

(2014) 10 KL CK 0356

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 27767 of 2014 (U)

Mohamed Sali Kasim

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996 — Section 11, 2(d), 2(i)
Constitution of India, 1950 — Article 226

Citation : (2014) 10 KL CK 0356

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : T.M. Abdul Latheef and A. Mohamed Rasheed, Advocate for the Appellant; Biju Meenattur, Government Pleader, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—Petitioners are aggrieved with the assessment passed under the Kerala Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. Proceedings were initiated with respect to the construction of a commercial complex. The petitioners allegedly employed a contractor, who is the fourth respondent herein, to carry out the construction. The petitioners admit to having received the pre-assessment notice and also filed an objection produced at Ext. P13. The assessment was passed as per Ext. P2 on 5.4.2013. A show cause notice, raising the demand, was also issued as per Ext. P3.

2. On 15.4.2014, an application was filed by the petitioner before the Assistant Labour Officer. The application indicated that the petitioner did not have the liability under the Cess Act for reason of the petitioner having employed a contractor, who alone employed the employees in the construction of the building. It is to be immediately noticed that, there is no provision for such an application, nor is the assessing officer under the Cess Act conferred with any powers of review. But an appeal is provided under Section 11 of the Act. Such appeal has to be filed under Rule 14 of the Building and other Construction

Workers (Regulation of Employment and Conditions of Service) Kerala Rules, 1998, within a period of three months from the date of the order. The petitioner chose not to avail of the appellate remedy, but filed an application before the Assistant Labour Officer Gr. I, the Assessing Officer, who had, as noticed above, absolutely no power to consider the same.

3. In any event, the Assessing Officer considered the application and also found from the agreement produced that the contractor did not have any liability since the contract did not clearly include the payment of any cess with respect to the construction carried out. Petitioner rested content with the order issued at Ext. P4 also. No appeal was filed therefrom. When recovery proceedings were initiated by Ext. P6, the petitioner approached this Court with the above writ petition.

4. It is trite that, this Court, under Article 226, cannot invoke the extraordinary jurisdiction, when an alternate remedy is available and the same is not availed of by the assessee within the period stipulated or within the time in which an appeal could be filed with a delay condonation application. The Act does not contain any provision for condonation of delay, but provides only for a period of three months from the date of the order; to file an appeal. The position is covered by two decisions of this Court in *Panopharam and Narayaneeyam Vs. Union of India (UOI)*, and *Assistant Commissioner of Central Excise Vs. Krishna Poduval*, .

5. Learned counsel appearing for the petitioner would urge another contention with respect to the owner of the building, not being included under the definition of "employer" under the Cess Act; if a contractor is employed. The Cess Act by Section 2(d) incorporates the definition in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 with respect to the words and expressions used in the Cess Act. The definition of "employer" in the Act of 1996 is, as follows:

"Section 2(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 through a contractor, or by the employment of building workers supplied by a contractor, the contractor."

6. A reading of the definition does not advance the case put forward by the petitioner, since, it is an inclusive definition where the owner is primarily mulcted

with the liability, but extending the same to the contractor also by sub-clause (3) of Clause (i). In such circumstances, with respect to the liability of the petitioner under the Cess Act, it cannot be said that the petitioner is exonerated from the liability on account, only, of the petitioner, having employed a contractor to carry out the work. But, however, if the petitioner has a remedy against the contractor as per the terms of the contract, he shall be entitled to agitate the same before the appropriate forum. Writ petition is dismissed.