

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.100 of 2017

1. The State of Bihar through the Secretary Road Construction Department, "Vishwesharraiya Bhawan", Patna
2. The Engineer in Chief, Road Construction Department, Vishwesharraiya Bhawan, Patna.
3. The Chief Engineer Kendriya Nirupan Sangathan, Road Construction Department, Patna.
4. The Chief Engineer (Yatayat) North Bihar Upbhag, Road Construction Department, Darbhanga.
5. The Superintending Engineer, Road Construction Department, North Bihar Circle, Muzaffarpur.
6. The Executive Engineer, Road Construction Department, Road Division, Sitamarhi, District Sitamarhi.

... .. Petitioner/s-Respondents- Revisionist
Versus

M/s Vatsa Construction Pvt. Ltd. Kasturba path, North Sri Krishna Puri, Police Station- Sri Krishna Puri, District-Patna, through its Director, Sri Kishore Kumar Singh, Son of late Janki Prasad Singh Resident of Kasturba Path , North Sri Krishna Puri, Patna Police Station Sri Krishna Puri, District Patna.

... .. Claimant-opposite party

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Dubey, Mr. Dinesh Maharaj, Advocates
For the Respondent/s	:	Mr. Manish Sahay, Adv. Mr. Anil Kumar Sinha, Adv. Mr. Siddharth Aditya, Adv.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

9 14-05-2024 Heard learned counsel for the petitioners and learned
counsel for the claimant-opposite party.

2. This Civil Revision under Section 13 of Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 has been preferred against the award dated 06-12-2016, passed by the Bihar Public Works Contracts Disputes Arbitration Tribunal ('The Tribunal' for short) in Reference Case No. 52 of 2010 (M/S Vatsa Construction Pvt. Ltd., vs. The State of Bihar)



whereby the claim of the opposite Party has been allowed in the following terms :-

(i) The petitioner is entitled to get refund of entire deposited amount of Earnest Money and Initial Security Deposit i.e. Rs. 22,25,800/- and 40,000/-.

(ii) The petitioner is also entitled to get refund of security deposit amount i.e. Rs. 45,66,002/- deducted from 01st on running account bills to 24th on running account bills from time to time with 10% simple interest with effect from date of filing of this case i.e., from 20.04.2010 till payment, if not paid.

(iii) The petitioner is entitled to get refund of Rs. 6,16,645/- deducted from 24th on running account bills as time extension along with 10% simple interest with effect from date of filing of this case i.e., from 20.04.2010 till payment, if not paid.

(iv) The petitioner is also entitled to get refund of Rs 9,55,405/- deducted from 4th on running account bills, 15th on running account bills and 16th on running account bills as Liquidated damage along with 10% simple interest with effect from date of filing of this case i.e., from 20.04.2010 till payment, if not paid.

(v) The petitioner is also entitled to get payment of



Rs. 43,23,528/- against 25th and final bill amount along with 10% simple interest with effect from date of filing of this case i.e., from 20.04.2010 till payment, if not paid.

(vi) The petitioner is entitled to get payment of Rs. 14,48,450/- against deducted amount of royalty with 10% simple interest with effect from date of filing of this case i.e., from 20.04.2010 subject to verification of affidavit M&N from Mining Department till payment, if not paid.

(vii) The respondent authority would be at liberty to make recovery of balance amount of mobilization advance for tools and plant amounting to Rs. 23,95,222/- and Materials advance amounting to Rs. 15,31,714/- with simple interest @ 10% per annum due against the petitioner from aforesaid awarded amount.

3. The case of the claimant-opposite party is that an agreement bearing No. 52 F2 of 2006-07 was executed between the Executive Engineer and the petitioner for “widening and strengthening of Sitamarhi Riga-Dheng Road from Kilometer 00 to 23.02 KM in Sitamarhi District under Plan head for the year 2006-07”. The cost of the work was Rs. 12.62 Crores (@ 3% above on estimated cost). 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:-

1.	Name of work	:- Widening and strengthening of Sitamarhi Riga-Dheng Road from Kilometer 00 to 23.02 km in Sitamarhi District under Plan head for the year 2006-07.
2.	Agreement No. and date	:- 52 F2 of 2006-07 dated 20.03.2007
3.	Administrative approval for this work	:- For Rs. 12,14,39,000/- vide letter no. Pra8/Prakalan-06-306/2006-9093(S) dated 03.08.2006.
4.	Estimated Cost	:- Rs. 12,25,73,088/-
5.	Agreement Value	:- - Rs. 12.62 Crore (@3% above on estimated cost).
6.	Time Allowed for completion	:- 21 months (as per agreement) on or before 22.11.2008
7.	Time Extension granted	:- Up to 31.03.2009 (Total 25 months)
8.	Earnest Money (Deposited)	:- Rs. 22,25,800/- in shape of Bank Guarantees (This Bank Guarantee has been encashed on 19.06.2009). Annexure- 02 at Page 36-39 of Reference.
9.	Security Deposited	:- Rs. 40,000/- in shape of N.S.Cs. (This has been encashed in the months of June 2009).
10.	Security Deposit deducted from bills	:- Rs. 45,66,002/- (from 01st to 24th running account bill) As per respondent Executive Engineer dated 03.03.2014.
11.	Time Extension deduction	:- Rs. 6,16,645/- As per respondent Executive Engineer dated 03.03.2014.
12.	Liquidated Damage	:- Rs. 9,55,405/- As per respondent Executive Engineer dated 03.03.2014.
13.	Final bill amount as per department	:- Rs. 6,59,94,015/- (25th and final) filed on 03.03.2014 by respondent Executive Engineer.
14.	Paid amount up to 24th running account bill	:- Rs. 6,16,70,487/- filed on 03.03.2014 by respondent Executive Engineer.
15.	Balance payable amount against work done	:- Rs. 43,23,528/- Difference of 25th and final bill minus 24th on account bill
16.	Claim with relates to royalty	:- Rs. 14,48,450/- (M&N affidavit has been submitted) but said amount could not be released lack of verification from Mining Department by the respondent.
17.	Advance Taken for Tools- and Plants	:- Rs. 52,74,151/- Vide voucher no. 53 dated 31.03.2007 (M.B. No. 1793 Page-09)
18.	Paid up till now	:- Rs. 38,21,075/- (Rs. 28,78,929/- + interest Rs. 9,42,146/- as per respondent dated 03.03.2014.)
19.	Payable to department against advance taken for tools and plants.	:- Rs. 23,95,222/- as per respondent dated 03.03.2014.
20.	Material Advance payable to department.	:- Rs. 15,31,714/-

4. After issuance of work order, the Opposite Party had approached the concerned Assistant Engineer and the Junior



Engineer and started the work in- question under their direction and supervision and time to time the Executive Engineer had also made site inspection and given needful direction to the claimant -Opposite Party. It is further case of the claimant-Opposite Party that during course of execution of the said work, it was found that the estimate should be revised on account of certain changes in the design. Thereafter, on representation made on behalf of the claimant-opposite party for revision of the original DPR (Detailed Project Report), the same got revised by the respondent authorities after long period i.e., on 20.01.2009, which was approved and sanctioned for Rs. 14,37,26,000/- (Rupees Fourteen Crore Thirty Seven Lakh Twenty Six Thousand) only.

5. Further case of the claimant -Opposite Party is that during course of execution of the said work, several obstructions had taken place, on account of which progress of work was badly hampered and despite all kinds of obstructions, the claimant -Opposite Party had completed more than 50% works as per directions of the concerned authorities and no defects had been pointed out against his work done. During the said execution period road traffic was badly affected due to "ILLA STORM" and no materials like bitumen and emulsion was made



available to the claimant -Opposite Party. Apart from that work was also disturbed due to Lok Sabha Election-2009. It is further contended that due to natural calamities the working site was badly damaged for which the Executive Engineer had given assurance to compensate the damages, but they had not taken any interest for the same.

6. It is further submitted that the bill of work done was never paid timely on account of lack of fund, as a result of which progress of work was badly affected. During his work, he had made request for allowing him to carry out the materials like stone chips etc., from nearest quarry, but respondents had refused the same, however, for maintaining the progress of work, the claimant-Opposite Party had carried out the materials from Sheikhpura and Pakur quarries, for which he had submitted affidavit M & N before Mining Department for reimbursement of royalty amount (i.e. Rs. 14,48,450/-) as well as payment of lead. It is admitted fact that Pakur Stone Chips were used for completing the work and the petitioner is entitled for extra lead amount of Rs. 27,71,927/-.

7. During execution period, a show cause notice was served upon the claimant -Opposite Party asking him to explain why he should not be debarred from taking part in future tender



process till completion of work in-question. In this regard, a detailed reply was filed on behalf of the claimant-Opposite Party, wherein, he had explained the reason for delay and requested for releasing him from the allegations as imposed against him. It was further explained by the claimant -Opposite Party that owing to parliamentary election the movement of vehicle had been closed, as a result of which, the required construction material could not be supplied at the work site and the aforesaid impediments coming at work site had been informed to the respondent authorities time to time. It is further contended that without considering the reply given by the claimant -Opposite Party to show cause, the authority concerned rescinded the work in-question related with the agreement No. 52F2/2006-07 vide Memo No. 846 dated 06-06-2009, which is annexed as Annexure-9 to the application. It is apparent from the said rescinding order dated 06-06-2009, that the "risk and cost" was inserted by hand written, but the authority had failed to disclose the provisions of law and also explain that on which provision they have come to the conclusion about fixing "risk and cost." From bare perusal of rescinding order, it transpires that the respondent- Executive Engineer had raised allegation about misbehaviour against the government officials, but they



failed to prove the same because at no point of time the respondents had disclosed such allegations. It is further contended that claimant -Opposite Party had not misbehaved with the government officials and he has not committed any breach of contract after rescinding of the said contract. The date was fixed on 15-06-2009 for taking final measurement, but when the claimant -Opposite Party reached at working site, on that very day, no officials were present for taking final measurement. Thereafter, the claimant -Opposite Party informed the Executive Engineer. It is further submitted that prior to the rescinding of the contract of the claimant -Opposite Party and blacklisting, the Executive Engineer had not followed the guidelines. The claimant-Opposite Party had uplifted total quantities of stone from Sheikhpura mines through royalty challans and made request to the Executive Engineer to reimburse the same, but he had not taken any interest.

8. The claimant -Opposite Party was constrained to file writ application bearing C.W.J.C No. 7636 of 2009. The said writ application was disposed of with an observation that "however, the petitioner would be at liberty either to take resort to arbitration or to file a civil suit before a court of competent civil jurisdiction. It would further be open to the petitioner to



file a representation in respect of his grievance against impugned office order dated 06.06.2009 of the respondent Executive Engineer, before the Principal Secretary, Road Construction Department, Patna, explaining the circumstances under which he could not complete the work in time. In case such a representation is filed, the Principal Secretary/In charge Principal Secretary, Road Construction Department, would dispose of the same after affording opportunity to the petitioner in accordance with law preferably within a period of four weeks from the date of receipt of the representation. The claimant -Opposite Party had challenged the order dated 09-09-2009 passed in CWJC No. 7636 of 2009 by way of Letters Patent Appeal bearing L.P.A No. 1335 of 2009, which was disposed of *vide* order dated 05.03.2010, with an observation that the appellant should take recourse to appropriate legal forum. Pursuant to the aforesaid order, claimant -Opposite Party filed Reference Case No. 52 of 2010 claiming Rs. 8,76,61,750/- excluding amount of Earnest Money i.e., Rs. 22,25,800/- deposited in the form of bank guarantee which was encashed on 19-06-2009. Details of claim of the claimant -Opposite Party is as follows:-

Sl. No.	Claimed Item	Claimed Amount	Remarks
1.	Earnest Money (Deposited)	Rs. 22,25,800/-	In shape of Bank Guarantees



			which has been encashed on 19.06.2009
2.	Security Money (Deposited)	Rs.40,000/-	In shape of N.S.Cs which has been encashed on June 2009
3.	Security Deposit deducted from bills	Rs.45,66,002/-	From 1st to 24th R/A Bill
4.	Time Extension Deducted from bills @ 10% of total bill value	Rs.6,16,645/-	From 24th R/A Bill
5.	Liquidated damage	Rs. 9,95,405	From 4 th , 15 th and 16 th R/A bills
6.	Withheld amount Compaction of earth	Rs. 4,99,666/-	
7.	Claim for work done amount	Rs. 43,23,528/-	This is admitted amount by the respondents.
8.	Claim for differences of rates given in BOQ and Agreement	Rs. 47,89,195/-	Due to typographical mistake rate has been given in the agreement contrary to approved Bill of quantity which was basis of agreement.
9.	Claim relates to difference given in bill of quantity and agreement	Rs. 7,10,556/-	Due to typographical mistake rate has been given in the agreement contrary to approved Bill of quantity which was basis of agreement.
10.	Claim relates to Lead	Rs.27,71,927/-	Materials were lifted beyond the approved distance as given in the agreement.
11.	Claim relates to Earth work	Rs. 1,48,71,026/-	Measurement was not taken as per work done by the petitioner.
12.	Claim for Royalty	Rs.14,48,450/-	Material was purchased from approved quarry after paying royalty.
13.	Claim for price escalation	Rs. 75,58,856/-	Actually the petitioner should be entitle for amount of Rs. 60,27,143/-
14.	Claim for repair for Road	Rs.5,29,400/-	
15.	Claim for bricks on edge soiling	Rs.29,16,075/-	Work has been taken from the petitioner but measurement has not been incorporated in the measurement.
16.	Claim for Bricks Flat Soiling	Rs. 6,35,353/-	
17.	Claim relates to BM	Rs. 10,30,710/-	
18.	Claim for PCC / RCC / Reinforce	Rs. 9,34,135/-	
19.	Claim for sign board	Rs.20,000/-	
20.	Claim for over head charge and offside expenses	Rs.1,03,66,772/-	
21.	Loss of contractor's profit	Rs.1,05,58,365/-	
22.	Material Losses	Rs.4,46,060/-	
23.	Losses of Advances	Rs.6,08,000/-	
24.	Losses of earth field	As per consideration of Tribunal.	



9. After notice, the respondents- petitioners appeared and filed their reply to the reference case. After analyzing the pleadings and material available on records and after scrutinizing the impugned Awards, pleadings and submissions of the parties, the learned Tribunal held that the tender in question was invited on the basis of Standard Bidding Document (in short 'S.B.D'), but due to mistake, F2 agreement was executed besides terms and conditions of S.B.D was also made applicable in this case by mutual consent of the parties. The learned Tribunal has held that from perusal of memo no. 846 dated 06.06.2009 (rescinding order), it transpires that the Executive Engineer has failed to disclose the provision of agreement i.e., clause of the agreement, under which, he has rescinded the contract of the claimant -Opposite Party. It also transpires that no show cause notice was served to the claimant -Opposite Party prior to passing of the rescinding order dated 06.06.2009 and there is no any discussion about serving any show cause notice prior to taking action against the claimant -Opposite Party and held that the said rescinding order dated 06-06-2009 is bad in law and not acceptable in the eyes of law and the same is against the principles of natural justice and cannot be binding upon the claimant -Opposite Party. Therefore,



the claimant -Opposite Party would be entitled for refund of deposited Earnest Money (i.e. Rs. 22,25,800/-) and initial Security deposit (i.e. Rs. 40,000/-). Apart from that, the claimant -Opposite Party would also be entitled for refund of the security deposit amounting to Rs. 45,66,002/- along with 10% simple interest from the date of filing of this case. So far deduction towards “ Time Extension” as well as “Liquidated damage” is concerned, the same is contrary to provision of agreement as well as Section 55 of the Indian Contract Act,1872 (for short ‘the Act’). The learned Tribunal has further held that the claimant -Opposite Party would also be entitled for refund of the deduction amount i.e., Rs. 6,16,645 and Rs. 9,55,405/ respectively along with 10% simple interest with effect from date of filing of the Reference case. The learned Tribunal further held that claimant -Opposite Party is also entitled to get payment of Rs. 43,23,528 against 25th and final bill amount along with 10% simple interest w.e.f. 20-04-2010 till payment if it had not been paid. Further, the Tribunal found the Opposite Party-Claimant entitled Rs. 14,48,450/- against deducted amount of royalty with 10% simple interest w.e.f. the date of filing of the Reference Case from 20-04-2010, subject to verification of affidavit M& N from Mining Department, till



payment if it had not been paid. So far recovery of balance amount of mobilization advance for tools and plant amounting to Rs. 23,95,222/- and materials advance amounting to Rs. 15,31,714 with simple interest @ 10% *per annum* due against the claimant -Opposite Party from the aforesaid awarded amount, liberty has also been given to the respondents-petitioners to make recovery of the aforesaid amounts. Accordingly, the learned Tribunal awarded the aforesaid amounts in favour of the claimant -Opposite Party.

10. Being aggrieved and dissatisfied with the impugned judgment and Award dated 06-12-2016, passed in Reference Case No. 52 of 2010 by the learned Tribunal, petitioners-State authorities have filed the present Civil Revision application.

11. The learned counsel for the petitioners submitted that prior to issuance of rescinding order dated 06-06-2009, several show cause notices were served upon the claimant -Opposite Party, but the opposite party had chosen not to reply the aforesaid show cause notice. Therefore, the State authority was constrained to pass the rescinding order dated 06.06.2009 and the same is just and proper. It is further pleaded that there is no obligatory provision to mention the terms of the agreement in



the rescinding order. The learned Tribunal has failed to consider the fact that despite the parties entered into agreement in F2 form but the terms and conditions of SBD was made applicable in the matter and in such circumstances, deduction is permissible in the eyes of law. The SBD was also part of the agreement and there is specific provision for deduction against “time extension” and “liquidated damage”. It is further submitted that the penalty imposed for the delay and laches is covered under both F2 and SBD. According to Clause-2 of the F2 Agreement, there is a provision to impose 1/2% per day of the estimated cost of the whole of the work maximum being 10% and according to the Clause 2 of the SBD, there is provision to impose penalty of 2% of the whole amount of the estimated cost subject to maximum 10%. Both the criteria of work ought to be the same amount as Rs. 1,26,25,000/- for the delay of work. Similarly, the risk and cost amount is covered under Clause- 3C of the F2 Agreement and also under clause 14(B) of the SBD Agreement. The amount of works to be the same i.e., Rs. 2,22,70,171/- for the left over work from both the criteria of works of F2 and SBD.

12. On the other hand, learned counsel for the claimant -Opposite Party submitted that from perusal of the



rescinding order, it is quite clear that the Agreement 52 F2/2006-07 has been rescinded by the Executive Engineer meaning thereby the agreement was entered into between the parties in F2 Form. It is also pleaded that after having knowledge about reasons for delay, the respondents-petitioners had allowed the claimant -Opposite Party to continue with work despite that they had deducted a huge amount under head of “Time Extension” as well as “Liquidated Damage/penalty” from the bills of opposite party which is contrary to Section 55 of the Act.

13. Reliance has been placed on the judgment in the case of ***Brajesh Kumar Vs. The Bihar State Power Transmission Company Ltd. & Ors.*** In this case, the petitioner had challenged the award dated 03.09.2019, passed in Reference Case No. 169 of 2017, wherein the learned Tribunal has held that if the contractor is to be allowed to continue with the work beyond the agreed period, they never claimed that the contractor-petitioner should file application. If there was any loss occasioned to the respondents for delay then according to the Section 55 of the Act notice should have been given to the contractor indicating the loss and the intention to recover the same from the petitioner-opposite party. The said order was



challenged in Civil Revision No. 249 of 2019 before this Court, which was finally heard and disposed of *vide* order dated 15.06.2023, affirming the aforesaid award. This Court has held that the learned Tribunal has rightly passed the said award and there is a narrow scope of judicial review of an award passed by the Tribunal, unless the award suffers from manifest illegality or material irregularity, it is not to be interfered in a routine manner. In fact, merely because there exists a second possible view also cannot be 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 re-appreciate the evidence led by the parties. Thus, unless the finding of the Tribunal is hounded with 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. It is apparent from the rescinding order of Agreement No. 52F2/2006-07 that the Executive Engineer has failed to disclose the provisions, under which, he has rescinded the contract and in the said rescinding order, there is no discussion about giving any show cause notice to the Opposite Party meaning thereby said rescinding order was contrary to the settled principle of law as well as provisions of Agreement.



14. The claimant -Opposite Party has placed reliance in the case of ***The State of Bihar & Ors. Vs. M/s Kumar Construction Company***, reported in ***2013 (4) PLJR 239***. This court in the aforesaid judgment at paragraph no. 26 has held as under:-

*“26. 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 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".

15. The claimant -Opposite Party has placed further reliance on the judgment in the case of ***Bihar Industrial Area Development Authority & Ors. Vs. Rama Kant Singh*** reported in ***2022 (2) BLJ SC 387***, wherein, the Hon'ble Apex Court, at paragraph no. 14, has held as under:-

"14. As can be seen from Section 13 of the 2008 Act, the scope of revision is limited. A perusal of the judgment of the High Court shows that it has considered and interpreted some of the clauses in the agreement between the parties. High Court found that the Arbitration Tribunal had the jurisdiction to make the award and that the award does not suffer from manifest illegality and material irregularity. The High Court rightly found that the scope for interference with the award of the Arbitration Tribunal in Revisional jurisdiction was very narrow. In the absence of any perversity, the High Court could not have given a different interpretation to the clauses in the agreement from the one provided by the Arbitration Tribunal."

16. In view of the above discussion as also the decision of the Hon'ble Supreme Court as well as decisions of this Court, this Court finds that the impugned Award has rightly been passed by the learned Tribunal. From the record, it appears that no notice was ever given to the claimant -Opposite Party, as



required under Section 55 of the Act. Moreover, the claimant -Opposite Party had given representation for revision of the original DPR (Detailed Project Report), which ultimately got revised by the petitioners'-respondent authorities after a long period i.e., on 20-01-2009 by the Chief Engineer, by which revised estimate was approved and Rs. 14,37,26,000/- (Fourteen Crore Thirty Seven Lakh and Twenty Six Thousand) only was sanctioned. 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 the opposite party under the direction and supervision of the respondents authorities-petitioners. Therefore, in fact, the time was not the essence of the contract. When the work was executed by the claimant -Opposite Party under the direction and supervision of the respondents authorities, there arises no question of filing of any application for extension of time because the claimant -Opposite Party was directed to continue the work. If there was no intention to grant extension of time, the respondents could not have allowed the claimant -Opposite Party to execute the work. When they allowed the claimant -Opposite Party to continue the work after expiry of stipulated period, they never claimed that the claimant-Opposite Party should file application.



Therefore, the learned Tribunal has rightly held that the action of the respondents deducting the amount is wrong and it is contrary to Section 55 of the Contract Act.

17. Considering the nature of issue raised herein which amount to adjudication of disputed fact between the parties and also considering the fact that there is no error apparent on the face of record in the impugned award as well as there is no irregularity or gross jurisdictional error in passing the impugned order, this Court finds no merit in the Revision application.

18. Accordingly, this Civil Revision application is dismissed.

(Khatim Reza, J)

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