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W.P.No.36544 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 22.01.2026

Orders pronounced on : **03.02.2026**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.36544 of 2025

Kamarajar Port Limited,
Rep by General Manager (Operations),
3rd Floor, Jawahar Building,
No.17, Rajaji Salai,
Chennai – 600 001.

.. Petitioner

Versus

1. Tamil Nadu Building and Other Construction
Workers Welfare Board,
Represented by its Secretary, No.8, Valluvar Kottam,
High Road, Chennai – 600 034.
2. International Seaport Dredging Pvt. Ltd.,
Olympica Cyberspace, 9th Floor,
Module - 2 (Part of the 6th Floor),
21/22, Alandur Road, Arulayiammanpet,
2nd Street, Guindy, Chennai – 600 032.
3. The Labour Enforcement Officer (C), Chennai,
Shashtri Bhawan, Haddows Road, Chennai.
4. The Director General of Inspection,
Under the Building and Other Construction Workers
(RE and CS) Act, 1996 and Deputy Chief Labour
Commissioner, Central, Office of the Chief Labour
Commissioner, Shram Shakthi Bhawan,
New Delhi – 110 001.

.. Respondents



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(R3 and R4 suo motu impleaded vide order,
dated 08.12.2025 made in W.P.No.36544 of 2025
by DBCJ)

Prayer : Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, directing the 1st respondent to refund the sum of Rs.3,14,58,004/- (Rupees Three crores fourteen lakhs fifty eight thousand four only) to the petitioner, in view of the inapplicability of the BOCW Act for the work undertaken by the 2nd respondent Contractor.

For Petitioner : Mr.Menon

For Respondents : Ms.S.Valliammal, for R1

: Ms.Shruti Khanijow, for R2

: Ms.P.J.Anitha,
Senior Panel Counsel,
for RR-3 and 4

ORDER

A. The Petition:

This Writ Petition is filed for a mandamus directing the first respondent to refund a sum of Rs.3,14,58,004/- to the petitioner in view of the inapplicability of the Building and Other Construction Workers Cess (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter referred to as 'BOCW Act') for the work undertaken by the second respondent contractor.



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B. The Factual Matrix:

2. The brief facts leading to filing of this writ petition are, that the petitioner owns and operates the Port at Ennore under the Ministry of Ports, Shipping and Waterways, Government of India. The Chennai Ports Authority holds the entire shares of the petitioner. In the year 2014/2015, the petitioner proposed to expand the Port by dredging the Port Basin and the shore to create additional berths. After issuing global tenders, the petitioner had awarded the contract to the second respondent by an agreement, dated 12.08.2015 for the execution of Capital Dredging Phase – III at the Port.

3. During the execution of the project, the Chief Technical Examiner of the organization made a technical inspection of the project from 02.08.2016 to 05.08.2016. While so, he observed that as per the Act, the capital dredging work will come within its purview. Even during the pre-bid clarification, the tenderer sought for waiver of the payment of cess, which was not granted and as per the conditions of the tender, the contractor was required to pay all the taxes, duties etc. However, the cess payable under the Building and Other Construction Workers' Welfare Cess



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Act, 1996, (hereinafter referred to as 'the CESS Act') was not deducted from the contractor's bills. On the strength of the above report, the Chief Technical Examiner of the organization, advised the petitioner to comply with the statutory liability and remit the cess.

4. Accordingly, in order to avoid any penal action and to comply with the statutory liability, the petitioner had remitted a sum of Rs.2,96,26,374/- and another sum of Rs.27,56,053/- towards the cess payable under the CESS Act with the first respondent Board. The above payments were duly acknowledged by the receipts, dated 22.02.2018 and 28.08.2018.

5. In the meanwhile, a complaint was filed by the Labour Enforcement Officer, the third respondent, under Section 50 of the BOCW Act against the second respondent before the Director General of Inspection/Deputy Chief Labour Commissioner (Central), the fourth respondent, alleging breach of Section 7 and Rule 240 and prayed for imposing fine under the provisions of Section 50 of the BOCW Act. Pursuant to the said complaint, proceedings were initiated by the Director General of Inspection/Deputy Chief Labour Commissioner (Central) under



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the BOCW Act. On 16.11.2018, the fourth respondent passed an order that the dredging of the seaport will not be a 'construction' activity under Section 2(d) of the BOCW Act and held that no fine could be levied. Under the said circumstances, the petitioner made a representation to the first respondent on 19.03.2019 to reimburse the said sum of Rs.3,14,58,004/- in view of the order passed by the fourth respondent.

6. In the meanwhile, the second respondent - contractor had also initiated arbitration proceedings. On 07.03.2024, an award was also passed by the Arbitral Tribunal directing the petitioner to pay to the second respondent the amount of cess deducted and remitted to the first respondent. The said award is also under challenge in O.P.No.335 of 2024, which is pending on the file of this Court. After the award was passed, on 20.12.2024, the petitioner again renewed its request to refund the amount. A reminder was also sent on 24.10.2025. Since the amount is not refunded till date, the present Writ Petition is filed.

7. A counter-affidavit is filed by the first respondent. It is submitted by the first respondent that it was constituted pursuant to Section 6 of the Tamil Nadu Manual Workers (Regulation of Employment and



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Conditions of Work) Act, 1982 and thus, it acts as the Tamil Nadu Construction Workers Welfare Board and carries the functions under the BOCW Act. The dredging works, *ex facie*, fall within the definition of the term 'construction' under Section 2(d) of the Act as it amounts to navigation works and embankment works. Therefore, the cess is rightly paid and there is no question of any refund of the aforesaid amount. It can be seen from the tender itself that it was invited for expansion of the Port and creation of new dock which definitely amounts to construction. When the amount has already been deposited with the first respondent, the order, dated 06.11.2018 that was passed without even impleading the petitioner Port as a party, cannot be now enforced. The claim for refund is also barred by limitation and their own conduct of voluntarily depositing the amount. Merely because the arbitration proceedings are initiated, the refund cannot be sought for.

8. The second respondent contractor, since is sailing with the petitioner, did not file any counter-affidavit, but, filed written submissions. It is stated that the second respondent is only a proforma party and no cause of action or relief is prayed against the second respondent. It is submitted that the arbitral award had already determined the rights



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between the second respondent and the petitioner herein. It is further submitted that the validity of the award or the finality of the proceedings, cannot be affected by the present writ proceedings.

9. It is further submitted that the business of the second respondent is dredging and allied marine engineering activities. Dredging activity involves the excavation of material located below the surface of a water body or at the land water interface, followed by relocation of that material to another location. The purpose of dredging is to create or maintain depth in rivers, lakes, ports, harbours and coastal channels. Dredging is undertaken by specialist floating vessels known as dredgers and some examples include Cutter Suction Dredgers, Trailing Suction Hopper Dredgers, often supported by ancillary marine assets for mobilization, positioning and disposal of the excavated material to another location. Dredging activity is a specialised, highly mechanized marine operation carried out by skilled seafarers and technicians on specialized ocean vessels with strong maritime safety regimes mandated to it. Dredging is classified either as capital dredging or maintenance dredging. Capital dredging is a one-time excavation to create a new Port or to expand/deepen an existing Port to new design depths. Maintenance



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dredging is a recurrent activity to maintain depths achieved by earlier capital dredging. This project of capital dredging in a brownfield port (i.e., expansion of an existing port), aims to deepen and expand existing navigational areas to specified design depths.

10. According to the second respondent, the cess payable under the CESS Act is chargeable only when there is building or other construction work as defined under Section 2(d) of the BOCW Act. The dredging activities do not meet the statutory dictum. It does not amount to construction, alteration, repair, maintenance or demolition of any building, structure or other tangible work as contemplated under the Act. Though the term 'embankment and navigation work' is used in Section 2(d) of the Act, it has to be construed as per the intention of the legislature as it should be connected to some construction work and does not warrant a disjunctive interpretation. As the second respondent's activity was directed solely to deepen the navigational areas, it did not involve creating, altering or maintaining any embankment or it involved any civil works in the nature of constructed structures. On a plain reading, an activity solely in relation to navigation without any embankment component or construction work falls outside the ambit of Section 2(d) of the Act.



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11. Further, the phrase used in Section 2(d) of the Act is ‘navigation works’ and not merely ‘navigation’. The term ‘works’ as per the latest General Financial Rules, 2017 cannot be meant to include mere excavation to maintain navigability. Dredging does not create any structures. It relocates submerged material to achieve depth. Therefore, maintaining navigability through excavation is not ‘works’ under the Act. Hence, dredging does not fall within the ‘navigation works’. The Act itself is a social welfare legislation meant to cover the vulnerable construction works, whereas, the instant work is carried on with a help of highly skilled specialized seafarers using tailor made vessels and special dredging vessels and mechanical systems. Therefore, the work will never be covered under Section 2(d).

12. Originally, neither the Labour Enforcement Officer, Chennai, who filed an application under Section 50 of the BOCW Act before the Director General of Inspection/Deputy Chief Labour Commissioner and the said authority which passed the order on 16.11.2018 were parties in the Writ Petition, this Court *suo motu*, by an order, dated 08.12.2025, impleaded them as the respondent Nos.3 and 4 in the Writ



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Petition. After service of notice, the learned Counsel for the respondent Nos.3 and 4 would submit that they have nothing further to add and stated that upon taking a view that the dredging activity would come within the purview of the term 'construction', the Labour Enforcement Officer had filed a complaint since the payment of cess was not complied with, upon which the appropriate authority namely, the fourth respondent, had decided the issue on merits in accordance with law.

C. The Questions:

13. I have considered the rival submissions made on either side and perused the material records of the case. The following questions arise for consideration:-

(i) Whether the arbitral award passed against the petitioner will preclude the determination of liability in these proceedings?

(ii) Whether the capital dredging activity that is carried by the petitioner through the second respondent in the instant case is a 'building and other construction work' as per Section 2(d) of the Act?

(iii) If so, whether the first respondent Board is entitled to withhold the amount inspite of the order passed by the fourth respondent, dated 16.11.2018?



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D. Question No.i :-

14. It is true that the Arbitral Tribunal had passed an award in favour of the second respondent against the petitioner for refund of the cess amount which was deducted by the petitioner from an out of the certified running account bills. When there is an arbitration clause, between the petitioner and the second respondent, the *inter se* disputes that had arisen between them is referred to the Tribunal and the Tribunal had passed an award. A perusal of the said award, dated 07.03.2024 involves several issues, of which, issue No.6 was as follows as:-

“Whether the Respondent was justified in deducting BOCW Cess from the Claimant’s certified running account bills as set out in Claim No.16?”

15. The Arbitral Tribunal took note of the fact that the fourth respondent had passed an order stating that the dredging activity will not be covered under the provisions of the BOCW Act and in the teeth of the said order, cess was paid by the petitioner without any statutory liability on the contractor and directed the petitioner to refund the amount it had deducted from the bills. That would only be determining the *inter se* rights between the petitioner and the second respondent. It was not within the



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remit/jurisdiction of the Arbitral Tribunal to decide about the liability or about the validity of the order passed by the fourth respondent or the obligation of the first respondent whether to return the amount paid or not, which involves the respondent Nos.1, 3 and 4 who are not the parties to the arbitration. Thus, the core question that whether the activity will be covered under the BOCW and CESS Acts, the payment, refund from the authorities can neither be an arbitrable issue nor was a matter between the parties to arbitration. By construing that on the date of passing of the award, there is an order in favour of the second respondent as well as the petitioner that the activity is not covered under the Act and the CESS was not payable the Arbitral Tribunal had determined the *inter se* rights and passed the award directing the refund of the amount. That determination can never affect the statutory proceedings or the subsequent determination of this Court of the issues under Article 226 of the Constitution of India. The argument that the present writ proceedings cannot affect the rights of parties under the arbitral award is illogical in the present context. It is for the parties to canvass their rights under the arbitral award depending on the subsequent events that take place.



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16. Similar issues were considered in detail by the Hon'ble Supreme Court of India in ***Prakash Atlanta (JV) Vs. National Highways Authority of India***¹. Reference specifically can be made to paragraph No.50. With reference to the inter *se* claim between the petitioner and contractor as to whether the amount was factored in by the contractor at the time of entering to contract or not or otherwise, whether the petitioner was right in deducting or whether the second respondent is entitled to refund are questions within the realm of arbitration proceedings, of which no opinion can be, and is expressed by this Court. However, with reference to the liability vis-à-vis the statutory authorities, as held by the Hon'ble Supreme Court of India, the ultimate obligation would also lie with the employer under Section 3(2) of the Act and as such, the determination of the obligation is completely a statutory exercise falling outside the scope of the Arbitral Tribunal. The exercise on the part of the statutory authorities cannot be bogged down by the arbitral award one way or the other. Therefore, I answer the question by holding that merely because the award was passed inter *se* between the petitioner and the second respondent, the same will not preclude the statutory authorities from deciding the issue on payment of cess or this Court, from exercising

1 2026 SCC OnLine SC 98



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the jurisdiction under Article 226 of the Constitution of India with regard to liability to pay the same.

E. Question No.ii:-

17. The primary question that is involved in the case is whether the activity that is carried on, in the instant case, would come within the definition of construction and other works as defined under Section 2(d) of the Act.

18. Section 2(d) of the Act is extracted hereunder for ready reference:-

“2. Definitions.--

.
. .

(d) “building or other construction work” means the construction, alteration, repairs, maintenance or demolition- of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio; television, telephone, telegraph and overseas communication dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aquaducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other



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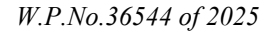
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construction work to which the provisions of the Factories Act, 1948 (63 of 1948), or the Mines Act, 1952 (35 of 1952), apply;”

(emphasis supplied)

19. The definition would include embankment and navigation works. The term ‘embankment’ means to artificially create banks, mounts or walls made of soil, rock or contract constructed to hold back water or to protect land. ‘Navigation works’ refer to construction and maintenance of activities that ensure channels are suitable for vessel traffic. Thus, the capital dredging, which is removing the sediment from the bottom of the water increase the depth and by relocating it to a particular place to protect the channel and holding the water, squarely falls within the definition. The nature of work as detailed by the second respondent in the paragraph Nos.14 and 15 of their written submissions which are extracted hereunder for ready reference:-

“14. Dredging activity involves the excavation of material located below the surface of a waterbody or at the land water interface, followed by relocation of that material to another location. The purpose of dredging is to create or maintain depth in rivers, lakes, ports, harbours, and coastal channels. Dredging is undertaken by specialist floating vessels known as dredgers, some examples include Cutter Suction Dredgers (“CSDs”), Trailing Suction Hopper Dredgers (“TSHDs”), often supported by ancillary marine assets for mobilisation, positioning and disposal of the excavated material to another location. Dredging



15. Dredging is classified as either capital dredging or maintenance dredging. Capital dredging is a one-time excavation to create a new port or to expand/deepen an existing port to new design depths, whilst, maintenance dredging is a recurrent activity, to maintain depths achieved by earlier capital dredging. The KPL project was capital dredging in a brownfield port (i.e., expansion of an existing port), aiming to deepen and expand existing navigational areas to specified design depths.”

20. This apart, it is also a work relating to water and will come within the term ‘water works’. The contention of the second respondent is that the various works that are mentioned in the definition should be read conjunctively and not distinctively. Firstly, the said argument cannot be accepted as the Section 2(d) creates a legal fiction by bringing various works and activities within the definition of ‘building and other construction works’ and conjunctive reading cannot be made. Further, the second respondent contends that the term ‘works’ from the GFR Rules. When the act contains a definition, the same has to be read in the context and by adverting to the plain meaning of the words. The work done by the



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second respondent can result in import of goods but does not call for import of meaning, that is alien to the context. The issue as to reading the definition under Section 2(d) is no longer *res integra* and has been considered in detail by the Hon'ble Supreme Court of India in ***Lanco Anpara Power Limited Vs. State of Uttar Pradesh and Ors.***². In paragraph No.16, it considered its earlier decision in ***Punjab Land Development and Reclamation Corporation Limited, Chandigarh vs. Presiding Officer, Labour Court***³ which took into consideration, the definition which uses the word 'means' has to be construed the plain meaning with reference to the intention. Thereafter, in paragraph No.37, it also considered the conjunctive or disjunctive reading and held as follows:-

“ ... To our mind, this submission is of no avail. Section 2(d) of the BOCW Act dealing with the building or construction work is in three parts. In the first part, different activities are mentioned which are to be covered by the said expression, namely, construction, alterations, repairs, maintenance or demolition. Second part of the definition is aimed at those buildings or works in relation to which the aforesaid activities are carried out. The third part of the definition contains exclusion clause by stipulating that it does not include”

21. The BOCW Act is a beneficial legislation for ensuring the safety, health and welfare of the construction workers. The welfare fund is established for this purpose for which the CESS Act imposes the

² (2016) 10 SCC 329

³ (1990) 3 SCC 682



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liability. Therefore, the interpretation should be to include every activity as such that is enumerated in the definition. Thus, by following the rule of plain/literal meaning, which is also in tune with the intention of the legislature while enacting a beneficial piece of legislation, the only conclusion that can be drawn is that the dredging activity will be very much an activity covered within the definition covered under Section 2(d) of the Act and consequently, any person carrying on the same which include the petitioner as well as the second respondent.

F. Question No.iii :-

22. In order to answer this question, it is essential to look into the statutory framework. The Hon'ble Supreme Court of India in ***Prakash Atlanta (JV)***'s case (cited *supra*), in a similar case of a Public Sector Undertaking belonging to the Central Government (National Highways Authority of India), has considered the statutory schemes of the BOCW Act and the CESS Act. It is essential to extract paragraph Nos.2 to 17 which reads thus:-

“2. This being the milieu, it would be apposite to first note the statutory schemes of the BOCW Act and the Cess Act. Both these enactments had their origin in Ordinances promulgated on 03.11.1995. These Ordinances were followed by the later Ordinances dated



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05.01.1996, 27.03.1996 and 20.06.1996. Finally, both the enactments took shape on 19.08.1996, with the sanction of the Parliament. The BOCW Act came into force on 01.03.1996, as per Section 1(3) thereof. The Cess Act, on the other hand, came into force even earlier on 03.11.1995, as per Section 1(3) thereof. The preamble to the BOCW Act states that it is an Act to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto. The Cess Act is linked to the BOCW Act, as is evident from its preamble and Statement of Objects and Reasons, which state that it is an Act to provide for levy and collection of cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers' Welfare Boards constituted under the BOCW Act.

3. Section 1(4) of the BOCW Act states that the said enactment would apply to every establishment which employs, or had employed on any day of the preceding twelve months, ten or more building workers in any building or other construction work. Section 2(1) (a) thereof defines 'appropriate Government' to mean the Central Government in cases falling within Clauses (i) and (ii). Section 2(1)(a)(ii) pertains to public sector undertakings which may be specified by the Central Government, under notification, that employ building workers either directly or through a contractor. The '*Explanation*' thereto provides that a public sector undertaking (PSU) means any corporation established by or under any Central, State or Provincial Act or a Government company, which is owned, controlled or managed by the Central Government. Section 2(1)(a)(iii) states that, in relation to any other establishment which employs building workers, either directly or through a contractor, the Government of the State in which that other establishment is situated would be the appropriate Government. Section 2(1)(c) defines 'Board' to mean a Building and Other Construction Workers' Welfare Board constituted under Section 18(1) thereof. Section 2(1)(d) defines 'Building or other construction work' to include construction, alteration, repairs, maintenance or demolition of, or in relation to, amongst others, roads also. Section 2(1)(i) defines 'employer' inclusively and it



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reads as follows:

‘(i) “employer”, in relation to an establishment, means the owner thereof, and includes,—

(i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

(ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;

(iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor.’

4. Section 2(1)(k) defines ‘Fund’ to mean the Building and Other Construction Workers’ Welfare Fund, constituted under Section 24(1) thereof. Chapter III of the BOCW Act pertains to ‘Registration of Establishments’. Section 6 therein is titled ‘Appointment of registering officers’ and states that the appropriate Government may, by order notified in the Official Gazette, appoint gazetted officers of the Government to be registering officers for the purposes of the BOCW Act, duly defining the limits within which such registering officers shall exercise the powers conferred upon them by or under the said enactment. Section 7 thereof pertains to registration of establishments and requires every employer to make an application to the registering officer for registration of the establishment to which the BOCW Act applies within a period of sixty days. The *proviso* thereto, however, empowers the registering officers to entertain belated applications upon being satisfied that there was sufficient cause for the delay. Section 10 deals with non-registration and states that no employer of an establishment to which the BOCW Act applies who has either failed to get the establishment registered, or whose registration has been revoked and has attained finality, shall employ building workers in the establishment after expiry of the stipulated period.

5. Chapter IV of the BOCW Act is titled



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‘Registration of Building Workers as Beneficiaries’. Section 11 therein provides that, subject to the provisions of the enactment, every building worker registered as a beneficiary thereunder shall be entitled to the benefits provided by the Board from its Fund under the enactment. Section 12 deals with registration of building workers as beneficiaries. Section 12(1) defines eligibility of building workers for registration as beneficiaries under the BOCW Act. The other sub-sections provide the procedure for registration to be carried out and stipulate that the Secretary of the Board shall maintain such registers as may be prescribed in relation to the building workers who have been registered as beneficiaries.

6. Section 15 of the BOCW Act requires every employer to maintain a register showing the details of employment of beneficiaries employed in the building or other construction work undertaken by him. Section 16 of the BOCW Act pertains to contributions by the building workers who are registered as beneficiaries and stipulates that they must contribute to the fund at the rate per month as prescribed by the State Government, by notification in the Official Gazette, and Section 17 of the BOCW Act provides that failure on the part of the beneficiary to pay his contribution for a continuous period of not less than one year would result in his ceasing to be a beneficiary.

7. Chapter V of the BOCW Act, comprising Sections 18 to 27, deals with the Buildings and Other Construction Workers’ Welfare Boards. Section 18 therein deals with constitution of State Welfare Boards. Section 18(1) provides that every State Government shall appoint and constitute a Welfare Board to exercise the powers conferred on, and perform the functions assigned to, it under the BOCW Act, by notification. Section 18(2) provides that the Board shall be a body corporate having perpetual succession and a common seal. Section 18(3) states that the Board shall consist of a Chairperson nominated by the Central Government and such number of members, not exceeding 15, as may be appointed by the State Government. Section 22 of the BOCW Act details the functions of the Welfare Board.

8. Section 24 of the BOCW Act pertains to the ‘Building and Other Construction Workers’ Welfare Fund and its application’. This fund is to be constituted by the Welfare Board and all grants and loans made to



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the Board by the Central Government; all contributions made by the beneficiaries; all sums received from such other sources as may be decided by the Central Government should be credited to the said fund. Sections 40 and 62 of the BOCW Act empower the appropriate Government to make Rules, be it with regard to the measures to be taken for the safety and health of building workers in the course of their employment and the equipment and appliances to be provided to them for ensuring their safety, health and protection during such employment, or for carrying out the provisions of the BOCW Act. In exercise of power thereunder, the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Central Rules, 1998 (the BOCW Rules), were framed by the Government of India, *vide* G.S.R. 689 (E) dated 19.11.1998, published in the Gazette of India, Extraordinary, dated 19.11.1998.

9. The Cess Act, as is manifest from its preamble and Statement of Objects and Reasons, is complementary to the BOCW Act. Section 2(a) thereof defines 'Board' to mean the Welfare Board constituted under Section 18(1) of the BOCW Act by the State Government. Section 2(b) defines 'Fund' to mean the Building and Other Construction Workers' Welfare Fund, constituted by that Board. Section 3 thereof deals with levy and collection of cess. Section 3(1) states that there shall be levied and collected a cess for the purposes of the BOCW Act at such rate, not exceeding two per cent but not less than one per cent of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time specify. In exercise of power under Section 3(1) of the Cess Act, the Ministry of Labour, Government of India, issued Notification No. S.O. 2899 dated 26.09.1996, published in the Gazette of India, Extraordinary, dated 12.10.1996, in modification and supersession of Notification dated 17.05.1996, specifying the cess for the purpose of the BOCW Act @ 1 per cent of the cost of construction incurred by an employer. Section 3(2) states that the cess levied under Section 3(1) should be collected from every employer in such manner and at such time, including deduction at source, in relation to a building or other construction work of a Government or of a PSU, etc, as may be prescribed.



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Section 3(3) states that the cess collected under Section 3(2) shall be paid by the State Government collecting the cess to the Board, after deducting the cost of collection of such cess, not exceeding one per cent of the amount collected.

10. Section 14 of the Cess Act empowers the Central Government to make Rules for carrying out the provisions thereof by notifying the same in the Official Gazette. Pursuant thereto, the Building and Other Construction Workers' Welfare Cess Rules, 1998 (the Cess Rules), were framed by the Government of India, *vide* G.S.R. 149 (E) dated 26.03.1998, published in the Gazette of India, Extraordinary, dated 26.03.1998. Rule 2(f) defines 'Cess Collector' to mean an officer appointed by the State Government for collection of cess under the Act. Rule 2(g) defines 'Assessing Officer' to mean a gazetted officer of a State Government or an officer of a local authority, holding an equivalent post to a gazetted officer of the State Government, appointed by such State Government for assessment of cess under the BOCW Act. Rule 3 of the Cess Rules, titled 'Levy of cess', provides that, for the purpose of levy of cess under Section 3(1) of the BOCW Act, the cost of construction shall include all expenditure incurred by an employer in connection with the building or other construction work, subject to certain exclusions. Rule 4 of the Cess Rules is titled 'Time and manner of collection'. It reads as follows:

'4. Time and manner of collection.

— (1) The cess levied under sub-section (1) of section 3 of the Act shall be paid by an employer, within thirty days of completion of the construction project or within thirty days of the date on which assessment of cess payable is finalised, whichever is earlier, to the cess collector.

(2) Notwithstanding the provisions of sub-rule (1), where the duration of the project or construction work exceeds one year, cess shall be paid within thirty days of completion of one year from the date of commencement of work and every year thereafter at the notified rates on the cost of construction incurred during the relevant period.

(3) Notwithstanding the provisions of



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sub-rule (1) and sub-rule (2), where the levy of cess pertains to building and other construction work of a Government or of a Public Sector Undertaking, such Government or the Public Sector Undertaking shall deduct or cause to be deducted the cess payable at the notified rates from the bills paid for such works.

(4) Notwithstanding the provisions of sub-rule (1) and sub-rule (2), where the approval of a construction work by a local authority is required, every application for such approval shall be accompanied by a crossed demand draft in favour of the Board and payable at the station at which the Board is located for an amount of cess payable at the notified rates on the estimated cost of construction:

Provided that if the duration of the project is likely to exceed one year, the demand draft may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of commencement and further payments of cess due shall be made as per the provisions of sub-rule (2).

(5) An employer may pay in advance an amount of cess calculated on the basis of the estimated cost of construction along with the notice of commencement of work under section 46 of the Main Act by a crossed demand draft in favour of the Board and payable at the station at which the Board is located:

Provided that if the duration of the project is likely to exceed one year, the demand draft may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of such commencement and further payment of cess due shall be made as per the provisions of sub-rule (2).

(6) Advance cess paid under sub-rules (3), (4) and (5), shall be adjusted in the final assessment made by the Assessing Officer.'

11. Rule 4(3) above manifests that, unlike a case falling under Rules 4(1) and (2), if the levy of cess pertains to the building and other construction work of a



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Government or of a PSU, that Government or PSU should deduct or cause to be deducted the cess payable at the notified rate from the bills paid for such works. Rule 4(6) states that the advance cess paid under Rule 4(3) shall be adjusted in the final assessment made by the Assessing Officer. Further, Rule 5 of the Cess Rules stipulates that the proceeds of the cess collected under Rule 4 should be transferred by the Government, PSU, etc., to the Welfare Board within thirty days of its collection. Rule 6 is titled information to be furnished by an employer and provides that every employer, within thirty days of commencement of his work, shall furnish to the Assessing Officer, information in Form I and any change or modification in the information, so furnished, should be communicated to the Assessing Officer immediately and not later than thirty days from the date of affecting the modification or change. 12. Rule 7 pertains to 'Assessment'. Rule 7(1) provides that the Assessing Officer, on receipt of information in Form I from an employer is required to make an order of assessment within a period not exceeding six months from the date of receipt of information in Form I, indicating the amount of cess payable by the employer. A copy thereof is to be furnished to the employer; to the Welfare Board; and to the Cess Collector within five days of the date on which such order is made. Rule 7(2) provides that the order shall, inter alia, specify the amount of cess due, cess paid by the employer or deducted at source and the balance amount payable and the date, by which the cess should be paid to the Cess Collector.

12. Rule 7 pertains to 'Assessment'. Rule 7(1) provides that the Assessing Officer, on receipt of information in Form I from an employer is required to make an order of assessment within a period not exceeding six months from the date of receipt of information in Form I, indicating the amount of cess payable by the employer. A copy thereof is to be furnished to the employer; to the Welfare Board; and to the Cess Collector within five days of the date on which such order is made. Rule 7(2) provides that the order shall, inter alia, specify the amount of cess due, cess paid by the employer or deducted at source and the balance amount payable and the date, by which the cess should be paid to the Cess Collector.



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13. We deemed it necessary to deal with and set out the contents of the BOCW Act, the Cess Act and the concomitant Rules to stress upon how exhaustive, comprehensive and detailed were the schemes of these two welfare legislations and the steps and measures to be taken thereunder.

14. It is, however, a matter of record that the BOCW Act and the Cess Act just remained on paper owing to the failure of the appropriate Governments in taking necessary steps and measures, as provided in those welfare legislations, to give full effect to them. A 3-Judge Bench of this Court took note of this sorry state of affairs in *National Campaign Committee, C.L., Labour v. Union of India* [(2009) 3 SCC 269] and directed the State Governments and Union Territories (UTs) which had not framed Rules under Section 62 of the BOCW Act to adopt the Rules already framed by the Delhi Government in that regard. Further directions were issued on 18.01.2010 for implementation of the Acts by such States/UTs without further delay. One such direction was with regard to constitution of Welfare Boards, with adequate full-time staff, by each State/UT within three months. By order dated 10.09.2010, a 3-Judge Bench of this Court observed that time had come to enforce the earlier orders for implementation of the BOCW Act and directed the Central Government to call for the necessary information from the States/Uts concerned and to issue directions for setting up Welfare Boards within eight weeks, in terms of the earlier order dated 18.01.2010.

15. The Central Government was also asked to furnish a status report with regard to implementation of the BOCW Act and the guidelines given in the earlier order dated 18.01.2010. Contempt proceedings were initiated for non-implementation of the directions of this Court in the orders dated 18.01.2010, 13.08.2010 and 10.09.2010. Notices were issued to the authorities of the Central Government, Lakshadweep, Meghalaya and Nagaland in that regard, vide order dated 15.03.2011. Thereafter, by order dated 28.11.2011, another 3-Judge Bench of this Court granted an opportunity to enable each defaulting State to explain as to why contempt action should not be taken.

16. By order dated 07.02.2012, taking note of substantial compliance by most of the States, this Court closed the contempt cases, but with further directions to



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ensure full compliance. Again, by order dated 16.10.2015, a 3-Judge Bench noted further inaction on the part of stakeholders in giving effect to these legislations, as only about 1.5 crores out of 4 crore construction workers had been registered with the authorities concerned. Further directions came to be issued for full and proper implementation of these Acts on 30.10.2017. This Court took note of the dismal situation in the context of misuse of the BOCW Act, as Rs. 29,000 crores had been collected but not even 10 per cent thereof was spent for the benefit of construction workers. The matter was accordingly adjourned to enable the Secretary in the Ministry of Labour, Government of India, to report. Having heard the Secretary on 10.11.2017, this Court directed involvement of civil society in the effective management of the BOCW Act and adjourned the matter to enable the Secretary to hold a meeting with the Labour Secretaries of all the States/UTs within a time frame to ensure proper and complete implementation. The matter was heard again on 19.03.2018 and further directions were given by this Court. The matter was directed to be listed on 01.05.2018 to ascertain whether timelines were fixed by the authorities concerned for compliance with such directions. The last reported order of this Court in this regard is ***National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) v. Union of India [(2018) 5 SCC 607]***.

17. It is, thus, clear that neither the BOCW Act nor the Cess Act were actually implemented till this Court intervened and actively monitored the steps to be taken therefor from time to time. It is owing to this lassitude and lethargy on the part of the States, UTs and stakeholders that the present litigation arises. The failure on the part of several States in constituting Welfare Boards and in appointing authorities to give effect to these enactments lays foundation for the present conundrum. The contention of NHAI is that, notwithstanding the delayed constitution of Welfare Boards and lack of effective implementation, both the enactments should be construed to have come into effect on the dates notified, i.e., 01.03.1996 (BOCW Act) and 03.11.1995 (Cess Act) and they cannot, therefore, be taken to be 'subsequent legislation' under its contractual clauses. NHAI would contend that, as the rate of the cess



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to be collected, i.e., @ one per cent of the cost of construction, was specified by the Central Government as long back as on 26.09.1996, the respondents in its five appeals cannot claim ignorance thereof and they ought to have factored in the same in their price bids while submitting tenders for its works. NHAI would argue that, as per Rule 4 of the Cess Rules, deduction at source was to be effected if the work pertained to a Government or a PSU and, therefore, the cess was deductible irrespective of the Constitution of Welfare Boards. NHAI would further argue that, if the Cess Act is to be given effect by linking it to constitution of Welfare Boards, such interpretation would undermine and defeat the very scheme and intent underlying these welfare legislations, as that would mean that they came into operation on different dates in different States/UTs depending upon the constitution of Welfare Boards in such States/UTs.”

23. As far as the State of Tamil Nadu is concerned, even before the aforementioned acts the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982 was enacted which contained similar provisions and the Act applied to the schedule employments. There are 68 types of works which are notified under the schedule and all kinds of employment in engineering works were included in Entry 27 of the schedule. While so, when the implementation of the above acts were taken up by the Hon’ble Supreme Court of India in ***National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) Vs. Union of India and Ors.***⁴, it directed that the multiple schemes framed by the various states to be amalgamated and a

⁴ (2018) 5 SCC 607



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common welfare board in terms of Section 18 of the BOCW Act must be established and the funds be administered as per the other directions given.

Pursuant thereto, the State of Tamil Nadu had amended the state Act by amalgamating the Boards and also making such provisions for the first respondent Board to be the Board as per Section 18 of the BOCW Act.

24. The Building and Other Construction Workers' Welfare Cess Rules, 1998 imposes a duty on the petitioner which is a Public Sector Undertaking and Rule 4(3) is extracted hereunder:-

“4 . Time and manner of collection.—

.
. .

(3) Notwithstanding the provisions of sub-rule (1) and sub-rule (2), where the levy of cess pertains to building and other construction work of a Government or of a Public Sector Undertaking, such Government or the Public Sector Undertaking shall deduct or cause to be deducted the cess payable at the notified rates from the bills paid for such works.”

25. Rule 5 mandates transfer of the proceeds of the cess to the Board and the same is extracted hereunder:-

“5. Transfer of the proceeds of the cess to the Board.

— (1) The proceeds of the cess collected under rule 4 shall be transferred by such Government office, Public Sector Undertakings, local authority, or cess collector, to the Board along with the form of challan prescribed (and in the head of account of the Board) under the



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accountings procedures of the State, by whatever name they are known.

(2) Such government office of Public Sector Undertaking may deduct from the cess collected, or claim from the Board, as the case may be, actual collection expenses not exceeding one per cent, of the total amount collected.

(3) The amount collected shall be transferred to the Board within thirty days of its collection.”

26. As per Rule 4(5) and 4(6), it can be seen that such payment that is made by the Public Sector Undertakings should be treated as the advance cess and the employer or any person interested, shall make such claims at the time of assessment as per Rule 7. An appeal is also provided against the assessment to the appellate authority. If only the assessment authority revises the assessment or the appellate authority modifies the authority of assessment, the cess paid can be returned to the party as per Rule 8. Rule 14 contains the manner in which the appeal has to be preferred.

27. With the above background, it can be seen that under Rule 14, the employer is entitled to file an appeal to claim that the dredging activity will not come within the purview of building and other construction works and ought to have claimed refund of the amount paid by them. The term ‘employer’ would mean the petitioner as well as the



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second respondent contractor. Both of them did not make any such claim in this case.

28. However, when the relevant records were not maintained, considering the contravention of the provisions of the Act, which amounted to offences for which penalty can be imposed by the fourth respondent also under Section 50(2) of the Act, the third respondent herein who is the assessment officer, had filed an application for imposition of penalty.

29. It is the case of the third respondent, Labour Enforcement Officer, that the contractor carrying out the work has not complied with the provisions of the Act inspite of show-cause notice and prayed for imposition of fine for breaching of Rule 240 of the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Central Rules, 1998 and thus, contravening Section 7 of the BOCW Act. Section 7 of the Act and Rule 240 are extracted hereunder:-

“7. Registration of establishments.- (1) Every employer shall,-

(a) in relation to an establishment to which this Act applies on its commencement, within a period of sixty days from such commencement; and



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(b) in relation to any other establishment to which this Act may be applicable at any time after such commencement, within a period of sixty days from the date on which this Act becomes applicable to such establishment, make an application to the registering officer for the registration of such establishment:

Provided that the registering officer may entertain any such application after the expiry of the periods aforesaid, if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period.

(2) Every application under sub-section (1) shall be in such form and shall contain such particular and shall be accompanied by such fees as may be prescribed.

(3) After the receipt of an application under sub-section (1), the registering officer shall register the establishment and issue a certificate of registration to the employer thereof in such form and within such time and subject to such conditions as may be prescribed.

(4) Where, after the registration of an establishment under this section, any change occurs in the ownership or management or other prescribed particulars in respect of such establishment, the particulars regarding such change shall be intimated by the employer to the registering officer within thirty days of such change in such form as may be prescribed.”

“240. Register of persons employed as building workers:-Every employer shall maintain in respect of each registered establishment, where he employs building workers a register in Form XV, annexed to these rules.”

Thus, the complaint was filed with reference to registration and not maintaining the register of workers in Form XV.

30. In this regard, it can be seen that the Hon’ble Supreme Court



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of India in the case of *National Campaign Committee for Central Legislation on Construction Labour (NCC-CL)* (cited *supra*) in paragraph

Nos.7 to 11, held as follows:-

“7. The BOCW Act provides, inter alia, for the constitution of Central and State Advisory Committee(s) to advise the appropriate Government on matters concerning the administration of the BOCW Act (Sections 3 and 4); the constitution of Expert Committee(s) for advising the appropriate Government to frame Rules under the BOCW Act (Section 5); appointment of registering officers and registration of establishments employing building and construction workers by making an application to the registering officer (Sections 6 and 7); registration of building and construction workers as beneficiaries under the BOCW Act and issuance of identity cards to them (Sections 12 and 13); constitution of the State Welfare Boards with identified functions including providing necessary benefits and assistance to beneficiaries (Sections 18 and 22); creation of a Welfare Fund for the benefit of building and construction workers (Section 24) and providing hours of work, welfare measures relating, inter alia, to safety and health and other conditions of service of building and construction workers (Chapters VI and VII of the BOCW Act).

8. Clearly, the BOCW Act is a welfare legislation intended and enacted for the benefit of the unorganised sector of building and construction workers. It has a strong flavour of social justice and is a serious attempt by Parliament to ensure that building and construction workers are not exploited because of their poverty and their children do not suffer their fate in terms of education, healthy living and whatever it takes to live a life of dignity. It is in this background and context that the BOCW Act was enacted by Parliament.

9. Parliament simultaneously enacted the Cess Act which enables the State Governments and the UTAs to collect a cess from every employer as defined in the BOCW Act to be utilised for the benefit of registered construction workers.

10. The Cess Act provides for the levy and



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collection of cess in terms of Section 3 thereof. This section enables the deduction of cess at source in relation to building or other construction work of a government or a public sector undertaking or advance collection through a local authority. The cess so collected shall be paid to the Welfare Board constituted under the BOCW Act after deducting the cost of collection which shall not exceed 1% of the amount collected. Section 3 of the Cess Act reads as follows:

“3. Levy and collection of cess.—(1)

There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996, at such rate not exceeding two per cent but, not less than one per cent of the cost, of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time specify.

(2) The cess levied under sub-section (1) shall be collected from every employer in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a public-sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed.

(3) The proceeds of the cess collected under sub-section (2) shall be paid by the local authority or the State Government collecting the cess to the Board after deducting the cost of collection of such cess not exceeding one per cent of the amount collected.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), the cess leviable under this Act including payment of such cess in advance may, subject to final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved.”

11. Sections 4 and 5 of the Cess Act require every employer to furnish a return to the officer or authority concerned and that officer or authority is obliged to make an assessment of the amount of cess



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payable by the employer. The officer or authority concerned is also empowered to specify the date within which the cess shall be paid by the employer on assessment. In the event of any delay in payment of cess, interest is liable to be paid under Section 8 of the Cess Act at 2% for every month or part thereof. There is of course a provision for an appeal as well as an enforcement provision whereby penalty can be levied under the provisions of the Cess Act.”

When the employer has, in compliance of Rule 4(3), had already paid the cess and no appeal, having been preferred by the contractor, the Director General, the fourth respondent herein, being the person who should be interested in implementing the welfare measure, strangely, even without any pleading or affidavits, requested the parties to make oral and written arguments.

31. Normally, the authority ought to have given a finding as to whether any workman is involved or not after giving an opportunity to the Labour Enforcement Officer and also the principal employer by taking into account the ground situation as to the work done as to how many manual labourers were employed. Instead, the authority simply accepted the oral submissions and came to the conclusion that dredging will not at all come within the definition under Section 2(d) of the Act. Such finding is, *ex facie*, erroneous considering the literal meaning or even if the intention of



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the legislation is taken into account. When the second respondent contractor had miserably failed to maintain the register, the fourth respondent simply accepted their submission as if no workman was involved, the Hon'ble Supreme Court of India terms the 'legislation' as a serious attempt of the Parliament towards social justice which seems to have been completely not considered by the fourth respondent. The finding that dredging will not come within the purview of the definition is (a) a decision made without any evidence simply and casually accepting the oral pleas and thus perverse; (b) without considering the express terms that are contained in the definition; and (c) unconscious about the intention and pious purposes of the act and hence I have no hesitation in declaring the same as illegal and will not be binding on any authority. It is painful to note that the authorities such as the fourth respondent, who are roped in for effective implementation of the Act, perform their duties in a casual manner unmindful of the repeated pronouncements of the Hon'ble Supreme Court of India as to the pious purposes of the Act. Though dredging is one of the highly mechanized and automated sectors, there are so many incidental and other works apart from operating these mechanized equipments, which include moving of the tug boats, barges and removing of clogs, cleaning and so many other things. Fatal and non-fatal accidents



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have been reported in our country during dredging works. Unauthorised workers being clandestinely involved as manual labour inside port area have been detected by labour enforcement agencies on many occasions. Thus contention that there no workers involved have to be decided based on facts and actual inspection that has to be made by the Enforcement Agency and not on the mere oral argument of the contractor without any pleading in that regard, who had not even maintained the register.

32. In any event, a perusal of the order of the authority, dated 06.11.2018 is with the following final directions:-

“... I am of the considered opinion that the activity of dredging of sea port does not involve any building or other construction work as defined under section 2(d) of the BOCW Act. ***Accordingly complaint case no.ESII/31(219)/2016 is disposed off without any fine on the non applicant.***”

(emphasis supplied)

Thus, it is only a decision not to impose any fine and that was only the jurisdiction and remit of the fourth respondent.

33. As far as the refund of the amount is concerned, if only the assessment is revised or the appeal is allowed by the appellate authority setting aside the assessment and ordering refund of the entire amount, the



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same can be refunded. The petitioner has paid the cess. If the assessment proceedings have not taken place, the petitioner or the second respondent have to pursue the statutory proceedings in the manner known to law. Neither the assessment is questioned, nor any appeal is filed. Therefore, the first respondent Board, was right in refusing to refund the money, already paid to it as it has jurisdiction/duty to spend the same towards the welfare of the workers registered under the Act. Therefore, I am of the view that merely because there is an order, dated 08.11.2018, the petitioner does not have a right to request for refund of the cess amount that is paid.

G. The Result :-

34. In view thereof, finding no merits, this Writ Petition is dismissed. There shall be no order as to costs.

03.02.2026

Neutral Citation : yes
grs

To

1. The Secretary,
Tamil Nadu Building and Other Construction Workers Welfare Board,
No.8, Valluvar Kottam,
High Road, Chennai – 600 034.

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2. The Labour Enforcement Officer (C), Chennai,
Shashtri Bhawan, Haddows Road, Chennai.
3. The Director General of Inspection,
Under the Building and Other Construction Workers
(RE and CS) Act, 1996 and Deputy Chief Labour
Commissioner, Central, Office of the Chief Labour
Commissioner, Shram Shakthi Bhawan,
New Delhi – 110 001.



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D.BHARATHA CHAKRAVARTHY, J.

grs

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03.02.2026