

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.230 of 2016

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1. The State of Bihar through the Principal Secretary, Rural Works Department, “Vishweshwaraia Bhawan”, Bailey Road, Patna
 2. The Engineer-in-Chief -cum-Additional Secretary, Rural Works Department, Vishweshwaraia Bhawn” Bailey Road, Patna.
 3. The Chief Engineer, Rural Works Department, “Vishweshwaraia Bhawan”, Bailey Road, Patna.
 4. The Superintending Engineer, Rural Works Department, Works Circle, Munger.
 5. The Executive Engineer, Rural Works Department, Works Division, Munger.

... .. Petitioner/s

Versus

M/s Sadanand Singh Construction Works, through its Director Sadanand Singh, s/o Late Medni Singh, resident of village- Dharhara, P.S.- Dharhara, District- Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sriram Krishna, AC to SC-11
For the Respondent/s	:	Mr. Aditya Narayan Singh-I, Advocate
		Mr. Uday Prasad Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 01-03-2019

The State of Bihar through its Principal Secretary, Rural Works Department and its officials have challenged the award dated 25.04.2016 made by Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna, under Section 9 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008. The award was made in favour of the Opposite Party herein.

2. Heard learned counsel for the parties and have



gone through the records including the counter affidavit and rejoinder to the counter affidavit filed by the petitioners.

3. The petitioners floated a tender for construction and maintenance of road in between Dariyapur Gumati to Bilokhar Road. The Opposite Party was selected as successful bidder. Accordingly, an agreement was executed on 04.12.2009 bearing No.16/SBD/2009-2010. The work was to be completed within a period of one year. However, the work continued even after expiry of the aforesaid period but the petitioners rescind the contract alleging failure on the part of the Opposite Party to complete the work and ordered for forfeiture of security money etc.

4. The matter went up to the Tribunal. The parties contested thereat and finally the Tribunal made an award that Opposite Party-contractor would be entitled to get refund of earnest money of Rs. 3,95,000/- if paid, would be entitled to get back security deposit of Rs. 6,80,041/- with simple interest of 10 % per annum. The Contractor would further be entitled to Rs.6,76,752/- (rupees six lacs seventy-six thousand seven hundred and fifty two only), which was deducted from the running account bills of the opposite party on account of extension of time. This amount was to be paid along with simple



interest of 10% per annum from the date of filing of the claim before the Tribunal till realization.

5. Contention of the petitioners is that the contract work was not completed within time. Hence, as per terms and conditions of the contract, the forfeiture was permissible. Therefore, the Tribunal should not have disturbed the same and passed contrary order. Learned counsel for the petitioners further submits that the Tribunal has awarded the benefit of contract to the contractor and not the liability arising out of failure of performance of the contract. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond & Gem Development Corporation Limited and Another** reported in **(2013) 5 SCC 470** for submission that a party to the agreement cannot be permitted to approbate and reprobate at the same time.

6. On the other hand, learned counsel for the Opposite Party submits that in the counter affidavit the respondents have placed details on the records which would show the reason for non-completion of the work within time, which was mainly attributable against the petitioners for the reason that supply of bitumen within time was not made; rather



the same was not made available within the contract period, which would be evident from the latter dated 31.12.2013 at Annexure-3. The work was not completed within time for the reason mentioned in the representation of the petitioner before the authority vide a copy at Annexure-1 to the reply to the counter affidavit filed before the Tribunal, wherein the petitioners stated the circumstances under which stone chips could not be lifted because the authority had directed initially to take stone chips from Jamalpur and thereafter from Shankarpur and a different rate was claimed for carrying the said stone chips. Moreover, the award of the Tribunal cannot be examined by this Court in exercise of power of judicial review on the line that Tribunal could have reached at some different conclusion on the basis of material available on the record or on the ground that the Tribunal ignored the terms and conditions between the parties.

7. Contention is that the law is well settled that arbitrator is final authority on the facts of the case as arbitrator is choice of the parties and appeared before the arbitrator and contested the matter by filing written objection. Moreover, in the present case, arbitrator has been appointed under the Act by the State Government itself.



8. A similar issue regarding scope of judicial review of the award of arbitral Tribunal was considered by the Hon'ble Supreme Court in the case of **State of Rajasthan Vs. Puri Construction Co. Ltd. And Another** reported in (1994) 6 SCC 485. In para 26 of the judgment the Hon'ble Supreme Court 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.”

9. A Bench of this Court had occasion to examine the scope of judicial review under Section 13 of the Act, which is pari materia to Section 115 of the Code of Civil Procedure in the case of **State of Bihar through the Chief Secretary and Ors.Vs. M/s Kumar Construction Company**, reported in **2013 (4) PLJR Page 239**, in para 26 of the judgment the Bench 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.”

10. Learned counsel for the petitioner has relied on two judgments, one of them is referred to above and another is **Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others** reported in (1980) 2 SCC 129. In none of the aforesaid cases, the issues involved was scope and limits of the power exercisable by the Tribunal or the limits and contours of power exercisable by this Court under Section 13 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008.

11. On careful scrutiny of the award made in this



case, I am of the considered view that the Tribunal has not taken view contrary to law or settled proposition of law nor has exercised jurisdiction with material irregularity. The terms and conditions of the award and its consideration is limited within the realm of the exercise of power by the Tribunal and this Court cannot re-look into that and substitute its own finding. Hence, I do not find any merit in this revision application.

12. In the result, this Civil Revision application stands dismissed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.03.2019
Transmission Date	

