

**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPC No. 2636 of 2010**

“Larsen and Toubro Limited” having its Registered office at L&T House, Narottam Morarji Marg, Ballard Estate, Mumbai-400001 and its Site Office at Larsen & Toubro Limited, ECC Division, MIG 44, Phase II, R.P. Nagar, Near Head Office, Kosabadi, Korba-495677 (C.G.) acting through its Power of Attorney, Mr. Subhendra Kumar, S/o. Jagneswar Nanda, Assistant Manager-Industrial Relation of Metallurgical, Material Handling and water OC, Resident of MIG 44, Phase II, R.P. Nagar, Near Head Post Office, Kosabadi, Korba-495677 (C.G.)

---- **Petitioner****Versus**

1. State of Chhattisgarh, through: the Secretary, Labour Department, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh
2. Assistant Labour Commissioner-cum-Registration Officer under the Building and other Construction Act, 1996, Korba, District Korba, Chhattisgarh
3. “Bharat Aluminum Company Limited-Vedanta”, having its registered office at Aluminium Sadan Core-6, Scope Office Complex, Lodi Road, New Delhi-110003 and Factory at Balco Nagar-495684, Korba, District Korba, Chhattisgarh

----**Respondents****WPC No. 2199 of 2012**

“Larsen and Toubro Limited” having its Registered office at L&T House, Narottam Morarji Marg, Ballard Estate, Mumbai-400001 and its Site Office at Larsen & Toubro Limited, Near Boria Gate, Bhilai Steel Plant, Bhilai, District Durg, Chhattisgarh acting through its Power of Attorney, Satya Narayan Murthy K. S/o. Late Shri K.V. Rao, Designation- Accounts Manager, Resident of 391, A2 Type, Surya Vihar, Junwani, Bhilai, District Durg Chhattisgarh

---- **Petitioner****Versus**

1. State of Chhattisgarh, through: the Secretary, Labour Department, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh
2. Assistant Labour Commissioner-cum-Registration Officer under the Building and other Construction Act, 1996, Raipur, District Raipur, Chhattisgarh
3. Steel Authority of India Limited (A Government of India Enterprise), having its Registered office at Ispat Bhawan, Lodhi Road, New Delhi-110003 and Factory at Bhilai Steel Plant, Bhilai-490001 (C.G.)

----**Respondents**

For Petitioners	:	Mr. C.R. Sridharan, Sr. Advocate along with Mr. Siddharth Rathod, Advocate
For State/Resp. No.1&2	:	Mr. Gary Mukhopadhyay, G.A.
For Respondent No.3	:	Abhishek Pandey, Advocate

**Hon'ble Shri Justice P. Sam Koshy****CAV Judgment**

**Delivered on 16/02/2018**

1. These are two writ petitions preferred by the petitioner establishment challenging the impugned notice dated 01.05.2010 and the letter dated 14.12.2011 asking the petitioner's establishment for getting themselves registered under the provisions of "Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996" (for short "BOCW Act") and for payment of 1% Cess charges under the "Building and Other Construction Workers Welfare Cess Act, 1996 (for short "Cess Act").
2. The moot question for consideration in the two writ petitions is, "whether the provisions of the BOCW Act would be applicable upon a factory, where the manufacturing process has started and the provisions of Factories Act is already in force".
3. The brief fact of the case is that the petitioner's establishment are experts in civil structural, mechanical and electrical contract works. The petitioners due to their vast experience were awarded contracts at the respondent No.3-Factory, one at the BALCO Aluminum Company, at Korba and the other at the Bhilai Steel Plant of the Steel Authority of India, at Bhilai.
4. At BALCO Korba, they were awarded the contract for the installation of Aluminum Smelter Plant and for construction of a Blast Furness Complex at the Bhilai Steel Plant Factory, at Bhilai. As such, the petitioners are the contractors awarded with the contract as stated above, which are being executed through the workers engaged by the petitioners.

5. The respondent No.3-Factory in both the petitions have issued the impugned notice (Annex.P/1) directing the petitioners to get themselves registered under the BOCW Act and also to contribute towards the Cess Act to the tune of 1% of the contract value. The contention of the petitioners is that, since the respondent No.3-Factory in either of the writ petitions is a factory, as defined under the provisions of the Factories Act, 1948 and where the manufacturing process has already started decades ago therefore the provisions of the BOCW Act and the Cess Act enacted under it, shall not be applicable upon it, in view of the exclusion of the provisions of the said Act to any Building or other Construction work to which the provisions of the Factories Act, 1948 apply.

6. The contention of the learned senior counsel appearing for the petitioner was two folds, firstly the nature of the work or the contract awarded to the petitioners is not one which is specified in the definition of Building and Other Construction Work defined under Section 2(d) of the BOCW Act. The second ground of challenge is on the ground that since the respondent No.3-Factory in the two writ petitions admittedly are factories defined under the provisions of the Factories Act 1948, the provisions of the BOCW Act gets excluded of its coverage as in both the establishments it is the provisions of the Factories Act, 1948, which applies.

7. The contention of the counsel for the petitioner so far as the first limb of argument is concerned, it was submitted that under Section 2(d) of the Act of 1996, the Building and other Construction work has been exhaustively defined and they have categorically specified the different areas, fields and establishments, in which the construction

work carried out would be brought under the coverage of the BOCW Act. It was further contended that the said definition under Section 2(d) also stipulates that apart from the specified areas, fields and establishments. The provisions could be made applicable on such other works as may be specified in this behalf by the appropriate government by notification. According to the learned senior counsel this by itself means that the provisions of the Act at this moment of time shall be applicable only in those areas, fields and establishments as defined in under Section 2(d) and not on any other establishment, unless there is a specific notification by the appropriate government in this behalf making the provisions of the Act applicable on such other works.

8. Learned senior counsel further emphasized the fact that so far as the work at the BALCO Plant, at Korba i.e. in WPC No. 2636/2010 is concerned, the nature of work was pertaining to the installation of an Aluminum Smelter Plant and likewise as far as the work at the Bhilai Steel Plant i.e. in WPC No. 2199/2012 is concerned, the nature of work was construction of a Blast Furness. Both these nature of works do not find place in the definition of Building and Other Construction Work and as such it clearly reflects the deliberate exclusion or a conscious omission by the parliament. That if at all if the appropriate government intends to cover these areas also, there has to be a specific notification issued in this behalf covering the said nature of work.
9. As regards the second ground is concerned, the counsel for the petitioner submits that the definition of Building and Other Construction Work under Section 2(d) specifically excludes Building

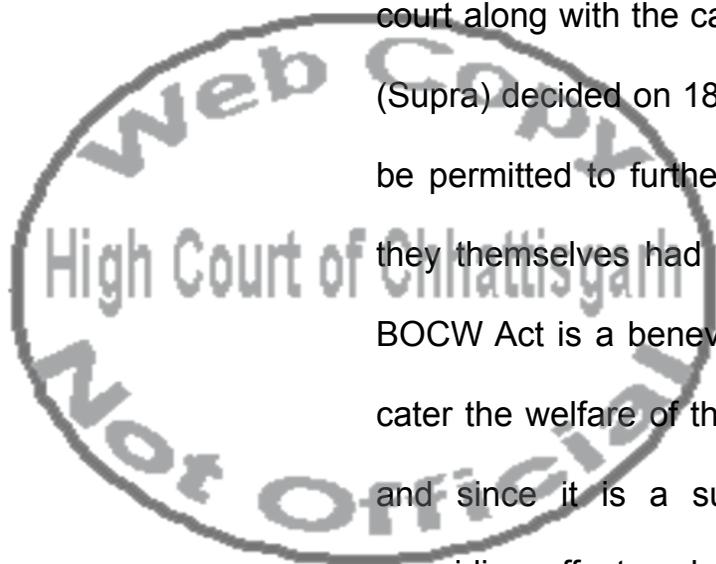
and Other Construction Work to which the provisions of the Factories Act apply. According to the petitioner, admittedly both BALCO, Korba so also the Bhilai Steel Plant, Bhilai are factories under the Factories Act, 1948 and the nature of contract awarded to the petitioners also is within the same premises. Further, at both the places manufacturing process has already started. Thus, since at both the places the provisions of the Factories Act is applicable, there shall be an automatic exclusion of the applicability of BOCW Act in these two establishments. Therefore the two notices issued to the petitioners (Annex.P/1) seeking registration of the petitioner's establishment under the BOCW Act is bad in law, illegal and totally uncalled for and prayed for an appropriate writ be issued holding that the provisions of the Act will not be applicable to the petitioners and they do not need a registration so far as their work which they are executing at the respondent No.3-Factory.

10. Per contra, the counsel appearing for the respondents opposing the petitions submits that there is nothing which requires an adjudication in the present case as the Hon'ble Supreme Court in the case of **"LANCO ANPARA POWER LIMITED VS. STATE OF UTTAR PRADESH AND OTHERS"** (2016) 10 SCC 329 have already laid to rest all the contentions put forth by the petitioners and that the issues raised no longer remains *res integra*.

11. It was further contended that in the light of the judgment of the Supreme Court in the case of Lanco Anpara (Supra), this court also in the case of **Arasmeta Captive Power Company Ltd. Vs. State of Chhattisgarh & Ors.** (WPT No.7503 of 2010) and other connected bunch of writ petitions decided on 18.11.2016, has

categorically held that the provisions of BOCW Act will be applicable upon establishments of similar nature and that the only relief which the petitioners have got was where this court has held that cess under the BOCW Act would be payable only on the cost incurred in the construction activity or the amount incurred on the construction aspect in the contracts and it has been held that it would not be payable on those items which did not fall under the construction activities.

12. According to respondents, the petitioner's establishment i.e. L&T also was a petitioner in the bunch of writ petitions decided by this court along with the case of Arasmeta Captive Power Company Ltd. (Supra) decided on 18.11.2016, therefore the petitioners now cannot be permitted to further challenge the applicability of BOCW Act as they themselves had accepted its applicability in those cases. The BOCW Act is a benevolent legislation enacted by the parliament to cater the welfare of the workers involved in the construction activity and since it is a subsequent Act, therefore it would have an overriding effect and would be applicable in respect of any sort of works engaged in the construction activity even if it is a factory under the Factories Act or not. It was further contended that the petitioners were not the direct employees or directly engaged by the respondent No.3 establishment in either of the petition. There was no employer-employee relationship with the workers engaged by the petitioner with the respondent No.3. Rather, it is the petitioner with whom the workers have an employer and employee relationship. Therefore, the petitioners in the capacity of employer engaged in the construction activity would have to get themselves registered under



the BOCW Act and would also be required to comply with the provisions including that of payment of Cess.

13. The Respondents further contended that after the judgment of Supreme Court in case of Lanco Anpara (Supra) the requirement of manufacturing process to start was not a relevant factor so far as BOCW Act is concerned and all that was required was that of the undertaking of construction activity in an establishment. According to him, the ratio laid down in the case of Lanco Anpara (Supra) and which has also been followed by this court in case of Arasmeta Captive Power Company Ltd. (Supra) would be binding upon this court also. The respondent No.3's company cannot be forced to take care of the welfare of the employees engaged by the petitioner's establishment. The nature of works allotted to the petitioners in the two establishments were not in relation to the manufacturing unit, but was altogether a new construction which was being made which in one case was the erection and installation of Smelter Plant and in the other case was for the construction of Blast Furnace. It was also submitted by the respondents that the nature of activities which has been undertaken by the petitioners at the two places would easily fall within the ambit of the activity "the construction" "alteration" "maintenance or demolition" of or in relation to buildings.
14. It was the contention of the State that since all the establishments were in the process of construction of the factory, which was being undertaken and since the manufacturing process had not commenced, the provisions of the BOCW Act would become applicable for the construction workers engaged by the establishments and the establishments were suppose to pay the



cess for the welfare of such nature of workers engaged in the construction activity.

15. Having heard the counsel for either side and on perusal of records, what is first to be determined by this court is whether the issue involved in the present case are such which would stand squarely covered by the decision of Supreme Court in Lanco Anapara's case which has also since been followed by this High Court in case of Arasmeta Captive Power Company Ltd. (Supra) and other bunch of petitions decided by common order dated 18.11.2016.
16. For proper appreciation of the aforesaid question, it would be relevant at this juncture to consider the factual matrix of Lanco Anpara's case.
17. If we read the first four paragraphs of the judgment of the Lanco Anpara (supra), it would clearly reveal that the cases which led to the filing of those writ petitions were the show cause notices issued by the authority concerned under the provisions of the BOCW Act and the challenge in all the writ petitions before the High Court was on the ground that the provisions of the BOCW Act or the Welfare Cess Act would not be applicable upon these establishments for the reason that they were registered under the Factories Act and therefore they were excluded from the applicability of the said Act of 1996 under Section 2(1)(d).
18. Another fact which also is reflected from the judgment is that in all the establishments which had filed the writ petitions before the different High Courts at the relevant point, no manufacturing operation had commenced. All the establishments were at the construction stage of a factory.

19. The entire judgment of Lanco Anpara (supra) revolved around the issue as to whether the provisions of the BOCW Act could be made applicable on those establishments, which intended to construct a factory and for which they had obtained a license under the Factories Act and where the manufacturing process had not commenced.
20. At this juncture it would be relevant to quote paragraphs No. 2 to 4 to understand the basic issue which came up for consideration before the Hon'ble Supreme Court in the aforesaid judgment and which have been adjudicated upon by the Hon'ble Supreme Court :

***“2. These appeals are filed by the appellants challenging the orders passed by different High Courts i.e. High Court of Allahabad, High Court of Orissa, High Court of Madhya Pradesh and High Court of Karnataka. These High Courts, however, are unanimous in their approach and have reached the same conclusion. In all these cases, appellants were issued show cause notices by the concerned authorities under the provisions of the Building And Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter referred to as 'BOCW Act') and Buildings And Other Construction Workers Welfare Cess Act, 1996 (hereinafter referred to as 'Welfare Cess Act'). They had challenged those notices by filing writ petitions in the High Courts on the ground that the provisions of BOCW Act or Welfare Cess Act were not applicable to them because of the reason that they were registered under the Factories Act, 1948.***

***3. It may be mentioned that at the relevant time no manufacturing operation had commenced by the appellants. In fact, all these appellants were in the process of construction of civil works/factory buildings etc. wherein they had planned to set up their factories. As the process of construction of civil works was undertaken by the appellants wherein construction workers were engaged, the respondent authorities took the view that the provisions of the aforesaid Acts which were meant for construction workers became applicable and the appellants were supposed to pay the cess for the welfare of the said workers engaged in the construction work.***

**4. The appellants had submitted that Section 2(1)(d) of the BOCW Act which defines 'building or other construction work' specifically states that it does not include any building or construction work to which the provision of the [Factories Act, 1948](#) or the [Mines Act, 1952](#) apply. Since the appellants stood registered under the [Factories Act](#), they were not covered by the definition of "building or other construction work" as contained in [Section 2\(1\)\(d\)](#) of the Act and, therefore, said Act was not applicable to them by virtue of [Section 1\(4\)](#) thereof. All the High Courts have negated the aforesaid plea of the appellants on the ground that the appellants would not be covered by the definition of "factory" defined under [Section 2\(m\)](#) of the [Factories Act](#) in the absence of any operations/ manufacturing process and, therefore, mere obtaining a licence under [Section 6](#) of the [Factories Act](#) would not suffice and rescue them from their liability to pay cess under the [Welfare Cess Act](#). This is, in nutshell, the subject matter of all these appeals. However, in order to understand the full implication of the issue involved and to answer the said issue, it would be apt to take note of certain facts from one of these appeals. This factual canvass is suitably available in the events that have occurred leading to the filing of Civil Appeal No. 6223/2016."**

21. In paragraph No.25, the Hon'ble Supreme Court culled out the arguments put forth on either side and framed the issue involved in the case as under:

**"25. We have bestowed our due and serious consideration to the submissions made of both sides, which these submissions deserve. The central issue is the meaning that is to be assigned to the language of [Section 2\(1\)\(d\)](#) of the Act, particularly that part which is exclusionary in nature, i.e. which excludes such building and construction work to which the provisions of [Factories Act](#) apply."**

22. Thereafter considering the various judgments rendered in the past under the provisions of the BOCW Act, the [Factories Act](#), etc. the Hon'ble Supreme Court in paragraphs No. 35 to 39 held as under:

**"35. Having regard to the above, if the contention of the appellants is accepted, the construction workers engaged in the construction of building undertaken by the appellants which is to be used ultimately as factory, would stand excluded from the provisions of BOCW Act and [Welfare Cess Act](#) as well. Could this be the intention while providing the definition of 'building and other construction work' in [Section 2\(1\)\(d\)](#) of**

**BOCW Act? Clear answer to this has to be in the negative.**

**36. We may mention at this stage that High Court is right in observing that merely because the appellants have obtained a licence under [Section 6](#) of the Factories Act for registration to work a factory, it would not follow therefrom that they answer the description of the “factory” within the meaning of the [Factories Act](#). We have reproduced the definition of ‘factory’ and a bare reading thereof makes it abundantly clear that before this stage, when construction of the project is completed and the manufacturing process starts, ‘factory’ within the meaning of [Section 2\(m\)](#) of the Factories Act does not come into existence so as to be covered by the said Act.**

**37. We now advert to the core issue touching upon the construction of Section 2(1)(d) of the BOCW Act. The argument of the appellants is that language thereof is unambiguous and literal construction is to be accorded to find the legislative intent. To our mind, this submission is of no avail. Section 2(1)(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 ‘any building or other construction work to which the provisions of the [Factories Act, 1948 \(63 of 1948\)](#), or the [Mines Act, 1952 \(35 of 1952\)](#), applies’. Thus, first part of the definition contains the nature of activity; second part contains the subject matter in relation to which the activity is carried out and third part excludes those building or other construction work to which the provisions of [Factories Act](#) or [Mines Act](#) apply.**

**38. It is not in dispute that construction of the projects of the appellants is covered by the definition of “building or other construction work” as it satisfies first two elements of the definition pointed out above. In order to see whether exclusion clause applies, we need to interpret the words ‘but does not include any building or other construction work to which the provisions of the [Factories Act](#) ..... apply’ (emphasis supplied). The question is as to whether the provisions of the [Factories Act](#) apply to the construction of building/project of the appellants. We are of the firm opinion that they do not apply. The provisions of**

*the [Factories Act](#) would “apply” only when the manufacturing process starts for which the building/project is being constructed and not to the activity of construction of the project. That is how the exclusion clause is to be interpreted and that would be the plain meaning of the said clause. This meaning to the exclusion clause ascribed by us is in tune with the approach adopted by this Court in [Organo Chemical Industries v. Union of India](#).*

*39. The aforesaid meaning attributed to the exclusion clause of the definition is also in consonance with the objective and purpose which is sought to be achieved by the enactment of BOCW Act and [Welfare Cess Act](#). As pointed out above, if the construction of this provision as suggested by the appellants is accepted, the construction workers who are engaged in the construction of buildings/projects will neither get the benefit of the [Factories Act](#) nor of BOCW Act/[Welfare Cess Act](#). That could not have been the intention of the Legislature. BOCW Act and [Welfare Cess Act](#) are pieces of social security legislation to provide for certain benefits to the construction workers.”*

23. And while concluding the judgment, the Hon'ble Supreme Court in paragraph No.46 held as under:

*“46. We are left to deal with the argument of the appellants that while granting permission under the [Factories Act](#), various conditions are imposed which the appellants are required to fulfill and these conditions are almost the same which are contained in BOCW Act. We are not convinced with this submission either. It is already held that provisions of [Factories Act](#) are not applicable to these construction workers.”*

24. From the aforesaid authoritative pronouncement of the Hon'ble Supreme Court what is clearly reflected is that the Hon'ble Supreme Court in the aforesaid judgment had been dealing with only those establishments, all of which were at the construction stage of a factory, though they had obtained a license for the construction of the factory under the Factories Act, but the manufacturing process had not commenced in any of these industries.

25. On the contrary in the respondent No.3-establishment in the present two writ petitions, the contract has been awarded to the petitioners by a factory registered under the Factories Act and where the manufacturing process has commenced ages ago and where there is no dispute whatsoever of the Factories Act being in force. In paragraph No.38 of the judgment of Lanco Anpara (supra), the Hon'ble Supreme Court has dealing with the issue and while giving an answer on the aforesaid question has held as under:

***“38. xxxxxx. The question is as to whether the provisions of the Factories Act apply to the construction of building/project of the appellants. We are of the firm opinion that they do not apply. The provisions of the Factories Act would “apply” only when the manufacturing process starts for which the building/project is being constructed and not to the activity of construction of the project. That is how the exclusion clause is to be interpreted and that would be the plain meaning of the said clause.”***

26. The plain reading of the aforesaid conclusion of the Hon'ble Supreme Court clearly envisages the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment i.e. prior to the commencement of a manufacturing process for the workers engaged for the construction of the factory, the provisions of the Factories Act would not be applicable upon them and they would stand covered and protected under the provisions of the BOCW Act. This also means and implies that where a manufacturing process has already commenced the provisions of the Factories Act is what would be applicable and after the commencement of the manufacturing process, the provisions of the BOCW Act gets excluded as is envisaged under Section 2(1)(d) of the BOCW Act.

27. At this juncture, it would also be relevant to refer to paragraph No.24 of the judgment of Lanco Anpara (supra), which in fact was the stand

taken by the respondent in those cases and for ready reference, the relevant portion of paragraph No.24 is reproduced herein under:

***“24. Their fervent plea was that the view taken by the High Court while interpreting the provisions of Section 2(1)(d) of BOCW Act was perfectly justified and any other interpretation as suggested by the appellants would defeat the very purpose of these Acts. It was argued that mere registration under the [Factories Act](#) would be of no consequence inasmuch as definition of 'factory' contained in [Section 2\(m\)](#) of the Act unambiguously suggest that the provisions of the said Act would apply only when manufacturing process is actually carried on. It was further submitted that the definition of 'worker' under the [Factories Act](#) does not include construction workers and, therefore, construction workers would not be entitled to various benefits which are contained in different provisions of the [Factories Act](#). It is for this reason at the stage of construction of the building, which is to be ultimately used as a factory, the provisions of BOCW Act would be applied.”***

28. If we take into consideration the aforesaid stand taken by the respondent before the Hon'ble Supreme Court, it has also to be construed that once when the manufacturing process starts in an establishment, thereafter the provisions of the BOCW Act cannot be made applicable and the provisions of the BOCW Act would stand excluded.

29. As regards the contention of the respondents that the petitioner's establishment was also one of the petitioners in the bunch of writ petitions which have been decided by this Court along with the case of Arasmeta Captive Power Company Ltd. (Supra) is concerned that again was a petition which was filed by the management of 'Larsen and Toubro' in respect of the cement factory which was being installed by the petitioners at Nagarnar, Jagdalpur. The said plant also was one of the plants where the manufacturing process had not started. Therefore the petitioners would not be precluded from

challenging applicability of the Act in respect of the contract, which was being executed by the petitioners at the two establishments i.e. the respondent No.3-factories where undisputedly the manufacturing process had started long-long ago.

30. Another factor which has to be considered is the fact that the contract which is being executed by the petitioners both at BALCO, Korba so also at Bhilai Steel Plant, Bhilai are not the place where a new factory is being installed but is the premise of an old factory where there are certain expansion work for which the contract has been awarded to the petitioners and as such it is not a new factory under construction stage, but is an old factory going in for a expansion. These two facts would also give strength to the case of the petitioner in reaching to the conclusion that the two decisions referred to in the preceding paragraphs one by the Hon'ble Supreme Court in the case of Lanco Anpara (supra) and second being the judgment of this Court in the case of Arasmeta Captive Power Company Ltd. (Supra), both are distinguishable on its facts itself.

31. In the light of aforesaid discussions and the findings of the Hon'ble Supreme Court in the case of Lanco Anpara (supra) as has been reproduced in the preceding paragraphs, this Court has no hesitation in reaching to the conclusion that the facts of the present case and the facts of the cases before the Hon'ble Supreme Court were quite different and therefore, the judgment of the Hon'ble Supreme Court in the case of Lanco Anpara (supra), with all great respect and in all humility at my command, would be distinguishable on its facts and may not squarely be applicable in the factual matrix of the present case



32. Coming to the judgment of this High Court in the case of Arasmeta Captive Power Company Ltd. (Supra) and other connected matters decided on 18.11.2016, the said judgment also has been decided purely on the basis of the judgment of the Hon'ble Supreme Court in the case of Lanco Anpara (supra). Another aspect which cannot be taken lightly is the fact that while deciding the bunch of the writ petitions on 18.11.2016 by this Court in the case of Arasmeta Captive Power Company Ltd. (Supra), the issue whether the manufacturing process had started in the different petitioner's establishment has not been discussed in any of the cases. Whereas in the instant case this is the precise argument/contention put forth by the petitioners.

33. In the case of ***"T.N. State Electricity Board vs. Central Electricity Regulatory Commission and others"*** and other bunch of Civil Appeals decided by the Hon'ble Supreme Court reported in ***(2007) 7 SCC 636***, the Hon'ble Supreme Court in paragraph No.20 referring to its earlier decision in the case of ***"Ombalika Das vs. Hulisa Shaw"*** reported in ***(2002) 4 SCC 539*** dealing on the issue of interpretation of an statute held as under:

***"20. The Rule of literal interpretation has been explained by this Court time and again. In Ombalika Das & Anr. V/s. Hulisa Shaw, 2002 4 SCC 539, this Court unequivocally declared as under:***

***"Resort can be had to the legislative intent for the purpose of interpreting a provision of law, when the language employed by the legislature is doubtful or susceptible of meanings more than one. However, when the language is plain and explicit and does not admit of any doubtful interpretation, the Supreme Court cannot, by reference to an assumed legislative intent, expand the meaning of an expression employed by the legislature and therein include such category***

***of persons as the legislature has not chosen to do."***

34. Similar view has also been taken by the Hon'ble Supreme Court in its earlier decision in the case of "***Gurudevdatla VKSSS Maryadit and others vs. State of Maharashtra and others***" reported in ***(2001) 4 SCC 534***, wherein in paragraph No. 26 it has been held as under:

***"26. Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law giver. The Courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute."***

35. A similar view was taken by the Hon'ble Supreme Court in the case of "***Grasim Industries Ltd. vs. Collector of Customs, Bombay***" reported in ***(2002) 4 SCC 297***, wherein again dealing on the issue of interpretation of statute in paragraph No.10 of the said judgment it has been held as under:

***"10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle***

***of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used.”***

36. So far as the issue whether the judgment of the Hon'ble Supreme Court in the case of Lanco Anpara (supara) so also the judgment of this Court in the case of Arasmeta Captive Power Company Ltd. (Supra) having a binding effect to this Court is concerned, this Court with all great respect and in all humility is of the view that when a particular point or an issue of law has not been determined by the Hon'ble Supreme Court then the judgment claimed to have a binding effect having been decided on entirely different consideration, the said judgment would not form a ratio ***decidendi*** and as such may not have a binding effect.

37. On this issue the Hon'ble Supreme Court in the case of ***“Arnit Das vs. State of Bihar”*** reported in (2000) 5 SCC 488, on the issue of ratio ***decidendi*** in paragraph No.20 has held as under:

***“20. A decision not expressed, not accompanied by reasons and not proceeding on conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not ratio decidendi. This is the rule of sub-silentio, in the technical sense when a particular point of law was not consciously determined. (See State of U.P. Vs. Synthetics & Chemicals Ltd. 1991 (4) SCC 139, para 41).”***

38. Given the aforesaid decision of the Hon'ble Supreme Court, when we read the provisions of the BOCW Act particularly section 2(1)(d), which defines “Building and Other Construction Work” and which also has a specific exclusion clause and in the exclusion clause, it has been emphatically held that the provisions of the BOCW Act

**does not include any 'Building and Other Construction Work' to which the provisions of the Factories Act apply.**

39. This deliberate and emphatic exclusion clause when read with the judgment of the Hon'ble Supreme Court in the case of Lanco Anpara (supra), it clearly suggests that the moment the manufacturing process gets commenced in an industry the provisions of the Factories Act becomes applicable and therefore, the provisions of BOCW Act would cease to operate in those factories. That subsequent to the manufacturing process getting started, it is the provisions of the Factories Act, which would be applicable to these factories.

40. In view of the aforesaid discussions and the view of the Hon'ble Supreme Court in all the cases referred to herein above, this Court is of the opinion that since in the two respondent No.3-establishments, the provisions of Factories Act were already in force, the provisions of the BOCW Act shall not be applicable on them.

41. Hence the petitions deserve to be and is accordingly allowed and the two impugned notices stands set-aside/quashed.

Sd/-  
**(P. Sam Koshy)**  
Judge

Ved