

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.264 of 2016

1. The State of Bihar, through the Principal Secretary, Road construction Department, Govt. of Bihar Vishweshwarraiya Bhawan, Bailey Road, Patna.
2. The Chief Engineer, N.H. Wing, Road Construction Department, Vishweshwarraiya Bhawan, Bailey Road, Patna.
3. The Superintending Engineer, Road Construction Department, N.H. Works Circle, Vishweshwarraiya Bhawan, Bailey Road, Patna.
4. The Executive Engineer, Road Construction Department, N.H. East Division, Rajbanshi Nagar, Patna.

... .. Petitioner/s

Versus

M/s. Jai Maa Bhawani Construction Pvt. Ltd. Through its Managing Partner Sri Lalit Kumar Singh, R/o Deodha, P.O.- Mohanandpur, P.S.- Deep Nagar, District- Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bishwa Bibhuti Kumar Singh, Advocate Mr. Haishankar Roy, AC to AG
For the Respondent/s	:	Mr. Nand Kishore Singh, Advocate Mr. Jitendra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 23-12-2022

This Civil Revision under Section 13 of Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 has been preferred against the award dated 16-12-2013 passed by the Bihar Public Works Contracts Disputes Arbitration Tribunal ('The Tribunal' for short) in Reference Case No. 46 of 2012 (M/s Jai Maa Bhawani Construction Pvt. Ltd. Vs. The State of



Bihar and Ors).

2. The brief facts of the this case are that an application by the contractor (M/s Jai Maa Bhawani Construction Pvt. Ltd. respondent herein) under Section 9 of the Bihar Public Works Contracts Disputes Arbitration Act, 2008 filed before the Tribunal relating to contractual dispute arising out of non-payment of dues of escalation, refund of the amount of security deposit, penalty and damage for pre-mature closure of Agreement No. 25 SBD of 2008-09, 44 F2 of 2008-09 and 49 SBD of 2008-09.

The tribunal rejected some claim of the contractor, however following award for payment of following amounts has been passed in favour of contractor.

(i) Rupees 1,83,580/- towards security deposit with simple interest @ 10% per annum from 01.11.2011 till realization.

(ii) Rupees 19,68,580/- towards security deposit without interest.

(iii) Rupees 8,93,383/- deducted as penalty or fine with simple interest @ 10 % per annum from 01.05.2011 till realization.

(iv) Rupees 7,02,209/- deducted toward extension



of time with simple interest @ 10% per annum with effect from 01.05.2011 till realization.

(v) Counsel's fee as per schedule.

Learned counsel for the petitioners has submitted that the finding with respect to security deposit of the respondent company is contrary to the provisions made in Clause 16 of F2 agreement which provides that security deposit will be returned after six month from the date of issuing completion certificate. It is further stated that the same is also contrary to Clause 41 of SBD agreement which provides that repayment of security amount to the contractor is conditional as it provides that half of the total amount of security shall be repaid to the contractor after six months of completion of whole work and balance half of the total amount of security will be returned after completion of liability period and after the Engineer certify that all defects notified by him to the contractor before the end of this period have been corrected and also after the recovery of any dues. It is further submitted that the contractor failed to fulfill these conditions but the tribunal failed to appreciate the same and the impugned award is liable to be set aside.

Learned counsel for the petitioners has further



submitted that the contractor has failed to complete the work within time despite number of letters written to the contractor who is solely responsible for delay as such penalty on contract value has imposed on contractor under Clause 2 of SBD and similarly for time extension are not illegal and not liable to be refunded. It is also submitted that in the facts and circumstances of this case that contract was not performed withing stipulated period and due to non-compliance with the work programme the contract was closed and the work was handed over to NHAI for four laning and also final bill was not prepared as M&N form was not submitted, accordingly, the contractor is not entitled to the awarded amount which is against the terms and conditions of the agreement and also the contractor is not entitled to any cost, including the counsel's fee.

Learned counsel for the petitioners has further submitted that since reference pertains to three contracts accordingly claim of contractor in one reference is not proper and is erroneous. It is submitted that in this regard, three references were required to be referred instead of one reference. He was pointed out that in Reference no cause of action stated so limitation period cannot be calculated and the date of completion in three contracts are three dates.



The tribunal failed to consider that admittedly default has been committed by the claimant-contractor, accordingly contract is not entitled for interest amount as awarded by the Arbitral Tribunal in its impugned award. It is also submitted that evidence adduced by the petitioners with respect to deduction of penalty and forfeiture of earnest and security money on failure to fulfill the obligation of contractor has not been considered by the tribunal and as such the impugned award is perverse.

On the other hand, learned counsel for the contractor has submitted that the petitioner has not raised the issue with respect to requirement of three reference before the Tribunal. Accordingly, this issue cannot be raised and entertained at this stage. He has referred and relied on the observation made by the Hon'ble Supreme Court in **MSP Infrastructure Ltd. Vs. M.P. Road Development Corp. Ltd. (2015) 13 SCC 713** that "A party is bound, by virtue of sub-section (2) of Section 16, to raise any objection it may to the jurisdiction of the Tribunal before or at the time of submission of its statement of defence, and at any time thereafter it is expressly prohibited. Suddenly, it cannot raise the question after it has submitted to the jurisdiction of the Tribunal and invited an unfavourable award.



It would be quite undesirable to allow arbitrations to proceed in the same manner as civil suits with all the well-known drawbacks of delay and endless objections even after the passing of a decree.”

It is further submitted that appropriate reasons have been indicated by the Tribunal to arrive at the conclusion and there is no perversity in the reasoning for interference by this Court in this proceeding.

Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 provides for Constitution of a tribunal to arbitrate for dispute arising from Works Contract to which the State Government or a public undertaking is a party with the object to provide for expeditious dispute resolution mechanism. Section 8 of the Act provides that “notwithstanding anything contained in this Act, any of the provisions shall be in addition to and supplemental to **Arbitration and Conciliation Act, 1996** and in case any of the provision contained therein is construed to be in conflict with the Arbitration Act, then the latter Act shall prevail to the extent of conflict.

The decision in **Delhi Airport Metro Express Pvt. Ltd. Vs. Delhi Metro Rail Corporation Ltd. (2022) 1 SCC 131** indicate that there should be minimal interference in



arbitral awards, save, it suffers from patent illegality.

In **Associate Builders Vs. Delhi Development Authority** (2015) 3 SCC 49 it is held that none of the grounds under Section 34 (2) (a) deal with merits of the decision rendered by an arbitral award. Interference is permissible only when findings of an arbitrator is arbitrary, capricious or perverse or when conscience of Court is shocked or when illegality is not trivial but goes to the root of the matter.

The law is well settled that there is limited scope available under Act, 1996 to assail an award as provided under Section 34 of the said Act. The law on interference in matters of awards under the 1996 Act has been circumscribed with the object of minimizing interference by Courts in arbitration matters.

A perusal of the award passed by the learned Arbitral Tribunal would demonstrate that the learned Arbitral Tribunal decided the dispute within four corners of the provisions of agreements between the parties and findings are clear and the reasoning of learned Arbitral Tribunal in coming to the conclusion is logical and the same cannot be held to be patently illegal or absurd or perverse or is opposed to public policy.



In view of the above discussion, this Court finds no reason to interfere with the impugned award. Accordingly, this Civil Revision is dismissed.

(Sunil Dutta Mishra, J)

ashutosh/-

AFR/NAFR	NAFR
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