

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17032 of 2013

Avantika Contractors (I) Ltd. 610 B, Nilgiri Block, Aditya Enclave, Ameerpet, Hyderabad, through its Authorized Representatives Namely Sri M. Amar Nath Reddy, S/o Sri Subba Reddy Resident of Flat No. 1-B, Sri Niwas Towers, Central Avenue, M.S.R. Nagar, Andhra Pradesh, Presently Residing At N.T.P.C. Barh, S.T.P.P. Barh, Patna.

.... Petitioner

Versus

1. The State Of Bihar through The Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
3. The Chief Engineer, Water Resources Department, Govt. of Bihar, Patna.
4. The Executive Engineer, Flood Control Division, Mokama Camp, Bhakhtiyarpur, Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 16730 of 2013

M.G. Contractors Pvt. Ltd. 148 C, Model Town, Patiala, Punjab, through its Authorized Representatives Namely Sri M. Amar Nath Reddy, Son of Sri Subba Reddy Resident Of Flat No. 1-B, Sri Niwas Towers, Central Avenue, M.S.R. Nagar, Andhra Pradesh, Presently Residing at N.T.P.C. Barh, S.T.P.P. Barh, Patna

.... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Govt. Of Bihar, Patna
2. The Principal Secretary, Water Resources Department, Govt. Of Bihar, Patna
3. The Chief Engineer, Water Resources Department, Govt. of Bihar, Patna
4. The Executive Engineer, Flood Control Division, Mokama Camp, Bhakhtiyarpur, Patna

.... Respondent/s

Appearance :

(In CWJC No. 17032 of 2013)

For the Petitioner/s : Mr. SANDEEP KUMAR

For the State : Mr. SASHI SHEKHAR PRASAD

(In CWJC No. 16730 of 2013)

For the Petitioner/s : Mr.

For the State : Mr. S.K. SARAF

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 20-06-2016

Heard Mr. Sandeep Kumar, the counsel for the petitioners in both the writ applications which raise identical issues as well as the State counsel.

Counter affidavits have been filed in both the cases.

As both the writ application raises identical issues, they have been heard together. The relevant facts shall be noticed from C.W.J.C. No. 17032 of 2013.

The writ applications seek appropriate order/orders commanding the respondent(s) not to deduct 1% labour cess from the running bills of the petitioners company. The petitioners is a company registered under the Companies Act. Pursuant to the notice inviting tender issued by the respondent(s) an agreement dated 25.03.2011 vide no. S.B.D.-04/2010-11 was signed. In course of execution of work, the Bills were submitted by the petitioners company whereon the respondent(s) deducted 1% labour cess. This has really aggrieved the petitioners.

Mr. Sandeep Kumar, the counsel for the petitioners has submitted that the provision for 1% labour cess was not incorporated in the Detailed Project Report (DPR) or the estimate prepared by the respondent(s) and as such they cannot deduct or recover the labour cess @ 1% from the Bills or the running Bills submitted by the petitioners company.

Counter affidavit on behalf of the respondent(s) no. 3 & 4 has been filed annexing therewith the invitation for BID (IFB) at Annexure-A. Penultimate clause of the I.F.B. reads as under:

विपत्र मूल्य एक प्रतिशत (1 %) दर
द्वारा अधिनियम द्वारा अथवा अन्य
कर्मकार बोर्ड द्वारा
उद्धरण कर निविदा प्राप्ति के
दावा मान्य

It thus appear that the respondent(s) had made it clear in the I.F.B. that 1% labour cess shall be deducted from the Bills of the contractor. The contractor was supposed to include, the cost incurred thereon in the bid/agreement itself. As the aforesaid conditions was made clear to the petitioners, in my view, deduction of 1% labour cess from the Bills or the running Bills submitted by the petitioners cannot be said to be an arbitrary exercise of power the respondent(s). This Court finds no merit in the application.

The writ application is dismissed.

(Kishore Kumar Mandal, J)

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