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(2014) 12 AHC CK 0136

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 67102 of 2013

Hasrat Ali and Others APPELLANT

Vs

Aligarh Muslim University and Others RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Citation : (2015) 2 ADJ 275 : (2015) 144 FLR 1041 : (2015) LLR 504

Hon'ble Judges : Arvind Kumar Mishra-I, J;Arun Tandon, J

Bench : Division Bench

Advocate : A.Z. Khan and R.P. Mishra, Advocates for the Appellant; Shashank Shekhar Singh and Ikram Ahmad, Advocates for the Respondent

Judgement

1. Petitioners, who are 26 in numbers had entered into a contract with the Aligarh Muslim University, Aligarh on a date subsequent to February, 2009. The petitioners before this Court seek quashing of letters dated 9.11.2013 and dated 25.12.2013 where under while making the payment of the work done by the petitioner under the contract, 1% labor cess has been deducted with effect from February, 2009 onwards from the contractors bill. Sri R.P. Mishra, learned counsel for the petitioners submitted before this Court that at the time of entering into the contract the Aligarh Muslim University had not disclosed in the tender notice or otherwise that the bidders would be liable to pay Labor cess at the rate of 1% and therefore, the petitioners had not included the impact of labor cess in the price quoted by them in response to the tender. It is pointed out that Aligarh Muslim University under office memo dated 9th February, 2013 has decided to adopt the Building and Other Construction Workers'' Welfare Cess Act, 1996 and therefore, it is only from a date subsequent to 9th November, 2013 liability of labor cess can be raised/demanded from the petitioner contractors. He further submits that under the terms and conditions agreed upon between the parties there is no provision for levy of labors cess. The demand impugned is wholly unjustified. Therefore, it is prayed that the respondents may be restrained from making any deduction from the bill of the contractor to the extent of 1% as labor

Cess.

2. Learned counsel for the Aligarh Muslim University, Aligarh on the contrary submits that the terms and conditions as agreed upon between the parties with open eyes, under Clause-6 of the preamble to the schedule of quantity specification, (which is a part of the contract entered into between the parties). Contemplates, that prices quoted shall include royalty, monopoly charges, and any other taxes levied by the Government or local bodies except where stated otherwise in the contract.

3. He explains that the Building and Other Construction Workers'' Welfare Cess Act, 1996 was adopted by the State of U.P. with effect from 2009. Therefore, in view of Clause-6 referred to above the component of labor cess being included in the price offered by the petitioners logically follows being in the nature of tax. The University is justified in making the deduction of 1% of the labor cess from the contractors bill towards such tax liability.

4. Learned counsel for the petitioner in rejoinder disputes the stands taken and reiterates what has been stared earlier.

We have heard learned counsel for the parties and have perused the record of this writ petition.

5. It is not in dispute that the Building and others Construction Workers'' Welfare Cess Act, 1996 being Act No. 28 of 1996 has been adopted by the State of U.P. with effect from February, 2009 with the adoption of the said Act No. 28/1996. The liability of payment of labor Cess under the said Act accrued. This labor cess is in the nature of compulsory payment of money for the welfare of the labors engaged in building and other construction works. The cess answers the description of tax and therefore, in view of Clause-6 of the preamble to scheduled of quantity specifications referred to above it would be a tax levied by State Government, included in the price quoted.

6. We may reproduce Clause-6 of the Preamble to the Schedule of Quantities-Specifications for ready reference:

6. Prices quoted shall include royalty as, monopoly charges, and any other taxes levied the Government or local bodies except where stated otherwise in this contract.

7. Once it is held by us that labor cess is in the nature of tax levied by the State Government, it became payable from the date the Cess Act was adopted by the State of U.P. that is February, 2009. The tax liability stands transferred to the contractors in view of Clause-6 quoted above. We may record that the imposition of cess/tax commences in accordance with the statutory provisions on being adopted by the State Government and that the letter of the University of Aligarh recording that the university is adopting the said cess dated 9th November, 2013 is of no legal consequence, in a much as the university which is situate in U.P. has no choice, once the cess has been enforced in the State of Uttar Pradesh by

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an act of legislature.

8. In the totality of the circumstances, we find no illegality in the demand, which has been raised. The petitioners had entered into the contract with open eyes. They cannot be permitted to wriggled out from the liability, which accrued because of the labor cess is implemented with effect from February, 2009. This writ petition is dismissed.

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