

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.166 of 2020

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M/s. Madhucon Project Limited Madhucon House, 1129/A, Road No. 36, Jubilee Hall, Hyderabad-500033 through its Managing Director-N. Seethaiah, aged about 53 years (Male), Son of Mr. Muthaiah Nama

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Labour Resources Department, Niyojan Bhawan, Bailey Road, Patna-800001
2. The Labour Superintendent -cum- Cess Collector Vaishali, Hajipur, Office of the Labour Superintendent, Vaishali, Hajipur, Labour Resources Department, Govt. of Bihar
3. The District Collector-cum-Certificate Officer Vaishali (under the Bihar and Orissa Public Demand Recovery Act, 1914)
4. The National Highway Authority of India Principal Office- G-5 and 6, Sector-10, Dwarka, New Delhi-110075, through its Chairman

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar Sinha, Advocate
		Mr. Manish Kumar, Advocate
		Mr.Indrajeet Bhushan, Advocate
For the Respondent/s	:	Mr.Raghwendra Kumar (SC 22)

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

Date : 19-09-2022

Petitioner has prayed for the following relief(s):

“A). For quashing/setting aside the letter no. 550 dated 31.03.2015 (Annexure ‘1’) read with letter no. 789 dated 12.05.2015 (Annexure ‘1/1’) issued by the Labour Superintendent-cum- Cess Collector, Vaishali to the District Collector -cum- Certificate Officer,



Vaishali (under the Bihar & Orissa Public Demand Recovery Act, 1914), whereby and whereunder the Labour Superintendent-cum-Cess Collector, Vaishali, in purported exercise of power under Sections 10 of the Building and Other Construction Workers Welfare Cess Act, 1996 (hereinafter for brevity referred to as 'the Cess Act') has initiated the process of recovery of Rs.14,40,00,000/- (Rupees fourteen Crores and forty lacs only) from the petitioner Company towards one percent (1%) Cess and further one percent (1%) towards penalty, under 'the Cess Act', on the total cost of project of Rs.720 Crores alleged to have been incurred as cost of construction by the petitioner company till September, 2014 while constructing the Four-Laning of Chhapra – Hajipur Section of Express Way of National Highway No. 19 in the State of Bihar, and

B). Consequently, for also setting aside/quashing the Certificate Case No. 02/2015-16 and the entire proceedings arising therefrom currently being pursued by Respondent no. 3 and;

C). For staying the further proceedings of Certificate Case No. 02/2015-16 before District Collector -cum- Certificate Officer, Vaishali during pendency of the instant case and;

D). For grant of such other relief(s) as the petitioner Company may be entitled to in the facts and circumstances of the case.”



Petitioner undertakes to deposit a sum of Rs.50 Lakhs with the authority under the provisions of the Building and Other Construction Workers Welfare Cess Act, 1996 (hereinafter referred to as the Act). This, of course, shall be without prejudice to the respective rights and contentions of the parties and the outcome of the order which we direct the appropriate authority to pass in terms of the said Act.

It is brought to our notice that without passing the order under the said Act, respondent No. 4, namely the National Highway Authority of India, straightaway issued the communication dated 23rd of September, 2014 (Annexure-2) to the Labour Superintendent, Hajipur, Vaishali. We also notice that in terms thereof, the said officer has initiated proceedings for recovery of the amount as arrears of land revenue. Whether the amount of cess would be on the entire value of the contract to be executed or on the amount executed in terms thereof is the sole issue for consideration.

We are of the considered view that without passing of the order by the competent authority under the Act, no recovery could have been effected in the manner it is sought to be so done in terms of the impugned order/communications. Author of Annexure-2 is not the competent authority under the



Act.

As such, we dispose of the present petition on the following mutually agreeable terms:

(a) impugned order dated 31.03.2015 (Annexure-1) and all consequential order/s passed in Certificate Case No.2/2015-16 as also the certificate case are quashed and set aside;

(b) The petitioner shall deposit a sum of Rs.50 Lakhs with the authorities. This he shall do within two weeks from today; To this effect, undertaking is accepted and taken on record, with consequences of failure explained.

(c) Petitioner shall appear before the competent authority on 10th of October, 2022, at 10:30 a.m.;

(d) The appropriate authority shall pass an order under Section 5 of the Act after complying with the statutory provisions, as also, following the principles of natural justice;

(e) Such proceedings be completed within a period of two months thereafter;

(f) The amount already deposited and to be deposited by the petitioner shall be adjusted towards the adjusted demands, if any. Also excess amount, if any, shall be



refunded to the petitioner within two months.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/DKS

AFR/NAFR	
CAV DATE	
Uploading Date	22.09.2022
Transmission Date	

