

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.204 of 2016

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Dinesh Kumar Yadav son of Rajendra Prasad Yadav resident of Azad Nagar,
Ward No. 09, Madhepura, P.S. - Madhepura, District - Madhepura.

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Building Road Construction Department, Vishweswaraiya Bhawan, Bailey Road, Patna
2. The Chief Engineer N.H. Wing, Road Construction Department, Vishweswaraiya Bhawan, Bailey Road, Patna
3. The Superintending Engineer, Road Construction Department, N.H. Circle, Purnia, Bihar.
4. The Executive Engineer, Road Construction Department, N.H. Division, Madhepura.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Uma Shankar Tiwary
For the Respondents : Mr.- Kameshwar Prasad Gupta, GP X

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
CAV JUDGMENT

Date : 25-04-2019

Heard both sides.

2. The petitioner has preferred this Civil Revision petition for setting aside the award dated 08.08.2016 passed by The Chairman, Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna (hereinafter referred to as the Tribunal) in Reference Case No. 110 of 2015.

3. The factual matrix relevant for disposal of this case is that the petitioner, being the lowest bidder, entered into an agreement with the Executive Engineer for the execution of work “Construction of IRQP (Improvement of Riding Quality



Programme)” of N.H. 106 from 77 to 88 km falling within Madhepura district vide agreement No. 33F2 of 2006-2007. The estimated cost of the work was Rs. 5,00,42,744/-. The date of commencement of the work was 17.01.2007 and date of completion of work was 16.07.2007 and the work was to be completed within six months. The petitioner could not complete the work within the stipulated period as framed by the respondents on account of the fact that some dispute arose between the PWD (Road) department and Forest Department and Forest Department raised objection with regard to fell of trees standing by the side of the road leading to registration and institution of FIR and stoppage of work. Later on, the dispute was resolved. When the petitioner could not complete the allotted work the Executive Engineer rescinded the contract vide office order No. 20 dated 04.07.2008. The petitioner filed CWJC No. 11824 of 2008 and the High Court vide order dated 20.08.2008 stayed the operation of order dated 04.07.2008, rescinding the contract, and directed the petitioner to complete the work till November, 2008 otherwise the respondents would be at liberty to take steps against the petitioner as per law.

4. Further case of the petitioner is that immediately after the order of this court dated 20.08.2008 the entire Madhepura district was inundated on account of unprecedented flood on



account of breach in Kushaha Bandh on Koshi river and the materials kept by the side of road for completion of work were washed away. When the flood receded and normalcy restored, the petitioner filed I.A. No. 6700 of 2008. The petitioner undertook to complete the work by the end of February, 2009 and on such the High Court vide order dated 02.03.2009 extended the period for completion of work till March, 2009. The petitioner executed the entire work including damaged work, which was beyond the agreement, by doing extra work. On 02.03.2009 the petitioner filed an I.A. before this court stating therein that he had already completed 90% work including the extra work and on such this court directed the Executive Engineer to prepare estimate for extra work and pay the same along with work executed under the agreement. Thereafter, the petitioner completed 100% work including extra work before 31.03.2009 and submitted report on 06.04.2009 before this court.

5. Further case of the petitioner is that in spite of order of this court estimate for extra work was not prepared nor payment for completion of work was made and consequently the petitioner filed contempt petition, being MJC No. 497 of 2011. In contempt proceeding the respondent No.4 disputed the claim of the petitioner about the completion of work and doing extra work and



on such rival contentions a bench of this court vide order dated 13.05.2015 passed in MJC No. 497 of 2011 disposed of the contempt petition giving liberty to the petitioner to move the Tribunal if he has any claim left in pursuance to order of this court or any other claim in relation to the contract executed by him. In the light of aforesaid order, the petitioner filed reference case before the Tribunal for payment of extra work done by him worth Rs. 84,88,650/-. The petitioner further claimed Rs. 98,39,500/- as compensation of the damage caused to the materials which were washed away in unprecedented flood. The petitioner further built up his case that the period allowed for the completion of work was unreasonably short and as such he kept all the required materials like metal grade-II, grade-III, ½" stone chips and stone dust etc. in all the stretch from 77 to 88 km in one go. The petitioner also started earth work on both sides of the flank.

6. The Executive Engineer controverted the claim put forth by the petitioner and stated in his counter affidavit that the petitioner done only 42.9% of the work. The respondents further states that the work was to be completed till 16.07.2007 but when the petitioner could not complete the work within the stipulated period, on the request of the petitioner the period for completion of work was extended from time to time but even after extension of



time and show cause issued to the petitioner for non completion of work the petitioner could not complete the work and the contract with the petitioner was rescinded vide order No. 20 dated 04.07.2008 as the petitioner could not be able to give any plausible explanation for completion of work even after extension of time for completion of work for about a year. The further case of the respondents is that petitioner did not start the work till 16.04.2007. The respondents vide letter No. 254 dated 17.04.2007 directed the petitioner to bring required progress otherwise action would be taken as permissible under the contract. The respondents reminded the petitioner for speed up the work, ensure completion of work and for installation of machinery and plants on work site vide letter No. 272 dated 04.05.2007 (Annexure- A). Since the petitioner was not maintaining the required progress, under memo No. 254 dated 17.04.2007, he was directed to file his reply on the delay of execution of work so that the same may be made available to the authorities (Annexure- B). The date of completion of work was 16.07.2017 but no progress was made by the petitioner, the respondents vide letter No. 486 dated 06.07.2007 issued direction to the petitioner. The petitioner did not complete the work till 16.07.2007 and again on the request of the petitioner the period for construction of work was extended till 31.12.2007 by the order of



Secretary, Road Construction Department, Government of Bihar vide letter No. 719 dated 27.11.2007 (Annexure- C) but the petitioner failed to complete the work till 31.03.2008. Consequently, vide order as contained in memo No. 541 dated 05.02.2008 and the letter as contained in memo 90 show cause was served on the petitioner as to why contract may not be rescinded and security money be not forfeited. When the petitioner failed to respond, the respondents again issued memo No. 202 dated 16.04.2008 to the petitioner to explain regarding his failure to complete the work. The petitioner filed show cause/ affidavit regarding completion of work till 30.06.2008 otherwise the department would be free to take action against him (Annexure- G). Even then the petitioner could not complete the work till 30.06.2008 and only 42.9% of work could be completed despite extension of time for about one year from the scheduled date of completion of work, that is, 16.07.2007. On 26.06.2008 vide letter No. 414 the petitioner was asked to file show cause and when the show cause of petitioner was found unsatisfactory the agreement No. 33F2/ 2006-07 was rescinded vide office order No. 20 dated 04.07.2008 under clause- 3(a) and 3(c) of the condition of contract.



7. The petitioner filed CWJC No. 11824 of 2008 challenging the order dated 04.07.2008 and I.A. No. 4853 of 2008 for stay of the order dated 04.07.2008. The High Court vide order dated 20.08.2008 was pleased to stay the operation of order dated 04.07.2008 till November, 2008 with a condition to complete the work by that time to the satisfaction of the respondents otherwise respondents would be at liberty to deal with him in accordance with law (Annexure- J). The petitioner filed I.A. No. 6700 of 2008 to extend the time granted vide order dated 20.08.2008. The petitioner undertook to complete the work till March, 2009. Vide order dated 06.04.2009 CWJC No. 11824 of 2008 was disposed of on the basis of submission of the petitioner that work was completed within time with a direction to the respondents to measure the work done by the petitioner, as claimed by him, and ensure payment to the petitioner. The petitioner filed MJC No. 497 of 2011 but this court finding the rival contention of completion and non completion of work disposed of the contempt petition with liberty to the petitioner to file reference case in the Tribunal.

8. Further case of the respondents, resisting the claim of the petitioner, is that in August, 2008 due to devastating flood in north Bihar including Madhepura district part of NH 106 including the road in question was damaged very badly. The Road



Construction Department issued letter No. 2/Astha/ 7-10-2008 dated 23.09.2008 whereunder seven Task Force were constituted in the five effected districts of State of Bihar including Madhepura for speedy repair of the roads and restoration of vehicular traffic in flood affected area. The District Magistrate, Madhepura vide letter No. 934-2 dated 15.02.2008 directed the Chief Engineer North Bihar Wing Road Construction Department, Darbhanga to take immediate steps for restoration of traffic on nine important roads of district, including NH 106 (Annexure- M). In persuasion of aforesaid letter repair and restoration of road including the road in question from 77 to 88 km of NH 106, was carried out by the Task Force and the petitioner did not do any repair work or extra work, therefore, question of doing extra work by the petitioner is absolutely false. A chart enclosed as Annexure-3 by the petitioner is absolutely false and no work was done by the petitioner. After completion of work by the RCD and by the Task Force the Executive Engineer submitted all the records including the measurement book vide letter No. 662 dated 24.07.2009 (Annexure- N & O).

9. It is further stated that all the payments have already been made to the petitioner for the work done by him including the minor work done by him and this fact was communicated to the



higher authorities by the respondent/ Executive Engineer through letter No. 494 dated 02.06.2009 (Annexure- P). The respondents further claimed that final bill in full and final settlement of all the claims of the petitioner has already been paid to him, which is evident from page 94 to 100 of the measurement book No. 151 and in token of the receipt, the petitioner has put his signature at page 99 of the measurement book. Thus, this fact makes it crystal clear that petitioner has already received entire amount for the work he had actually done including any extra work in the flood damage repair work in item 2 and 3 respectively (Annexure- Q).

10. The Tribunal after hearing both sides and on appraising and scrutinizing the materials on record recorded finding that on perusal of Annexure- Q, the measurement book and acceptance and acknowledgement of the petitioner to receive the entire amount for the work done by him in item-2 & 3 in full and final satisfaction of the work done and his signature thereon prove the fact that no payment is lying due against respondent/ authorities and in view of this fact the petitioner is not entitled to get any award for any extra work done or for compensation to any damage alleged to have been sustained by the petitioner and dismissed the reference case vide order dated 08.08.2016.



11. Mr. Subodh Kumar Jha, the learned counsel for the petitioner, submits that contract of the petitioner was rescinded on 04.07.2008 arbitrarily. Against the order dated 04.07.2008 the petitioner filed CWJC No. 11824 of 2008 and a bench of this court vide order dated 20.08.2008 stayed the operation of the order No. 20 dated 04.07.2008 by which the contract of the petitioner was repudiated and directed the petitioner to complete the work till November, 2008. The petitioner in pursuance of the aforesaid order again started work but unfortunately due to breach in Kushaha Bandh on Koshi river the entire Koshi belt was inundated in flood, including the district of Madhepura, and the road in question was extensively damaged. The petitioner filed I.A. No. 6700 of 2008 for extension of time for completion of work and on the undertaking of the petitioner the time granted for completion of work was extended till March, 2009 vide order dated 02.03.2009. The petitioner completed the work including the extra work and requested the Executive Engineer to prepare estimate for extra work and pay the same including the work executed under the agreement. The Executive Engineer paid no heed compelling the petitioner to file MJC No. 497 of 2011 for initiating contempt proceeding for violation of the order of this court passed in CWJC No. 11824 of 2008 but the respondents disputed the factum of



completion of work by the petitioner and on such rival contentions the contempt proceeding was dropped with liberty to the petitioner to move before the Tribunal for the needful. Thereafter, the petitioner filed reference case claiming payment of Rs. 84,88,650/- for extra work and Rs. 98,39,500/- for compensation on account of damage caused to the materials kept by the petitioner by the side of road on account of washing of materials in unprecedented flood.

12. It is further submitted that the Tribunal has erred and has not decided the reference made by the petitioner for the work done by the petitioner. No finding is recorded on the reference and the Tribunal has not considered the material documents filed by the petitioner and, thus, the Tribunal has committed irregularity in recording the finding that the petitioner is not entitled to get any money in the head of extra work or in the head of compensation to the damage alleged to have been caused by unprecedented flood.

13. Having considered the submissions and on perusal of the order passed by the Tribunal, it is admitted fact that petitioner undertook the work under agreement for construction of road but when the petitioner could not complete the work by 16.07.2007, within six months from the date of agreement, the respondents



served show cause notice to the petitioner for non completion of work under the agreement. On the request of the petitioner the period for completion of work was extended from time to time till 31.03.2008 but even then the petitioner did not speed up the work towards completion and then show cause was served to explain regarding his failure to complete the work. Till 30.06.2008 the petitioner completed only 42.9% of work, even after extension of the period of completion for 11 months the petitioner could not complete the work and ultimately agreement with the petitioner was rescinded vide order No. 20 dated 04.07.2008. The petitioner moved this court in CWJC No. 11824 of 2008 and a bench of this court vide order dated 20.08.2008 stayed the operation of order No. 20 dated 04.07.2008 and directed the petitioner to complete the work till November, 2008 but the petitioner could not complete the work even within the time given by the High Court. The petitioner filed I.A. No. 6700 of 2008 to extend the time till 31.03.2009 and the petitioner claimed to have completed the work but the Executive Engineer seriously refuted the claim of the petitioner and stated that petitioner did not complete the work under the agreement even in pursuance of the order dated 20.08.2008 passed by the High Court rather on account of unprecedented flood there was extensive damage to the road



including the road in question and the Collector constituted Task Force under which the repair of road in the entire inundated area including the road in question was undertaken and completed. The petitioner taking advantage of the work done by the Special Task Force submitted affidavit for completion of work and on such the High Court disposed of the writ petition directing the respondents to make payment but the Executive Engineer measured the work done by the petitioner and found that petitioner did not do any extra work nor any damage was caused to the petitioner. The work of the petitioner was measured in measurement book No. 151 and the petitioner put his signature making endorsement. The measurement is accepted and in the 29th and final bill he received the entire amount for the work done by him. The petitioner accepted the measurement done by the Executive Engineer and also accepted the final payment and he did not raise any objection about non payment of any damage caused to him on account of flood. The Tribunal considered the facts and the endorsement made by the petitioner in measurement book that in full and final satisfaction of the entire work done by him, the petitioner received the payment. The petitioner did not raise any objection before the authority who did the measurement of work done by the petitioner. There is no material on record to show that the works done by the



petitioner was not properly measured and measurement of the work done by the petitioner was not made. Rather the measurement book shows that petitioner received the entire bill for the works done by him. Thus I find that the learned Tribunal has rightly held that petitioner is not entitled to get any award in the head of extra work done by him or in the head of compensation for the damage caused to him. The learned counsel for the petitioner has not been able to point out that any document filed on behalf of the petitioner has not been considered in its true perspective rather I find that on consideration of entire material and on acceptance of the petitioner and his endorsement on the measurement book that he accepted the measurement and received the payment in full and final satisfaction of work done by him the Tribunal dismissed the petition. Thus, I find no illegality or material irregularity in the impugned order of Tribunal.

14. Accordingly, this Civil Revision is dismissed as devoid of any merit.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	05.12.2018
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