

**GOVERNMENT OF ANDHRA PRADESH
IRRIGATION & CAD (PW-REFORMS) DEPARTMENT**

Memo.No. 636/Reforms – A1/2008

Dated: 8-06-2011

Sub:- Irrigation & CAD Dept. – Building and other constructions workers (Regulation of Employment and Conditions of Services) Act, 1996(Act 27 of 1996) and the Andhra Pradesh Rules made there under - the Building and other construction workers Welfare Cess Act, 1996 (Act 28 of 1996) (Cess Act) and the Building and other construction workers Welfare Cess Rules, 1998 – Compliances with statutory provisions – Payment of Cess - instructions – Issued.

- Ref:-
1. G.O.Ms. No. 94, I & CAD (PW) Dept. dt. 1-7-2003.
 2. From the ENC (IW) Lr.No. ENC/IW/P&M/EE.1/DEE.8/19200/98, dated 12-11-2007.
 3. From M/s AKR Coastal (JV) Lr.No. AKR-Coastal (JV)P-81/814 dt. 14-12-2007.
 4. Govt. U.O. Note No. 4763/PFS.F8 (A1)/07-1, Finance and Planning (W&P) Department dt. 4-2-2008.
 5. Govt. U.O. Note No. 4763/PFS.F8 (A1)08-4, Finance (W&P) Dept. dt.28-2-2008.
 6. W.P.No. 5567/2008 filed by M/s Patel Engineering Ltd., and batch in the Hon'ble High Court of A.P. Hyderabad.
 7. W.P. No 4587/2008 filed by M/s Coramandel Prestcrete Pvt. Ltd. and batch in the Hon'ble High Court of A.P. Hyderabad.
 8. W.P. No. 25200/2007 filed by RMN-GDR Joint venture and others in Hon'ble High Court of A.P., Hyderabad.
 9. Advocate General's Letter No. 604/2008 dt. 21-7-2008,
 10. From the ENC (IW) Lr. No. ENC/IW/P&M/EE.1/DEE.8/19200/98 dt. 13-8-2008.
 11. Advocate General's Letter No. 330/Opinion No. 290/2009, dt. 20.4.2009.
 12. G.O.Ms.No.111, Labour, Employment Training & Factories (Lab.II) Dept. Dt. 15.12.2009.
 13. G.O.Ms. No. 112, Labour, Employment Training & Factories (Lab.II) Dept., dt.15.12.2009.
 14. Orders of Hon'ble High Court dt. 22-12-2009 and 23-10-2009 in W.P. No: 27995 of 2009 and W.P. No. 6402 of 2009.
 15. From the ENC (IW), Hyderabad Lr.No. ENC/IW/P&M/EE-I/DEE8/120908/08, Dt.1-2-2010.

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In the Letter 2nd cited the Engineer-in-Chief (IW) has informed that the provision for 1% Cess is not loaded in the estimates till now and to facilitate payment of Cess to the Labour Department, the field Officers may have to be authorized to make provision for the payment of Cess in the Current agreements by furnishing Revised Estimates and the G.O.Ms.No. 94, I & CAD (PW) Department, dated 01-07-2003 has to be amended suitably to make provision of 1% towards Cess in the existing contracts. In this regard, the Finance Department vide U.O. No. 4763/PFS.F8(1)/07-1 dated 04-02-2008 informed the Irrigation Department that 1% towards Labour Cess is to be deducted from contractor's bills in respect of all payments made from 26-06-2007. For this, the Department has been requested to issue orders for making L.S. Provision @ 1% towards Cess in all the estimates sanctioned from 26-06-2007 under the Building and construction Workers Welfare Cess Act 1996 as an amendment to Annexure-I(1) of G.O.Ms. No. 94, I & CAD Dept., dated 01-07-2003. The above orders of Finance Department were challenged by several Agencies executing works in

Irrigation Department and filed Writ Petitions before the Hon'ble High Court of Andhra Pradesh questioning the instructions contained therein and obtained stay orders not to recover the Cess. Some of the numbers of Writ Petitions are 5567/2008; 7218/2008; 7238/2008; 7226/2008; 7227/2008; 7216/2008; 5580/2008; 5569/2008 and 5571/2008.

2. The Finance Department desired to issue common order applicable to all Engineering Departments on the lines indicated in their U.O. Note No. 4763/PFS/F8(A1)/08-4, dated 28-02-2008.

3. The Advocate General in his letter dated 21-07-2008 has informed that W.P. No. 25200/2007 and batch filed by various contractors questioning levy of 1% Cess under the provisions of Building and other construction Workers (Regulation of Employment and conditions of Service) Act 1996 and the Building and other Construction Workers Welfare Cess Act 1996 were disposed of by a learned single Judge on 15-08-2008 negating all the pleas of the Writ Petitioners, but holding that the profit element cannot be included in the cost of construction while levying 1% Cess on the cost of Construction. He has opined that it is therefore open to the Government to levy 1% Cess from the contractor's bills after deducting the profit element in respect of all payments made from 26.06.2007 for the present.

4. The Engineer-in-Chief (IW) in his letter dated 18.02.2009 has stated that there is no specific contractor's profit provided in the estimates of I & CAD Department in contrast to other departments viz. R & B Department, wherein 10% profit is added to the overall provisions of the estimate. It is stated that the rates of the SSR items contain Profit element in the material components only and the contractor's Profit/Loss depends on the skills of the contractor in performing the work and the profit elements can't be separated from the total amount of the work, as such working out the profit element through a mathematical formula does not arise. Further as per section 3 of the Building and other construction workers (Regulation of Employment and Conditions of Services) Act, 1996 (Act 27 of 1996) and the Andhra Pradesh Rules made there under, the Building and other construction worker's welfare Cess Act, 1996 (Act 28 of 1996) (Cess Act), the employers are liable to pay cess @ 1% on the cost of construction/estimated cost of construction. In view of the above, it is desirable to levy 1% labour cess as per the Act from the contractor's bill, without going into profit element in respect of Irrigation works.

5. The Learned Advocate General in his Letter No. 330/Opinion No. 20/2009 dated 20-04-2009 opined that in view of the finding of the Hon'ble High Court that only the cost of land and any compensation paid or payable to the worker or his kin under the Workmen's Compensation Act. 1923, must be excluded from the cost of construction while levying 1% Cess on the cost of construction, no other factor must be excluded from the cost of construction while levying cess at the rate of 1% on the cost of construction and therefore the respondents while levying and collecting the labour cess have to collect the same on the cost of construction incurred by the employer only excluding the cost of land and the compensation paid or payable to a worker or his kin under the Workmen's Compensation Act 1923, but not on the entire value of the work.

6. In terms of the orders passed by the High Court on 26-03-2009 in W.P.W.P. No. 8365 of 2009 in W.P.No. 6402 of 2009 and considering the detailed opinion rendered by the Advocate General after going through the High Court Judgment dt. 15-7-2008 in W.P. No. 4587/2008 and batch and also the guidelines issued by Finance (W&P) Department in U.O. Note No. 4763/PFS.F8(A1)08-4, dated 28-2-2008 and also the Law Department opinion, the Government have decided and hereby issue the following orders on levy of 1% towards Labour Cess making them applicable to all the Engineering Departments.

- i) In respect of ongoing works, wherever agreements do not contain the clause relating to the condition of the Building and other construction workers Welfare Cess Act, 1996 an amount of @ 1% of the amount will be added to the estimates and the estimates revised accordingly for all payments made after 26-06-2007.
- ii) In respect of agreements which provided that the Contractor shall pay Cess at the rate not exceeding 1% of the cost of Construction under the Building and other Construction workers Welfare Cess Act 1996, the Contractor has to Pay Cess.
- iii) The Department shall include 1% Cess in the estimates for the works which they propose to undertake, if the work continues for, or beyond twelve months and involves engagement of 10 workers or more.
- iv) The Levy of Labour Cess shall be on the cost of construction incurred by the employer only duly excluding the cost of land and the compensation paid or payable to a worker or his kin under the Workmen's Compensation Act, 1923, and not on the entire value of the work.
- v) The Department shall not deduct any amount towards Cess, unless the corresponding amount is included in the estimates i.e necessary provision may be incorporated in the revised estimates.
- vi) Supplemental agreements may be concluded with the contractors/Agencies, wherever required to effect the recovery towards Labour Cess, duly providing provision in the revised estimate.

7. In the references 12th & 13th cited the G.O.s issued by Labour, Employment, Training and Factories Department are communicated to all the Engineering Departments for strict compliance of the orders issued therein and also to take necessary further actions as required.

8. All the Engineers-in-Chief/ Chief Engineers of Irrigation Department and other Engineering Departments are requested to take necessary action accordingly.

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9. This order issues with the approval of Labour Employment, Training & Factors Dept., vide U.O. No. 5347/Lab-II/A1/2007, dt: 26-05-2010.

10. This order issues with concurrence of Finance (W&P) Dept., vide U.O. No.1979/F8(1)/2011-1, dated: 03-06-2011.

SHAIENDRA KUMAR JOSHI
PRINCIPAL SECRETARY TO GOVERNMENT (P)

To

All the Engineers-in-Chief of Irrigation & CAD Department.

All the Chief Engineers of Irrgn. & CAD Dept.

Pri.Secy to Govt., TR&B Dept.

Pri.Secy to Govt., PR & RD / RWS Dept.

Pri.Secy to Govt., MA & UD Dept.

Copy to:

All the Departments of Secretariat.

All Sections in Irrigation & CAD Dept.

The Finance (W&P) Dept.

The Advocate General, High Court of A.P., Hyderabad.

The Govt. Pleader for Irrigation & CAD, High Court of A.P. Hyderabad.

//FORWARDED :: BY ORDER//

T. P. Chith. Laxi
SECTION OFFICER.