(2013) 12 CAL CK 0051

In the Calcutta High Court

Case No : W.P. No. 24971 (W) of 2013

NCC Limited APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2014) 2 CHN 517

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Harish Tandon, J.—The petitioner has challenged the action of the respondent Nos. 3 & 4 in deducting an amount under the Building and other Construction Workers Welfare Cess Act, 1996 in relation to the contract entered into between the parties for execution of the construction work. The respondent No. 3 invited tender for Structural Works, Reheating Furnaces and Rolling Mills for expansion of IISCO Steel Plant at Burnpur. The petitioner was declared as a successful tenderer and was awarded the contract. Clause IX of general conditions of contract provides that the contractor shall bear and pay all taxes, duties, levies and charges assessed on the contractor, sub-contractor or their employees by Municipal, State or Central Government Authorities except those specifically provided in the contract. A meeting was held at the pre-bid stage wherein it was agreed that the tenderer shall quote the rates by including all types of taxes, duties, levies, transport, freight, insurance etc., as applicable and as may be made applicable till completion for which no extra payment shall be made on any account whatsoever.

2. The RA Bills were raised in terms of the contract but some amount is withheld by the respondent No. 3 which constrained the petitioner to cause a letter for providing the reasons for withholding the said amount. The respondent No. 3 replied that the amount have been deducted on account of CESS Act, 1996, insurance lapse, lapses on safety and cost of the materials issued. The Company

sought to invoke Clause 8 of the special condition of contract which provides that the contractor shall also be responsible for implementation of all statutory rules and regulations including the building and other conditions of Contract Act, 1996 (If applicable) and the CESS Act, 1996. Other correspondences exchanged between the parties could not bring the parties to a consensus relating to the applicability of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and the CESS Act to the nature of the work provided under the said work contract.

3. An argument is advanced on behalf of the petitioner that BOCW Act and the CESS Act cannot apply if it is covered under the Factories Act and the Mines Act. In this regard, the reference is made to section 2(d) of the BOCW Act which defines building or other construction work but excludes the applicability thereof to which the provisions of the Factories Act or the Mines Act applied. The reliance is heavily placed on the information received under the Right to Information Act which is annexed in reply filed by the petitioner wherein it is indicated that the expansion of IISCO Steel Plant at Burnpur are made under the purview of the Factories Act, 1948 and West Bengal Factories Rules, 1958. To support the only point as canvassed above, the petitioner placed reliance upon the unreported judgment of the Orissa High Court in case of M/s Sterlite Energy Ltd. vs. State of Orissa & Ors., (W.P. 15924 of 2009 decided on 04.09.2010) wherein it is held that if the building and other construction work in relation to a factory or mines to which the provisions of the Factories Act or the Mines Act applied, it excludes the applicability of the BOCW Act and the CESS Act.

4. The respondent Nos. 3 & 4 mainly contested the instant writ petition. The stand of this said respondent adumbrated in a pre-bid conference and the consensus arrived therein, the price to be quoted was to include all type of taxes as applicable and may be applicable till completion and, therefore, there is no illegality committed by the aforesaid respondents in deducting the amount on account of CESS Act which is very much applicable in case of the construction work under the Contract. It is pointed out by the said respondent that the unreported judgment rendered by the Orissa High Court as relied upon by the petitioner is a assailed before the Supreme Court and the matter is sub judice. The said respondent firmly stood to their stand that BOCW Act and the CESS Act applies as the nature of the work squarely comes within the ambit of the definition clause attributed to building or other construction work u/s 2(1)(d) of the BOCW Act.

5. It emerges from the respective stands of the parties both in the pleading as well as from the submissions that the terms and conditions of the contracts are not in variance. It is not in dispute that the clause of the special condition of contract provides that the rates so quoted should include the taxes as applicable. The parties are in dispute so far as the applicability of the BOCW Act and the CESS Act is concerned.

6. Before addressing the aforesaid issue, the basic object and purpose for

enactment of the aforesaid statutes needs to be adumbrated. It was observed that the large number of workers in the country engaged in the building and the other construction works were considered to be wonderable segments of an unorganized labour in the country. The characteristic of such work is casual, temporary in nature and there is uncertain working hours. It was thought that such unorganized workers lacks basic amenities and there is an inadequacy of welfare facilities. It was felt that a competent legislation be promulgated for regulating their safety, health, welfare and other conditions of service. The bill was presented in both the houses of the parliament and after being passed received the assent of the President on 19 August, 1996. Thus the BOCW Act, 1996 came into effect on and from the date where it received the assent of the president. Section 18 of the Act provides that every State Government by notification appoint and constitute the State Welfare Boards to exercise the power conferred on and performed the functions assigned to under the said Act with an object to augment the resources of the State Welfare Boards, CESS Act, 1996 is simultaneously promulgated for the purpose of levying and collection of the CESS. But the acts as would appear from the object and purposes are complimentary to each other. The BOCW Act, if inapplicable, the CESS Act cannot be enforced.

7. Section 21(d) of the BOCW Act defines "building or other construction work" to 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, colling 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;"

8. If the petitioners are brought within the definition of "building or other construction work", it does not admit any debate that the deduction made under the CESS Act is justified, legal and correct but it would be different if the petitioners are take out the purview of the said definition clause. The words of the statute if explicit and conveys the intention sufficiently and clearly, the Court should lean to an interpretation which upholds the object and the intendment of the legislation and not to make it unworkable. In other words, the interpretation much depend on the text and the context and the textual interpretation should match with the context. The express exclusion clause relating to the applicability of the Act is an irresistible conclusion as words or expression used in any statute cannot be said to be redundant or superfluous. It leads to an irresistible conclusion that in case of building and other construction work comes within the

ambit of the Factories Act and the Mines Act, the BOCW Act has no manner of applicability in such event the CESS Act cannot be made applicable as well.

9. In the present case, the information supplied to the petitioner reveals that the expansion of ISP Burn Work which is a brown field project comes under the purview of the Factories Act, 1948 and West Bengal Factories Rules, 1958. The respondent No. 3 themselves treat the aforesaid expansion work to cover under the Factories Act and the Rules applicable thereto and therefore cannot take a different stand that BOCW Act and the CESS Act applies. The aforesaid stand appears to me is contrary to the definition assigned u/s 2(1)(d) of the BOCW Act which excludes the operation of the Factories Act and the Mines Act from the purview of the said Act. It appears that the respondents are blowing hot and cold at the same time, in saying at one hand that the aforesaid construction work comes under the Factories Act, on the other hand, deducting the certain amount under the CESS Act.

10. This Court, therefore, finds that the deduction under the CESS Act is illegal as BOCW Act and the CESS Act does not apply.

11. Since the parties have not argued on other deductions made by the aforesaid respondents but have concentrated on the deductions made under the CESS Act, this judgment shall not be construed to have decided the other deductions than the CESS Act.

12. With this observations, the writ petition is disposed of.

13. However, there shall be no order as to costs.

14. Urgent photostat certified copy of the judgment, if applied for, be given to the parties on priority basis.

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15. After the judgment is delivered in open Court, the respondents pray for stay of operation of this judgment.

16. After considering the submissions made at the Bar, this Court does not find that such prayer can be allowed. The prayer is, thus, rejected.

