

Court No. - 6

Case :- WRIT - C No. - 37916 of 2023

Petitioner :- M/S Simplex Infrastructures Limited

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Amit Mahajan,Diptiman Singh

Counsel for Respondent :- C.S.C.,Gaurav Bishan

Hon'ble Mrs. Manju Rani Chauhan,J.

1. Heard Sri Diptiman Singh and Sri Amit Mahajan, learned counsel for the petitioner, learned Standing Counsel appearing for the State functionaries, and Sri Gaurav Bishan, learned counsel for the third respondent.

2. The petitioner Company has preferred this writ petition challenging an order dated 27.09.2023 passed by the second respondent / Deputy Labour Commissioner-cum-Cess Assessing Officer, Prayagraj.

3. The petitioner having its registered office at New Delhi and Head Office at Kolkata (West Bengal) is one of the construction leaders in India for nearly ninety years and executing projects with consistent quality, assurance, cost control and adherence to milestone in a safe environment as per the customers requirements. The petitioner is a diversified reputed company executing projects in several sectors like, Transport, Energy & Power, Mining, Buildings, Marine, Real Estate etc. It is also involved in infrastructure power projects, construction of dam and other activities.

4. The third respondent, i.e., Meja Urja Nigam Pvt. Limited is a joint venture of National Thermal Power Corporation¹ and Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited², which owns a major Thermal Power Station, a 2x660 MW coal-based thermal power plant which is located at Meja Tehsil in District Prayagraj.

1 NTC

2 UPRVUNL

5. The third respondent floated a tender on 18.05.2017 for balance works of main plant of off-site work for the aforesaid project at Meja. The petitioner amongst other bidders, placed their bid and the bid was announced in favour of the petitioner on 04.12.2017, accordingly a letter of award was sent to the petitioner for the balance works of main plant and off-site civil works for the Meja Project, to which the petitioner submitted its acceptance on 15.12.2017. A certificate of registration in favour of the petitioner by the Labour Department was also issued.

6. The petitioner continued working for the third respondent Company till 05.04.2022 before they were served with a contract cancellation letter dated 05.04.2022. The third respondent cancelled the contract on specific ground of breach of contract as stated in Clause-6.1.0 of the award letter dated 04.12.2017, according to which the entire scope of work of the subject package was to be completed within eighteen calendar months from the date of letter of award, i.e., 04.12.2017.

7. Thereafter, on 30.04.2022 the petitioner received a show cause notice from the second respondent to explain as to why the petitioner has not submitted various documents with regard to the amount of cess deposit, the amount of construction work executed, construction cost incurred, copy of work orders and total cess deposited with the authorities presently.

8. 20.05.2022 was the date fixed before the second respondent for hearing. A reply dated 18.05.2022 was submitted by the petitioner to the show cause notice dated 30.04.2022, wherein the petitioner Company had stated that it had already deposited an equal amount of Rs. 60,47,764/- for the Year 2018-19 and 2019-20 on account of Building and Other Construction Workers' Welfare Cess³ for the works

3 BOCW Cess

of main plant and off-site several work package, and further stated that construction work at Meja Thermal Plant was kept in abeyance at that stage and there was no staff to provide documents which were required, as mentioned in the show cause notice. Thereafter, no communication was received by the petitioner from the office of second respondent.

9. It appears that proceedings under Section 5 of the Building and Other Construction Workers' Welfare Cess Act, 1996⁴ and Rule-7 of the Building and Other Construction Workers' Welfare Cess Rules, 1998⁵ were initiated without any notice to the petitioner and ex-parte assessment was made to the tune of Rs. 2,73,26,59,452/- and cess was assessed at 1% over the total construction cost which would amount to Rs. 2,73,26,594/-. No opportunity of hearing was provided to the petitioner to place the actual facts and the order impugned dated 27.09.2023 has been passed violating the principles of natural justice. Hence the present writ petition.

10. Learned counsel for the petitioner submits that show cause notice was given to the petitioner on 30.04.2022 mentioning therein that the work entrusted upon the petitioner by the letter of award dated 04.12.2017 was not completed as per terms and conditions mentioned therein and the petitioner has submitted a detailed reply dated 18.05.2022 mentioning therein that the Company was already registered under the Cess Act, 1996 and was duly granted registration number dated 31.01.2018 under the Cess Rules, 1998. The Company had already deposited an equivalent amount of Rs. 60,47,764/- for the Year 2018-19 and 2019-20 on account of BOCW Cess for the work of main plant and off-site civil work package for Meja Thermal Power Project. It was further informed that the construction work at Meja was kept in abeyance at that stage and there was no staff at the site to

4 The Cess Act, 1996

5 The Cess Rules, 1998

provide documents which have been intended vide letter dated 30.04.2022 and also requested before the authority under the Cess Rules, 1996 to allow them some more time of at least 45 days to collect the requisite documents and submit the same before it.

11. Learned counsel for the petitioner further submits that the third respondent had issued a contract cancellation letter dated 05.04.2022 ignoring the fact that the breach was on the part of respondent no. 3 as the work was halted due to non-release of funds, as the amounts being withheld in various RA Bills by the third respondent due to non-compliance of technical specifications. Thus the main reason for the project not being completed within the stipulated period of time was non-release of funds on behalf of the third respondent, bringing the entire project to standstill.

12. Learned counsel for the petitioner next submits that the total construction cost should have been assessed till the date the construction work as done by the petitioner, thus the total construction cost should have been assessed to the tune of Rs. 88,12,29,102/- and the cess should be assessed at the rate of 1% over the total construction cost incurred by the petitioner which is amounting to Rs. 88,12,291/-. The petitioner Company has made a total deposit of Rs. 93,67,042/- on 24.11.2021 which is more than 1% of the total construction cost incurred by the petitioner Company as is evident from Page-59 of the writ petition. Thus, the Assessing Officer during the assessment proceedings has passed the order dated 27.09.2023 on incomplete facts taking into consideration the total construction cost as agreed between two parties and not the actual cost of construction as incurred by the petitioner Company prior to cancellation order.

13. While passing the assessment order dated 27.09.2023, no notice or opportunity of hearing to the petitioner has been provided. The

Assessing Officer / second respondent has failed to take into consideration the main fact that the entire amount of cess was deducted by the third respondent and deposited with the second respondent. The entire amount of Rs. 93,53,108/- was deducted by the third respondent for the part of work completed by the petitioner Company and the aforesaid fact is admitted by the third respondent.

14. Learned Standing Counsel appearing for State functionaries and Sri Gaurav Bishan, learned Advocate appearing for the third respondent, could not dispute the aforesaid fact.

15. As there is no denial by the third respondent that the amount of Rs. 93,53,108/-, which is the assessment on the actual construction as incurred by the petitioner, has already been deposited, therefore, there was no occasion to pass the order impugned calculating the assessment on incomplete facts and on total construction cost as the petitioner is only liable to pay the assessment on the cost of construction as done by it. In view of the above discussion, the order impugned is liable to be set aside. Hence it is quashed.

16. The writ petition stands allowed accordingly.

17. No order as to costs.

Order Date :- 30.11.2023
DS/Arti

(Justice Manju Rani Chauhan)