

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.49 of 2016

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1. The State of Bihar through The Secretary Road Construction Department, "Vishwashwarraiya Bhawan" Bailey Road, Patna.
 2. The Engineer-in-Chief, Road Construction Department, "Vishweshwaraiya Bhawan" Bailey Road, Patna.
 3. The Chief Engineer, Road Construction Department, "Vishweshwaraiya Bhawan" Bailey Road, Patna.
 4. The Superintending Engineer, Road Construction Department, Bhojpur Road Circle, Arrah.
 5. The Executive Engineer, Road Construction Department, Shahabad Road Division, Arrah.

... .. Petitioner/s

Versus

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

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kameshwar Prasad Gupta, Advocate Mr. Binod Kumar, AC to GP-10
For the Respondent/s	:	Mr. Sandeep Kumar, Advocate Mr. Sanjeev Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 22-02-2019

Heard learned counsel for the parties.

2. This Civil Revision has preferred under Section 13 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008, against the award of the Tribunal. The Road Construction Department has challenged the award of Bihar Public Works Contracts Disputes Arbitration Tribunal dated 19.01.2015 in Reference Case No. 22 of 2012, whereby the respondent contractor has been allowed three crores and odd



against the claim of ten crores and odd for extra lead. Challenge is on the ground that the stone chips and bitumens were not carried via nearest route as agreed between the parties.

3. While considering the aforesaid issue the Tribunal has discussed the letter issued by the Executive Engineer of the department, to the Superintending Engineer, informing the bad condition of Ara-Sasaram road at that time which was not motorable and fit for transportation of construction material i.e. metals and chips. Recommendation was that if the contractor carries the goods via a longer route, he should be reimbursed for extra lead subject to production of challan and that was permissible from June, 2008. The Tribunal examined other materials also and awarded the aforesaid amount.

4. Grievance of the petitioners is that the Tribunal should not have awarded anything beyond the agreed amount in contravention or contrary to the agreement between the parties.

5. Learned counsel for the opposite party submits that the contract does not bar consideration of the situation on the spot at the time of execution of the work. Moreover, the extra lead has been claimed only on getting permission of the petitioners authorities to carry goods through the convenient



motorable route.

6. The scope of the judicial review of the order of the Tribunal under Section 13 of the Act stands circumscribed to the eventualities set out in Section 13 of the Act itself. Moreover, by different judicial pronouncements, the law with regard to the scope and ambit of the jurisdiction of the court to interfere with an arbitral award is also well settled. Reference may be made to the case State of Rajasthan vs. Puri Construction Company Ltd. And Others reported in 1994 (6) SCC 485 wherein, the Hon'ble Supreme Court observed as follows:

“ 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 Sudarshan Trading Company vs. Govt. of Kerela 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 of particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in access of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or facts 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 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 present case the appellant has challenged the award only on the ground that the award has been made beyond the agreement between the parties. The aforesaid cannot be gone into at the stage of judicial review of the impugned award. This Court cannot look into the reasonableness of the



reasons assigned. The arbitrators have already assigned reasons for grant of particular award in favour of the opposite party.

8. A Bench of this Court had occasion to examine the scope of judicial review under Section 13 of the Act in State of Bihar vs. M/s. Kumar Construction Company Ltd. Reported in 2013 (4) PLJR 239 in para 26 of the judgment the Court 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 refereed 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.

9. Since, this Court cannot go into disputed question of facts in exercise of supervisory jurisdiction nor can substitute its own view based on the same materials. Hence,



there is no merit in this civil revision. Accordingly, it stands dismissed as devoid of merit.

10. Since, the revision application has been dismissed. I.A. No. 2664 of 2016 for condonation of delay in filing of this revision application also stands disposed of.

(Birendra Kumar, J)

khushbu/Banti-

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