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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 31.10.2022

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W.P.(C) 2461/2014

M.T.N.L.

.....Petitioner

Through: Ms Geeta Luthra, Sr. Adv. with Mr
Sushil Kumar Singh, Ms Sitwat Nabi
and Mr Harsh B. Nagar, Advs.

versus

DEPUTY LABOUR COMMISSIONER (SOUTH).....Respondent

Through: Mr Prashant Manchanda, ASC with
Mr Angad Singh, Mr Vaibhav, Ms
Jasleen, Advs. for GNCTD/R-1.
Mr Anurag Ahluwalia, CGSC with
Mr Danish Faraz Khan, Adv. for R-
2/UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This writ petition is directed against the order dated 05.08.2013, passed by the Labour Commissioner, which is the Appellate Authority, constituted under the Building and Other Construction Workers Welfare Cess Act, 1996 [hereafter referred to as "1996 Act"].
2. Besides this, challenge has also been laid to the *vires* of Rule 14 of the Building & Other Construction Workers Welfare Cess Rules, 1998 [hereafter referred to as "1998 Rules"].

2.1 We may note, that this prayer is found in the amended writ petition.

3. In the original writ petition, the challenge was laid only to the aforementioned impugned order i.e., the order dated 05.08.2013.

4. Upon an application for amending the writ petition being moved by the petitioner, *via* order dated 18.11.2014 passed in CM No.8407/2014, leave was granted by the learned Single Judge of this Court to the petitioner, to bring the amended writ petition on record.

5. It is in this background, that *via* order dated 23.08.2016, another learned Single Judge of this Court issued directions for placing the matter before the Division Bench of this Court, as per roster.

6. The core issue, which arises for consideration is, whether the petitioner could have been called upon to pay 100% of cess, penalty and interest, for progressing its appeal, which was filed before the Appellate Authority?

7. The record shows, that cess, penalty and interest was imposed on the petitioner by the Assessing Authority *via* order dated 07.03.2012, which, in sum, ended up confirming the show cause notice dated 13.02.2012.

7.1 It is not in dispute, that the amount, which the assessee would have to pay towards cess, penalty and interest would be Rs.9,13,77,520/- [with cess amounting to Rs. 3,87,19,288/-, interest amounting to Rs. 1,39,38,944 and penalty being equivalent to the cess due i.e., Rs. 3,87,19,288/-]

8. Admittedly, the petitioner, while preferring the appeal, did not deposit any of the aforementioned amounts, which were adverted to in the assessment order dated 07.03.2012.

9. As a result of the petitioner's failure to deposit the said amounts, the appeal preferred by it was dismissed by the Appellate Authority.

10. According to the Appellate Authority, the appeal was not viable, as it did not comply with the provisions of Rule 14(2) of the 1998 Rules.

11. It is in these circumstances, that the petitioner has preferred the instant writ petition.

11.1 The petitioner, along with the writ petition, had also filed an interlocutory application, i.e., CM No.5126/2014, for staying the impugned order.

12. On 22.01.2020, a coordinate bench of this Court admitted the writ petition.

13. However, *via* the same order, the petitioner's application for interlocutory relief was rejected.

13.1 The rationale provided in the said order was, that in case the petitioner was to succeed, the amounts, if any, deposited towards cess, penalty and interest, would be returned to it.

14. We may note, that perhaps, the quantification of the amount in the said order was not accurate.

15. The amount shown in the said order is Rs.3,87,19,288/-.

15.1 To be noted, the amount that the petitioner would have had to pay, *qua* which there is no dispute, is Rs.9,13,77,520/-.

16. It appears, that the petitioner did not move the Court for correction, as perhaps, it made little difference, if it was called upon to pay Rs.3,87,19,288/- or Rs.9,13,77,520/-.

17. The stand of the petitioner is, simply, this, that the provisions of Rule 14(2)(b) of the 1998 Rules are clearly beyond the provisions of Section 11 of the 1996 Act, which prescribes for deposit of fees while instituting the appeal, and not cess and penalty, as is provided in said Rule.

18. Mr Anurag Ahluwalia, who appears on behalf of the contesting respondent i.e., respondent no.2/Union of India (UOI) submits, with all emphasis at his command, that the expression “fee” appearing in sub-section (2) of Section 11 of the 1996 Act would take within its sway “cess” and “penalty” which are found in sub-clause (b) of Clause (2) of Rule 14 of the 1998 Rules.

19. In support of this contention, Mr Ahluwalia has drawn our attention to Section 14 of the 1996 Act, which is the provision that empowers the rule making authority to frame rules.

19.1 Furthermore, Mr Ahluwalia seeks to buttress his submission by referring to the provisions of sub-section (1) of Section 11 of the 1996 Act, which provides that the appeal shall be filed “in such form and in such manner as may be prescribed”. The contention is, that the form prescribed adverts to cess, penalty and interest as well.

20. We have heard the learned counsel for the parties.

21. One cannot quibble with the proposition, that the rule making authority has been given necessary powers for framing rules, under Section 14 of the 1996 Act.

21.1 However, it is trite to say, something which Mr Ahluwalia cannot, perhaps, dispute, that the rule making authority cannot frame a rule, which is beyond the power conferred under the 1996 Act.

22. Therefore, what requires examination, is the width and scope of Section 11 of the 1996 Act. For the sake of convenience, Section 11 of the 1996 Act is extracted hereafter:

“11. Appeals.—(1) Any employer aggrieved by an order of assessment made under section 5 or by an order imposing penalty

made under section 9 may, within such time as may be prescribed, appeal to such appellate authority in such form and in such manner as may be prescribed.

(2) Every appeal preferred under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) After the receipt of any appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

(4) Every order passed in appeal under this section shall be final and shall not be called in question in any court of law.”

[Emphasis is ours]

23. For our purpose, what is important to be noticed is the provision contained in sub-section (2) of Section 11 of the 1996 Act.

23.1 A careful perusal of the said sub-section would show, that an appeal can be preferred under sub-section (1) of Section 11, in the form and manner prescribed only if it is accompanied by stipulated “fees”.

24. The prescription, made in that behalf, is incorporated in Rule 14 of the 1998 Rules. For the sake of ease of reference, the said rule is set forth hereafter:

“14. Appeal.—(1) An employer aggrieved by an order of the assessment made under rule 7 or by an order imposing penalty made under rule 12 may appeal against such order, within three months of the receipt of such order, to the Appellate Authority.

(2) The appeal shall be accompanied with—

(a) the order appealed against;

(b) a certificate from the cess collector to the effect that the amount of cess or penalty or both, as the case may be, relating to such appeal has been deposited;

(c) a fee equivalent to one per cent, of the amount in dispute or

penalty or both, as the case may be, under such appeal;
(d) a statement of points in dispute;
(e) documentary evidence relied upon.

(3) On receipt of the appeal the Appellate Authority may call from the Assessing Officer a statement on the basis of his assessment order appealed against, as such Appellate Authority may consider necessary for the disposal of such appeal.

(4) The Appellate Authority shall give the appellant an opportunity of being heard in the matter and dispose of the appeal as expeditiously as possible.

(5) On being satisfied on the quantum of cess the Appellate Authority shall confirm the order of the Assessing Officer or if in his opinion the assessment was wrong; or on the higher side shall modify the order of assessment or if in his opinion the assessment is on the lower side or if the basis of assessment is wrong, it shall remand back the assessment order to the Assessing Officer along with his observations to rectify the wrong.

(6) An order remanded back under sub-rule (5) shall be disposed of by the Assessing Officer within one month in view of the observation made by the Appellate Authority: Provided that if the amount of cess is proposed to be enhanced the assessee shall be given an opportunity of being heard.

(7) No appeal shall lie against the order of the Appellate Authority under this rule.

(8) If the Appellate Authority is of the opinion that the quantum of penalty imposed is on the higher side or not correctly made it shall suitably modify or set aside the order of the Assessing Officer, as the case may be.

(9) The appeal under this rule shall be disposed of by making a speaking order and a copy of such order shall be sent to each of 'the appellant, the Assessing Officer and the Board within five

days of the date on which such order is made.

(10) An order in appeal reducing the amount of cess shall also ask the Board to refund the excess cess.

(11) An order in appeal reducing, enhancing or confirming the orders of penalty, as the case may be, shall also specify the date by which the amount of penalty should be paid/refunded.”

[Emphasis is ours]

25. The rule making authority has, in sub-rule (2) of Rule 14 of the 1998 Rules, provided the necessary accompaniments of a viable appeal.

- (i) The order appealed against.
- (ii) A certificate issued by the cess collector, indicating the amount deposited towards cess or penalty or both, as the case may be.
- (iii) Fee equivalent to one per cent of the amount in dispute or penalty or both, as the case may be.
- (iv) Statement of points in dispute
- (v) The documentary evidence relied upon.

26. Concededly, the only two provisions, with which we are presently concerned, are what is found in Clause (b) & (c) of sub-rule (2) of Rule 14 of the 1998 Rules.

27. Insofar as the provisions made in Clause (c) of sub-rule (2) of Rule 14 of the 1998 Rules are concerned, which prescribes that fee equivalent to one per cent of the amount in dispute or penalty or both, as the case may be, should accompany the appeal, Ms Geeta Luthra, learned senior counsel, who appears on behalf of the petitioner, says that she has no cavil with the same.

27.1 According to Ms Luthra, the fee would have to be deposited, as that provision is in line with what is provided in sub-section (2) of Section 11 of

the 1996 Act.

28. This leaves us with the only aspect left, which is whether the rule making authority could have insisted upon the deposit of cess or penalty or both, for the purposes of institution of a viable appeal.

29. In our view, the provision made in sub-clause (b) of sub-rule (2) of Rule 14 of the 1998 Rules is clearly beyond the provisions of Section 11(2) of the 1996 Act.

29.1 The said section i.e., Section 11(2) of the 1996 Act, as noticed above, only speaks about “fees”.

29.2 The rule making authority, being cognizant of this, has clearly made a provision in that behalf in Clause (c) of sub-rule (2) of Rule 14 of 1998 Rules.

30. Interestingly, the 1998 Rules make no provision for waiver, or for reduction of cess or penalty; a certificate in respect of which issued by the cess collector is required to accompany the appeal.

31. In this case, as noticed above, the petitioner, which is a Public Sector Undertaking (PSU) has been called upon to deposit the entire amount, which, as noticed above, is Rs.9,13,77,520/-.

32. Insofar as Mr Ahluwalia’s contention is concerned, that sub-section (1) of Section 11 of the 1996 Act alludes to both form and manner, in our opinion, while form and manner can be prescribed by the rule making authority, it cannot possibly issue directions for deposit of cess or penalty or both, as the case may be, as no such power has been conferred on the rule making authority.

32.1 In this context, it would be apposite to refer to the following observations made by the Supreme Court in the case of *Additional District*

Magistrate (Rev.) Delhi Admn. vs. Siri Ram (2000) 5 SCC 451, while considering the amendments made in the Delhi Land Revenue Rules, 1962. The Court ruled, that the amendments made in the said Rules were *ultra vires* the provisions of the Delhi Land Revenue Act, 1954. The relevant paragraphs of the aforesaid judgement are extracted hereafter:

“11. Under the old Rule 49 the Patwari is required to make field-to-field inspection three times in a year, the object being to maintain the map and the field book properly. Rule 51 enjoins a duty upon the Patwari to compare the fields one by one with the map and in every inspection shall note any change which might have occurred on the boundaries etc. By amending this Rule the rule-making authority has excluded certain classes of land which are defined as “extended abadi” from the operation of preparation of the map and the field book. The Act does not authorise the rule-making authority to exclude any area from the purview of Section 16 of the Land Revenue Act. Thus the rule-making authority acted beyond its power.

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16. It is a well-recognised principle of interpretation of a statute that conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. From the above discussion, we have no hesitation to hold that by amending the Rules and Form P-5, the rule-making authority has exceeded the power conferred on it by the Land Reforms Act.”

33. In these circumstances, we are in agreement with the petitioner, that Rule 14(2)(b) of the 1998 Rules is clearly beyond the powers of the rule making authority.

33.1 The said clause i.e., Clause (b) of sub-rule (2) of Rule 14 of the 1998 Rules is, accordingly, struck down, being *ultra vires* the provisions of Section 11 of the 1996 Act.

34. Given the fact, that the impugned order does not deal with the merits of the case, and that the appeal was dismissed only on the ground, that there

was non-compliance of the provisions of Rule 14(2) of the 1998 Rules, the impugned order i.e., the order dated 05.08.2013 is set aside, with the direction, that the appeal will be taken up for hearing, and shall be disposed of, on merits, provided that the fee in terms of clause (c) of sub-rule (2) of Rule 14 of the 1998 Rules is deposited, if not already deposited, within two weeks of the receipt of a copy of this judgment.

35. The writ petition is, accordingly, disposed of.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

OCTOBER 31, 2022

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Click here to check corrigendum, if any