[3488]

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

WEDNESDAY, THE TWENTY NINTH DAY OF JULY
TWO THOUSAND AND TWENTY SIX

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE SRI APARESH KUMAR SINGH
AND
THE HONOURABLE SRI JUSTICE G.M. MOHIUDDIN**

WRIT APPEAL NO: 265 OF 2026

Writ Appeal under clause 15 of the Letters Patent Preferred Against Order Dated 09/01/2026 in W.P.No.13195 of 2025. on the file of the High Court.

Between:

M/s Kalpataru Projects International Limited, (formerly known as Kalpataru Power Transmission Ltd.) Having its registered office at Plot no. 101, Part-III, G.I.D.C. Estate, Sector-28, Gandhinagar-382028
Also at.
M/s Kalpataru Projects International Limited, Kalpataru Synergy, 7th Floor, Opp. Grand Hyatt, Santacruz (E), Mumbai 400055.

.....APPELLANT/PETITIONER

AND

1. The State of Telangana, Rep. by the Principal Secretary, Labour Employment and Factory Department, Secretariat Buildings, Hyderabad.
2. The Commissioner of Labour, H.No.1-1-18/73 TAKS Bhavan, RTC X Roads, Hyderabad 500020, Telangana.
3. The Additional Commissioner of Labour (Secretary and CEO), Telangana Building and Other Construction Workers Welfare Board(TBOCWWB), H.No.1-1-18/73 TAKS Bhavan, RTC X Roads, Hyderabad 500020., Telangana.
4. The Joint Commissioner of Labour, Chaitanyapuri Colony, Prashanthnagar, Warangal, Hanamkonda, Telangana.

....RESPONDENTS

I.A.NO:1 OF 2026

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings pursuant to and arising out of the proceedings vide No.

E/182/2022 dated 05.10.2023 passed by the Appellate Authority/ the Commissioner of Labour, Telangana.

I.A.NO:2 OF 2026

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the directions passed in W.P.No 13195 of 2025 vide order dated 09.01.2026 passed by the Learned Single Judge.

Counsel for Appellant : SRI A.VENKATESH, SENIOR COUNSEL REPRESENTING SRI LAKSHMIKANTH REDDY DESAI

Counsel for the Respondents : SRI T.VENKAT RAJU, AGP FOR LABOUR AND EMPLOYMENT

The Court made the following Judgment : -

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE THE CHIEF JUSTICE SRI APARESH KUMAR SINGH
AND
THE HON'BLE SRI JUSTICE G.M.MOHIUDDIN

WRIT APPEAL No.265 of 2026

DATED : 29.07.2026

Between:

M/s. Kalpataru Projects International Limited,
Gandhinagar.

... Appellant

AND

The State of Telangana,
Represented by the Principal Secretary,
Labour Employment and Factory Department,
Secretariat Buildings, Hyderabad and three others.

... Respondents

JUDGMENT:

Mr. A. Venkatesh, learned Senior Counsel, represents Mr. Lakshmikanth Reddy Desai, learned counsel for the appellant.

Mr. T. Venkat Raju, learned Government Pleader for Labour and Employment appears for respondents.

2. The Assessing Officer-cum-Joint Commissioner of Labour, Warangal, passed an order of refund dated 30.06.2023 upon assessment under Section 5(1) of the Building and Other Construction Workers' Welfare Cess Act, 1996 (hereinafter referred to as 'the Act') read with Rule 7(1) of the Building and Other Construction Workers' Welfare Cess Rules, 1998 (hereinafter referred to as 'the Rules') to the tune of Rs.2,06,78,006/- in favour of the appellant in lieu of payments made

towards 1% cess amount during the execution of the contract of construction of a gas pipeline. Earlier, the appellant had filed W.P.No.5471 of 2025 for a direction to disburse the amount of refund. During pendency of that writ petition, *vide* order dated 05.10.2023, the respondent-Commissioner of Labour *suo motu* exercised the powers of the appellate authority and held the assessment to be wrong being on the lower side. The matter was remanded to the Assessing Officer and Joint Commissioner of Labour, Warangal, to rectify the wrong in terms of the observations made therein. This was the subject matter of W.P.No.13195 of 2025. Both the writ petitions were taken together by the learned writ Court. *Vide* order dated 09.01.2026, the learned writ Court dismissed W.P.No.5471 of 2025 as infructuous and disposed of W.P. No.13195 of 2025 directing the appellant to file a detailed representation to the authority, who in turn was directed to dispose it of within three months.

3. The appellant contends that under the Rules, there is no *suo motu* power conferred upon the appellate authority to set aside the assessment order or the order of refund unless an appeal is filed by the employer.

4. Rule 14 of the Rules is quoted hereunder:

> "**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 manner 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 alongwith 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."

Therefore, the appellant has preferred this appeal.

5. Though the counter affidavit was filed by the respondent Department, it has not been able to show from the provisions of the Rules, specifically Rule 14, which provides for appeal that such a *suo motu* power

can be exercised by the Commissioner of Labour to hold the assessment to be wrong being on the lower side.

6. Learned counsel for the Department has referred to a decision of the Apex Court in the case of **Uttar Pradesh Power Transmission Corporation Limited and another v. CG Power and Industrial Solutions Limited and another**[1] and submitted that the Apex Court in connection with the same Act and the statutory Rules framed thereunder had observed that the Act and the Rules framed prescribe the mode and manner of recovery of outstanding cess under the Act. It is well settled that when a statute requires a thing to be done in a particular manner, it is to be done in that manner alone. The Commissioner found that the Joint Commissioner of Labour erred in deducting the amount pertaining to the material used in the construction by erroneously referring to the Supreme Court cases, which are on different questions of facts and question of law and inapplicable to the present case. The contract in question was a lump sum form fixed price time contract for all activities related to providing completed facilities by the contractor to the owner. As per the Rules, the cost of construction includes all expenditure incurred by an employer in connection with the building or other construction work. Therefore, the entire contract value ought to be taken for arriving at the

---

[1] (2021) 6 SCC 15

levy and assessment of cess without any deduction as erroneously allowed by the Joint Commissioner of Labour. Therefore, the assessment order was liable to be verified. The learned writ Court has rightly directed the appellant to file a detailed representation to the authority, who in turn was directed to dispose it of within three months.

7. Learned Senior Counsel for the appellant submits that since the statute or the Rules do not confer any *suo motu* power upon the appellate authority to annul the order of the assessing officer i.e., Joint Commissioner of Labour, the impugned direction was in the teeth of the statutory provision and fit to be set aside. The learned writ Court committed error in directing the appellant to file a detailed representation to the authority who was directed to dispose it of within a period of three months. He has also referred to Rule 14(5) of the Rules which provides that such power can be exercised by the appellate authority on any appeal filed by an aggrieved employer. There is no appeal filed by the employer in this case. Therefore, the order under appeal dated 09.01.2026 may be set aside. The order dated 05.10.2023 passed by the Commissioner of Labour in exercise of *suo motu* powers as an appellate authority may also be set aside.

8. We have heard the learned counsel for the parties and taken note of the statutory position as extracted hereinabove. In the present case, the

Assessing Officer cum Joint Commissioner of Labour, Warangal, has passed an order of refund upon assessment under Section 5(1) of the Act read with Rule 7(1) of the Rules to the tune of Rs.2,06,78,006/- in favour of the appellant in lieu of payments made towards 1% cess amount during the execution of the contract of construction of a gas pipe line. This order was passed pursuant to a direction of the learned writ Court in an earlier round of litigation in W.P. No.5471 of 2025. It, however, appears that though no appeal was preferred by any person or an aggrieved employer in terms of Rule 14 of the Rules, *vide* order dated 05.10.2023, the Commissioner of Labour has exercised *suo motu* powers and set aside the assessment to be on the wrong side. Such *suo motu* power is not available under Rule 14 of the Rules which provides for remedy of appeal to an employer aggrieved by an order of the assessment made under Rule 7 of the Rules or by an order imposing penalty under Rule 12 of the Rules before the appellate authority.

9. Learned counsel for the Department has not been able to show any other provision under the Rules which provide for *suo motu* powers to the Commissioner of Labour to annul the assessment order In **Uttar Pradesh Power Transmission Corporation Limited** (supra), the Apex Curt rendered its decision on the following issue:

> "This Special Leave Petition, under Article 136 of the Constitution of India, filed by the Petitioner, hereinafter referred to as the UPPTCL, is

> against a final Judgment and Order dated 24th February 2020 passed by the High Court of Judicature at Allahabad (Lucknow Bench), allowing the writ petition filed by Respondent No.1 and setting aside the letters dated 2nd September 2016 and 29th December 2018 issued by the Executive Engineer, Unnao UPPTCL directing the Respondent No.1 to remit Labour Cess amounting to Rs.2,60,68,814/-, computed at 1% of the contract value, under Sections 3 sub-sections (1) and (2) of the Building and Other Construction Workers' Welfare Cess Act, 1996, hereinafter referred to as the "Cess Act", read with Rules 3 and Rule 4 (1), (2) (3) and (4) of the Building and Other Construction Workers Welfare Cess Rules, 1998, hereinafter referred to as the "Cess Rules" and also Section 2 (1) (d), (g) and (i) of the Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act, 1996, hereinafter referred to as the "BOCW Act".

10. The Apex Court, in this background, had held that the action of the UPPTCL in forcibly extracting building cess from respondent No.1 solely on the basis of CAG report was in excess of power conferred on UPPTCL by law or in terms of the contract. The Apex Court found that UPPTCL had no power and authority or jurisdiction to realize labour cess under the Act in respect of the first contract by withholding dues in respect of other contracts and/or invoking a performance guarantee. The order of the High Court was affirmed. In the aforesaid context, the Apex Court had at para 71 observed that the Act and the Rules framed thereunder prescribe the mode and manner of recovery of outstanding cess under the Act.

11. It was further held that when a statute requires a thing to be done in a particular manner, it is to be done in that manner alone. When the Rules do not provide for exercise of *suo motu* power by the Commissioner of Labour and no appeal has been preferred by the employer under Rule 14 of the Rules, invocation of Rule 14(5) of the Rules for setting aside the order

of Assessing Authority in a *suo motu* manner, cannot be countenanced in the eye of law.

12. Accordingly, the order dated 05.10.2023, which was impugned in W.P. No.13195 of 2025, is set aside. The order of the learned writ Court dated 09.01.2026 in W.P. No.13195 of 2025 is also set aside. Needless to say, the Assessing Officer would proceed to disburse the refund amount along with interest at the applicable rate within a period of six weeks from the date of receipt of a copy of this judgment.

Accordingly, the instant Writ Appeal is disposed of. There shall be no order as to costs.

Miscellaneous applications, if any pending, shall stand closed.

SD/- A.V.S.PRASAD
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Principal Secretary, Labour Employment and Factory Department, Secretariat Buildings, State of Telangana at Hyderabad.
2. The Commissioner of Labour, H.No. 1-1-18/73 TAKS Bhavan, RTC X Roads, Hyderabad 500020. Telangana.
3. The Additional Commissioner of Labour (Secretary and CEO), Telangana Building and Other Construction Workers Welfare Board(TBOCWWB), H.No. 1-1-18/73 TAKS Bhavan, RTC X Roads, Hyderabad 500020., Telangana.
4. The Joint Commissioner of Labour, Chaitanyapuri Colony, Prashanthnagar, Warangal. Hanamkonda, Telangana.
5. Two CC's to G.P FOR LABOUR AND EMPLOYMENT, High Court for the State of Telangana at Hyderabad. (OUT)
6. One CC to SRI LAKSHMIKANTH REDDY DESAI, Advocate [OPUC]
7. Two CD Copies

SA

TKS

HIGH COURT

DATED: 29/07/2026

JUDGMENT

WA.No.265 of 2026

HIGH COURT FOR THE STATE OF TELANGANA
07 AUG 2026
DESPATCHED

DISPOSING OF THE W.A
WITHOUT COSTS.

10
kps
7/8/26