILR (MP) 1280 : (2010) 2 LLJ 809 : (2009) 5 MPHT 258

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Yadav, J.—The order passed in the present writ petition shall govern the disposal of Writ Petitions bearing Numbers W.P. No. 3657/2008, BOC India Ltd. v. State of M.P. and Ors. W.P. No. 3846/2008, Neo Structo Construction Ltd. v. State of M.P. and Ors. W.P. No. 4271/2008, Naftogaz India Pvt. Ltd. v. State of M.P. and Ors. W.P. No. 4274/2008, Naftogaz India Pvt. Ltd. v. State of M.P. and Ors. W.P. No. 1802/2008, Patron Engineering Construction Ltd. v. State of M.P. and Ors. W.P. No. 4562/2008, MSK Projects (India) Ltd. v. State of M.P. and Ors. W.P. No. 4564/2008, MSK Projects (India) Ltd. v. State of M.P. and Ors. W.P. No. 4567/2008, MSK Projects (India) Ltd. v. State of M.P. and Ors. W.P. No. 6968/2008, S.K.B. Builders and Fabricators v. State of M.P. and Ors. W.P. No. 5420/2008, Bridge and Roof Co. (India) Ltd. v. State of M.P. and Ors. W.P. No. 5421/2008, Bridge and Roof Co. (India) Ltd. v. State of M.P. and Ors. W.P. No. 5422/2008, MSK Projects (India) Ltd. v. State of M.P. and Ors. W.P. No. 6361/2008, Thermax Limited v. State of M.P. and Ors. and W.P. No. 9353/2008, Pace Process Controls Pvt. Ltd. v. State of M.P. and Ors. wherein, challenge putforth is to an order passed by the Assessing Officer under the Building and Other Construction Workers Welfare Cess Act, 1996 (hereafter referred to as "Cess Act of 1996") and the Rules made thereunder, viz., the Building and Other Construction Workers'' Welfare Cess Rules, 1998 (hereafter referred to as "Rules of 1998"); whereby, the petitioner contractors and the Bharat Oman Refineries Ltd., been subjected to the levy of cess.

2. Facts briefly are that, Bharat Oman Refineries Limited is a joint venture company brought into existence vide joint venture agreement entered into between the Bharat Petroleum Corporation Limited and Oman Oil Company Limited, and incorporated under the Companies Act, 1956 (hereafter referred to as ''Company''). The Company is constructing an oil refinery in Village Agasod, Tehsil Bina District Sagar, M.P. with an estimated cost of more than rupees ten thousand crores. To facilitate commissioning thereof within the stipulated time the company has engaged 37 contractors who are issued work orders between 18-4-2006 to 4-9-2007 for various building or other construction works. As a result whereof the petitioners are subjected to levy of cess under the Cess Act of 1996 and the Rules of 1998 by the impugned order @ 1 % of the cost of construction incurred.

3. The contractors questions the levy on the grounds that they are not the employer but are employed by the company, and therefore, they cannot be held liable for cess which is levied and collected from the employer. Furthermore, it is urged that even if for the sake of argument the contractors are termed as employer, then the nature of work which they are engaged in is governed by the Factories Act, 1948, and therefore, are excluded from applicability of the Cess Act of 1996 and the Rules, 1998 made thereunder. In the alternate it is contended that the assessment of cess is not in accordance with the provisions contained in Rules of 1998.

4. To substantiate the contentions the learned Counsel appearing for the petitioner contractors has led this Court through various provisions not only of the Act of 1996 and Rules, 1998 made thereunder, but also of the provisions contained in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (referred to as ''Construction Workers Act, 1996'') and the Factories Act, 1948. Placing reliance on Section 2(d) of the Construction Workers'' Act, 1996, it is contended that, the "building and other Construction Work" does not include any building or other construction work to which provisions of the Factories Act, 1948 apply. It is urged that since the company is governed by the Factories Act, 1948, the provisions contained in the Act of 1996 are not applicable. It is further contended that the contractors like the petitioners being employed by the Company cannot be construed as an employer for the purpose of levy of cess which is to be collected from every employer. Moreover, it is urged that, for the sake of argument if it is construed that the contractor can be an employee then the levy can be on the cost of construction incurred by the employer, whereas in the case at hand, the learned Counsel for the petitioners contends that, the assessment is on the basis of work done, the methodology adhered to by the respondent has thus led to uncertainty regarding collection of cess. Based on these submissions, the contractors seek quashment of assessment order dated 23-1-2008.

5. The company on its turn questions the order of assessment that they have wrongly been joined with the contractors for the liability to deposit the Cess. It is

urged by the learned Counsel for the company that since the buildings and other construction work is being carried out through contractors, it is the contractors who are liable to pay the cess and not the company. Accordingly, it is urged that the joint liability imposed by the impugned order is bad and liable to be set aside.

6. The respondent State of Madhya Pradesh on its turn justifies the action of levying the cess on the contractors and also making the company liable for its recovery at source. The action, it is urged, is in consonance with the provisions contained under the Cess Act of 1996, Rules of 1998, and the Construction Workers Act, 1996. It is contended that, the reference to Factories Act, 1948 is a misconception because the nature of construction being undertaken are not those undertaken for achieving the object delineated under Chapters III and IV under the heading Health and Safety. Commenting upon the provisions contained in the Rules of 1998, which provides for the procedure adhered to for assessing the cess, the learned Counsel for the respondent State submits that it is the taxable event which has been made the basis for the assessment of cess and even if such event are fictional there exist provision for its adjustment, therefore, the contention raised by the petitioner that there is no procedure provided under the Cess Act of 1996 and the rules made thereunder is being denied by the State of Madhya Pradesh.

7. Having considered the rival submissions, the issue which crops up for consideration is whether the contractors who have undertaken the work of construction of Buildings and other Construction works for the company can be said to be employer as would make them liable for the payment of cess and whether the procedure adhered to for levy of cess and its recovery is just and proper.

8. The decision on the issue turns on the construction of the provisions of Construction Workers Act, 1996, Cess Act, 1996.

9. The Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act, 1996 was enacted on 19-8-1996. The long introduction appended to the statute reveals that the enactment was to provide safety, health and welfare measures for more than eight million workers engaged throughout the country in building and other construction work. It was observed that, these members were one of the most vulnerable segments of the unorganized labour in India and their work were temporary in nature, their relationship with employer was temporary working hours were uncertain, basic amenities and welfare facilities were inadequate, there was absence of machinery to get requisite information regarding number and nature of accidents. It was to bridge over these major discrepancies, the Construction Workers'' Act, 1996 was brought into existence with an object to regulate the employment and condition of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith an incidental thereto and for ensuring sufficient funds to undertake the social security schemes and welfare measures.

10. Section 2(d) of Construction Workers Act, 1996 defines the building and other construction work to mean:

(d) ''building or other construction work'' means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948 (63 of 1948), or the Mines Act, 1952 (35 of 1952) apply.

The expression "Contractor" is defined u/s 2(g) to mean:

(g) ''contractor'' means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment; and includes a Sub-contractor.

Whereas, an "employer" is defined u/s 2(i) in the following terms:

(i) "employer", in relation to an establishment, means the owner thereof, and includes,--

(i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

(ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the Chief Executive Officer of that authority or establishment;

(iii) in relation to a building or other construction work carried on by or though a contractor, or by the employment of building workers supplied by a contractor, the contractor.

The "establishment" means:

2. (j) ''establishment'' means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakhs.

Chapter V deals with Building and Other Construction Workers'' Welfare Boards. Section 24 provides for the Constitution of a fund called:

24. Building and Other Construction Workers'' Welfare Fund and its application.-- (1) There shall be constituted by a Board a fund to be called the Building and Other Construction Workers'' Welfare Fund and there shall be credited to--

(a) any grants and loans made to the Board by the Central Government u/s 23;

(b) all contributions made by the beneficiaries;

(c) all sums received by the Board from such other sources as may be decided by the Central Government.

(2) The fund shall be applied for meeting--

(a) expenses of the Board in the discharge of its functions u/s 22; and

(b) salaries, allowances and other remuneration of the members, officers and other employees for the Board;

(c) expenses on objects and for purposes authorized by this Act.

(3) No Board shall, in any financial year, incur expenses towards salaries, allowances and other remuneration to its members, officers and other employees and for meeting the other administrative expenses exceeding five per cent of its total expenses during that financial year.

Chapter IX makes special provisions regarding responsibility of employers (Section 44); responsibility for payment of wages and compensation (Section 45); and the notice of commencement of building or other construction work (Section 46), which obligates the employer to send written notice to Inspector having jurisdiction in the area where proposed building or other construction work is to be executed at least thirty days before the commencement of any building or other construction work information of particulars which find mention u/s 46.

11. To provide for the levy and collection of cess on the cost of construction incurred by employees with a view to augmenting the resources of the Building and Other Construction Workers'' Welfare Board constituted under the Construction Workers Act, 1996, the Parliament enacted the Building and Other Construction Workers'' Welfare Cess Act, 1996; wherein Section 3, stipulated:

3. Levy and collection of cess.-- (1) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, at such rate not exceeding two per cent. But not less than one per cent. Of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time specify.

(2) The cess levied under Sub-section (1) shall be collected from every employer

in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed.

(3) The proceeds of the cess collected under Sub-section (2) shall be paid by the local authority or the State Government collecting the cess to the Board after deducting the cost of collection of such cess not exceeding one per cent of the amount collected.

(4) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), the cess leviable under this Act including payment of such cess in advance may, subject to final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved.

12. Section 4 provides for furnishing of returns whereas Section 5 provided for assessment of Cess. Section 9 stipulates penalty for non-payment of cess within the specified time. Section 11 makes a provision for appeals. Section 14 empowers the Central Government to frame rules to carry out the provisions of the Cess Act, 1996. In exercise whereof, the Central Government has framed Rules, viz., the Building and Other Construction Workers'' Welfare Cess Rules, 1998; whereunder Rule 3 stipulates that, cost of construction shall include all expenditure incurred by an employer in connection with the Building or Other Construction Work, excluding, the cost of land and any compensation paid or payable to a worker or his kin under the Workmen''s Compensation Act, 1923. Rule 4 provides for time and manner of collection, indicating therein that:

(1) The cess levied under Sub-section (1) of Section 3 of the Act shall be paid by an employer, within thirty days of completion of the construction project or within thirty days of the date on which assessment of cess payable is finalized, whichever is earlier, to the cess collector.

(2) Notwithstanding the provisions of Sub-rule (1), where the duration of the project or construction work exceeds one year, cess shall be paid within thirty days of completion of one year from the date of commencement of work and every year thereafter at the notified rates on the cost of construction incurred during the relevant period.

(3) Notwithstanding the provision of Sub-rule (1) and Sub-rule (2), where the levy of cess pertains to building and other construction work of a Government or of a Public Sector Undertaking, such Government or the Public Sector Undertaking shall deduct or cause to be deducted the cess payable at the notified rates from the bills paid for such works.

(4) Notwithstanding the provisions of Sub-rule (1) and Sub-rule (2), where the approval of a construction work by a local authority is required, every application

for such approval shall be accompanied by a crossed demand draft in favour of the Board and payable at the station at which the Board is located for an amount of cess payable at the notified rates on the estimated cost of construction:

Provided that if the duration of the project is likely to exceed one year, the demand draft may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of commencement and further payments of cess due shall be made as per the provisions of Sub-rule (2).

(5) An employer may pay in advance an amount of cess calculated on the basis of the estimated cost of construction along with the notice of commencement of work u/s 46 of the Main Act by a crossed demand draft in favour of the Board and payable at the station at which the Board is located:

Provided that if the duration of the project is likely to exceed one year, the demand draft may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of such commencement and further payment of cess due shall be made as per the provisions of Sub-rule (2).

(6) Advance cess paid under Sub-rules (3), (4) and (5), shall be adjusted in the final assessment made by the Assessing Officer.

13. Rule 6 requires that every employer, within thirty days of commencement of his work of payment of cess, as the case may be, furnish to the Assessing Officer, information in Form 1 and the Assessing Officer thereafter shall proceed to scrutinize the same and take action in accordance with the provisions contained under Rule 7. Rule 8 provides for return of overpaid cess in the event where the employer decides to withdraw from or foreclose the works or modifies the plan of construction thereby reducing the cost of construction undertaken or has been forced by circumstances to call off the completion of the work undertaken. Appeal is provided under Rule 14.

14. Brief resume of various provisions thus reveals that, the Construction Workers Act, 1996 is a piece of beneficial legislation whereas the Cess Act of 1996 is in the nature of taxing statute, i.e., an Act making compulsory imposition of cess.

15. About the beneficial Legislation it has been observed by their Lordships of the Supreme Court in The Works Manager, Central Railway Workshop, Jhansi Vs. Vishwanath and Others, , Paragraph 11:

It is probably true that all legislation in a welfare State is enacted with the object of promoting general welfare, but certain types of enactments are more responsive to some urgent social demands and also have more immediate and visible impact on social vices by operating more directly to achieve social reforms.

16. The long introduction and the statement of objects and reasons of the statutes under consideration reveals the special type of enactment to eradicate

menaces faced by more than eight million workers engaged in building and other construction work, which, besides being a beneficial in nature also carries with it the fiscal and the penal provisions. Thus, while interpreting the beneficial aspect the provision is to be construed in such a manner as to give an optimum applicability so that the object is achieved as per the goal set by the makers. As was observed by Their Lordships in Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, , (Paragraph 6):

Semantic Luxuries are misplaced in the interpretation of ''bread and butter'' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where Legislation is designed to give relief against certain kinds of mischief, the Court is not to make in roads by making etymological excursion.

17. In respect of fiscal statute, the law is trite that "the subject is not to be taxed unless the words taxing statute unambiguously impose the tax on him".It has been observed by Their Lordships in A.V. Fernandez Vs. The State of Kerala, P. 661, in the following terms:

in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter.

Similarly, it was observed by Their Lordships in Mathuram Agrawal Vs. State of Madhya Pradesh, , in Paragraph 11:

In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the Legislature. The statute should clearly and unambiguously convey the three components of the tax law, i.e., the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the Legislature to do the needful in the matter.

18. The first submission put forth by the learned Counsel for the petitioner contractors is that they are not the employer because the principal employer is the Company and the contractors are engaged by the company. This contention of the petitioner contractor loses its substance in view of Clause (i), (iii) of Sub-

section (1) of Section 2 of the Construction Workers Act, 1996, which defines ''employer'' 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 word "means" and the expression "and includes" are of great significance in this Sub-clause; which has been noted recently by the Apex Court in the case of Bharat Co-Operative Bank (Mumbai) Ltd. Vs. Co-Operative Bank Employees Union, , wherein Their Lordships were pleased to observe:

22. Section 2(bb) of the ID Act as initially introduced by Act 54 of 1949 used the word "means and includes" and was confined to a "Banking Company" as defined in Section 5 of the Banking Companies Act, 1949, having branches or other establishments in more than one province and includes Imperial Bank of India. Similarly, Section 2(kk), which was also introduced by Act 54 of 1949, defines Insurance Company as "an Insurance Company defined in Section 2 of the Insurance Act, 1938 (IV of 1938), having branches or other establishments in more than one province". It is trite to say that when in the definition Clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. When the phrase "means" is used in the definition, to borrow the words of Lord Esher M.R. in Gough, it is a "hard and fast" definition and no meaning other than that which is put in the definition can be assigned to the same. Also see: P. Kasilingam and others Vs. P.S.G. College of Technology and others, . On the other hand, when the word "includes" is used in the definition, the Legislature does not intend to restrict the definition; makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in Section 2(bb) of the ID Act is clearly indicative of the Legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other.

19. The intention of the Legislature is therefore, not only to include the owner of the establishment in the present case the Company but also the Contractors who carries out the work of building or other construction work and is an employer for the purpose of the Construction Workers Act, 1996 and the Cess Act, 1996. Thus, there is no escape for the contractors who have undertaken the building and other construction work in the establishment belonging to the Company. Thus, in the considered opinion of this Court the contractors who undertake the work of building and other construction works in an establishment belonging to or under the control of Government, any Body Corporate or Firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor, are governed by the provisions of Cess Act, 1996 and the Rules of 1998 made thereunder.

20. The next submission of the learned Counsel for the petitioner contractor is

based on the exclusion Clause contained in the definition u/s 2(1)(d) of "Building or Other Construction Work", which stipulates that any building or other construction work to which the provisions of the Factories Act, 1948 will not be included in the definition as contained in this clause. It is the contention of the learned Counsel for the petitioner that the Company is governed by the Factories Act, 1948 and as such the construction which are carried out are governed by the said Act, the necessary corollary whereof would be the exclusion of the contractors engaged therein from the applicability of the Construction Workers Act, 1996 and the Cess Act, 1996 and the Rules made thereunder.

21. The Factories Act, 1948 was enacted to consolidate ad amend the law regulating labour in factories. The statement of objects of reasons reveals that at the time of enactment, the Factories Act, 1934 was in existence but number of defects and weaknesses were experienced and the provisions pertaining to safety, health and welfare of workers engaged in factories were found to be inadequate and unsatisfactory which harbingered the need for minimum requirements regarding health (cleanliness, ventilation and temperature, dangerous dusts and fumes, lighting and control of glare etc.), safety (eye protection, control of explosive and inflammable dusts, etc.), and general welfare of workers (washing facilities, first-aid, canteens, shelter rooms creches, etc.) amplified where necessary, by rules and regulations to be prescribed by Governments. Thus, the Factories Act, 1948, as the statement of objects and reasons and various provisions contained therein reveals, operates in a different field with different scope and object than the Construction Workers Act, 1996, Cess Act, 1996. The nature of construction activities undertaken to commission a refinery cannot by any stretch of imagination be construed as an activity under the Act of 1948. Merely because the provision of the Act of 1948 has been made applicable besides other labour laws to the contractors, will not, in the considered opinion of this Court, exclude the applicability of the Construction Workers Act, 1996 and Cess Act, 1996 to the petitioner contractors. The second submission, therefore, put forth by the petitioner regarding exclusion of the petitioner Contractors from the applicability of the Construction Workers Act, 1996 and Cess Act, 1996, therefore also fails.

22. The last contention of the petitioner contractors that there is no proper provision or machinery to assess and compute the cess as a result whereof the petitioners are being arbitrarily dealt with. Every taxing statute, in the present context Cess Act, 1996 making compulsory imposition of cess, has a charging section and provisions laying down the procedure to assess the tax and penalties and method of their collection. The resume of Cess Act, 1996 reveals the three elements, viz., the subject on which the Cess is levied, i.e., the "employer" as defined u/s 2(1)(i) of the Construction Workers Act, 1996; the persons liable to pay, i.e., it could be an owner of the establishment, or the head of the department in relation to building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, or the Chief Executive Officer in relation to a building or other

construction work carried on by or on behalf of a local authority or other establishment directly without contractor and contractor 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; and the rate at which the cess is levied which in present case is 1% of the cost of construction incurred by an employer. There thus exist no ambiguity as complained by the petitioner contractors. In Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others, , it was held by the Supreme Court that the first component in the concept of a tax is the character of imposition, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed and the fourth is, the value to which the rate is applied for computing the tax liability. The last submission put forth on behalf of petitioner contractors also fails.

23. Now coming to the contentions raised by the learned Counsel for the petitioner Company that they cannot be made liable for payment of cess. The answer to the contention lies in the definition of the employer u/s 2(1)(i) of the Construction Workers Act, 1996, which leaves open the option of collection of the cess from the class of person who owes the liability whether it would be the Head of Department, the Chief Executive Officer or the Contractor as the case may be. However, Sub-rule (3) of Rule 4 of the Rules of 1998 stipulates that:

Notwithstanding the provisions of Sub-rule (1) of Sub-rule (2), where the levy of cess pertain to building and other construction work of a Government or of a Public Sector Undertaking, such Government or the Public Sector Undertaking shall deduct or cause to be deducted the cess payable at the notified rates from the bills paid for such works.

Thus, the above provision bind the Government or the Public Sector Undertaking to deduct or cause to be deducted the cess payable at the notified rates from the bills paid for such works and in the context of said provision, the action of the respondent State of Madhya Pradesh cannot be found fault with in making the Company liable to realize the cess from the bills of the contractors and account for the same.

24. Having thus considered, this Court does not find any substance in the challenge. In the result the petition fails and is hereby dismissed. However, no costs.