

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.224 of 2016

Manish Kumar, aged about 24 years, Son of Sri Sheoparsan Singh, R/o Village-Parasdihan, P.O.-Dumari (Shahpur), P.S.-Shiv Sagar, District-Rohtas, Bihar. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Vishesvaraya Bhawan, Patna.
2. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Vishesvaraya Bhawan, Patna .
3. The Chief Engineer-I, Rural Works Department, Government of Bihar, Vishesvaraya Bhawan, Patna.
4. The Superintending Engineer, Rural Works Department, Sasaram Circle, Near Old Railway Gumti (Fatak), Takiya, Sasaram, Rohtas.
5. The Executive Engineer, Rural Works Department, Works Division-II, Gorakshami, Sasaram, Rohtas.
6. The Assistant Engineer, Rural Works Department, Works Division-II, Gorakshami, Sasaram, Rohtas.
7. Junior Engineer, Rural Works Department, Works Division-II, Gorakshami, Sasaram, Rohtas. Respondent/s

Appearance :

For the Petitioner/s : Mr.Anup Kumar, Adv
For the Respondent/s : Mr.Ravindra Kumar, A.C. to A.A.G.-6.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 13-03-2019

Heard learned counsel for the parties.

2. The matter was listed for hearing on petition for stay vide I.A.No.1143 of 2017, however, the parties agree that this matter be heard on merit before grant of stay on the operation of the order of the Tribunal.

3. This civil revision application has been preferred under Section 13 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008, against order dated 10.05.2016 passed in Reference Case No.108 of 2013, whereby the Bihar



Public Works Contracts Disputes Arbitration Tribunal has dismissed the claim of the petitioner and allowed the respondents to recover Rupees Thirteen Lacs and Odd.

4. The matter reached before the Tribunal under Section 9 of the said Act arising out of an agreement to perform work between the parties. The opposite parties alleged that the petitioner did not perform the work even within extended time, whereas the petitioner alleged that the work was not completed due to non-payment of the amount within time schedule.

5. In this revision application, the challenge is to the extent that at page-51, there is measurement report which revealed that the petitioner had performed work of Rs.1,30,993/- and the bill was passed on 05.06.2010, however, payment could not be made due to non-availability of the fund.

6. Contention is that the Tribunal has not awarded the aforesaid amount in faovur of the petitioner, as such, the award suffers from non-application of mind. The record does not reveal that the petitioner had specifically put the said claim before the Tribunal. The power of judicial review by this Court is circumscribed by different judicial pronouncements. In the case of **State of Rajasthan Vs. Puri Construction Co.Ltd and Anr**, reported in (1994) 6 SCC 485, the Hon'ble Supreme Court



considered the scope of judicial review of the award of the arbitral tribunal while considering the application for setting aside the award and in paragraph-26 of the judgment observed as follows:

“26. The arbitrator is the final arbiter for the dispute between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate the facts. In Sudarsan Trading Co. v. Govt. of Kerala [(1989) 2 SCC 38] it has been held by this Court that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. (emphasis supplied)



Whether a particular amount was liable to be paid is a decision within the competency of the arbitrator. By purporting to construe the contract the court cannot take upon itself the burden of saying that this was contrary to the contract and as such beyond jurisdiction. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, the award cannot be examined by the court. Where the reasons have been given by the arbitrator in making the award the court cannot examine the reasonableness of the reasons. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisal of evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a judge on the evidence before the arbitrator.”



7. In the case of **State of Bihar through the Chief Secretary and Ors Vs. M/s Kumar Construction Company**, reported in **2013 (4) PLJR 239**, a Bench of this Court considered the scope of judicial review under Section 13 of the Act and in paragraph-26 of the judgment observed 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.”

8. Apparently, this Court in exercise of revisional power cannot look into the disputed question of fact as to what the Tribunal should have awarded and what should not have awarded. Moreover, the record does not substantiate that the petitioner have specifically put the aforesaid claim before the Tribunal which has been raised herein. Therefore, there is no merit in this civil revision application.

9. Accordingly, it stands dismissed and I.A.No.1143 of 2017 (stay petition) stands disposed of.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.03.2019
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