

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.2 of 2015

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1. Bihar Industrial Area Development Authority, through its Managing Director, 01st Floor, “Udyog Bhawan”, East Gandhi Maidan, Patna.
 2. The Technical Consultant, Bihar Industrial Area Development Authority, 01st Floor, “Udyog Bhawan”, East Gandhi Maidan, Patna.
 3. The Executive Engineer, Bihar Industrial Area Development Authority, 01st Floor, Udyog Bhawan, East Gandhi Maidan, Patna.
 4. The Assistant Engineer, Bihar Industrial Area Development Authority, 01st Floor, “Udyog Bhawan”, East Gandhi Maidan, Patna.

... .. Petitioner/s

Versus

Shri Rama Kant Singh S/o - Late Ram Khelawan Singh, R/o 101, Lotus Apartment, New Patliputra, P.S.- Patliputra, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Yashraj Bardhan, Advocate
For the Respondent/s	:	Mr. J.S. Arora, Sr. Advocate
		Mr. Lal Babu Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 31-01-2019

Heard learned counsel for the parties.

2. Bihar Industrial Area Development Authority and its Officials have brought this civil revision application under Section 13 of Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 against award dated 15.09.2014 passed by Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna in Reference Case No.35 of 2013, whereby the Tribunal has awarded the amount referred in Item Nos. I to VII of the award in favour of the



sole opposite party while considering Point No.7. The awarded amount is reproduced in paragraph-1 of this revision application.

3. The admitted fact is that petitioner-Bihar Industrial Area Development Authority in short BIADA entered into a written agreement with opposite party-Mr.Ram Kant Singh on 15.12.2007. A copy of the agreement is at Annexure-1. Under the agreement, the opposite party was to perform the agreed work of construction of drainage system in the BIADA Industrial Area, Fatuha. Allegation is that work was not completed within time and extended time. Hence, the agreement was rescinded and opposite party No.2 was blacklisted by order dated 22.05.2008 contained in Annexure-4. The sole opposite party brought the matter before the arbitration tribunal claiming that he has already completed the work in terms of the agreement, though beyond the stipulated time for the reason of intervening circumstances disclosed in the petition. However, the authorities have illegally deducted major portion of the payable amount including in the form of penalty and deduction for the damaged/missing goods at the present market rate and not at the rate of purchase.

4. After hearing the parties including the petitioners, who were opposite parties before the Tribunal, the impugned award was passed.



5. Before advertng to rival contention of the parties, it would be apt to look into the scope of power and jurisdiction of this Court under Section 13 of the Act, which is being reproduced below:

“13. Revision.-(1) The High Court may, suo motu at any time or on an application made to it within three months from the date on which the award or interim award is made or reviewed under this Act, by any party aggrieved by the award or interim award so made or reviewed, call for the record of any case in which an award or interim award has been made or as the case may be reviewed and if the Tribunal appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

(2) For the purpose of exercising its powers of revision under this section, the High Court shall have the same powers as it has, and as far as may be, follow the



same procedure as it follows, under the Code of Civil Procedure, 1908 while exercising its powers of revision under section-115 of the Code and for that purpose the Tribunal shall be deemed to be a Court subordinate to it.”

6. The scope and ambit of revisional jurisdiction of this Court under Section 13 of the Act have been succinctly dealt in paragraph-26 of the judgment in the ***State of Bihar through the Chief Secretary and Ors Vs.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 Vs. 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 reappreciate 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.”

7. Contention of the learned counsel for the petitioner against the impugned award is that the opposite party No.2 approached the Tribunal after five years from the date of cancellation of the agreement and blacklisting of opposite party No.2 vide order contained in Annexure-4. However, the Tribunal condoned the delay without any reasonable explanation for non-approaching the Tribunal within time. Learned counsel has relied on the judgment of the Hon’ble Supreme Court in **Basawaraj and Anr Vs. The Special Land Acquisition Officer and Ors** reported in **AIR 2014 SC 746** for his contention that the Tribunal acted against the settled principle that the applicant must satisfy the court that he was prevented by any sufficient cause from



prosecuting his case and unless a satisfactory explanation is furnished the court should not allow the application for condonation of delay.

8. Submission is that opposite party No.2 had not filed any separate petition for condonation of delay before the Tribunal rather stated in the main petition that the appeal is within time. However, oral submission for condonation of delay was considered by the Tribunal as Point No.I.

9. On the other hand, learned counsel for the opposite party submits that it is not requirement of law that application under Section 5 of the Limitation Act should be separately filed and it should also always be in writing only requirement is that reasonable excuse should be disclosed. The opposite party No.2 had already mentioned in the petition before the Tribunal that since representation of opposite party No.2 for reconsideration of order at Annexure-4 was pending before the petitioners-authorities and the authorities had not taken any decision on that, the delay in filing of application before the Tribunal is well explained by the aforesaid statement.

10. Learned counsel for the petitioners does not dispute that on the representation of respondent No.2, no order was passed at any point of time. Therefore, in my view also, sufficient



cause was there with opposite party No.2 before the Tribunal for condonation of delay. The Tribunal has also discussed this issue and has come to the conclusion that the reference is not barred by limitation, considering the applicability of Article 137 of the Limitation Act. In the circumstances, this Court does not find that the Tribunal has exercised jurisdiction not vested in it by law or has acted in exercise of jurisdiction illegality or with material irregularity.

11. Next contention of the learned counsel for the petitioners is that since the work was not completed within time and extended time by opposite party No.2, a penalty was imposed on opposite party No.2 by the petitioners which the Tribunal has wrongly asked for refund to the opposite party No.2.

12. I have gone through the terms of agreement especially Item No.2 which reads as follows:

*“2. The second party also agrees to furnish a weekly work programme for execution of the said scheme/project within the stipulated time to the first party. If the second party fails to execute the work as per the weekly work programme then the first party shall be competent to levy such penalty on a weekly basis as it deems fit. **The first party shall review the progress of the work every week and decide whether the penalty should be***



imposed or not depending upon the quality and progress of the work.”

13. In the present case, nothing was brought on the record before the Tribunal that the petitioners were reviewing the progress of the work every week and were recording a proceeding of the progress of work or the opposite party was noticed and heard before the penalty was imposed. Therefore, imposition of penalty by the petitioners was arbitrary one and the order of Tribunal requires no interference on this score.

14. Next contention of the learned counsel for the petitioners is that it has come on the record that during excavation work some water supply system etc were damaged and the damaged parts of the water supply system were removed by the opposite party No.2 or his functionary.

15. Learned counsel for the opposite party No.2 submits that when the damaged parts were not deposited with the petitioners, the opposite party accepted the liability of reimbursement. However, the reimbursement should have been to the extent of the cost of those items at the time of purchase and not on market value, on the date of damage. The Tribunal has ordered for refund to the extent of purchase cost of the damaged items. After examining the records, I find substance in the submission of



of learned counsel for the opposite party, that the Tribunal has awarded purchase value of those goods.

16. Learned counsel for the appellants submits that 10% per annum simple interest has been awarded by the Tribunal on the amount due which is excessive one and in the nature of penal interest. Therefore, the Tribunal should have assigned reason for awarding such interest which has not been done in the present case. For that reason the interest awarded is vitiated in law.

17. Section 31 of the Arbitration and Conciliation Act, 1996, provides for form and contents of arbitral award. Sub-section (7) thereof provides for award of interest which reads as follows:

“(7)(a) Unless otherwise agreed by the parties, where and insofar as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

[(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent higher than the current rate of interest prevalent



on the date of award, from the date of award to the date of payment.

Explanation.- The expression “current rate of interest” shall have the same meaning as assigned to it under clause (b) of Section 2 of the Interest Act, 1978 (14 of 1978).J”

18. Learned counsel has relied on judgment of Hon’ble Supreme Court in **Clariant International Ltd And Another V. Securities & Exchange Board of India** reported in **(2004) 8 SCC 524** for his submission that interest cannot be awarded in a casual manner. In paragraph-30 of the judgment the Hon’ble Supreme Court observed as follows:-

“ Interest can be awarded in terms of an agreement or statutory provisions. It can also be awarded by reason of usage or trade having the force of law or on equitable considerations. Interest cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefore, for which a written demand is mandatory.”

19. On the other hand, learned counsel for the opposite party relied on judgment of the Hon’ble Supreme Court in **Sayeed Ahmed and Company V. State of Uttar Pradesh and Others** reported in **(2009) 12 SCC 26**, for his submission that authority of the arbitrator to award interest has already been settled in view of



the provisions of Section 31 (7) of the Arbitration and Conciliation Act, 1996. Paragraphs 25 and 26 of the judgment is being reproduced below:-

“ 25. The arbitrator awarded interest at the rate of 18% per annum on Rs.24,18,586/-, 14% per annum on the amount found due on finalisation of the final bill and 12% per annum on the security deposit amount if any that has to be refunded. As noticed above, clause (b) of sub-section (7) of Section 31 of the Act provides that if the award does not otherwise direct, the amount awarded shall carry interest as directed by the award and in the absence of any provision of 18% per annum. Any provision in the contract barring interest, will therefore operate only till the date of award and not thereafter.

26. The arbitrator has awarded interest at three different rates on three different amounts which are all less than 18% per annum. The said award of interest by the arbitrator is not contrary to section 31(7)(b) of the Act. Unless the award of interest is found to be unwarranted for reasons to be recorded, the Court should not alter the rate of interest awarded by the Arbitrator. The High Court has not assigned any reasons for reducing the rate of interest to 6% per annum. Therefore, such reduction cannot be sustained.”



20. From the aforesaid recitals, it is evident that when the agreement between the parties specifically bars claim of the interest, the arbitrator can award interest which would be effective from the date of award. When there is no such provision, the arbitrator can award interest for pre-litigation period, of litigation period and of subsequent period. The amount awarded would reveal that in different heads 10% simple interest per annum was awarded which is less than 18%. The Hon'ble Supreme Court has held that such interest is not contrary to Section 37 (1) (b) of the Act unless the award of interest is found to be unwarranted for the reasons to be recorded.

21. In my view, the interest awarded by the Tribunal is not unreasonable and unwarranted interest for the reason that amount due with the petitioners is money of business and if it would have come in the hands of the opposite party it might have fetched more money than the interest awarded.

22. To conclude, this Court does not find that the arbitral tribunal in making of the award infringed in exercise of jurisdiction nor the award suffers from manifest illegality or material irregularity. This Court cannot interfere in exercise of revisional jurisdiction in a routine manner in each and every details of calculation and weigh the reasoning of the Tribunal



which is supported by evidence, for the simple reason that appellate power cannot be exercised while exercising the power of judicial review.

23. In the result, this civil revision application is dismissed as devoid of any merit.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	AFR
CAV DATE	NA
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