

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No. 49 of 2014

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Pradip Kumar Rai Son Of Shri Raj Kishore Rai Resident Of Village : - Repura,
P.O.:- Hathua, P.S.:- Mirganj, District:- Gopalganj, State:- Bihar.

.... Claimant/ Petitioner

Versus

1. The State Of Bihar through the Secretary, Road Construction Department, Vishweshwaraiya Bhawan", Bailey Road, Patna-15
2. The Engineer-In-Chief, Road Construction Department, Vishweshwaraiya Bhawan", Bailey Road, Patna-15
3. The Chief Engineer (South), Road Construction Department, Vishweshwaraiya Bhawan", Bailey Road, Patna-15.
4. The Superintending Engineer, Road Construction Department, Bhojpur Road Circle, Arrah.
5. The Executive Engineer, Road Construction Department, Road Division, Buxar (Bhojpur).

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Rajendra Narayan, Sr. Adv.
Mr. Manish Sahay, Adv.
Mr. Anil Kumar Sinha, Adv.
For the State : Mr. Binod Kumar, AC to GP-10.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT
Date: 17-03-2017

1. Heard learned counsel for the petitioner as well as learned AC to GP-10.

2. This petition has been filed for setting aside the award dated 17.12.2013 passed by Bihar Public Works Contracts Disputes Arbitration Tribunal in Reference Case No. 49 of 2012 by which and whereunder the learned Tribunal rejected the claim of the petitioner holding that petitioner is not entitled to the revised estimate and final payment based on the bill of quantity is not liable to be modified or



enhanced as per revised rate in technical sanction.

3. Petitioner happens to be a registered contractor and the Road Construction Department got published an advertisement inviting tender for construction of Dhansoi-Dinara Road and for which the estimated cost in the aforesaid advertisement was shown as Rs. 4,85,87,655/- The petitioner gave his proposal for the aforesaid work and ultimately, the petitioner got the aforesaid work from the concerned department. However, it is said that petitioner gave a written petition to Executive Engineer, Road Construction Department, Buxar mentioning therein that he was ready to do the work at the rate 4% above of the bill of quantity. The concerned department and petitioner entered into an agreement on 20.04.2009 which is evident from perusal of Annexure-1 to the petition. The aforesaid agreement contains a condition that revised estimate shall be part of the aforesaid agreement. Furthermore, it is an admitted position that prior to allotment of work to the petitioner, another Company was doing the aforesaid work but the aforesaid Company was denuded from the aforesaid work as the work of the said Company was not found satisfactory. It is an admitted position that due to delay in the aforesaid project, the estimate of the aforesaid work was increased and a revised estimate of Rs. 5,43,43,824/- was prepared. However, it is an admitted position that prior to execution



of the agreement, the work order to the petitioner had already been given on 28.02.2009 and he started doing his work. No doubt, due to some delay in the aforesaid work, fine was imposed upon the petitioner but anyhow, he completed his work and requested for his payment but the concerned department cleared the bill at the original rate i.e. Rs. 5,05,31,161/- as mentioned in the agreement. The petitioner being aggrieved by the aforesaid act of the concerned department made representation before the competent authority but no order was passed on the representation of the petitioner and thereafter, petitioner knocked the door of the Tribunal. The Tribunal having heard the parties passed the impugned award holding that sanction of estimate shall not be construed as sanction of rate and the petitioner raised his claim for revised rate after 33 months of starting of work.

4. Learned counsel appearing for the petitioner submits that agreement dated 20.04.2009 (Annexure-1) goes to show that concerned department agreed to form the revised estimate as part of the agreement and, therefore, it cannot be said that petitioner agreed to do the work at the original estimated rate rather at the time of execution of agreement, the revised estimate was also taken into consideration and that was the reason petitioner became ready to do the work on the above stated original estimated rate as well as revised estimated rate.



5. Learned counsel for the petitioner took me through the impugned award and submitted that the Tribunal has mentioned in the impugned award that sanctioned estimate and technical note were made part of the agreement but even then the Tribunal denied the claim of the petitioner.

6. On the other hand, learned counsel appearing for the State refuted the above stated submissions arguing that petitioner himself agreed to work at the rate of 4 % above of the rate of original bill of quantity and, therefore, he cannot say that he is entitled for revised estimate. It is further submitted by him that the Tribunal has rightly held that the petitioner is entitled only for original bill of quantity and he cannot claim for revised estimate.

7. Having heard the contentions of both the parties, I have gone through the record. Annexure-1 to the petition is original agreement dated 20.04.2009. The aforesaid agreement contains at para-4 of the said agreement that following document shall be deemed to form and be ready and construed as part of the agreement:-

- (i) Letter of Acceptance.
- (ii) Notice to proceed with the works.
- (iii) Contractor's bid
- (iv) Condition of contract: General & Special.
- (v) Contract Data
- (vi) Revised Estimate (T/S)
- (vii) Bill of quantities.



8. The aforesaid para-4 of above stated agreement goes to show that at the time of execution of aforesaid agreement, the bill of quantities as well as revised estimate both were taken into consideration by the department concerned as well as petitioner and, therefore, it cannot be said that revised estimate was only a technical sanction and petitioner was not entitled to claim on the basis of revised estimate. Moreover, several reports as well as technical sanction go to show that due to lapse of the period, the rate of several materials were increased and apart from this, some changes were made in original plan and that compelled the concerned authorities to prepare a revised estimate which was, later on, not only got technical sanction but also administrative sanction.

9. No doubt, the Tribunal relied upon a decision reported in AIR 1962 SC 1810 in which it was held by Hon'ble Apex Court of this country that to construe a contract, it would be legitimate to take into account the surrounding circumstances but in my view, the aforesaid decision helps the petitioner because the surrounding circumstances of the present case clearly say that due to increase of rate of materials as well as change of original plan, revised estimate was prepared and at the time of execution of agreement both parties kept in mind the above stated revised estimate and that was the reason the aforesaid revised estimate was made part of the agreement.



Therefore, in my view, petitioner is entitled to get his payment at the rate of revised estimate and Tribunal committed an error in refusing the claim of the petitioner.

10. On the basis of aforesaid discussions as well as facts and circumstances of the case, the award dated 17.12.2013 passed in Reference Case No. 49 of 2012 is, hereby, set aside and the concerned department is directed to make payment to the petitioner at the rate of revised estimate with simple interest of 6 % from the date of first payment made to the petitioner.

11. In the aforesaid manner, this revision petition stands disposed of.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	21.03.2017
Transmission Date	N.A.

