

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.14 of 2015

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1. The State of Bihar through The Principal Secretary, Water Resources Department, "Sinchai Bhawan" Harding Road, Patna.
 2. The Engineer-in Chief-(Middle), Water Resources Department, "Sinchai Bhawan", Harding Road, Patna.
 3. The Chief Engineer, Water Resources Department, Katari Hill Road, Gaya.
 4. The Superintending Engineer Water Resources Department, Water Ways Circle, Gaya.
 5. The Executive Engineer, Water Resources Department Water Ways Division, Ghoshi (Jehanabad).

... .. Petitioner/s

Versus

M/s Anil Sharma, through its proprietor, Shri Anil Sharma, son of Late Ram Chandra Singh, resident of North Office, Para Doranda, Police Station- Doranda, District- Ranchi (Jharkhand).

... .. Respondent/s

Appearance :

For the State (Petitioners)	:	Mr. Kamlesh Pd. Gupta, G.P.10 Mr. Binod Kumar, Advocate
For the Respondent/s	:	Mr. Sandeep Kumar, Advocate Mr. Manish Sahay, Advocate Mr. Anil Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 08-02-2019

Heard the parties.

2. The State of Bihar and its functionaries have filed this civil revision application under Section 13 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008, challenging the award of the Tribunal dated 27.11.2014, passed in Reference Case No.74 of 2012, whereby the petitioners have been directed to pay referred amount to the sole opposite party. The dispute arose out of work contract dated 24.03.2009.



3. By the impugned award, the Tribunal has allowed in favour of opposite party Rs.43, 50, 565/- (Rupees Forty Three Lacs Fifty Thousand Five Hundred and Sixty Five) only along with ten percent interest with effect from 09.01.2014 till the date of realization against the entitlement of opposite party to price escalation of the material. The Tribunal further granted Rs.35, 90, 298.68 (Rupees Thirty Five Lacs Ninety Thousand Two Hundred Ninety Eight and Sixty Eight Paise) only in respect of carriage by extra lead with simple interest @ ten percent per annum with effect from 13.07.2012.

4. It is worth to note here that the amount awarded against the price escalation was part of the interim award made by the Tribunal on 09.01.2014. The said award was challenged before this Court in Civil Revision No.141 of 2014. The said revision application was dismissed as devoid of any merit. On the same ground again award has been challenged herein that Clause 10CC of the agreement was not applicable in the facts and circumstances of the case, rather Clause 10CA was applicable and the Tribunal has committed error of record.

5. Clause 10CA of the agreement and Clause 10CC are being reproduced below:-

“ Clause 10CA:- If after submission of the tender, the price of cement or steel reinforcement bars/bitumen incorporated in the works (not being a



material supplied from the Engineer-in charges stores in accordance with Clause 10 thereof) increase(s) beyond the price(s) prevailing at the time of the last stipulated date for receipt of tenders (including extensions, if any) for the work, then the amount of the contract shall accordingly be varied and provided further that any such increase shall not be payable if such increase has become operative after the stipulated date of completion of work in question.

If after submission of the tender, the prices of cement and/or reinforcement bars/bitumen incorporated in the work (not being a material stipulated from the Engineer-in charges stores in accordance with Clause 10 thereof) is decreased, government shall in respect of these materials incorporated in the works (not being materials supplied from the Engineer-in charges stores in accordance with Clause 10 thereof) be entitled to deduct from the dues of the Contractor such amount as shall be equivalent to the difference between the prices of Cement and/or Steel reinforcement bars/bitumen as prevailed at the time of last stipulated date for receipt of tenders including extensions if any for the work and the prices of these materials on the coming into force of such base price of cement and/or steel reinforcement bars/bitumen issued under authority of Schedule of Rate committee.

The increase/decrease in prices shall be determined by the All India Wholesale Price Indices for Cement and Steel (bars and rods) as published by Economic Advisor to Government of India, Ministry of Commerce and Industry and base price for cement and/or steel reinforcement bars/bitumen as issued under authority of Schedule of Rate



committee as valid on the last stipulate date of receipt of tender, including extension if any and for the period under consideration.

*“ **Clause 10CC:-** Contract price shall be adjusted for increase or decrease in rates and price of labour, materials, fuels and lubricants in accordance with the following principles and procedures and as per formula given in the contract data :*

(a) The price adjustment shall apply for the work done from the start date given in the contract data upto end of the initial intended completion date or extensions granted by the Engineer and shall not apply to the work carried out beyond the stipulated time for reasons attributable to the contractor.

(b) Following expressions and meanings are assigned to the work done during each month:

R = Total value of work done during the month. It would include the amount of secured advance granted, if any, during the month, less the amount of secured advance recovered, if any during the month. It will exclude value for works executed under variations for which price adjustment will be worked separately based on the terms mutually agreed.

C = To the extent that full compensation for any rise or fall in costs to the contractor is not covered by the provisions of this or other clauses in the contract, the unit rates and prices included in the contract shall be deemed to include amounts to cover the contingency of such other rise or fall in costs”.

6. The applicability of Clause 10CC was considered by a co-ordinate Bench of this Court in Civil Revision No.19 of 2015 disposed of on 12.05.2017 and in para 7 of the judgment the Court observed as follows:-

“ Clause 10CC of agreement dated 05.02.2009 goes to show that the aforesaid clause is applied when the period for completion of work is more than 18 months. However, in the present case, it is an admitted position that the agreement was executed on 05.02.2009 and the work was to be completed within 12 months from the date of execution of agreement but, later on, the aforesaid period was



extended time to time and, therefore, the aforesaid fact goes to show that period of completion of work was extended for more than 18 months and, therefore, the learned Tribunal has rightly taken clause 10CC of the agreement for calculation of the dues of the opposite party. Moreover, the State has already made payment of the amount of the award to the opposite party except interest and, therefore, in my view, this Civil Revision Application does not have any merit and is liable to be dismissed on admission stage itself.”

7. In the present case, initially agreement was for one year which was extended from time to time by the petitioners mainly for the reason that possession of the land on which work was to be done was not handed over to the Contractor-opposite party.

8. According to learned counsel for the petitioners even if the time for performance of the contract was extended, the benefit of provision 10CC could not have been allowed because extension was allowed by letter dated 12.09.2011 under the approval of the Government with condition that no financial benefit will be given.

9. In the interim order the Tribunal has rightly held that such restriction is not applicable in a subsequent unilateral instruction, if the agreement specifically stipulates that in such circumstance the Contractor would be entitled for payment against escalation of price of the material. Moreover, the disputed question of fact cannot be looked into in exercise of this



supervisory jurisdiction. Therefore, grant of award against extra lead by the Tribunal cannot be faulted.

10. Contention of opposite party is that from the award itself, it is clear that during pendency of the said reference case, *Mr. Jwala Prasad*, a retired Chief Engineer, W.R.D. Bihar was appointed with consent of the parties as an expert to visit the site in presence of both the parties and to submit his report. In the report of *Mr. Jwala Prasad*, it is specifically mentioned that 45785.89 M³ of earth filling work has been done by carriage from different borrow pits. Regarding distance of lead by road, the expert opinion was that approximately average 2.0 K.M. lead should be fixed by actual measurement of distance. If, the petitioner disapproves the correctness of the report that cannot be looked into in exercise of this jurisdiction.

11. The scope of ambit of revisional jurisdiction of this Court under Section 13 of the Bihar Public Work & Contracts Arbitration Tribunal Act, 2008 have been succinctly dealt in para 26 of the judgment of the *State of Bihar through the Chief Secretary and Others versus M/s Kumar Construction Company* reported in *2013 (4) PLJR Page 239*, wherein a Bench of this Court considered the judgment of the Hon'ble Supreme Court in *Rabindra Kumar versus The Union of India reported in*



2010 (1) PLJR (SC) 145 and observed in paragraph 26 of the judgment as follows:-

“26. Even while the scope of judicial review of an award stands circumscribed to the eventualities set out in Section 13 of Act, there has been extensive arguments by both sides on the merits of the issue. The Supreme Court in paragraphs 9 to 14 of the judgments passed in the case of Rabindra Kumar Gupta (supra) has referred to a catena of judgments on the scope and ambit of judicial review of an arbitration award. The opinion expressed in the judgment so referred makes it manifestly clear that unless there is a jurisdictional infraction by the Arbitral Tribunal in making of the award or the award suffers from manifest illegality or material irregularity, it is not to be interfered with in a routine manner: In fact merely because there exists a possible second view also cannot be a ground for interference with an Arbitral Award. It is also well settled that the High Court in exercise of powers of judicial review would not sit as a Court of appeal to re-appreciate the evidence led by the parties. Thus unless the finding of the Tribunal is hounded with the perversity or is based on a wrong preposition of law, the High Court would not interfere with the award merely for a different possible view.”

12. Considering the nature of issues raised herein which amounts to adjudication of disputed facts between the parties and also considering the fact that there is no error apparent on the face of the record of the impugned award, this civil revision application stands dismissed as devoid of any merit.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	12.02.2019
Transmission Date	

