

IN THE HIGH COURT OF JHARKHAND AT RANCHI
L.P.A. No.511 of 2022

1. The State of Jharkhand through the Secretary, Department of Labour, Employment & Training, Office at Shram Bhawan, Doranda, Ranchi.
2. Labour Commissioner, Department of Labour, Employment & Training, Office at Shram Bhawan, Doranda, Ranchi.
3. Assistant Labour Commissioner-cum-Cess Assessment Officer (Building and Other Construction Worker's Welfare Cess Act, 1996), Ranchi, Office at Doranda, Ranchi.

... **Appellants**

Versus

1. M/s Flowmore Limited, a Company registered under the Companies Act, 1956, having Branch Office situated at 131, North Office Para, Near Indumati Apartment, Doranda, Ranchi, through its Manager (Commercial)-cum-Authorised Signatory, namely, Mr. Raihan Ahmed, son of Abdus Sami, resident of Paras Toli, Doranda College Road, Doranda, Ranchi.
2. Jharkhand Urja Sancharan Nigam Limited, through its Managing Director, Office at Nigam Head Quarters Building, Kusai Colony, Doranda, Ranchi.
3. Senior Manager (Finance and Accounts), Jharkhand Urja Sancharan Nigam Limited, Office at Nigam Head Quarters Building, Kusai Colony, Doranda, Ranchi.
4. Principal Accountant General, Jharkhand, Ranchi.

... **Respondents**

CORAM : SRI SANJAYA KUMAR MISHRA, C.J.
SRI ANANDA SEN, J.

For the Appellants: Mr. Manoj Tandon, Advocate
Ms. Neha Bhardwaj, Advocate

For the Respondents: Mr. M.S. Mittal, Sr. Advocate
Mr. Salona Mittal, Advocate

For the Respondent
(JUSNL) : Mr. Mrinal Kanti Roy, Advocate

11/ 27.07.2023 Upon hearing the learned counsel for the parties, this Court passed the following, (Per Ananda Sen, J.)

ORDER

1. This Letters Patent Appeal at the instance of the State is directed against the order dated 13.06.2022 passed by the learned Single Judge in

W.P.(C) No.3835 of 2020, whereby the writ petition filed by the writ petitioner has been disposed of holding that the Labour Cess is not leviable on supply of materials and consultancy charges with respect to the contract, which are distinct from the contracts of civil works. Further, the Court directed to refund the Labour Cess deducted against the writ petitioner's bill for supply of material and consultancy charges giving liberty to the writ petitioner to approach the appropriate authority claiming interest thereon.

2. Counsel appearing on behalf of the State-appellants submitted that the learned Single Judge could not have entertained the writ petition filed under Article 226 of the Constitution of India, in view of the alternative remedy available under Section 11 of the Building and Other Construction Workers Welfare Cess Act, 1996 read with Section 14 of the Building and Other Construction Workers Welfare Cess Rules, 1998. As per him, Labour Cess has to be deducted from the cost of entire project, which includes the cost of supply, consultancy charges, engineering and, thus, the appellant and the Jharkhand Urja Sancharan Nigmal Limited (JUSNL) committed no illegality in deducting the amount of Cess from the bills of the contractor-writ petitioner. The respondent-writ petitioner signed a single contract agreement with JUSNL for supply of materials as well as erection and commission of Sub Stations, therefore, the entire work should be construed to be one work of construction, which includes consultancy charges, supply of materials and engineering works. State-appellants argued that the contract could not have been bifurcated in the instant case. The objection raised by the Principal Accountant General (Audit), Jharkhand was considered and thereafter it was decided to deduct the amount from the bills of the contractor-writ petitioner on the entire cost of construction including the cost of supply, consultancy and engineering works, thus, no fault can be found in the action of the JUSNL, whereby they deducted the amount and forwarded the same to the appellants. As per him, learned Single Judge failed to take into consideration all these facts while allowing the writ petition by giving direction in paragraph 30 of the impugned order.

3. Learned Senior Counsel appearing on behalf of the writ petitioner-respondent submits that the respondent-JUSNL had entered into an agreement with the writ petitioner-respondent for construction of Electric Grid Sub Station at various locations in the State of Jharkhand. For the aforesaid construction, there were several components like supply of materials and

equipment, consultancy services, erection of transmission lines. Supply of materials and erection of Grid Sub Stations were separate agreement and even the terms of payment as per agreement was also different. As per Building and Other Construction Workers Welfare Cess Act, 1996, the Cess can only be levied on the component of construction and erection and not on supply of materials and consultancy. The respondents had committed grave illegality by deducting cess on the component of supply of materials and consultancy etc. over and above the erection and construction part, which has been taken note of by the learned Single Judge and direction has been given to refund the same. He relies upon the judgment of the Hon'ble Supreme Court in the case of ***Uttar Pradesh Power Transmission Corporation Ltd. & Another versus CG Power and Industrial Solutions Limited & Another*** reported in ***(2021) SCC OnLine SC 383***.

4. We have heard the parties and have gone through the impugned order. Admittedly, the respondent No.1 was awarded work of construction of Electric Sub Stations including supply of materials, consultancy etc. Learned Single Judge analysed the agreement and the contract and found that two separate contracts were required to be entered between the parties, namely, **one** for supply of equipment/materials including spares loading, transportation for delivery at site, transit insurance, unloading, storage, handling at site and the **other** for electrical and civil works. The price bids of both the contracts were also required to be broken down so that figures for supply of materials and equipment and services respectively would be available clearly for award of contract. Learned Single Judge has also found that separate agreements were entered between the parties for both the contracts. LoA No.16 dated 21.02.2019 was for supply of materials whereas LoA No.20 dated 21.02.2019 was for erection and civil works. It was also found that there was a purchase order and work order for designing, engineering, supply of materials, equipment, erection, testing and commissioning of Grid Sub-Station at Bahragora, Jamua and Chandankyari on turnkey basis. The Purchase order being P.O. No.02 C.E.(T)/J.U.S.N.L. dated 18.01.2017 was for supply of materials and work order being W.O. No.02 C.E.(T)/J.U.S.N.L. dated 18.01.2017 was for erection, testing and commissioning of all supplied materials and thus, two separate contracts were entered into for supply and civil work. Learned Single Judge also found that the contract price for both the works was separate as the price of supply of materials was Rs.87,51,77,838/-

and the work order relating to erection and civil works was valued at Rs.26,66,70,906.75. We are of the opinion that these findings clearly suggest that there were two contracts, which were separable – one for supply and another for construction.

5. Section 3 of the Building & Other Construction Workers' Welfare Cess Act, 1996 is the charging provision, which provides for levy and collection of cess. Sub section (1) of Section 3 reads as follows: -

“3. Levy and collection of cess.- (1) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, at such rate not exceeding two per cent, but not less than one per cent of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time specify.”

6. From the aforesaid provision, it is clear that cess would be levied and collected at a particular per cent of the cost of construction incurred by the employer. Section 2(d) of Building & Other Construction Works (Regulation of Employment and Conditions of Service) Act, 1996 defines 'building' or 'other construction work'. It is necessary to quote the aforesaid Section 2(d) of Building & Other Construction Works (Regulation of Employment and Conditions of Service) Act, 1996, which reads as under:-

2. Definitions. – (1) In this Act, unless the context otherwise requires,-

(a) ...

(b) ...

(c) ...

(d) “building or other construction work” 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, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government,

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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;

7. From the aforesaid definition of “building or other construction work” it is quite clear that in relation to any building, streets or even transmission or distribution of power, the “building or other construction” will mean and convene to any construction, alteration, repairs, maintenance or demolition of or in relation to the said structures. It is quite clear from the conjoint reading of Section 2(d) and Section 3 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, that no cess can be levied on supply or consultancy component. It can only be levied on construction, alteration, repair, maintenance or demolition work. Extending the said levy on consultancy or supply will be a clear deviation from the provisions of the Act. Further, the Hon’ble Supreme Court has decided an exactly similar issue in the case of **Uttar Pradesh Power Transmission Corporation Ltd. (supra)** and has held that the Act excludes a supply contract from within its ambit. Learned Single Judge has also considered the said judgment on the facts of this case, which is also similar with the facts dealt with by the Hon’ble Supreme Court.

8. So far as plea of alternative remedy is concerned, we find that similar issue was also before the Hon’ble Supreme Court in the case, which was being dealt with in **Uttar Pradesh Power Transmission Corporation Ltd. (supra)** wherein it has been held that relief under Article 226 of the Constitution of India may be granted in a case arising from civil contract. Availability of alternative remedy does not prohibit the High Court from maintaining a writ petition in an appropriate case. In the aforesaid case, the Hon’ble Supreme Court has upheld invocation of Article 226 of the Constitution of India, which involves similar nature of facts. The Hon’ble Supreme Court, in paragraph 71 of the aforesaid judgment has held that UPPTCL (the Company involved in the case before the Hon’ble Supreme Court) has no power or authority or jurisdiction to realize labour cess under the Cess Act by withholding the dues and the State Government has acted in excess of powers by its acts impugned. We find that the learned Single Judge has considered all these aspects and especially the judgment of the Hon’ble Supreme Court and has disposed of the writ petition in the following terms:-

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(i) Letter No.1656 dated 25.08.2020 issued by the Senior Manager (F&A), Jharkhand Urja Sancharan Nigam Limited, Ranchi (the respondent No.5) [Annexure-1 to the writ petition] is hereby quashed.

(ii) The labour cess is not leviable on supply of materials and consultancy charge with respect to the contracts in question as the same are distinct from the contract for civil works.

(iii) The respondent-JUSNL is directed to communicate the Department of Labour, Employment and Training, Government of Jharkhand regarding refund of labour cess deducted against the petitioner's bills for supply of materials and consultancy charges which is said to have been deposited by it with the said department, within two weeks from the date of receipt/production of a copy of this order.

(iv) The competent authority of the Department of Labour, Employment and Training, Government of Jharkhand, Ranchi is directed to refund the amount of labour cess which has been deducted from the petitioner's bill for supply of materials and consultancy charges through the respondent-JUSNL within one month from the date of receipt of the communication from the respondent-JUSNL.

(v) The petitioner will be at liberty to move before the appropriate authority claiming interest on the deducted amount in terms with the order of a co-ordinate Bench of this Court as referred in paragraph 28 of the judgment.

9. We also concur with the findings of the learned Single Judge as the same is based on the judgment of the Hon'ble Supreme Court, which covers the issue involved. We find no merit in this Letters Patent Appeal. This Letters Patent Appeal is, accordingly, dismissed.

10. There shall be no orders as to costs. Urgent certified copies of this order shall be issued as per the Rules.

(Sanjaya Kumar Mishra, C.J.)

(Ananda Sen, J.)