

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.94 of 2016

1.The State Of Bihar through the Managing Director, Bihar Industrial Area Development Authority (BIADA), “Udyog Bhawan”, 01st Floor, East Gandhi Maidan, Patna.

2.The Managing Director, Bihar Industrial Area Development Authority (BIADA), “Udyog Bhawan”, 01st Floor, East Gandhi Maidan, Patna.

3.The Executive Engineer, Bihar Industrial Area Development Authority (BIADA), “Udyog Bhawan”, 01st Floor, East Gandhi Maidan, Patna.

... Respondent/ Petitioners-Respondents

Versus

Anil Kumar Singh @ Anil Kumar, s/o Late. Narayan Prasad Singh, r/o Alka Colony, Sandalpur, Kumhrar, P.O. Mahendru, P.S. Bahadurpur, District Patna.

... .. petitioner/Opposite party-petitioner

Appearance :

For the Petitioner/s	:	Mr. Yashraj Bardhan, Adv
For the Respondent/s	:	Mr.Rajendra Kumar, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 15-04-2019

Heard learned counsel for the parties.

2. This revision application has been filed for setting aside the award dated 04.02.2016 passed by Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna in Ref. Case No.



54 of 2013, passed in favour of O.P. No. 1 holding that Opposite Party No.1 is entitled for refund of security deposit of Rs. 10,76,767/-(Rupees Ten Lacs Seventy Six Thousand Seven Hundred Sixty Seven) as well as refund of earnest money amounting to Rs. 4,48,900/- (Four Lacs Forty Eight Thousand Nine Hundred) with simple interest at the rate of 10 per cent per annum from the date of filing i.e. 09.05.2013 till its realization.

3. The claimant-opposite party no. 1 entered into agreement with petitioner being Agreement No. 02F2 of 2009-10 for construction of boundary wall at Growth Centre, Maranga, Purnea, with estimated cost of Rs. 2,23,26,523.55/- (Two Crore, Twenty Three Lacs, Twenty Six Thousand, Five Hundred, Twenty Three and Fifty Five Paisa only) and the time for completion of the contract was four months. Out of total area, 236.95 Metres was obstructed by the local people for construction and same could not be completed and Opposite Party No. 1 informed the same to BIADA vide his letter dated 14.12.2009 and prayed for extension of time and also mentioned by another letter dated 15.12.2009, that the time for completion of work was expiring on 20.12.2009.

4. By letter dated 08.02.2010, claimant-opposite party no. 1 submitted his grievance of non payment of second running



bill and again by letter dated 06.04.2010 and letter dated 29.04.2010 addressed to the Bihar Industrial Area Development Authority, to close the agreement as sites were not being made available. Junior Engineer and Assistant Engineer in their report dated 31.05.2010 have certified the work to be as per design drawn specification.

5. The grievance of the Opposite Party No. 1(Claimant) was that instead of resolving the issue BIADA (petitioner) vide its memo no. 6983 dated 12.12.2011, had taken decision that failing to complete the work within scheduled time, agreement was cancelled and earnest money and security amount was forfeited.

6. The case of petitioners/BiADA is that respondent-claimant was directed to carry out the work as per the map on the proposed land for construction of boundary wall but the respondent-claimant deviated from the specification over an area of 236.95 Metres. The foundation over the said area was wrongly carried out resulting in trouble from the local people as a result of which disturbance was created for which respondent-claimant was solely to be blamed.

7. It is further submitted by learned counsel for the petitioners/BiADA that the issue was resolved by prompt action



taken by petitioners/BIADA and Amin was deployed and respondent-claimant was asked to work as per the map and the specifications to which respondent-claimant did not agree and area of 236.5 Metres+161.28 Metres of work which was left over had to be re-tendered for completion. There was no complaint made by the new contractor and the work was completed smoothly within time as per specification provided in the map. The respondent-claimant never intended to complete the work within time and delayed the contract on one pretext or the other.

8. As per Clause-11 sub-clause-(iii) of the special terms of contract the violation of time limit is to be considered as fundamental breach of the contract and same entitles the petitioners/BIADA to terminate the contract and forfeit the security deposit and earnest money.

9. After hearing both sides and considering the materials available on record including the pleadings of the parties, the Bihar Public Works Contract Dispute Arbitration Tribunal, Patna, held that in terms of the contract petitioners/BIADA authority was duly bound to provide construction site and respondent-claimant being executing agent was bound to obey the directions/ instructions of the petitioners/BIADA authorities



with respect to construction of the boundary wall at the site provided by the petitioners/BIADA instead of resolving the dispute with the local people and in spite of several representation filed by the respondent-claimant, the petitioner authorities terminated the agreement and forfeited the earnest money and security deposit. The tribunal has further held that it cannot be a case of force majeure and constructing boundary wall at wrong place was attributable to petitioners/BIADA authorities since the work was being done in supervision of the Engineers and Amin of the respondent-claimant and respondent-claimant have no role in identification of any part of the site and held that there was no laches, delay or negligence in execution of work or any fundamental breach of the agreement and bound opposite party-claimant to be entitled for refund of security deposit/retention money of Rs. 10,76,767/- and also refund of earnest money deducted from R/A bills amounting to Rs. 4,48,900/- and further opposite party claimant is also entitled for simple interest @ 10 per cent annum on awarded amount with effect from the date of filing i.e. 09.05.2013 till its realization.

10. After hearing the parties and perusing the award passed by Bihar Public Works Contract Dispute Arbitration Tribunal, Patna, this Court does not find any error, illegality or



irregularity in award passed by the Bihar Public Works Contract
Dispute Arbitration Tribunal, Patna, which requires any
interference by this Court in its revisional jurisdiction and
accordingly, the revision petition is dismissed.

ranjan/-

(S. Kumar, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.05.2019
Transmission Date	NA

