

(2014) 01 AHC CK 0082

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2659 of 2014

Satish Kumar and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

Citation : (2014) 2 ADJ 52 : (2014) 3 ALJ 7 : (2014) 4 AWC 3439

Hon'ble Judges : Anil Kumar Agarwal, J; Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : Indrasen Singh Tomar, Advocate for the Appellant; Q.H. Siddiqui, Advocate for the Respondent

Judgement

1. Heard Sri I.S. Tomar, learned counsel for the petitioners, who has filed a supplementary affidavit today.

This petition raises a challenge to the liability of realisation of labour cess under the Building and Other Construction Workers Welfare Cess, Act 1996 read with the Rules of 1998 framed thereunder.

The first contention of Sri Tomar is that the Act and the Rules were never enforced in the U.P. Jal Nigam up to 1.7.2012 and the petitioners having executed the work under contracts prior to that are not liable to pay the labour cess for that period.

2. The second contention of Sri Tomar is that even otherwise the said terms and conditions were not incorporated in the bonds executed between the petitioners and the U.P. Jal Nigam for the said purpose prior to 1.7.2012, and if it is compared with the bonds, which have been executed thereafter makes it clear that even the U.P. Jal Nigam was not proceeding to realise any such cess from the contractors. The contention of the petitioners, therefore, appears to be that prior to 1.7.2012 neither the cess was chargeable nor was payable as the Rules framed were not enforced in the U.P. Jal Nigam and the petitioners even otherwise were not liable for the payment of such Cess.

3. The documents, which have been filed on record, and are being relied upon included the letter dated 5.2.2011 as well as other documents Sri Tomar went to urge that the U.P. Jal Nigam itself has been stated that the provisions have to be complied with in the U.P. Jal Nigam with effect from 4.2.2009. He further submits that inspite of that, the U.P. Jal Nigam did not incorporate any such condition in the bonds, which were executed by the petitioners, therefore, the petitioners were not liable to be charged with any such cess or to deposit the same.

4. He further submits that the petitioners upon being informed in 2012 about the same by the U.P. Jal Nigam have accordingly incorporated the same in their tender forms, which they had filed thereafter in respect of the works allotted and are making payment of the cess. He, therefore, submits that on all counts the claim now raised by the competent authority calling upon the petitioners to deposit the labour cess w.e.f. 2009 onwards, with retrospective effect, cannot be realised from the petitioners.

5. Learned counsel for the respondent Jal Nigam submits that the Act has already been enforced and according to Section 1(3) of the Act it is clear that the Act has come into force on 3.11.1995. The submission therefore, is that the Act has already been enforced and the Rules were framed thereafter, copies whereof have been filed alongwith the writ petition as Annexure Nos. 2 and 2A.

6. We have considered the submissions raised by the parties and we find that the liability of such Cess is amenable to the assessment on the basis of the information to be furnished by the employer as is prescribed by 1998 Rules. In the instant case the petitioners are contractors, who had employed labours. In the circumstances in our opinion the petitioners being the employers were under obligation to furnish the information under Rule 6 of the 1998 Rules and on that basis assessment has to be carried out. Once the assessment order is passed then the same can be challenged in an appeal under the provisions of the Act and the Rules.

7. In the aforesaid circumstances, we are unable to agree with the submissions of Sri Tomar that the Act was not enforced in the period for which the Labour Cess is sought to be realised from the petitioners. The Act and the Rules did not carve out any waiver or any exception on any letter written by the department. In short the Act has not waived the applicability of the Act and the Rules on the employer, who admittedly in the present case are the contractors. A mention in the letter by the department that the Act has been applied in the department w.e.f. 4.2.2009 does not appeal to reason in as much as the applicability of the Act is not dependant upon the choice of the U.P. Jal Nigam or of the employer, but it creates a statutory liability on the employer, who in the present case are the contractors themselves.

8. Coming to the second contention of Sri Tomar with regard to the incorporation of the terms and conditions in the bonds executed between the petitioners and the U.P. Jal Nigam, suffice it to say that if this argument is accepted and for the

shake of argument, even if any such terms and conditions did not exist in the bond, the employer cannot escape from the statutory liability, which is fixed under the 1996 Act and the 1998 Rules. The contention of Sri Tomar that as the terms and conditions were incorporated for the first time in the bonds in 2012 and onwards cannot be a ground for any waiver of the statutory liability of the employer, who in the present case are the petitioners. A statute fixing a financial liability has to be contrived strictly to exercise recovery. The petitioners, therefore, in our opinion, can claim for any waiver or any such exemption from the payment of labour Cess. In the event if they have been assessed and they are aggrieved by such quantum of assessment they can challenge the same by filing an appeal before the Appellate Authority according to the Act and the Rules framed thereunder.

There is no merit in the petition and it is accordingly dismissed.