

IN THE HIGH COURT OF MADHYA PRADESH

PRINCIPAL SEAT AT JABALPUR

Writ Appeal No. 1077 / 2009

Appellant

M/s Bharat Heavy Electricals

Limited, BHEL House, Siri Fort,

New Delhi - 110049

Presented on 27.1.2010

Also at:

M/s Bharat Heavy Electricals

Limited, Integrated Office Complex

Lodhi Road, New Delhi - 110003.

Versus

State of Madhya Pradesh,

Through Additional Chief Secretary,

Labour Department, Vallabh

Bhawan, Bhopal (MP)

Deputy Labour Commissioner

Cum-Cess Assessing Officer

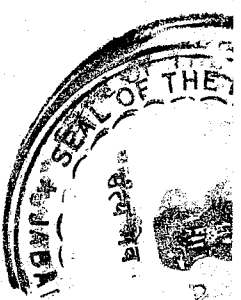
Building and other

Construction Workers Welfare Cess

Board D Block, Old Sectt. Bhopal

(MP)

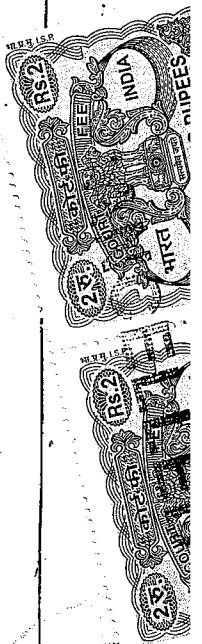
3. M/s Tehsildar



4. Project Manager,
Bharat Oman Refineries Limited
(BORL), A Block, Gautam Nagar,
Bhopal, Madhya Pradesh.

**WRIT APPEAL UNDER SECTION 2-A OF THE
MADHYA PRADESH UCHCHA NYAYALAYA
(KHAND NYAY PEETH KO APPEAL) ADHINIYAM,
2005**

The present Appeal is preferred being aggrieved by the order dated 06.01.2009 passed in W.P. No. 2717/2008 (M/s Gannon Dunkerley & Co. Ltd. & Vs. State of M.P. and others together with a bunch of other connected petitions. A copy of the writ petition is marked as **Annexure-A-1**, Return of R-1 & R-2 as **Annexure-A-2**, return of R-3 as **Annexure A-3** and copy of the judgement and order dated 6.1.2009 as **Annexure-A-4**. It is pertinent that the instant appellant was not the petitioner in any of the above referred petitions decided by common order dated 06.01.2009 to which challenge was made by the petitioners therein by filing writ Appeals, which were disposed of on concession of the parties therein that they want to approach the appellate authority under Rule 14 of the Cess Rules, 1998. Copy of order dated 04.08.2009 in W.A. No.



DATE OF THE
ORDER

ORDER

W.A. No.1077/09

23/11/2009-

I.A. No.11628/09-

This is an application for grant of leave to file the instant appeal as the appellant is grieved by the findings recorded by the learned single Judge in W.P. No.2717/08 and other connected matters.

Regard being had to the submissions made by the learned counsel for the appellant, assertions made in the petition and on a scrutiny of the order passed by the learned Single Judge, we are inclined to grant leave to the appellant to prefer the appeal.

Accordingly the IA stands allowed.

I.A. No.11336/09-

This is an application for condonation of delay. Be it noted, in I.A.No.11628/09 we have granted leave to prefer the appeal. In view of the aforesaid, keeping in view the assertions made in the petition, having heard Mr. V.K. Tankha, learned Additional Solicitor General for the Union of India and Mr. Naman Nagrath, learned Addl. Advocate General for the respondents No.1 to 3 delay in filing the appeal stands condoned.

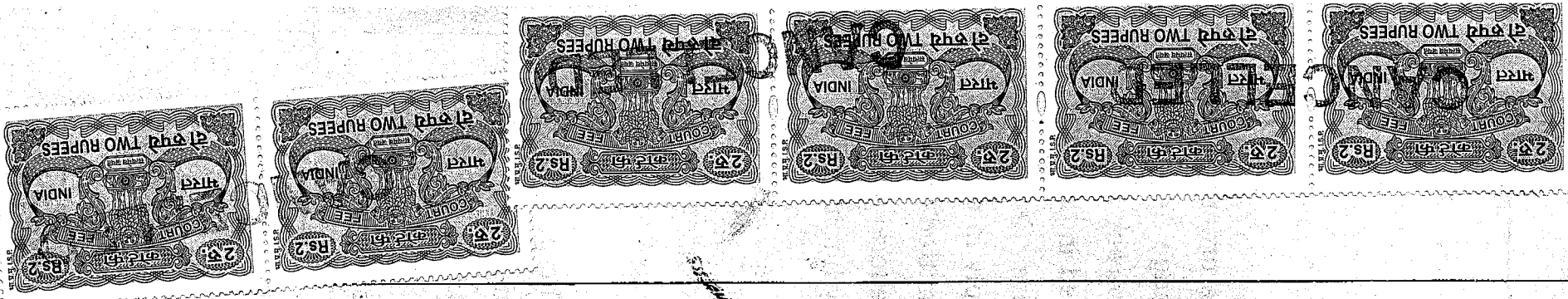
The IA is accordingly allowed.

W.A. No.1077/09-

As we have condoned the delay, we have taken up the appeal for admission.

Admit.

On consent of the learned counsel for the parties, it is finally heard.



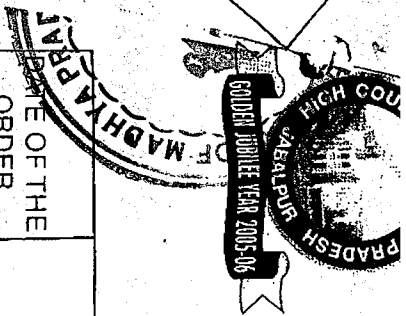


DATE OF THE ORDER	ORDER
	Heard Mr. V.K. Tankha, learned Additional Solicitor General for Union of India along with Mr. H.K. Upadhyaya and Mr. A.K. Rai, learned counsel for the appellant and Mr. Naman Nagrath, learned Additional Advocate General for the State. In this Intra-court appeal assail is to the order dated 06-01-09 passed by the learned Single Judge in W.P. No.2717/08 and other connected matters whereby he has recorded a finding that the provisions contained in the M.P. Building and Construction Workers Welfare Cess Act [hereinafter referred to as 'the Act'] shall apply in entirety to the public sector undertakings. It is submitted by Mr. V.K. Tankha, learned Additional Solicitor General for the Union of India that the Act has its applicability but it cannot be applied to the entire value of the contract. Mr. Naman Nagrath, learned Addl. Advocate General for the State submitted that the appellant can prefer an appeal before the competent authority and raise all possible contentions. Having heard the learned counsel for the parties, we are inclined to direct that if the appellant prefers an appeal raising all possible grounds including the non-applicability of the Act to the entire valuation of the contract and proportionality of cess the same shall be dealt with by the appellate authority. Be it noted, we have not expressed any opinion on the merits of the case. If the appellant prefers an appeal within a period of four weeks from today, the same shall be dealt with on merits and shall not be thrown overboard on the ground of limitation. Till the appeal is decided no coercive steps shall be taken against the

ORDER SHEET

CASE No. 200

..... Vs.



NAME OF THE
ORDER

ORDER

appellant.

Accordingly the order passed by the learned Single Judge stands modified.

With the aforesaid direction the writ appeal is disposed of. There shall be no order as to costs.

C.c. as per rules by 24-11-09.

Sd/-

(Dipak Misra)
Judge

Sd/-

(R.K. Gupta)
Judge

ac.

