(2020) 01 JH CK 0059

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5510 of 2013

Rites Limited And Ors — APPELLANT

Vs

State of Jharkhand And Ors — RESPONDENT

Date of Decision : 31-01-2020

Acts Referred:

Companies Act, 2013 — Section 617
Constitution Of India, 1950 — Article 226

Citation : (2020) 01 JH CK 0059

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Darshana Poddar Mishra, Atanu Banerjee, Tapas Kabiraj

Final Decision : Dismissed

Judgement

1. This writ petition is under Article 226 of the Constitution of India whereby and whereunder communication dated 13.09.2010 issued by the Development Commissioner, Jharkhand, Ranchi is under challenge by the petitioner-M/s RITES LIMITED.

2. Ms. Darshana Poddar Mishra, learned counsel for the petitioner submits that the notice impugned is without application of mind and without considering the fact that the petitioner-establishment has already deducted 1 % cess of the estimated cost of the construction from the concerned contractor and has been deposited in the respective accounts.

3. Mr. Atanu Banerjee, learned Sr. S.C. III, appearing for the respondents-State of Jharkhand has submitted that if that be so, then there is no cause of action for filing the present writ petition in view of the stipulation made in the last paragraph of the said communication wherein it has been stated that the quantum of 1 % cess is to be deposited, through the establishment or the contractor and if the amount has been deposited, as has been submitted by learned counsel for the petitioner, in the designated welfare accounts to achieve

the object and intent of The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 and The Building and Other Construction Workers' Welfare Cess Rules, 1998, no cause of action has arisen to approach before this Court.

4. Upon this, Ms. Mishra, learned counsel for the petitioner has submitted that the stipulation made in the said notice wherein direction has been issued upon the establishment by referring their names to deposit the said quantum and therefore, it cannot be said that there is no cause of action available to the petitioner for raising its grievances by way of filing the present writ petition.

5. This Court, having heard learned counsel for the parties and going across the impugned communication dated 13.09.2010, has found therefrom that the State Government has made communication to establishments working within the State of Jharkhand for compliance of provisions of The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 and The Building and Other Construction Workers' Welfare Cess Rule, 1998, whereby and whereunder the petitioner has been directed to deposit 1 % cess in the estimated cost of construction. Further, it appears from the impugned notice that in order to achieve the purpose, the establishment or the contractors have been held liable to deposit the amount of cess to the tune of 1 % of the construction cost in the welfare fund.

6. Contention has been raised by learned counsel for the petitioner that the establishment has been held liable to deposit the said amount, therefore, the petitioner is having the cause of action, but this Court is not in agreement with the submission advanced by learned counsel for the petitioner in view of the fact that it is the case of the petitioner that amount to the tune of 1 % cess is to be deposited as per the intent and purport of The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 and The Building and Other Construction Workers' Welfare Cess Rules, 1998, after deduction from the contractors and to be deposited in the welfare fund account.

Further, the petitioner itself has complied with the provisions of The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act 1996 and The Building and Other Construction Workers' Welfare Cess Rules, 1998, by deducting 1% cess and depositing it in the welfare fund account, therefore there is no question of any liability upon the petitioner as because question of liability only comes, if there will be no deduction on the part of the establishment from the contractor.

7. In view thereof, according to considered view of this Court, since petitioner being the establishment has already deducted the amount of cess from the contractor, as submitted by the learned counsel for the petitioner and deposited the same in the welfare fund account, the petitioner cannot be said to be aggrieved with the impugned communication.

