

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.162 of 2016

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M/s R. K. Construction, a proprietorship firm having its head office at M.G. Road, Bye-pass Chowk, Aurangabad through its proprietor Sri Krishna Kumar Singh, Son of Late Ram Tirath Singh, resident of M.G. Road, Bye-pass Chowk, Aurangabad.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Road Construction Department, "Vishweshwaraiya Bhawa", Bailey Road, Patna.
 2. The Engineer-in-Chief, Road Construction Department, "Vishweshwaraiya Bhawa", Bailey Road, Patna.
 3. The Executive Engineer, Road Construction Department, Road Division, Dehri-on-Sone, Rohtas.
- Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Raj Kishore Prasad

For the Respondent/s : Mr. GPX- KAMESHWAR PRASAD GUPTA

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 01-08-2017

Heard Mr.Y.V.Giri, learned senior for the petitioner and Mr.Binod Kumar Sinha, learned counsel for the opposite parties.

The present revision application has been filed under Section 13 of the Bihar Public Works Contract Disputes Arbitration Tribunal Act, 2008 against the award dated 14.07.2016 passed in Reference Case No.70/2013 by the Tribunal.

The facts are not in dispute that the works contract was entered into between the petitioner and the opposite party-Executive Engineer on 06.03.2012 with regard to " IRQP Work of Nokha Noonsari Bye-pass Road under



Road Division, Dehri-on-Sone for the year 2011-12” according to the terms of the contract, the work was to be completed within 3 months from the date of agreement. However, the work could not be completed within the agreed time and the opposite parties took actions of imposing penalty and also passed order debarring the petitioner from participating in any future tender of the Road Construction Department , Govt. of Bihar. The petitioner filed Reference Case No. 91/2012 before the Tribunal. From the perusal of the impugned order dated 26.11.2012 (Annexure-8), it transpires that the opposite parties released the petitioner from the order of debar and the petitioner also submitted work programme for completion of the remaining work undertaking to complete the remaining work by 10.01.2013 and accordingly in view of the settlement between the parties the reference case no.91/2012 was disposed of by the Tribunal.

The assigned work to the petitioner, however, could not be completed by 10.01.2013 in accordance with the above revised work programme submitted by the petitioner and the contract was rescinded by the opposite parties by office order dated 19.01.2013 (Annexure-9) and the security deposit was forfeited. It appears that the petitioner thereafter filed his representation for grant of opportunity to complete



the work within two months and the Executive Engineer-opposite party by his letter dated 16.04.2013, after considering the facts and circumstances, recommended for grant of opportunity to the petitioner for completing the work, in the expressed backdrop that the agreed amount of the contract with the petitioner was 15% below the estimated cost. As this recommendation by the Executive Engineer-opposite party was not considered by the opposite party no.2 Engineer-in-Chief, the petitioner filed CWJC No. 10302/2013 before this Court. By order dated 15.05.2013 (Annexure-13) the writ application was disposed of directing the opposite party no.2-Engineer-in-chief to consider and dispose of the recommendation dated 16.04.2013 made by the Executive Engineer within a period of two weeks from the date of receipt /production of a copy of this order. Thereafter the opposite party no.2-Engineer-in-Chief passed the order on 19.06.2013 and had declined to accept the recommendation of the Executive Engineer for grant of opportunity of two months to the petitioner to complete the remaining work. The petitioner, thereafter, filed reference case no.70/2013 before the Tribunal assailing the order dated 19.01.2013 rescinding the contract and also the order dated 19.06.2013 by the Engineer-in-Chief declining the recommendation by the



Executive Engineer and other allied and consequential reliefs. By the impugned award, however, the learned Tribunal has dismissed the case holding that the petitioner is not entitled to the reliefs as prayed.

After considering the submissions on behalf of the parties and perusal of the materials on record including the impugned award, it is quite limpid that the petitioner had failed to complete the assigned work within the period as agreed in the contract. The reasons for non-completion of the work within the schedule time was assigned by the petitioner mainly pertaining to the closure of Karbandia query from where the petitioner was to procure stone materials for the work. This Court is not inclined at present to enter into the merits of the explanations submitted by the petitioner for non-completion of the work within the schedule time because after everything said and done, the dispute had finally boiled down to the recommendation made by the opposite party-Executive Engineer by his letter dated 16.04.2013(Annexure-12) recommending for grant of two months' time to the petitioner for completing the work. This Court also by order dated 15.05.2013 passed in CWJC No. 10302/2013 (Annexure-13) had directed the opposite party-Engineer-in-Chief to consider and dispose of the said



recommendation of the Executive Engineer.

It would be significant, at this juncture, to take into notice the relevant file noting (Annexure-15) which the petitioner has said to have obtained under the Right to Information Act from which it transpires that the opposite party-Engineer-in-Chief had agreed to the recommendation as made by the Executive Engineer and sent the notings for approval before the Secretary, Road Construction Department, Govt. of Bihar who, however, had only raised the query to the proposed recommendation. Thereafter, it appears that the opposite party-Engineer-in-Chief has passed the order on 19.06.2013 (Annexure-14) rejecting the prayer of the petitioner as well as the recommendation made by the Executive Engineer. However, it appears that while passing this order, the opposite party-Engineer-in-Chief has only considered the fact that the petitioner did not complete the work even within nine months and thus has concluded that there was least chance of completion of the work within two months as prayed and recommended by the Executive Engineer. The other factors/reasons as mentioned in the letter dated 16.04.2013 (Annexure-12) as the basis for recommendation have apparently been not considered by the opposite party-Engineer-in-Chief. From the impugned award



also, it is apparent that the learned Tribunal has been swayed by the hypothesis that the petitioner could have completed the work earlier within the stipulated time but he knowingly delayed the work, even though there was no such pleading by the opposite parties or material before the Tribunal to support the fact that the petitioner deliberately and knowingly delayed the completion of the work within the stipulated time. In the opinion of this Court, the facts and materials were required to be considered objectively by the learned Tribunal before passing the impugned award in view of the principle laid down by the apex court in ***M/s J.G. Engineers Pvt.Ltd. Vs. Union of India, AIR 2011 SC 2477.***

For the aforesaid reasons and discussion, this revision application is allowed and the matter is remitted back to the Tribunal for decision afresh in accordance with law after granting opportunity to the parties for hearing. It is, however, clarified that this Court has not gone into the merits of the case of either of the parties and any observation made in this order shall not prejudice the case of either of the parties.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.08.2017
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