

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.82 of 2017

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1. The State of Bihar, through the Principal Secretary -cum- Commissioner, Road Construction Department, Government of Bihar, Patna.
 2. The Principal Secretary -cum- Commissioner, Road Construction Department, Government of Bihar, Patna
 3. The Chief Engineer, National Highway Section, Road Construction Department, Government of Bihar, Patna.
 4. The Superintending Engineer, National Highway Circle, Muzaffarpur.
 5. The Executive Engineer, National Highway Division No. II, Muzaffarpur.

... .. Petitioner/s

Versus

M/s R. S. Pandey and Co., Majholia Road, Rashulpur Zilani, Muzaffarpur, Police Station kazi Mohammadpur, District- Muzaffarpur through its Managing Partner Shri Mahesh Kumar, S/o Late Ram Surat Pandey, Resident of village Sain, Police Station- Kanti, District- Muzaffarpur.

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr. Amit Prakash, GA-13 Mr. Rajeev Shekhar, AC to GA-13
For the Opposite Party	:	Mr. Gautam Kejriwal, Advocate Mr. Alok Kumar Jha, Advocate Mr. Mukund Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

15 02-01-2023 Heard learned counsel for the petitioners and learned counsel for the opposite party.

This Civil Revision application has been filed under Section 13 of the Bihar Public Works Contract Disputes Arbitration Tribunal Act, 2008 against the Award dated 10.01.2017, passed by Bihar Public Works Contract Disputes Arbitration Tribunal, Patna in Reference Case No. 92 of 2013.

Learned counsel for the petitioners submits that 38 per cent progress of work as reported in memo no. 427 dated



11.06.2007 of the Executive Engineer was purely on the basis of eye estimation. The grievance of the petitioners is that the measurement of work is 27 per cent and not 38 per cent.

Learned counsel for the respondent stated that in rescinding letter bearing no. 967 dated 27.12.2007, the respondent Executive Engineer has mentioned that only 28.2 per cent work has been done whereas in the reasoned order dated 23.12.2009 passed by the Chief Engineer categorically recorded the finding regarding the admission of the Executive Engineer in its letter dated 11.06.2007 of completion of 38 per cent of the work by the opposite party which was contrary to the own statement of the same Executive Engineer in the letter of rescindment 27.12.2007, wherein the total work done by the opposite party was admitted only to the extent of 28.2 per cent of the contract which was not based on any measurement taken in the presence of the opposite party rather the admission of 38 per cent of the work done as recorded in the letter dated 11.06.2007 was passed on measurement taken in the presence of contractor/representatives.

On perusal of impugned Award dated 10.01.2017, the Hon'ble Tribunal has held that:-

“Chief Engineer clarified that the



petitioner could not complete the work as per schedule originally set due to factors beyond control of the petitioner and as such the rescindment order dated 27.12.2007 was set aside by him. The Chief Engineer also observed that final measurement was not taken on dated 31.12.2007 as per date fixed by the respondent Executive Engineer rather it was taken on 17.02.2008 and 23.02.2008 in absence of the petitioner. The Chief Engineer has quoted clause-15 of the agreement in which there is provision to obtain signature of the contractor as a consent on measurement book it self which was not adhered to.

The Tribunal finds that the respondent authority has violated clause-15 of the agreement and breach of contract has been committed by the respondent authority.

The Chief Engineer has also observed that the Executive Engineer in his penalty order dated 11.06.2007 has stated



completion of 38% of work having been done by the petitioner which was measured in the presence of the contractor where as same Executive Engineer in the letter of rescindment dated 27.12.2007 wherein the total work done by the petitioner was admitted only to the extent of 28.2% of the contract value which was not passed on any measurement taken in presence of the petitioner.

The respondent has filed copy of measurement book on dated 12.07.2016 to the Tribunal. From bare perusal of the measurement book, the 06th and final bill total amounting to Rs. 67,77,277/- was prepared in measurement book no. 252 page 28 to 38 and it was paid to the petitioner. We are of view that respondent Executive Engineer in his penalty order dated 11.06.2007 has admitted that 38% of the work has been done by the petitioner which was measured in his presence, so the



petitioner is entitled to get 38% of the agreement value i.e. 2,22,27,671/- x 38/100 = 84,46,515/-. The Petitioner has been paid up to 06th and final bill total amounting to Rs. 67, 77, 277/-.

Hence the petitioner is entitled to get the balance amount as admitted by the respondent i.e. 84,46,515/- (-) 67,77,277/- = 16,69,238/-.

We find that penalty order dated 11.06.2007 is also violation of clause 2 of the agreement and Chief Engineer in his reasoned order dated 23.12.2009 has mentioned in details that work was delayed due to the reasons beyond the control of the petitioner and as such rescindment order dated 27.12.2007 was set aside by Chief Engineer, hence the petitioner is also entitled to get refund of Rs. 1,11,000/-.”

This Court on perusal of the impugned Award dated 10.01.2017 finds the order very speaking and the basis of the claim of the petitioner regarding measurement dated 11.06.2007



is based on eye estimation, which cannot be accepted in any view of the matter. The Tribunal has passed after examining all the aspects of this case. There is no material irregularity found in the impugned Award. In the facts and circumstances, I am not inclined to interfere with the impugned Award.

Accordingly, this Civil Revision application is dismissed.

(Khatim Reza, J)

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