

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No. 160 of 2014

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1. The State of Bihar through the Principal Secretary, Road Construction Department, Vishweshwarraiya Bhawan, Bailey Road, Patna.
 2. The Engineer-in-Chief, Road Construction Department, Vishweshwarraiya Bhawan, Bailey Road, Patna.
 3. The Chief Engineer (South Wing), Road Construction Department, Vishweshwarraiya Bhawan, Bailey Road, Patna.
 4. The Superintending Engineer, Road Construction Department, Bhojpur Road Circle, Ara.
 5. The Executive Engineer, Road Construction Department, Road Construction Division, Ara.

.... Petitioners

Versus

M/s J.K.M. Infra Projects Ltd. (M/s Kamal Builders) authorized office Shri Ashis Jalan, having its registered Office at C-27, Sector-26 Noida, in the state of Uttar Pradesh and its Local Office at Flat No.403 and 404, Gorkhnath and Leela Apartment, Gorakhnath Lane, East Boring Canal Road, Patna.

.... Opposite Party

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Appearance :

For the Department Mr. K.P. Gupta, Adv.

For the Claimant : Mr. Sanjeev Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 15-09-2017

1. Heard learned counsel for the petitioners as well as learned counsel appearing for the opposite party.



2. The opposite party and petitioners entered into an agreement on 21.12.2006 and accordingly, the opposite party was allotted work for construction of roads within 21 months from the date of agreement i.e. by 20.09.2008. The opposite party failed to complete the work within above stated period as a result whereof, petitioners deducted penalty amount as per terms of the contract. However, the petitioners extended the time for completion of the work by 31.12.2009 and after extension of time the opposite party completed the work within extended period and claimed the amount which was deducted by the petitioners due to non completion of the work by the opposite party within first prescribed period.

3. The opposite party carried the matter to the Tribunal by filing Reference Case No. 21 of 2012 and the learned Chairman and Member of the Tribunal allowed the claim of the opposite party directing the petitioners to make payment of deducted amount with simple interest at the rate of 10 % per annum with effect from 17.04.2010 till its realization.

4. Learned counsel appearing for the petitioners submits that the learned Tribunal committed error in awarding the aforesaid amount to the opposite party because admittedly, the opposite party failed to complete the work within prescribed period. He further submits that the Tribunal also committed error by allowing interest on



the aforesaid deducted amount because as per agreement, the department was not liable to pay any interest on the deducted amount.

5. Learned counsel for the petitioners further submits that Engineer in Chief has written letter dated 02.07.2009 to all the concerned officials not to return the amount of penalty in any case and, therefore, in the light of aforesaid letter, the department rightly refused to return the deducted amount but the Tribunal failed to take note of the aforesaid fact.

6. On the other hand, learned counsel appearing for the opposite party refuted the above stated submissions arguing that as per Clause 2 of the agreement, the department was bound to return the deducted penalty amount, if the work is completed within the extended period of time. He further submits that the Tribunal rightly passed the award taking note of the aforesaid terms of the agreement because the dispute of parties to a contract can only be decided on the basis of terms of the agreement and, therefore, the Tribunal rightly passed the award in favour of the opposite party. He further submits that even if there is agreement between the parties that no interest shall be paid on deducted amount, then also, the Tribunal can grant interest on the deducted amount during pendente lite. In support of his contention, he referred the decision of **Board of Trustees For The Port of Calcutta vs. Engineers-De-Space-Age** reported in (1996) 1



SCC 516 in which it has been held by their Lordships that even if the clause of contract does not permit the arbitrator to award interest, then also, the aforesaid clause of the contract cannot prohibit the arbitrator from awarding interest pendente lite.

7. Having heard the contentions of both the parties, I have gone through the record. It would appear from perusal of the impugned award that the Tribunal has passed the impugned award having relied upon Clause 2 of the agreement which runs as follows:-

*“The amount of compensation may be adjusted or set-off against any sum payable to the Contractor under this or any other contract with the government. In case, the contractor does not achieve a particular milestone mentioned in schedule-F, or the rescheduled milestone(s) in terms of Clause 5.4, the amount shown against that milestone shall be withheld, to be adjusted against the compensation levied at the final grant of extension of time. Withholding of this amount of failure to achieve a milestone, shall be automatic without any notice to the contractor. **However, if the contractor catches up with the progress of work on the subsequent milestone(s), the withheld amount shall be released. In case the contractor fails to make up for the delay in subsequent milestone(s), amount mentioned against each milestone missed subsequently also shall be withheld.** However, no interest, whatsoever, shall be payable on such withheld amount.”*

8. From bare perusal of Clause 2, it is obvious that if the



contractor completes the progress of the work on the subsequent milestone, the withheld amount shall be released. Therefore, the aforesaid clause makes it clear that if contractor succeeds to complete the work within the extended period, the amount which was earlier withheld due to failure of contractor, shall be released to him and, therefore, in my view, the Tribunal rightly passed the impugned award having relied upon the aforesaid clause because parties to a contract are bound to follow the terms and conditions of the contract.

9. So far as interest on the aforesaid amount is concerned, it has been mentioned in clause 2 that no interest, whatsoever, shall be payable on such withheld amount. The aforesaid fact shows that the contractor shall not be entitled to get any interest on withheld amount but as held by the Apex Court of this country that the aforesaid prohibition clause cannot prohibit the arbitrator to award interest pendente lite and, therefore, in my view, the Tribunal has rightly granted interest to the opposite party on withheld amount but the Tribunal committed error giving the interest from 17.04.2010 because the Tribunal can grant interest only pendente lite and, therefore, the impugned award dated 13.08.2013 passed in Reference Case No. 21 of 2012 is modified to this extent that simple interest at the rate of 10 % per annum upon principal amount of Rs. 35,59,170/- shall be made applicable from the date of filing of Reference Case No.



21 of 2012 till its realization.

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

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	20.09.2017
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