

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.22 of 2015

=====

1. Birampur Construction Pvt. Ltd. through its Managing Director Mr. Nilesh Kumar. Son of Sri Arun Kumar. Resident of Mohalla - Quamruddinganj, P.O.- Biharsharif, P.S.- Laheri, District - Nalanda, State - Bihar, Pin - 803101.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Works Department "Vishweshwaraiya Bhawan", Bailey Road, Patna - 15.
2. The Engineer-in-Chief, Rural Works Department, "Vishweshwaraiya Bhawan", Bailey Road, Patna - 15.
3. The Chief Engineer-1, Rural Works Department, "Vishweshwaraiya Bhawan", Bailey Road, Patna - 15.
4. The Superintending Engineer, Rural Works Department, Works Circle, Nalanda at Biharsharif, Pin - 803101.
5. The Executive Engineer, Rural Works Department, Works Division, Harnaut (Nalanda) Pin - 803116.
6. The District Magistrate, (D.M.), Nalanda at Biharsharif, Pin - 803101.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Manish Sahay

For the Respondent/s : Mr. Binod Kumar

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 12-05-2017

1. Heard learned counsel for the petitioner as well as learned counsel for opposite party.

2. Petitioner is aggrieved against part of the impugned award dated 14.11.2014 passed by Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna in Reference Case no. 67 of 2012 by which and whereunder Tribunal rejected the claim of Rs. 3, 90, 825/- of the petitioner on the ground that the District Magistrate had kept the implementation of scheme in abeyance vide his letter no. 459 dated 28.2.2007 but even then the concerned Executive Engineer prepared bill of Rs. 3, 90, 825/- for payment to the petitioner and



furthermore, enquiry team could not verify the work done by the petitioner.

3. It would appear from perusal of impugned award that vide agreement 17 F2 of 2006-07 dated 9.1.2007 works of digging soil from a pond, earth filling and construction of fishing platform were allotted to the petitioner and works had to be completed within six months from the date of agreement. Petitioner started doing allotted work and he was paid first payment of Rs. 42, 510/- but while work was in progress, the concerned Collector wrote letter to the Executive Engineer vide his letter no. 459 dated 28.2.2007 for keeping the work in abeyance. The aforesaid letter of Collector was served upon the Executive Engineer on 2.3.2007. However, second bill in respect of work of the petitioner was prepared by the concerned official and same was put up before the Executive Engineer on 13.6.2007 who subsequently, checked the aforesaid bill and found it correct but no payment was made to the petitioner. Thereafter, petitioner went before Tribunal and accordingly, Reference Case no. 67 of 2012 was registered.

4. Learned counsel appearing for the petitioner submits that there was nothing before the Tribunal to show that information regarding stoppage of work was communicated to the petitioner but Tribunal failed to take note of the aforesaid fact. He further submits that section 70 of the Indian Contract Act says that if a work is lawfully done by a person for another person, latter person is under obligation to compensate the first person who had done the work for him. Having relied upon the aforesaid provision of the Indian Contract



Act, learned counsel for the petitioner submits that even if it is assumed that the Collector directed the Executive Engineer for stoppage of the work, then also, the petitioner could not have been made responsible because in absence of information of stoppage of work, he did his work in good faith and, therefore, under section 70 of the Indian Contract Act, he is entitled for his payment. Learned counsel for the petitioner further submits that admittedly, enquiry team was constituted by the Collector, Nalanda and the said enquiry team visited on the site and found that the petitioner not only did the digging work and filling earth but also got constructed fishing platform in accordance with agreement. He further submits that the concerned official as well as enquiry team failed to take measurement of filling work due to water in pond and, therefore, only on the aforesaid ground, it can not be said that there was cloud of doubt on the assertion of the petitioner.

5. On the other hand, learned counsel appearing for the opposite party refutes the aforesaid submissions arguing that admittedly, in the month of February, 2007, the concerned Collector had directed the concerned Executive Engineer for stoppage of the work but the concerned Executive Engineer prepared second bill for payment to the petitioner in the month of June, 2007 without getting any measurement of the work done by the petitioner. Learned counsel for the opposite party also submits that the learned Tribunal has considered all pros and cons of the case and gave a specific finding regarding claim of the petitioner and, therefore, the aforesaid specific finding of the Tribunal can not be interfered by this court while



exercising revisional jurisdiction.

6. Having heard the contentions of both parties I went through the record. It is an admitted position that the petitioner was allotted work of digging soil, earth filling as well as construction of fishing platform and the enquiry report which has been annexed as annexure 5 to the petition, goes to show that the aforesaid work was done by the petitioner. Moreover, it is also an admitted position that the concerned Collector wrote letter to the concerned Executive Engineer but there is nothing on record to show that the concerned Executive Engineer directed the petitioner for stoppage of the work in question. Therefore, in my view, Tribunal failed to consider the case in its real perspective. However, section 70 of the Indian Contract Act clearly says that if any lawful work is done by a person, the said person is entitled for compensation.

7. In the present dispute, it is an admitted position that the petitioner was entrusted to complete the work as per agreement and the said agreement was never revoked. However, there is nothing on the record to show that the petitioner was informed by the concerned officials for stoppage of the work of the agreement. Therefore, work done by the petitioner can not be put under the category of unauthorized work. Therefore, I am of the considered view that the petitioner is entitled for his dues.

8. On the basis of the aforesaid discussions, this revision petition is allowed and part of the impugned award dated 14.11.2014, by which claim of the petitioner for payment of Rs. 3, 90, 825/- was rejected, is set aside and accordingly, it is ordered that the petitioner



shall be entitled for payment of Rs. 3, 90, 825/- with simple interest at the rate of 10 % per annum from the date of preparation of the aforesaid bill till its realization.

shahid

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.5.2017
Transmission Date	25.5.2017

