

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12727 of 2022

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North East Granulators DAG-40, IGC, AIIDC, Chayagaon, Kamrup, Police Station-Kamrup District-Kamrup, Assam through its authorized representative namely Ayush Agarwal, Male, aged about 40 years, son of Sri Suresh Agarwal, resident of BF-223, Salt Lake City Kolkata, District -Kolkata, West Bengal.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Labour Resource Department, Government of Bihar, Patna.
2. The Principal Secretary Labour Resource Department, Government of Bihar Patna.
3. The Water Resource Department, through the Chief Engineer, Flood Control and Water Drainage, Water Resource Department, Katihar.
4. The Executive Engineer, Flood Control Division, Katihar.
5. The Executive Engineer, Flood Control Division, Kishanganj.
6. The Executive Engineer, Flood Control Division, Salimari.
7. The Executive Engineer, Flood Control Division, Kadhgola.
8. The Executive Engineer, Flood Control Division, Purnia.
9. The Executive Engineer, Flood Control Division, Bhagalpur.
10. The Executive Engineer, Flood Control Division, Naugachia.
11. The Executive Engineer, Flood Control Division, Bausi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ravindra Kumar Singh
For the Respondent/s : Mr.Anil Kumar Singh (Gp 26)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-09-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

- I. Issuance of deceleration that the Letter No. 294 dated 21.04.2017 and Letter No. 597 dated 21.05.2017 issued by the Labour Resource department, Government of Bihar, Patna are bad being in teeth of law settled by the Hon'ble Supreme Court in the case of *Uttar Pradesh Power Transmission Corporation Ltd. And Anr. Vs CG POWER And Industrial Solutions Limited And Anr. (SPECIAL LEAVE PETITION (C) NO. 8630 OF 2020) (reported in Live law 2021 SC 255)* holding that contract involving works other than civil works and construction work do not attract of labour cess in terms of Building and other Construction Worker's Welfare Cess Act 1996.

II. Issuance of further deceleration that the action of the Respondent Water Resource Department Government of Bihar Patna to deduct the labour cess from the running bills of the Petitioner on the direction of the Respondent Labour department Government of Bihar Patna is illegal, arbitrary and in contravention of the provision of Building and other Construction Worker's Welfare Cess Act 1996 and Bihar Building and other Construction Worker's Welfare Rules as well as law settled by the Hon'ble Supreme Court in the case of *Uttar Pradesh Power Transmission Corporation Ltd. And Anr. Vs CG POWER And Industrial Solutions Limited And Anr.* (SPECIAL LEAVE PETITION (C) NO. 8630 OF 2020).

III. Issuance of direction to the Respondent Authority to restrain for deducting the Labour cess from the running bills of the Petitioner under the provision of Building and other Construction Worker's Welfare Cess Act 1996 as the Petitioner firm is only supplier of the empty cement bags to the Respondent Authority and the Petitioner is not involved in any construction

works and civil works which is required under the provision of Building and other Construction Worker's Welfare Cess Act 1996 for payment of labour cess and Bihar Building and other Construction Worker's Welfare Rules 2005.

IV. Issuance of further direction to the Respondent Authority to refund the illegally levied labour cess amount with statutory interest and desist from charging inapplicable cess and other charges and further direction to act and conduct in accordance with law laid down by the Hon'ble Supreme Court in the case of *Uttar Pradesh Power Transmission Corporation Ltd. And Anr. Vs CG POWER And Industrial Solutions Limited And Anr. (SPECIAL LEAVE PETITION (C) NO. 8630 OF 2020)* by which the Hon'ble Supreme Court held that the contract which covers works other than civil works and do not involve in any construction work, do not attract labour cess under the provision of Building and other Construction Worker's Welfare Cess Act 1996 and Bihar Building and other Construction Worker's Welfare Rules.

V. Issuance of further direction to the Respondent Authority to implement the judgment of the Hon'ble Supreme Court passed in the case of *Uttar Pradesh Power Transmission Corporation Ltd. And Anr. Vs CG POWER And Industrial Solutions Limited And Anr. (SPECIAL LEAVE PETITION (C) NO. 8630 OF 2020)* and the Respondent Authority may be further directed to recall the orders which are in teeth of the judgment passed in the case of *Uttar Pradesh Power Transmission Corporation Ltd. And Anr. Vs CG POWER And Industrial Solutions Limited And Anr. (SPECIAL LEAVE PETITION (C) NO. 8630 OF 2020)*.

VI. Issuance of deceleration that the action of the Respondent Water Resource Department Government of Bihar Patna to deduct the labour cess from the running bills of the Petitioner on the direction of the Respondent Labour department Government of Bihar Patna is illegal, arbitrary and in contravention of the law settled by the Hon'ble Supreme Court in the case of *Uttar Pradesh Power Transmission Corporation Ltd. And Anr. Vs CG POWER And Industrial Solutions*

Limited And Anr. (SPECIAL LEAVE PETITION (C) NO. 8630 OF 2020).

Inviting our attention to the provisions of the statute, and more specifically Section 2D and 2G of the building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter referred to as "the Act") page 46 as also the decision rendered by Hon'ble the Apex Court in Uttar Pradesh Power Transmission Corporation Ltd. And Anr. Vs. CG Power and Industrial Solutions Limited And Anr. (Special Leave petition (C) No. 8630 of 2020 **reported in (2021) 6 Supreme Court Cases 15** and more specifically para 51 and 54 thereof, it is argued that the respondent no.3 is deducting the amount in terms of and under the Act. Such action is in utter breach of the judicial pronouncement, referred to supra, as compared with the work order (Annexure1 page 28).

Having given thoughtful consideration to the issue raised, we are of the considered view that interest of justice would be met if the petitioner were to invite attention of the authorities of the issues raised herein and leave it for them to take a decision in accordance with law.

Learned counsel for the petitioner fairly states that petitioner shall approach respondent no.3 namely, The Water Resource Department, through the Chief Engineer, Flood

Control and Water Drainage, Water Resource Department,
Katihar within four weeks.

As such, petition stands disposed of in the following
terms:-

(a) Petitioner shall approach the authority concerned
within a period of four weeks from today by filing a
representation for redressal of the grievance(s);

(b) The authority concerned shall consider and
dispose it of expeditiously by a reasoned and speaking order
preferably within a period of four months from the date of its
filing along with a copy of this order;

(c) Needless to add, while considering such
representation, principles of natural justice shall be followed
and due opportunity of hearing afforded to the parties;

(d) Also, opportunity to place on record all relevant
materials/documents shall be granted to the parties;

(e) Equally, liberty is reserved to the petitioner to
take recourse to such alternative remedies as are otherwise
available in accordance with law;

(f) We are hopeful that as and when petitioner takes
recourse to such remedies, as are otherwise available in law,
before the appropriate forum, the same shall be dealt with, in

accordance with law and with reasonable dispatch;

(g) Liberty reserved to the petitioner to approach the appropriate forum, if the need so arises subsequently on the same and subsequent cause of action;

(h) We have not expressed any opinion on merits. All issues are left open;

(i) The proceedings shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode.

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	