THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE DR. SHAMEEM AKTHER

WRIT APPEAL No.667 of 2019

JUDGMENT: (per Hon'ble the Chief Justice Raghvendra Singh Chauhan)

The appellant has challenged the legality of the order dated 22.07.2019, passed by a learned Single Judge, in I.A.No.1 of 2019, in W.P.No.11174 of 2019, whereby the learned Single Judge has declined to grant interim stay in favour of the petitioner.

In the writ petition, the petitioner has challenged the legality of the letter dated 01.10.2018, whereby the respondent-Corporation had directed the petitioner to pay an amount of Rs.10,20,181/- as the outstanding due. According to the petitioner, the said amount includes the imposition of Goods and Services Tax (GST) @ 18% per annum, totalling an amount of Rs.3,47,209/-. Moreover, according to the petitioner, under the contract entered into between the parties, there was no stipulation that the petitioner is required to pay the GST. Therefore, the imposition of liability to pay such GST is illegal.

The learned counsel for the petitioner submits that since there was no stipulation in the contract that the petitioner is required to pay GST @ 18% per annum, the respondent-Corporation is unjustified in claiming Rs.3,47,209/- as the amount to be paid for the GST. Moreover, in case the interim stay were not granted to the petitioner by the learned Single Judge, and in case the said amount of GST were to be recovered by the respondent-Corporation, the writ petition would become academic. Hence, the learned Single Judge should have granted a limited stay on demand of Rs.3,47,209/- in favour of the petitioner. Thus, the impugned order deserves to be set aside, or modified by this Court.

On the other hand, the learned standing counsel for the respondent-Corporation submits that according to the contract, the petitioner is liable to indemnify the Corporation all the claims, damages for compensation suffered by the Corporation under the labour laws. Therefore, the Corporation is justified in demanding Rs.3,47,209/- for GST. Therefore, the learned standing counsel has supported both the impugned letter dated 01.10.2018, and the impugned order dated 22.07.2019.

Heard learned counsel for both the parties.

The position being taken by the learned standing counsel for the respondent-Corporation that under the contract, the petitioner is liable to pay GST, is highly misplaced. For, clause (47) of the Contract reads as under:-

> "(47) The contractor has to comply with all the provisions of the Act of Government relating to labour and Rules and Regulations made thereunder from time to time like payment of minimum wages, provident fund, EDLIF, ESI etc., as prescribed by the State Government and submit a proof of compliance to the Unit Officer concerned. He has to indemnify the Corporation all the claims, damages for compensate on under the provisions of all laws and acts pertaining to the Labour engaged by him."

A bare perusal of the clause *prima facie* indicates that the petitioner is liable to indemnify the Corporation all the claims, damages under the provisions of the laws relating to labour. GST is not a law relating to labour. Therefore, under the said clause, the respondent-Corporation is *prima facie* unjustified in claiming that the petitioner needs to pay GST @ 18% per annum.

Therefore, the learned Single Judge should have granted a limited stay. However, the learned Single Judge had failed to do so.

Considering the fact that out of the outstanding amount due, namely Rs.10,20,181/- the GST amount being demanded is Rs.3,47,209/-, this Court stays the said demand of Rs.3,47,209/-. To this extent, the order dated 22.07.2019 stands modified.

The writ appeal is accordingly disposed of. Miscellaneous petitions, if any, pending shall stand closed. There shall be no costs.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(Dr. SHAMEEM AKTHER, J)

09.08.2019
Pln/tsr