

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.77 of 2014

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1. The Managing Director, Bihar Rajaya Pool Nirman Nigam Ltd., Patna Mangels Road, Patna

2. The Senior Project Engineer, Bihar Rajaya Pool Nirman Nigam Ltd. Road Division, Daroga Rai Path, Patna

.... Petitioners

Versus

1. M/s Madadh Manisha Construction Company Pvt. Ltd. M.D. Sri Rabindra Prasad Singh s/o Late Bhola Singh, I.L.I.G. 299 Hanuman Nagar, P.S. Patrakar Nagar, Distt. Patna

..... opposite party no.1

2. The State of Bihar through the secretary, Road Construction Department Vishweshwarraiya Bhawan, Bailey Road, Patna

3. The Chief Engineer, (North Bihar Wing), Road Construction Department, Vishweshwarraiya Bhawan Bailey Road, Patna

.... Opposite parties 2 and 3

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Ranjan Prasad, Adv.
	:	Mr. Avimanyu Vatsa, Adv.
	:	Mr. Sudhansu Trivedi, Adv.
	:	Ms. Surbhi, Adv.
For the Respondent no.1	:	Mr. Subodh kr. Jha, Adv.
	:	Mr. Bal Krishna Mishra, Adv.
	:	Mr. Pranav Kumar, Adv.
For the State	:	Mr. Sheo Shankar Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT
Date: 07-04-2017

Heard learned counsel for the petitioners as well
as learned counsel appearing for opposite parties.

This revision petition has been preferred against
the award dated 03.02.2014 passed by Bihar Public Works
Contract Dispute Arbitration Tribunal in Reference case no. 132
of 2010 by which and whereunder, he directed the petitioners to



refund earnest money/ security deposits with simple interest @ 10% per annum w.e.f. 27.10.2010 till realization to the opposite party no. 1 and also to refund the penalty amount of Rs. 5,23,667/- with simple interest @ 10% per annum w.e.f. 27.10.2013 till realization to the opposite party no. 1.

The opposite party no. 1 entered into an agreement with petitioners on 29.01.2008 for improvement of Joki Hat-Palasi-Teragachhi- Fatehpur road measuring about 40 kms to 43 kms (part) and the dead line for completion of the aforesaid work was fixed for 12 months. The work was commenced on 05.02.2008 but the work could not be completed within stipulated period and thereafter, the petitioners extended time for completion of the aforesaid work but even then, the work could not be completed and thereafter, a notice in writing was given to petitioner no. 1 and as per clause 3(iv) of the agreement, the contract of petitioner no. 1 was rescind and the earnest money/ deposit money i.e. 6,67,400/- deposited by opposite party no. 1 was forfeited and apart from this, Rs. 5,23,767/- was also deducted from the dues of the opposite party no. 1 in form of penalty. The opposite party no. 1 being aggrieved by the



aforesaid action of the petitioners referred the matter to abovesaid Tribunal. The petitioners also appeared before the Tribunal and accordingly, the Tribunal framed certain points for determination of dispute of the parties and by passing impugned award, directed the petitioners to return the forfeited earnest/ deposit money as well as the dues in form of penalty to opposite party no.1.

Learned counsel appearing for petitioners submits that there was an agreement between the parties that if opposite party no. 1 fails to complete the work within the stipulated period, the petitioners has right to forfeit the deposit amount but the learned Tribunal failed to take note of the aforesaid fact and having relied upon decision rendered in *AIR 1973 SC 1098* ordered for return of earnest/ deposit money to opposite party no. 1. Learned counsel for petitioners further submits that as a matter of fact, the Tribunal came to conclusion that no loss had been caused to petitioners and that was the reason that the tribunal held that petitioners had got no right to forfeit the earnest/ deposit amount. Learned counsel for petitioners further submits that the decision rendered in *AIR 1973 SC 1098* is not applicable in the present case because in that case, the concerned company,



subsequently, supplied the articles to the Government on the same rate and that was the reason, the Apex Court held that no loss was caused to concerned Government and the concerned Government has got no right to forfeit the deposited amount but in the present case, due to failure of opposite party no. 1, the work could not be completed within time which caused grave loss to the petitioners and therefore, they had every right to forfeit the deposited amount in terms of the agreement entered into between the parties. He further submits that so far as return of penalty amount of Rs. 5,23,767/- is concerned, the petitioners, specifically, pleaded before the Tribunal that due to non-performance of opposite party no. 1, the corporation/ petitioners suffered loss of near about 62 lacs and even if the petitioners had not made any counter claim then also, it was the duty of the Tribunal to take note of loss suffered by the petitioners due to non-performance of the opposite party no. 1.

Learned counsel appearing for opposite party no.1 has refuted the abovesaid submissions arguing that admittedly, the petitioners have not placed any material to show the so-called loss suffered by the Corporation and therefore, the Tribunal



rightly held that the Corporation had got no right to forfeit the amount deposited by opposite party no.1 as well as to impose penalty upon him.

Having heard the contentions of both the parties and went through the record as well as impugned order, I find that it is admitted position that the notice for termination of the contract was given under Clause 3(iv) of the agreement which says that if the agency fails to complete the work within the stipulated date or terms of the work with individual date of completion, if any stipulated on or before such date of completion and does not complete them within the period specified in the notice given in writing in that behalf by the Engineer-in-Chief, the Engineer-in-Chief has got right to rescind the contract. Therefore, it is obvious that the contract was not rescind on the ground of defective or substandard work rather the contract was rescind due to non-performance of opposite party no.1 within stipulated period of time and therefore, the aforesaid fact goes to show that no loss was caused to the petitioners due to non-completion of work in time. However, the learned Tribunal discussed the aforesaid point at length in the impugned award.

So far as the decision rendered in *AIR 1973 SC 1098* is concerned, in



the aforesaid decision, the Apex Court has held that if due to non-performance of the contract, any loss is not caused to the concerned party, the deposit/ earnest money would not be forfeited. No doubt, in the aforesaid case, subsequently, the articles were supplied on the same rate and that was the reason, the Apex Court came to conclusion that no loss was caused but crux of the aforesaid decision is that unless loss is caused, the party to the contract has got no right to forfeit the deposited amount. Therefore, in my view, the aforesaid decision is applicable in the present case also and the learned Tribunal rightly directed the petitioners to return the forfeited deposit amount as well as penalty deducted from the dues of the opposite party no.1.

Therefore, on the basis of aforesaid discussion, I do not find any substance in this revision application and accordingly, this revision application stands dismissed at the stage of admission itself.

(Hemant Kumar Srivastava, J.)

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AFR/NAFR	NAFR
CAV DATE	
Uploading Date	10.04.2017
Transmission Date	

