

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.177 of 2017

1. The State Of Bihar, through the Secretary, Road Construction Department, “Vishwesharraiya Bhawan” Bailey Road Patna.
2. The Engineer in Chief, Road Construction Department, “Vishwesharraiya Bhawan” Bailey Road Patna.
3. The Chief Engineer, road construction Department, “Vishwesharraiya Bhawan” Bailey Road Patna.
4. The Superintending Engineer, Road Construction Department, Bhagalpur Circle, Bhagalpur.
5. The Executive engineer, Road Construction Department, Road Division, Bhagalpur
6. The Executive Engineer, Road Construction Department, Road Division, Banka.
7. The Executive Engineer, Road Construction Department, Road Division, Munger.

... .. Petitioner/s

Versus

M/s J. K. M. Infra Projects Ltd. (M/S Kaal Builders) authorized Office Shri Ashish Jalan, having its registered office at C-27, Sector-26, Noida, in the State of Uttar Pradesh and its local office at Flat No. 403 & 404, Gorakhnath and Leela Apartment, Gorakhnath Lane, East boring Canal Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dinesh Maharaj, Adv.
For the Respondent/s : Mr. Sanjeev Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 14-02-2020

Heard the parties.



2. This civil revision petition has been filed under section 13 Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 on behalf of State of Bihar for setting aside the award dated 29.07.2013 passed in Reference Case No. 20 of 2012 passed by Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 by which the learned tribunal has held claimant/opposite party to be entitled for payment of Rs. 41,21,000/- (forty one lacs twenty one thousand) only and Rs. 4,78,000/- (four lacs seventy eight thousand) which was deducted from the bills as penalty along with interest @ 10 % per annum from the date of issuance of completion certificate i.e. 20.06.2009 till its realization.

3. Claimant/opposite party entered into an agreement in the year 2006-07 with the Executive Engineer Road Construction Department, Banka Division, Banka for improvement of road of Banka, Bhagalpur and Munger district under RCD package and agreement was executed on 08.01.2007 with total estimated cost of Rs. 55,84,21,720/- (rupees fifty five crore eighty four lakh twenty one thousand seven hundred twenty only) and time for completion of work was 21 months. Date of commencement of work was 08.01.2007 and date of completion was 07.10.2008.



4. On account of hindrance caused in execution of work same could not be completed within stipulated time due to objection raised by Forest Department, irregular supply of bitumen, non-clearance of site and time for completion of work was extended in the meeting dated 10.07.2008 for aforesaid reasons. It was resolved in the meeting to grant extension of time for completion of balance work on four roads as work on three roads were completed within scheduled time. Two roads were completed within first extended period i.e 28.02.2009 and remaining two roads were completed before 31.03.2009 and extension of time was granted up to 31.03.2009. Valid reason of slow progress and delay in completion work was discussed in the meeting and accordingly the time for completion of the work was extended up to 31.03.2019 and it was also resolved that penalty withheld from the RA bills of petitioner to be released. However, same was not released and petitioner thereafter approach the tribunal.

5. The work was completed on 31.03.2009 for which extension was granted by the competent authorities for valid reasons. All roads under Bhagalpur Division and Munger Division were completed due to availability of hindrance free site however, some delay occurred in execution of work on



some roads of Banka division. The amount of Rs. 41,21,000.00 was not released as same were withheld from the bills as penalty on account of slow work in Banka Division. Similarly, Rs. 4,78,000.00 was also withheld as penalty for slow work in Munger Division, as such, the total withheld amount of petitioner/claimant was Rs. 4,21,000.00 and Rs. 4,78,000.00

6. Respondent in their reply stated that proportionate work was not achieved according to work Programme and as per letter dated 01.02.2007 penalty was withheld from Bills raised by claimant. It is further stated that there was only partial hindrance in the Forest Area in some part of one road and there was violations of clause 5.2 of the S.B.D. agreement. All six roads were completed between 25.12.2008 31.03.2009 after expiry of the date of completion as per agreement for which extension of time was granted but penalty was withheld earlier due to slow progress.

7. It was submitted by claimant that there is no provision of penalty in the entire S.B.D. agreement as such the amounts could not have been withheld. The tribunal has found that there is clause for compensation for delay under Clause 2 of the conditions of contract for which there must be determination of compensation according to Clause 2 of the



Contract by computing the delay on per day basis. It has been further held that as extensions has already been granted under clause 5.4 of the Conditions of Contract and as such deduction in the name of penalty is reversible under the 2nd part of the Clause 2 of the Conditions of Contract.

8. The tribunal has further held that there have been a number of extensions granted by the competent authorities through various letter and extensions under clause 5.3 is valid in nature, as such, petitioner is entitled for refund of Rs. 41,21,000.00 (Banka Division) and Rs. 4,78,000/- (four lacs seventy eight thousand) (Munger Division) withheld from account bills. The work was completed as per specification and direction of Engineer-in-Charge. The learned tribunal has further held that order of the Road Construction Department 01.02.2007 does not prohibit the refund of an amount under the relevant clauses of contract nor the aforesaid executive order can supersede the clauses of contract entered between parties and terms thereof cannot be unilaterally altered. and claimant is entitled for simple interest from 20.06.2009 (date of issuance of competition certificate) @ 10% per annum on the amount of Rs. 41,21,000/-. (forty one lacs twenty one thousand only) and also over an amount of Rs. 4,78,000/- (four lacs seventy eight



thousand only).

9. After hearing counsel for the parties and perusing the judgment and award passed by the tribunal, this court does not find any infirmity or material irregularity in the order passed by the tribunal accordingly, the present revision petition is dismissed.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

