

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.306 of 2016

M/s Kumar Construction Managing Partner Jai Kumar Sharma son of Jagdish Singh Resident of Village - Rajpur, P.S. - Bihta, District - Patna. Presently Resident of - C/15, Vijay Nagar near Hope Jairam Apartment, P.S. - Rukanpura, District and Town - Patna - 800014.

... .. Petitioner

Versus

1. The State Of Bihar through Secretary, Rural Works Department, Visheshwaraiya Bhawan, Bailey Road, Patna.
2. The Engineer-in-Chief, Rural Works Department, Vishweswaraiya Bhawan, Bailey Road, Patna.
3. The Chief Engineer, Rural Works Department, Vishweswaraiya Bhawan, Bailey Road, Patna.
4. The Superintending Engineer, Rural Works Department, Work Circle, Patna.
5. The Executive Engineer, Rural Works Department, Works Division, Daroga Rai Path, Patna.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Lal Babu Singh, Advocate
For the Opposite Parties	:	Mr. Pushkar Narain Shahi, AAG 6 with Mr. Manish Kumar, AC to AAG-6

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

14 28-04-2023 This Civil Revision application has been filed against the Award dated 26.09.2016 passed in Reference Case No. 101 of 2013 by the Bihar Public Works Contract Disputes Arbitration Tribunal, Patna whereby claim of the petitioner in connection with the work of “Construction of strengthening of road from NH-30A Brahm Asthan to Nimi Thengua Road, length 5.10 km” has been rejected.

2. The petitioner filed Reference Case No. 101 of 2013 before the learned Bihar Public Works Contract Disputes



Tribunal, Patna against the order of termination and forfeiture of security deposit and prayed for following claims:-

“(a). For refund of security deposit (earnest money in the shape of NSC and passbook and deducted amount from RA bills) - 9,38,000/-

(b). For refund of deductions in the name of extension of time - Rs. 1, 78, 924/-

(c). Compensation due to prolongation of work in on site, off site expenses, depreciation of machines deployed at work site, wages of labours – Rs. 10,00,000/-

(d). Litigation cost of - Rs. 2,00,000/-

(e). Interest @ 18 per cent per annum on the aforesaid claims.”

3. The petitioner was awarded work of construction of strengthening/widening of road from NH-30A Brahm Asthan to Nimi Thengua Road, length 5.10 km.

4. After being successful bidder, the petitioner entered into agreement with Opposite Parties/Executive Engineer on 20.04.2006 whereby period of completion of work 9 months from the date of commencement i.e. 20.04.2006 was stipulated.

5. The petitioner carried out the entire BSG work but, during the execution of the work the Old Arch Bridge situated at



river work-site (on the same road) was damaged and due to damage of Old Arch Bridge the petitioner could not do further work and the petitioner intimated the opposite parties about this hurdle and sought instruction in this regard.

6. Despite several representations, the opposite parties didn't take any step to remove the problem of damage of Old Arch Bridge. However, on 01.02.2007 the opposite party Superintending Engineer inspected the work site and found the damage of Old Arch Bridge and directed the Executive Engineer to prepare estimate for construction of High Level RCC Bridge in place of damaged Old Arch Bridge and take step for approval of revised estimate. It is further submitted that without construction of High Level RCC bridge the petitioner could not complete the work. It is further submitted that the Executive Engineer never prepared the revised estimate for construction of High Level RCC bridge despite specific direction by the opposite party Superintending Engineer and in absence of construction of High Level RCC bridge, the petitioner could not complete the work. However, in anticipation of revision of estimate for construction of High Level RCC bridge, the petitioner remained at the work site and did other works and the opposite parties considering the genuine problem never took any



action against the petitioner. On 18.09.2010 without giving any notice to the petitioner, the opposite party-Executive Engineer terminated the agreement.

7. However, there was no order of forfeiture of Security Deposit and other adverse action against the petitioner. Therefore, despite several requests made by the petitioner regarding refund of security deposit and other deductions to the opposite parties, they did not refund the security deposit and other deductions. Surprisingly on 31.07.2013 after more than two and half years from the date of termination the Executive Engineer passed an order for forfeiture of security deposit under Clause 3A of the agreement and directed to deposit the security deposit amount of Rs. 9.38 lacs in the Revenue Department.

8. It is stated by learned counsel for the petitioner that in the totality of the facts and circumstances of this case, it is submitted that the order of rescinding dated 18.09.2010 and forfeiture of security dated 31.07.2013 is illegal and arbitrary exercise of power is contrary to the spirit of provision of law and is not sustainable in the eye of law.

9. On the other hand, the opposite parties filed their counter affidavit denying the allegation made by the petitioner. The learned counsel for the opposite parties further submits that



the Award passed by the learned Tribunal is just and proper. The learned counsel for the opposite parties further submits that the work was to be completed by 19.01.2007, yet the petitioner didn't complete the same within the stipulated period. He was directed several times to complete the work at the earliest. The petitioner promised in an affidavit dated 20.06.2008, that he would complete the work by 30.11.2008, but he failed. Much after he was informed *vide* letter dated 11.06.2009 that the final measurement of the work will be taken on 15.06.2009 as the progress of work was only 81.618% and petitioner was directed to remain present at the work site on the said date. He was also informed that the action is being taken under Clause 3(c) of the agreement but he didn't appear on the said date and assured the authority that he would complete the work by October 2009, but he again failed. Learned counsel for the opposite parties submits that it was apparent from his conduct that he was not interested to complete the work. As such, it was decided to take action against him under Clause 3(c) of the agreement and consequently, he was directed *vide* letter dated 08.03.2010 to remain present at the work site on 20.03.2010 on which date final measurement of the work will be taken. The final measurement was taken in presence of the petitioner and he



accepted the same by putting his signature on the measurement book. In the interest of work, the Agreement No. 1F2/2006-07 rescinded by the Executive Engineer Rural Works Department, Works Division, Patna *vide* Office order containing Memo No. 2545 dated 18.09.2010 and it was ordered to take action under Clause 3(c) of the agreement. It is further case of the opposite parties that the petitioner admitted *vide* letter dated 25.05.2011 that he has received payment of Rs 82, 31, 882/- against the agreement value of Rs 1,04,81,789/- and could not complete the work worth Rs. 22,49,907/-.

10. Learned counsel for the opposite parties further contended that since due to inaction of the petitioner the aforesaid agreement was rescinded *vide* the aforesaid order and for completion of the remaining work fresh tender is to be issued on the basis of fresh and enhanced estimate and due to which the Government has sustained huge loss, the earnest money and security deposit of the petitioner to the tune of Rs. 9.38 lacs has been forfeited and ordered to be deposited in the Government treasury in the light of the report of the C.A.G. (Comptroller and Auditor General) for the year 2010-11 *vide* office order dated 31.07.2013. The learned counsel for the opposite parties further submits that the petitioner himself failed



to perform the contractual/obligation as it did not complete the work within the stipulated period despite repeated requests of the concerned authority. The learned counsel for the opposite parties submits that the opposite parties were left with no option but to terminate the agreement and forfeit the security deposit of Rs. 9.38 lacs in the light of the C.A.G. report for the year 2010-11. Therefore, the petitioner is not entitled to get any claim under the facts and circumstances of this case.

11. After considering the facts and evidences on record, the learned Tribunal held that as per letter dated 09.04.2007, the Old Arch Bridge was damaged and it was not possible to carry the materials at site to complete the work. The petitioner had sought for instruction from the opposite parties authority but the opposite parties did not sort out the hurdle faced by the petitioner. In spite of the such hurdle in carrying the construction materials, the petitioner completed the work about 82,31,882/- / 1,04,81,789/- i.e. nearly 78.54%. The petitioner knowing the burden in carrying the construction materials submitted an affidavit on 20.06.2008 in which he specially stated that he will complete the work by 30.11.2008 but the petitioner did not complete the work and he committed breach of contract on his own part. The learned Tribunal further



held that the petitioner has not applied for extension of time and it has not been brought on record in the Tribunal. Moreover, the Arch Bridge culvert was reported to be damaged on 09.04.2007 i.e. nearly after three months of stipulated period of completion of the work i.e. 19.01.2007.

12. Learned counsel for the petitioner submits that the learned Tribunal failed to consider the fact that the damage of Old Arch Bridge is admitted fact and also the fact that the Superintending Engineer himself inspected the work site and directed the Executive-Engineer to make revise estimate for construction of High Level RCC bridge at the place of damaged Old Arch Bridge which was never done and without revision of estimate and its sanction the petitioner could not construct the High Level RCC bridge and complete the work under the agreement.

13. Learned counsel for the petitioner further submits that the work was delayed due to non-performance of reciprocal obligation by the State authorities. It is further submitted that the order of termination and forfeiture of security deposit are violative of principle of natural justice, in view of Clause 3(a) of the agreement. The learned counsel for the petitioner emphatically argued that opposite parties have not suffered any



loss.

14. The learned counsel for the petitioner submits that the acceptance of belated work performance of the petitioner shows that time was never the essence of the agreement. The petitioner's counsel relied upon Hon'ble Supreme Court judgment passed in *M/s Hind Construction Contractors Vs State of Maharashtra* reported in *1979 (2) SCC 70* and *Kailash Nath Associates Vs Delhi Development Authority and Another* reported in *2015 (4) SCC 136*.

15. The State authorities awarded punishment due to delay of execution of work. The provision of Clause 3 is compensatory and the opposite parties have no case at all as they have not suffered loss on account of breach of agreement by the petitioner which has not been considered by the learned Tribunal.

16. On perusal of the impugned Award and materials on record, it is apparent that the agreement for work was executed on 20.04.2006 and time of completion was only 9 months i.e. 19.01.2007. The petitioner completed the work of contract up to 6th on account Bill i.e. 78.54% out of total Awarded work. The petitioner failed to prove that after 6th on account Bill any work has been done. Since petitioner did not



complete the work, he committed breach of contract. There is no material on record to show that the petitioner had applied for extension of time. The case relied upon by the petitioner is not applicable to the facts of the present case.

17. Under the aforesaid facts and circumstances, I do not find any illegality or gross jurisdictional error for interference by this Court.

18. Accordingly, this Civil Revision application is dismissed.

(Khatim Reza, J)

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