

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21044 of 2013

Neeraj Construction Pvt. Ltd. Son Of Late Keshav Prasad Resident Of
Kanchan Kunj, Lane - 1/E, Shivpuri Vijay Nagar , Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Department Of Water Resources Government Of Bihar, Patna
3. The Engineer - In - Chief Central Department Of Water Resources, Patna
4. The Chief Engineer, Department Of Water Resources, Dehari, Distt. - Rohtas
5. The Superintending Engineer, Durgawati Construction Circle, Bhitari Bandh, Chenari Sasaram , At
6. The Executive Engineer, Durgawati, Right Bank Canal Division, Chenari, At And P.O. Chenari, Distt.
7. Braj Kishore Rajak, Sole Arbitrator - Cum - Superintending Engineer, Flood Control Circle, Buxar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dr. Umashankar Prasad, Sr. Adv.
	:	Mr. Kamala Kant Tiwary, Adv.
For the Respondent/s	:	Mr. Gautam Kumar Yadav, A.C. to G.P. 26

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT

Date : 15-07-2024

1. The writ petition has been filed by the petitioner challenging the Award dated 02.11.2012 passed by the Sole Arbitrator-cum-Superintendent Engineer, pursuant to the orders passed by this Court in C.W.J.C. No. 9031 of 2006 which is wholly without jurisdiction and as an abuse of the power of the Arbitrator who acted as an agent of the Department of Water Resources, Government of Bihar, Patna and therefore, prayed to set aside the Award dated 02.11.2012.



2. The brief facts culled out of the petition are that pursuant to the tender for construction of canal of Durgawati Right Main Canal between chain 95.55 to 103.20, the petitioner made an offer which was accepted by the Department and work was allotted to the writ petitioner vide Letter No. 1144 dated 03.03.2001 by the Chief Engineer/Respondent No. 4. The value of the work was Rs. 79,71,309/-. Pursuant to it, the petitioner and 6th respondent entered into a contract dated 12.03.2001 vide Agreement No. 16F2/2000-2001 (Annexures- 1 and 2).

3. Before going into merits of the case, it is pertinent to mention that this is the third round of litigation of the petitioner. Initially the writ petitioner was before this Court vide C.W.J.C. No. 1331 of 2004 and this Court has passed an oral order dated 20.06.2005 wherein it is contended by the petitioner-counsel in the said writ petition that the work contract entrusted to the petitioner was completed within the extended period granted by the Chief Engineer (dated 31.03.2005), as earlier neither the lands were acquired from which soil could be removed for completing the works nor the weather was conducive on account of rain. The petitioner made representations dated 18.01.2002 and 11.01.2003 to the Department. The Order of this Court dated 20.06.2005 clearly



disclose that the petitioner should make representation before the Secretary of the Department and while considering the representations, the Secretary will look into the other grievances of the petitioner with regard to the work which was required to be executed by the road roller for which the rate was approved vide Letter No. 519 dated 31.05.2002 of the Chief Engineer as also the carriage of the earth by mechanical means, namely, the truck. The said representation should be disposed of within a period of three weeks from the date of receipt/production of the copy of this Order.

4. Accordingly, the petitioner made representation before the Secretary and the Secretary passed a detailed order dated 03.08.2005 and the same was challenged by the petitioner through a Writ petition bearing C.W.J.C. No. 9031 of 2006. It is also relevant to mention that this Court has disposed of the said Writ petition on 05.12.2008 directing the parties to resort to arbitration where all the matters can be looked into by the Arbitrator and the decision taken after determining the facts in dispute. Further, the order also directs that on the petitioner's filing a notice for arbitration to the concerned Chief Engineer, further the Chief Engineer would agree to the matter to be



referred to arbitrator in accordance with the agreement who would decide the matter at the earliest.

5. Pursuant to the orders of this Court dated 05.12.2008, with the consent of the Department/respondents and the petitioner, an Arbitrator was appointed to settle the disputes between the parties as per the terms of the agreement.

6. It is specific contention of the Learned counsel for the petitioner that the Sole Arbitrator appointed was Superintendent Engineer of the Department and therefore, the Arbitrator was in hands and gloves with the respondents and have not determined the issues which were placed before him. Therefore, it is just necessary to set aside the Award passed by the Arbitrator dated 21.11.2012. It is further contended by the counsel for the petitioner that the Arbitrator did not dealt with each and every aspect which was put before him, including the terms of agreement made in Item No. 5A.

7. On the other hand, a detailed counter affidavit was filed by the respondents Nos. 1 to 6 contending that the writ petition itself is not maintainable and therefore, prayed to dismiss the writ petition.

8. The brief contents of the counter affidavit are that pursuant to the order of this Court dated 05.12.2008, the Chief



Engineer, Water Resources Department, Government of Bihar, Patna vide Memo No. 760 dated 25.03.2009 sought his consent on one of the three names mentioned thereunder for being appointed as an Arbitrator. The Managing Director of the petitioner-company communicated his consent by letter dated 09.04.2009 to the Chief Engineer, Water Resources Department, Dehri in the name of Sri Brajkishore Rajak, Superintendent Engineer, Flood Control Circle, Buxar. Thereafter, the Water Resources Department, Government of Bihar by a letter issued vide Memo No. 1516 dated 26.05.2009 appointed Sri Brajkishore Rajak Superintendent Engineer as Arbitrator in the case. Thereafter, the Arbitrator has given full opportunity to both the parties to support their claim, and passed the detailed Award dated 21.11.2012, which disclose that the contractor in question had received excess payment of Rs. 9,79,959.00/- upto 15th on account bill and hence, the contractor is liable to pay the aforesaid amount to the Executive Engineer, Durgawati Right Bank Canal Division, Chenari, Rohtas on the basis of final measurement, within a period of 90 days failing which the above noted amount shall carry an interest @ of 12% per annum, after expiry of 90 days of award till the date of receipt of payment. The counter affidavit further disclose that the



Contractor/petitioner did not pay the aforesaid amount pursuant to the Award, thereafter, the respondent No. 6 was requested to submit the list of properties of the petitioner-company so that the amount in question shall be recovered. The counter affidavit further disclose that there is no illegality or irregularity in the Award passed by the Arbitrator and that the petitioner cannot raise any question on the appointment of Arbitrator at a subsequent stage as the Arbitrator was appointed with the consent of the petitioner. The counter affidavit also disclose that the petitioner could complete only 59.44% of the total agreement cost of the work upto the date of completion i.e. 11.03.2002. As per Clause 5 of the condition of the contract, the petitioner did not apply in writing for Extension of Time to the Executive Engineer within 60 days from the date of starting of so called hindrance etc. on account of which they desired such extension of time and therefore, the Extension of Time was not granted to the petitioner.

9. Further the counter affidavit disclose that the Executive Engineer demanded Rs. 16,60,007/- according to sixteen and final bill page no. 1 to 36 vide M.B. No. 663 by adjusting the total amount paid by 15th and A/C bill treating as advance and diluting Sale tax, royalty, Time Extension etc.



which is in accordance with rule, so the 2nd respondent did not grant relief on the demand of Rs. 16,00,007/- vide letter no. 371 dated 07.04.2006 which is justified.

10. Heard the learned counsel for the petitioner as well as Learned counsel for the respondents and perused the record.

11. On perusal of the Arbitration Award, it is evident that the Arbitrator had issued notices to both the parties and the proceedings were commenced on 29.06.2009 and they got concluded on 04.09.2012. The Award further disclose that during the said period, both the parties were given full opportunity to present their case with documents and oral submissions in support of their claims and defence.

12. The last meeting of the Arbitral proceeding held on 04.09.2012. Both parties submitted that they have nothing further to submit any document before the Tribunal. During the Arbitral proceeding neither any prayer nor any affidavit by way of evidence was produced by either of the parties. Both the parties were also given full opportunity to make oral submissions also.

13. Further the Arbitrator has only decided the dispute with respect to the contentions raised by the parties by going through the concerned documents, which are already on record.



14. It is evident that both the parties have not filed any documentary evidence before the Arbitrator nor they have filed any affidavit by way of evidence. It is pertinent to mention that the specific contention of the Learned counsel for the petitioner is that the Arbitrator has not decided the dispute

(1) as per the contentions raised by the petitioner

(2) that the Arbitrator is a Superintendent Engineer who cannot decided the dispute as he is below the rank of Chief Engineer.

But the record reveals that consent was given by the petitioner at the time of appointing Brajkishore Rajak, as the sole Arbitrator-cum-Superintendent Engineer, Flood Control Circle, Buxar. Therefore, the second contention that the Superintendent Engineer who is below the rank of Chief Engineer, cannot be the Arbitrator, cannot be questioned at this juncture, as the petitioner himself has consented for appointment of Brajkishore Rajak as Arbitrator. The Arbitration Award clearly disclose that no document was filed during the course of arbitration proceeding and evidence was not lead by both the parties. This Court is of the considered view that there



is no illegality or irregularity in the order of the Arbitrator, as the Arbitrator cannot decide the dispute without there proper evidence. The Arbitrator has decided the *lis* between the parties basing on the document and contentions which were put before him. Further, against the award there is an alternative remedy available to the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996.

15. Section 34 of the Arbitration and Conciliation Act gives ample power to the Court (District Judge) to set aside the Arbitral Award, if an application is made by any of the parties to the arbitration. Instead of availing the alternative remedy, the present writ application is filed.

16. It is also relevant to mention that this Court has given specific directions to the parties i.e. the petitioner and the respondents to put forth all the claims before the Arbitrator in C.W.J.C. No. 9036 of 2006. Inspite of specific directions, the petitioner himself has not lead proper evidence before the Arbitrator, which cannot be challenged under Article 226 of the Constitution of India. There are catena of judgments of the Apex Court, which clearly disclose that writ petition under Article 226 is not maintainable if there is alternative remedy available to the petitioner.



17. However, Learned counsel for the petitioner seeks permission to agitate his rights under Section 34 of the Arbitration and Conciliation Act before the appropriate authority.

18. Accordingly, liberty is granted to the petitioner, to agitate his rights before the appropriate forum.

19. In view of the above discussion, the writ petition is dismissed as it is devoid of merits.

(G. Anupama Chakravarthy, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20.07.2024
Transmission Date	N/A

