IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.249 of 2019

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1. The Bihar State Power Transmission Company Ltd. (Government of Bihar undertaking), through its Managing Director, 1st Floor, Vidyut Bhawan, Bailey Road, Patna-1.
2. The Managing Director, The Bihar State Power Transmission Company Ltd. (Government of Bihar undertaking), 1st Floor, Vidyut Bhawan, Bailey Road, Patna-1.
3. The Chief Engineer (Civil), The Bihar State Power Transmission Company Ltd. (Government of Bihar undertaking), 1st Floor, Vidyut Bhawan, Bailey Road, Patna-1.
4. The Accounts Officer, The Bihar State Power Transmission Company Ltd. (Government of Bihar undertaking), 1st Floor, Vidyut Bhawan, Bailey Road, Patna-1.
5. The Executive Engineer(Civil), The Bihar State Power Transmission Company Ltd. (Government of Bihar undertaking), Transmission Zone, 132/33 KV Sub-Station, Bhikanpura, Ram Dayalu, Muzaffarpur.

... ... Petitioners

Versus

Brajesh Kumar, Male, aged about 42 years, S/o Late Bishundeo Singh, Resident of Mohalla-Sheikhpura, Mazargali, P.O.-B.V. College, P.S.-Shastri Nagar, District-Patna.

... ... Opposite Party

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Appearance :

For the Petitioners	:	Mr. Ritesh Kumar, Advocate
For the Opposite Party	:	Mr. Manish Sahay, Advocate
		Mr. Anil Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

CAV ORDER

15 15-06-2023 This Civil Revision application has been filed against Award dated 03.09.2019 passed by learned Bihar Public Works Contract Disputes Arbitration Tribunal, Patna in Reference Case No. 169 of 2017 whereby the claim of the opposite party has been allowed in following terms:-

(i). The action of the petitioners deducting Rs 5,94,110/- is wrong and it is contrary to Section 55 of the Contract Act.

(ii). There is no provision for deduction of Service Tax from the Bills of the contractor, thus, the action of the petitioners deducting the Service Tax is wrong.

(iii). The defect liability period is six months. Therefore, on expiry of six months from the date of completion of the work which comes to 19.02.2017, the security amount should have been refunded but it is not refunded till date. The opposite party is entitled to get the refund of the deposited and deducted security amount of Rs 2,67,350/-(deposited) and Rs 2,51,185/-(deducted from Bills) total being Rs. 5,18,535/-.

(iv). The opposite party is entitled to the interest according to the Section 31(7)(a) of the Arbitration and Conciliation Act, 1996.

(v). The opposite party is entitled to get the amount of Rs 5,18,535/- (Security Deposit) + Rs 5,94,110/- (Penalty Deduction) + Rs. 1,36,692/- (Service Tax) total being Rs. 12,49,337/- along with interest @ 6.50% per annum. This interest is payable by the petitioners on Rs 5,94,110/- + 1,36,692/- total amounting to Rs. 7,30,802/- from the date of the cause of action i.e., 19.08.2016 the date of the Bill. The opposite party is also entitled to receive interest @ 6.50% per annum on the amount of Rs. 5,18,535/- from the date of expiry of defect liability period i.e. 19.02.2017. The total amount along with interest as calculated above shall constitute the "Sum" and directed the petitioners to pay the "Sum" within three months from the date of presentation of a copy of this Award before the appropriate authority by either of the parties. If the "Sum" is not paid within the aforesaid period, the petitioners shall pay further interest @ 8.50% per annum on the "Sum" from expiry of three months till the payment is made.

2. Brief facts of the case is that opposite party filed a Reference Case No. 169 of 2017 for the following reliefs:-

(i). For award of 3rd and final bill amount (i.e. Rs. 1,41,817/-) relates to work namely "Providing PCC and gravel spreading in working area of swtichyard at 132/33 KV GSS Madhubani under State plan for the year 2015-16", because after taking work from the opposite party the petitioners slept over the matter of payment of said bill amount.

(ii). For award of entire amount of security deposit (Deposited & Deducted) in favour of the opposite party relates to said work, because work has already been completed since long back in spite of that the security deposit amount is not being refunded to the opposite party contrary to Clause-16 of the agreement.

(iii). For further award of entire deducted amount of "Penalty" which has been deducted from bills of the opposite party contrary to provision of law.

(iv). For further award of entire deducted amount of "Service Tax" which has been deducted from bills of the opposite party contrary to provision of law.

(v). For award of interest @ 18% per annum over entire payable amount from the date of its entitlement and till the date of its realization.

(vi). For award of cost of this reference case, which is presently assessed at Rs. 50,000/- (Rupees Fifty Thousand) only but the petitioner/Claimant craved leave of the learned Tribunal to submit the details of cost incurred by them for present reference, at the time of conclusion of hearing of present reference case if so directed by the learned Tribunal.

(vii). For grant of any other relief or reliefs for which the opposite party is entitled under the law in the facts and circumstances of this case.

3. The case of the opposite party is that an agreement was executed between the Executive Engineer and the opposite party on 09.07.2015. The cost of work was Rs. 53,46,990/-. The

details of work and agreement and also the deduction made from the Bills of the opposite party as detailed by the opposite party is as follows:-

(i)	Name of work	:-	Providing PCC and gravel spreading in working area of switchyard at 132/33 KV GSS Madhubani under State plan for the year 2015-16
(ii)	Agreement No. & date	:-	F2/CE ©/208/2015-16 dated 09.07.2015
(iii)	Estimated Cost	:-	Rs. 59,41,100/-
(iv)	Agreement Value	:-	Rs. 53,46,990/-
(v)	Work Order	:-	Vide LOA No. 55 dated 14.05.2015
(vi)	Time for completion	:-	Two months from the date of work order
(vii)	Actual date of completion	:-	19.08.2016
	3rd & Final Bill Amt.		Rs.1,41,816/-
(viii)	S.D. Deposited	:-	Rs. 1,19,000/- + Rs. 1,48,350/- =Rs.2,67,350/-
(ix)	S.D. deducted from bills	:-	Rs. 1,04,958/- + Rs. 1,39,136/- = Rs. 2,44,094/-
(x)	Deducted Amt. Of Penalty	:-	Rs. 5,94,110/- from 1st & 2nd R/A bill.
(xi)	Deducted Amt. Of Service Tax	:-	Rs. 58,776/- + Rs. 77,916/- = Rs. 1,36,692/-
(xii)	Status of work	:-	Work under said agreement has already been completed till 19.08.2016 under direction and supervision of all concerned authority.
(xiii)	M.B.No.	:-	27/2015-16 at Page-19 to 20

4. Initially although the opposite party has claimed the aforesaid relief but because of subsequent development supplementary affidavit has been filed on 25.03.2019, wherein, it is stated that the relief (Claim No. 1) for Rs. 1,41,817/- has been paid. From the said bill under the head of security deposit Rs. 7,091/- has been deducted, therefore, now the opposite party is entitled to initiate claim of Rs. 2,44,094/- + Rs 7,091/- = Rs 2,51, 185/- which is deducted security and the opposite party is entitled to Rs. 2,67,350/- which is the deposited security. The opposite party is also entitled to the deducted service tax of Rs. 1,36,692/-.

5. Learned counsel for the opposite party submitted that there is no provision for deducting service tax. The penalty deduction made by the petitioners is contrary to Section 55 of the Indian Contract Act. It is further contended that no notice was ever issued to the opposite party by the petitioners as required under Section 55 of the Indian Contract Act and further claimed that the opposite party is liable to pay compensation to the petitioners for the loss caused by delay. It is submitted that petitioners are liable to refund of amount of security deposit after expiry of defect liability period i.e. six months from the date of completion of work which is 19.02.2017 as the work was

to be completed by 19.08.2016 and claimed interest @ 18% per annum.

6. In reply, the petitioners have denied the allegation made by the opposite party. The main defence is that the opposite party didn't complete the work within the stipulated period, therefore, same amount has been deducted as penalty. Further case of the opposite party is that opposite party will be entitled to refund of security deposit after removing of defect during the defect liability period. The defect liability period is three years. Although the opposite party was allowed to complete the work beyond the stipulated time but he never filed application for extension of time. Therefore, on the ground of delay, the penalty has been deducted and further contended that service tax has rightly been deducted by the petitioners. Further case of the petitioners is that there is no agreement between the parties. Moreover, the opposite party should have approached the authority for his grievance but he directly filed reference case.

7. It is further contended that the work order was issued on 14.05.2015 and the work was to be completed within two months i.e., 14.07.2015 but within the said period the opposite party didn't complete the work. The petitioners allowed him to

continue the work but then also the opposite party never filed application for prayer for extension of time and it could not be completed on 19.08.2016 and was done after much delay.

8. On the basis of pleadings and submissions made by the parties, the learned Tribunal framed issues which are as follows:-

(A). Whether the respondents could have deducted the penalty amount from the bills of the petitioner and whether it is contrary to law or not?

(B). Whether the Service Tax can be deducted by the respondents?

(C). Whether the security deposit and deducted security deposit are to be refunded by the respondents?

(D). Whether this Tribunal has got the jurisdiction to grant interest?

9. After analyzing the pleadings and material available on records, the learned Tribunal held that petitioners cannot claim compensation of any loss occasioned by the non-performance of the promise within the time agreed unless at the time of acceptance it was enumerated. Admittedly, according to the opposite party, the petitioners allowed him to work after stipulated period under their direction and supervision. This fact is not denied. Admittedly, no notice was ever given as required

under Section 55 of the Contract Act. So far prayer for extension of time is concerned, the petitioners contended that opposite party didn't file application for extension of time. However, Clause 5 of the agreement clearly provides that the Executive Engineer is empowered for grant of extension of time. Therefore, in fact, time was not the essence of the contract. The work was executed by the opposite party under the direction and supervision of the petitioner authorities. There was no question of filing any application for extension of time because the opposite party was directed to continue the work.

10. In view of the provision enumerated under Section 55 of the Contract Act, the petitioners cannot claim compensation of any loss occasioned by the non-performance of the promise within the time agreed unless at the time of acceptance it was mentioned. The petitioners gave no notice to the contractor of the intention to do so. Admittedly, according to the opposite party the petitioners allowed him to work after stipulated period under their direction and supervision. This fact is not denied. Admittedly, no notice was ever given as required under Section 55 of the Contract Act. It may be stated here that Clause 5 of the agreement clearly provides that the Executive Engineer is empowered for grant of extension of time, therefore, in fact the

time was extended by the petitioners under the direction and supervision of the petitioners-authorities. There was no question of filing any application for extension of time because the opposite party was directed to continue the work and further held that the action of the petitioners deducting Rs. 5,94,110/- is wrong and it is contrary to Section 55 of the Contract Act.

11. So far issue with regard to deduction of service tax by the petitioners is concerned the learned Tribunal has held that in view of the decision of this High Court in CWJC No. 7694 of 2015 and its analogous cases delivered on 28.07.2015, wherein, this Court has held that the authority cannot collect or levy tax, there is no provision of deduction of Service Tax from the bill of the contractor. The action of the petitioners deducting the Service Tax is wrong. So far refund of deposited and deducted security amount is concerned, the petitioners are not denying refund. It is submitted that the same shall be refunded after six months i.e., after expiry of the defect liability period. After expiry of six months from the date of completion of the work which comes to 19.02.2017, the security amount should have been refunded but it was not refunded till date. The opposite party is entitled to get the refund of deposited and deducted security amount of Rs. 2,67,350/- (Deposited) and 2,51,185/-

(Deducted from bills) total amounting to Rs. 5,18,535/-.

12. The learned Tribunal relied upon decisions of the Hon'ble Supreme Court in the case of ***Secretary, Irrigation Department vs G.C. Roy*** reported in ***1992 Vol 1 SCC 508,*** wherein, Hon'ble Supreme Court has held that a person deprived of use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages where the agreement between the parties doesn't prohibit grant of interest and where a party claims interest, Arbitrator shall have the power to award interest p*endente lite*.

13. In view of the aforesaid background, the learned Tribunal held that the opposite party is entitled to the interest @ 6.50% per annum as per Section 31(7)(a) of the Arbitration and Conciliation Act, 1996. The learned Tribunal has held that opposite party is entitled to get the amount of Rs. 5,18,535(Security Deposit) + Rs. 5,94,110/-(Penalty Deduction) + Rs. 1,36,692/- (Service Tax) total amounting to Rs. 12,49,337/- along with interest @ 6.50% per annum. The interest is payable by the petitioners on the amount of Rs. 7,30,802/- from the date of the cause of action i.e., 19.08.2016, the date of the Bill. Further, it is held that the opposite party is

entitled to receive the interest @ 6.50% per annum on the amount of Rs. 5,18,535/- from the date of expiry of defect liability period i.e., 19.02.2017. The total amount along with interest as calculated shall constitute "Sum" and directed petitioners to pay the "Sum" within three months from the date of presentation of a copy of this Award before appropriate authority by either of the parties. If the "Sum" is not paid within the aforesaid period, the petitioners shall pay further interest @ 8.50% per annum on "Sum" upon expiry of three months till payment is made.

14. Learned counsel for the petitioners submitted that the learned Tribunal wrongly granted the relief for the refund of amount deducted towards penalty. It is submitted that there is a provision for imposing penalty in case the work is not completed within the stipulated period. It is admitted fact that the said work was completed beyond the period prescribed in the agreement. Since opposite party has not completed the work within the stipulated period, therefore, the penalty was imposed and the maximum penalty to be imposed was not exceeding 10% of the estimated cost of the work.

15. Learned counsel for the petitioners further submitted that there was no necessity of giving any notice to the opposite

party as per Section 55 of the Indian Contract Act. Learned Tribunal wrongly held that the notices should have been given to the contractor indicating the loss and the intention to recover the same from the opposite party and finding of the learned Tribunal with regard to the action of the petitioners in deducting Rs 5,94,110/- is wrong and contrary to the Section 55 of the Contract Act. As per Clause 2, 3, 4 and 5 of the agreement, there was provision for imposing penalty to the tune of maximum 10% of the contract value.

16. Learned counsel for the petitioners further submitted that there was no necessity for giving any notice under Section 55 of the Contract Act when there was a specific provision of deducting penalty in case of delay in completion of the work as per Clause 2, 3, 4 and 5 of the agreement.

17. Learned counsel for the petitioners further submitted that there is no provision for payment of interest on the amount of service tax deducted by the petitioners and there is no provision for payment of any interest in refund of the amount so deducted towards service tax for any procedural delay. It is submitted that the learned Tribunal failed to appreciate the fact that opposite party has not given any letter for extension of time duly recommended by the field officer. The provision of

imposing penalty after expiry of time for completion of work itself mean that the work can continue even after the time of completion of work mentioned in the agreement is over and by allowing the opposite party to continue with the work doesn't mean that penalty will not be imposed for delay in completion of the work and same has been imposed as per relevant clause mentioned in the agreement. Section 55 of the Contract Act is not applicable in the present case.

18. On the other hand, learned counsel for the opposite party submitted that the petitioners have agreed with the part of the Award dated 03.09.2019 because as per statement made in paragraph no. 10 of the Civil Revision petition, the petitioners have paid entire amount of service tax and “EMD/SD” to the opposite party. It is admitted fact that the petitioners have paid awarded amount of Rs. 1,36,692/- towards service tax which was deducted from the Bills of the opposite party besides that they have also paid awarded amount of security deposit i.e., Rs. 5,18,535/- to the opposite party in the month of November, 2019.

19. In the aforesaid facts, the petitioners are only aggrieved and dissatisfied with the award of penalty amount i.e., Rs. 5,94,110/- awarded of interest and cost only.

20. Learned counsel for the opposite party further submitted that the petitioners themselves admit that they allowed the opposite party to continue with the work beyond the fixed period. It is not in dispute that the work, in question, has been completed by the opposite party under supervision and direction of the Engineer in-charge i.e., Executive Engineer himself and he was satisfied that the opposite party had not committed any breach of contract for completing the work in question in time. The petitioners had allowed the opposite party to continue the work after expiry of the agreed period and they have accepted the performance of the opposite party without giving any notice to him for levying any compensation. In the aforesaid situations, the petitioners should not have deducted any amount of Bills of opposite party but they have wrongly deduced a huge amount of Rs. 5,94,110/- from first and second running account Bill of the opposite party towards penalty which is contrary to the law.

21. Learned counsel for the opposite party further submitted that the learned Tribunal has rightly relied upon the decision of Hon'ble Supreme Court in the case of ***Secretary, Irrigation Department vs G.C. Roy (Supra)*** as well as Section 31(7)(a) of the Arbitration and Conciliation Act, 1996 and

passed the Award of interest in favour of the opposite party.

22. After scrutinizing the impugned Award and pleadings and submissions of the parties, firstly I will consider the scope of ambit of revisional jurisdiction of this Court under Section 13 of the Bihar Public Works Contract Disputes Arbitration Tribunal Act, 2008 which has been dealt with in paragraph No. 26 of the judgment in the case of ***State of Bihar through Chief Secretary and others vs M/s Kumar Construction Company*** reported in ***2013 (4) PLJR 239,*** wherein, a Bench of this Court after considering the judgment of the Hon'ble Supreme Court in the case of ***Rabindra Kumar Gupta Vs Union of India*** reported in ***2010 (1) PLJR (SC) 145*** has observed in Paragraph No. 26 as follows:-

> "*Even while the scope of judicial review of an award stands circumscribed to the eventualities set out in Section 13 of the Act, there has been extensive arguments by both sides on the merits of the issue. The Supreme Court in paragraphs 9 to 14 of the judgments passed in the case of Rabindra Kumar Gupta (Supra) has referred to a catena of judgments on the scope and ambit of judicial review of an arbitration award. The opinion expressed in the judgment so referred makes it manifestly clear that unless*

there is a jurisdictional infraction by the Arbitral Tribunal in making of the award or the award suffers from manifest illegality or material irregularity, it is not to be interfered with, in a routine manner. In fact merely because there exists a possible second view also cannot be a ground for interference with an Arbitral Award. It is also well settled that the High Court in exercise of powers of judicial review would not sit as a Court of appeal to reappreciate the evidence led by the parties. Thus, unless the finding of the Tribunal is hounded with the perversity or is based on a wrong preposition of law, the High Court would not interfere with the award merely for a different possible view".

23. After considering the submissions and perusal of the impugned Award, this Court finds that it is admitted fact that the opposite party completed the work on 19.08.2016 under the direction and supervision of concerned authorities. It is not disputed here that the work has not been completed and admittedly, no notice was ever given to the opposite parties as required under Section 55 of the Contract Act. Clause 5 of the agreement clearly provides that the Executive Engineer is empowered for grant of extension of time. Therefore, the work was executed by opposite party under the direction and

supervision of the petitioners authorities and there is no question of filing any application for extension of time because the opposite party was directed to continue the work.

24. In view of the nature of objection raised in the instant revision application, which amounts to adjudication of disputed facts between the parties and also considering the fact that there is no error apparent on the face of the record of the impugned award as well as there is no irregularity or gross jurisdictional error in passing the impugned Award, this Court finds no merit in the revision application.

25. Accordingly, this Civil Revision Application is dismissed.

(Khatim Reza, J)

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