IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.325 of 2012

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1. M/S Debashree Constructions (India) Pvt. Ltd. A Company Incorporated Under the Indian Companies Act, 1956 having its Office at New Area, Nawajadik Complex, Old G.T. Road, Aurangabad, Bihar through It's Managing Director Smt. Geeta Singh, Wife of Sri Kaushal Kumar Singh, Resident of New Area, Aurangabad, Bihar

.... Petitioner/s

Versus

1. The IRCON International Ltd., A Government of India undertaking having its Registered Office At Plot No. C-4, District Centre, Saket, New Delhi-110017 through its Director (Projects)
2. The Additional General Manager, IRCON International Ltd., 1st Floor, Sone Bhawan, Daroga Prasad Rai Path, Patna

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Raj Kishore Prasad, Adv.
For the Respondent/s : Mr. Siddharth Prasad, Adv..

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 05-11-2015

Heard Mr. Raj Kishore Prasad learned counsel for the petitioner and Mr. Siddharth Prasad, learned counsel for the respondent.

The petitioner has prayed for a direction in the nature of mandamus commanding the respondents to reimburse the amount of 'labour cess' that has been realized at the rate of 1% from the bill submitted by the petitioner inter alia on grounds that there is no provision in the Detailed Project Report or the agreement entered in between the parties for such deduction.

It is the argument of Mr. Raj Kishore Prasad with reference to the bills present at Annexure-2 that in absence of any agreement to such effect it is wholly illegal and an arbitrary action on the part of respondents to deduct the 'labour cess' at the rate of 1% from the bills of the petitioner. It is argued by Mr. Prasad that a conscious omission by the respondents in not casting any such liability either in the Detailed Project Report or in the agreement, they are estopped from realizing the 'cess' from the bills submitted by the petitioner. Mr. Prasad though admits that in the subsequent agreements this component is present but submits that since this deduction was not present in the agreement in question, no such deduction would be permissible. In support of his submission learned counsel has relied upon a bench decision of this Court rendered in the case of **Neelam Kumar Vs. State** arising from C.W.J.C.No.5892 of 2007, a copy of the order is placed at Annexure-4

The argument of Mr. Prasad is contested by Mr. Siddharth Prasad who has referred to the provisions of the Building and other Construction Workers' Welfare Cess Act, 1996 (hereinafter referred to as 'the Act') to submit that 'the Act' being a parliamentary legislation it casts an obligation on the employer to deduct labour cess from the bill submitted by the contractor at a rate not exceeding 2% and not less 1% of the cost of construction. Mr. Siddharth Prasad refers to the agreement entered in between the parties present at Annexure-5 to the interlocutory application filed in the present proceedings and with particular reference to Clause 41 of the conditions of contract, a copy of which is placed at Annexure-B submits that the liability of the petitioner to pay ‘cess’ is clearly present therein. He submits that ‘the Act’ was enforced in the State in the year 2008 and whereafter the Board was constituted. It is contended that since the agreement in between the parties is dated 4.12.2009 as manifest from Annexure-8, the petitioner cannot escape from the liability. Mr. Siddharth Prasad has also relied upon the division bench judgment of the Delhi High Court passed in the case of **Delhi Metro Rail Vs. Simplex Infra** to submit that identical issues being raised it has been held that a belated implementation of the parliamentary legislation can be no ground to escape the liability.

Mr. Raj Kishore Prasad responding to the arguments has submitted that the word ‘cess’ mentioned in the agreement would not relate to the liability imposed under ‘the Act’ for it is accompanied with the word ‘royalty’ and thus would be relatable to the liability arising under of the Mines Act.

I have heard learned counsel for the parties and I have perused the records.

Two issues have been raised by the petitioner to question the liability so imposed, namely:

(a) that the Detailed Project Report and the agreement is silent as to the payments and recovery of the labour cess from the bills of the petitioner; and

(b) In view of the position settled in the judgment of **Neelam Kumar** (supra), the petitioner is entitled for reimbursement.

Another issue that is being raised by Mr. Raj Kishore Prasad is that 'the Act' itself was enforced in the State only in December, 2009 and thus would not cover the agreement which was executed on 4.12.2009.

'The Act' was enacted in the year 1996 and as informed by Mr. Siddharth Prasad it was enforced in the State of Bihar in the year 2008. Since despite the enforcement of 'the Act' the employers were not deducting 'Labour Cess' from the bills of the contractors that the Labour Resources Department vide letter dated 21.1.2009 issued directions for deduction of 'Labour Cess' from the bills of the contractors at the rate of 1%, to be utilized for the welfare schemes of the labourers. The letter is dated 21.1.2009 and requires that the tenders should mention the realisation of cess at the rate of 1%. The agreement was executed thereafter on 4.12.2009 and the terms and conditions of the contract which is present at Annexure-B, at Clause

41(1) casts responsibility on the tenderer to quote his rates which should be inclusive of the sales and other levies, cess, toll taxes of the Central/State Government, local authority, autonomous bodies which the contractor would have to pay for performance of the contract. It is also specifically mentioned that the employer will perform duties with regard to the deduction of such taxes at source as per the applicable law.

In view of such specific conditions quoted in the conditions of contract, the argument advanced by Mr. Raj Kishore Prasad regarding lack of information to the petitioner that he was liable to pay 'labour cess' does not hold good. The liability cast under the parliamentary legislation was clarified by the department as early as on 21.1.2009 and it is rather surprising that the agreement executed between the parties much later in December, 2009, the petitioner as a contractor of the civil constructions was not aware of the law as applicable. It is again not disputed rather admitted by Mr. Raj Kishore Prasad that in subsequent agreements this component is present and is being paid by the petitioner. In this self eloquent circumstances the failure on the part of the petitioner to include the element of labour cess in his rates for whatsoever reason, would not absolve him from the liability to make payment of the same for the liability gets fastened no sooner the bill is submitted by him. The judgment passed in the case of **Neelam**

Kumar (supra) in no way would come to the aid of the petitioner for that is a case where the royalty was being charged for removal of earth which was being utilized by the petitioner-contractor for construction of road and not for personal use and thus the Single Judge even while upholding the objection of the Treasury Officer, regarding payment of royalty was of the opinion that since the earth was utilized in the process of construction of the roads hence an order of reimbursement thereof was passed. The case in hand is absolutely distinguishable for the realization of 'Labour Cess' is not for State related work rather is to be utilized in the welfare scheme of the labourers.

In the circumstances so discussed above, I am not persuaded to interfere with realization of the labour cess by the respondents.

The writ petition is accordingly dismissed.

(Jyoti Saran, J)

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