

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.196 of 2017

1. The State Of Bihar, through the Principal Secretary, Road Construction Department, Government of Bihar, Patna
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Engineer in Chief, Road Construction Department, Government of Bihar Patna.
4. The Chief Engineer, (Yatayat) (North Bihar) Road Construction Department, Darbhanga
5. The Superintending Engineer, Road Construction Department , Road Circle, Saharsa.
6. The Executive Engineer, Road Construction Department, Road Division, Saharsa.

... Respondent/ Revisionist Petitioner/s
Versus

M/s Madan Kumar Singh, a partnership firm having its registered office at Naya Bazar, P.S. Sadar Saharsa, District Saharsa through its one of the partners, namely, Gopal Kumar Singh, aged about 36 years, son of Sri Ram Nandan Prasad Singh Resident of Naya Bazar, P.S. Sadar Saharsa, District Saharsa.

... Petitioner / claimant opposite party

Appearance :

For the Petitioner/s : Mr. Dinesh Maharaj
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 24-04-2019

Heard.

This revision petition has been filed by the State of Bihar and its authorities against the Award dated 25.1.2017 passed in Reference Case No.82/2015 by Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna (hereinafter referred as “the Tribunal”)

An agreement was entered between claimant / opposite



party and respondent by agreement no.24 SBD of 2008-09 to execute the work of widening, strengthening and raising of Alam Nagar Mali Chowk via Budhma Road including cross drainage from kilometer 17th to 24 and 25th (part) with a cost of Rs.10,09,52,426/- date of commencement was 28.02.2009 and date of completion was within 15 months, i.e., 27.05.2010.

Claimant /opposite party in his petition filed before the Tribunal stated that while he was executing the work, the devastating flood of Koshi hampered the work and Dumri Pool collapsed as such, due to intervening circumstances, the work could not be completed within stipulated period of 15 months and same was completed on 20.07.2013 and there was some delay due to parliamentary election 2009 also which has been accepted by the respondent/petitioner while granting extension of time. The engineer-in-chief extended the time of completion till 20.07.2013. Petitioner had to bring the construction material through a different motorable route due to rupture in pillar of Dumri pool as restrictions were placed for movement of heavy vehicle on the bridge. There were *bona fide* reasons which were beyond the control of claimant / opposite party as such the work could not be completed within time, however, rupees 5 lacs were deducted owing to delay in completion of work. It has



been submitted that there is no provision to impose penalty for delay in work. Petitioner /respondent by letter dated 20.1.2014 granted extension of time for completion of work till 20.7.2013 and same was completed within the extended time.

Respondents in their statement before the Tribunal stated that claimant / opposite party completed the work after more than three years beyond schedule time and time extension was granted considering the damage of Dumri Pool and parliamentary election of 2009. The time of Koshi disaster was prior to execution of agreement and Dumri Pool was damaged after stipulated date of completion as such, claimant / opposite party cannot take plea of non-completion of work due to Koshi disaster for his own default. Penalty was imposed for non-completion of work within the schedule time as such, the claim of petitioner to refund the penalty amount with interest cannot be granted.

The Tribunal has held that delay of work was due to reasons beyond the control of claimant /opposite party and also on account of non-performance of reciprocation obligation. The work commenced on 20.8.2009 and got completed on 20.7.2013. It has further held that within the extended period all the works were completed and extension of time was valid in



terms of contract under Clause 5.4 of the Condition of Contract of SBD Agreement. There is no provision of penalty in any of the clause of SBD Agreement, however, there is Clause for compensation for delay under Clause 2 of Conditions of Contract for which there has to be determination for compensation but since extension has already been granted, deduction in the name of penalty is refundable under 2nd part of Clause 2 of Conditions of Contract and, accordingly, Tribunal has held that claimant/opposite party is entitle for payment of refund of penalty amount of rupees 5 lac with simple interest @ 10% per annum from date of filing of petition till its realization.

After hearing the counsel for the petitioners, this Court does not find any infirmity or jurisdictional error in the Award passed by Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna requiring any interference by this Court in its revisional jurisdiction.

Accordingly, the revision petition is dismissed.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.06.2019
Transmission Date	NA

