

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.33 of 2017

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1. Vinay Kumar, S/o Sri Krishna Prasad, Resident of Mohalla- Ujjain Tola,
P.S.- Bettiah Town, District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department Govt. of Bihar, Patna.
4. The Chief Engineer No. 3, Rural Works Department, Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Works Circle, Bettiah, District- West Champaran.
6. The Executive Engineer, Rural Works Division, Bettiah, West Champaran.
7. The Assistant Engineer, Rural Works Department, Works Sub-Division, Yogapatti, District- West Champaran.
8. The Junior Engineer, Rural Works Department, Works Sub-Division, Yogapatti, District- West Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur

For the Respondent/s : Mr. Pawan Kumar, AC to G.A. 1

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

3 17-11-2017 Section 34 of the Arbitration and Conciliation Act,

1996 sets out the grounds for challenging an award of an

arbitrator, which are as under:-

“Section 34(1) x x x x x x x

x x x x x x x

(2) An arbitral award may be set aside by the Court
only if-

(a) the party making the application furnishes
proof that-

- (i) a party was under some incapacity;
or
- (ii) the arbitration agreement is not



- valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
- (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part;

Learned counsel for the petitioner has very fairly submitted that the grounds, incorporated under Section 34 of the Arbitration and Conciliation Act, as noted above, are not available



to him to challenge the Award. He, however, submitted that the provisions of Arbitration and Conciliation Act, 1996 are not applicable in the present case, since the reference has been made and award has been passed under the provisions of Bihar Public Works Contract Disputes Arbitration Tribunal Act, 2008. According to him, this Court has a duty to exercise its revisional jurisdiction to enter into the correctness of the award by re-appreciating the evidence as an appellate court. He has argued that the tribunal has not duly appreciated the evidence, adduced in course of proceeding and has failed to consider certain documents, which were suggestive of the fact that the petitioner had completed the remaining work.

This is to be noted that this revisional application has been filed under Section 13 of the Bihar Public Works Contract Disputes Arbitration Tribunal Act, 2008, which confers on the High Court jurisdiction to either *suo motu* at any time or on an application made to it, call for the record of any case in which an award has been made and if the tribunal appears:-

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise its jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.



Even if, the submission, on behalf of the petitioner, that grounds mentioned in Section 13 of the Bihar Public Works Contract Disputes Arbitration Tribunal Act, 2008 for seeking revision of the award apply, it is evidently not the case of the petitioner that the tribunal has exercised any jurisdiction, which is not vested in it by law while passing the award. It is not the case of the petitioner that tribunal has acted with material irregularity.

It is the case of the petitioner however, that the tribunal has failed to exercise a jurisdiction, vested in it in the background of the evidence already available before the tribunal and, therefore, it is his case that the tribunal ought to have acted in exercise of jurisdiction by making an award by exercising jurisdiction so vested in it. It is case of the petitioner that by not appreciating the evidence on record, the tribunal has committed illegality and, therefore, the award needs interference.

The submission, advanced on behalf of the petitioner, that this Court should act as an appellate authority over the award made by the tribunal, in my view, deserves to be rejected at the very threshold. Exercising power of revision under Section 13 of the Bihar Public Works Contract Disputes Arbitration Tribunal Act, 2008 and considering the grounds, on which the High Court can interfere, in my view, it is



impermissible for the High Court to re-appreciate the evidence on record after finding has been recorded by the tribunal on appreciation of evidence.

In my view, no case of interference with the award is made out.

This application is, accordingly, dismissed.

I.A. No. 3811 of 2017 stands disposed of.

(Chakradhari Sharan Singh, J.)

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