

**IN THE HIGH COURT OF JUDICATURE AT PATNA
COMMERCIAL APPEAL No.1 of 2024**

Narayan Prasad, son of Late Lochan Ram, Resident of Daud Nagar, Ward No. -13, Police Station-Daud Nagar, District-Aurangabad.

... .. Appellant

Versus

The State of Bihar through the Executive Engineer, Zamania Pump Canal Division, Ramgarh, District-Kaimur.

... .. Respondent

Appearance :

For the Appellant	:	Mr. Manish Prakash, Advocate
For the Respondent	:	Mr. Anjani Kumar, AAG-4

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 30-03-2026

Heard learned counsel for the appellant and learned AAG-4 for the State.

2. The appellant has preferred this appeal against the judgment and order dated 05.10.2021 passed in Title Suit No. 10 of 2007 (hereinafter referred to as the 'impugned judgment') passed by learned Additional District Judge-X, Kaimur at Bhabhua (hereinafter referred to as the 'learned court'), whereby the application filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act of 1996') was rejected. The appellant has also prayed for setting aside the award dated 26.09.2006 made and published by



the sole Arbitrator Sri Rameshwar Choudhary, Superintending Engineer, Water Ways Circle, Bhabhua, Kaimur.

3. At the outset, it is recorded that the nomenclature of the proceeding before the learned court gives an impression that it was perhaps a title suit but in fact the same was registered on an application under Section 34 of the Act of 1996 for setting aside the award.

Brief Facts – Case of the Appellant

4. The original applicant before the learned court is the appellant before this Court. The appellant, namely, Narayan Prasad initially filed an application under Section 34 of the Act of 1996 in the court of learned Sub Judge- I, Kaimur at Bhabhua for setting aside the award dated 26.09.2006 made and published by the sole Arbitrator Sri Rameshwar Choudhary, Superintending Engineer, Water Ways Circle, Bhabhua, Kaimur.

5. The appellant is a contractor registered with Water Resources Department, Government of Bihar and other Government Works Department. The case arises from award of a tender in favour of the appellant for execution of Zamania Canal Pump, he entered into an agreement which was signed by the Executive Engineer, Zamania Pump Canal Division, Ragarh on 27.05.1998 for excavation of earth work in Zamania (Link) canal



from 2.24 Km to 4.569 Km vide agreement no. 2F2 of 1998-99. The amount of agreement was Rs. 89,93,488.90/-. He had deposited Rs. 2 lakhs as earnest money and Rs. 4,75,000/- as initial security deposit. The date of the commencement of the work was 22.05.1998 as recorded in the agreement. The time for completion of the work was only one year from the commencement of the work and the rate was negotiated at the rate of 5% above the estimate rate. The entire length of canal was to be filled. The opposite party/ Respondent was under contractual obligation to make available the site i.e. permanent land for construction of canal as well as temporary land called borrow area for excavation of earth to fill the canal. It is the case of the appellant that, though the opposite party acquired the permanent land for construction of canal but failed to acquire temporary land till March, 2002. The period of completion of the work under agreement was extended by the opposite party up to 31.03.2002 due to non-acquisition of temporary land for filling work. After the expiry of the extended period of completion of work, the Executive Engineer vide his letter no. 346 dated 15.04.2002 intimated that the acquisition of temporary land has been made and the Superintending Engineer vide his letter no. 850 dated 13.04.2002 directed the appellant to commence the work on war



footing. In between, there were multiple communication for proper arrangement of land via land acquisition for both permanent and temporary land required for completion of the work and also demand for sanction and permission for arrangement of various machines and extension of work order period.

6. The appellant vide his letter dated 07.05.2002 addressed to the Executive Engineer informed that he would recommence the work under the agreement only if the rates in the contract is revised, balance payment is made and extension of time is granted for balance work under the agreement. The contention of the appellant was strictly in accordance with Sections 55 and 56 of the Contract Act but the Executive Engineer failed or neglected to consider the above noted letter of the appellant and issued notice for final measurement vide his letter no. 510 dated 03.06.2002 fixing the date of measurement from 19th to 22nd of June, 2002.

7. The appellant vide his letter dated 19.06.2002 intimated the Executive Engineer about his willingness to recommence the work on the terms and conditions noted in his earlier letter dated 07.05.2002, or if it is not acceptable, final measurement be taken and agreement be closed. In spite of the letter for requesting to recommence the work on the above terms



and conditions, appellant was present on the worksite for final measurement on the said date, but no measurement was taken by the subordinate officers of the respondents i.e. Assistant Engineer (S.D.O.) or Junior Engineer between 19.06.2002 to 22.06.2002, which is also established from the letter no. 601 dated 24.06.2002 of the Executive Engineer, in which letter dated 19.06.2002 of the appellant finds place, but there is no whisper of taking final measurement.

8. It is the case of the appellant that the agreement with the appellant was rescinded by the Executive Engineer in utter disregard of agreed terms of the contract in an arbitrary manner exceeding his authority, in which it was mentioned that appellant has completed the carriage of earth work as per sanction but comparatively less profitable work by head load and the head load has been executed in negligible quantity, which was totally illegal and without considering or replying the request of the appellant for recommencement of work. It is submitted that the Executive Engineer, Zamania Pump Canal Division, Ramgarh in collusion with his subordinates manufactured a purported final bill after a gap of two months without taking final measurement in presence of the appellant and communicated it to the appellant vide his letter no. 892 dated 29.08.2002 in which the value of bill was



shown in minus (-) Rs. 7,41,348.00/-. The total recoverable amount from the appellant shown in the bill was Rs. 14,09,922.00/- without giving any opportunity to the appellant or supplying the final measurement after so-called final measurement which shows arbitrary manner and predetermined intent to incur loss to the appellant. The appellant wrote to Section Engineer and other superior officers of the respondents that he had worked in accordance with the instructions of Executive Engineer and his subordinates for filling earth work from the land as shown by them. He further contended that the said final measurement of the executed works and pits were made in his absence thereby not acceptable to him and he also shows his inability to fill up the pits as it was done on the instruction of the Executive Engineer. The purported final bill was disputed and challenged by the appellant before Executive Engineer and superior officials of the respondent-department vide his letter dated 21.10.2002.

9. For redressal of his grievances, the appellant approached this Court in C.W.J.C. No. 13898 of 2004 assailing the action of the respondent-department. At this stage, the writ court vide order dated 07.09.2005 referred the dispute between the parties to the Superintending Engineer, Water Ways Circle, Bhabhua as arbitrator under clause 23 of the Conditions of contract



in Agreement no. 2 F2 of 1998-99 with a direction to adjudicate the said claim within a period of six months.

10. In pursuance to the above noted order, Sri Rameshwar Choudhary, Superintending Engineer Water Ways Circle, Bhabhua acting as sole arbitrator issued notice to the appellant and the respondent-department. The appellant appeared before the sole arbitrator in the arbitral proceeding. Prayers were made on behalf of the appellant before the sole arbitrator for direction to the opposite party to make available the relevant documents relating to the dispute which were said to be in exclusive custody of the opposite party but in spite of direction by the sole arbitrator, some vital document such as level books and graph sheets prepared during the measurement of Running Account Bills were withheld by the opposite party which was brought to the notice of the sole arbitrator by application of the appellant dated 17.08.2006.

11. The appellant contended that the said documents were withheld with malafide motive because those documents would have established the incorrectness of so called final bill. The arbitral proceeding concluded on 04.09.2006.

12. During the arbitral proceeding, claims and documents available with the appellant were filed from time to



time and consolidated claims of the appellant along with the available relevant documents were filed on 17.08.2006. In the last meeting of arbitral proceeding held on 04.09.2006, for the first time, a counter claim of Rs.14,09,922.00/- was made by the opposite party against the appellant. The sole arbitrator concluded the arbitral proceeding on the same day and directed the parties to submit stamp paper for award.

13. On 27.09.2006, the appellant received the true attested copy of the award made, signed and published by the learned sole arbitrator on 26.09.2006 along with notice vide Memo No. 1763 dated 26.09.2006. The award dated 26.09.2006 made, and published by the sole arbitrator Sri Rameshwar Choudhary, Superintending Engineer, Water Ways Circle, Bhabhua, Kaimur under Agreement No. 2 F2 of 1998-99 was challenged under Section 34 of the Act of 1996 before the court learned Sub-Judge-I, Kaimur at Bhabhua and the same was registered as Miscellaneous (Arbitration) Case No. 61 of 2006 which was transferred in the court of learned Additional District and Sessions Judge-X, Kaimur at Bhabhua, after hearing both the parties at length, the above petition was dismissed vide judgment dated 05.10.2021. Being aggrieved of the said order, this commercial appeal has been preferred.



Case of Respondent-State

14. It is admitted fact that the parties entered into a contract vide agreement dated 27.05.1998 and in terms whereof the agency (Appellant) undertook to construct the main canal from 2.24 to 4.569 K.M of Zamania Pump Canal. The estimated value of the work was Rs. 89,93,488/- and the agreement value was Rs. 94,43,163/-. The work was to be completed by the agency (Appellant) in one year and the work was to commence on 20.05.1998. The agency (Appellant) was allowed to bring earth from the plots of farmer nearby on mutual understanding and the work started accordingly by the appellant. As per agreement in F2 form, the earth work by mechanical means was to be done upto 1 K.M lead and the quantity of earth was 64413 M³. Thereafter, arrangement of temporary land was also made available to the agency (appellant) in which the work was in progress.

15. It is stated that the agency (appellant) excavated earth from both toe of the proposed canal bank at his own will causing danger to the canal to fall in H.G. line. As such, the agency (appellant) was to refill the pit by compacted earth at his own cost. Therefore, the appellant was asked to refill the pit at his own cost vide Letter No. 441 dated 28.03.1999. However, the work could not be completed by the appellant within the stipulated



period and so at the instance of appellant the time was extended till 31.03.2000. But the work was done by the agency till June 2000. The agency had completed the earth work which was to be done by mechanical means but left the remaining earth work which was to be done by head load since then the agency had applied for the extension of time to complete the work up to 31.03.2002. Appellant did not complete the work, since then the agency was informed and asked several times by Executive Engineer to complete the work through various letters on several dates and lastly by superintending Engineer's Letter No. 74 dated 14.01.2002 and Letter No. 850-dated 13.04.2002 but the agency did not turn up to complete the remaining work and the entire working season got lapsed. By that time, temporary land was made available to the agency. In this connection Letter No. 346 dated 15.04.2002 issued by the Executive Engineer Zamania Pump Canal Division Ramgarh clearly indicates that temporary land was already acquired and the agency/contractor was directed to complete the work.

16. It is further stated that the agency (Appellant) did not complete the work and, thus, caused heavy financial loss to the department. Thus, the department suffered a lot due to negligence of the agency in completing the work assigned to him in spite of



granting him time extension twice. Hence, decision was taken against the agency according to F2 agreement clauses to rescind the agreement. The Appellant (agency) worked till June 2000 and total amount Rs. 83,79,311/- on a/c bill, which was an advance payment.

17. On the basis of final bill Rs. 7,41,328/- was found to have been received by the Appellant/contractor in excess up to 15th on a/c bill. The Appellant is also liable to pay Rs. 6,68,594/- to the State for rectification of the ditch. In between, the appellant approached this Court in C.W.J.C. No. 13898 of 2004 and in regard to the Arbitration clause present in the agreement, this Court by an order dated 07.09.2005 referred the subject matter of dispute before the superintending Engineer Water Ways Circle Bhabua Kaimur, by appointing him as a sole arbitrator and thus, an arbitration proceeding was initiated and the parties were noticed.

18. The Appellant (agency) appeared and filed his statement of facts and his documents. The State of Bihar through the Executive Engineer Zamania Pump Canal Division Ramgarh also filed statement of facts and supporting documents and denied the liabilities of the state. On behalf of the state a claim of Rs. 7,41,329/- was made against the contractor on the basis of final bill as this amount was found to be received by the contractor in



excess up to 15th on a/c bill. A sum of Rs. 6,68,594/- was also claimed on behalf of the state for rectification of the ditch caused by the contractor by excavating earth within the undisturbed strip of 15 meters from outer toe of the embankment. The learned Arbitrator provided ample opportunity of hearing to both the parties and after hearing the parties and considering the entire materials on record passed the award in question in the arbitration proceeding in accordance with the law.

Findings of the Sole Arbitrator

19. The learned Arbitrator considered the claims of both the parties. The total 9 claims raised by the appellant (hereinafter referred to as 'contractor') as under Schedule-1 (Rs.3,21,237.11), Schedule-2 (Rs. 3,19,677.43), Schedule-3 (Rs. 34,216.56), Schedule-4 (Rs. 1,79,552.39), and Schedule-5 (Rs. 28,814.94) related to alleged dues for agreed items of work. The Arbitrator found that although the contractor relied upon numerous documents in support of these claims, he failed to submit any bills for the said items, even before the Executive Engineer, for claiming payment. It was admitted that notice had been issued by the Executive Engineer for final measurement, and according to the State, such measurement was conducted after due notice. The contractor contended that the measurement was not carried out in



his presence, however, he failed to produce any reliable evidence in support of this claim and did not file any affidavit to establish that the measurement was not conducted on the notified date. The Arbitrator further observed that the contractor did not submit any bill showing execution of work in quantities different from those recorded in the final measurement. In these circumstances, the correctness of the final bill could not be doubted, and once the final bill was held to be correct, the claims under Schedule-1 to Schedule-5 were found to be untenable and were accordingly rejected.

20. In Schedule No. 6, the contractor claimed a sum of Rs.40,000/- on account of crop compensation allegedly paid to landowner farmers. However, failed to produce any reliable evidence to establish that the Executive Engineer had ever directed such payment due to non-availability of temporarily acquired land. In the absence of any such direction, the said claim is not fit to be allowed and the same has been rejected. Further, it has been held that the contractor claimed a sum of Rs. 22,872/- under Schedule 7(a) towards deduction of compaction test report and Rs. 98,634/- under Schedule 7(c) on account of deduction for rectification, however, these amounts had already been released in the final bill as recorded in Measurement Book No. 184 at page 31.



Accordingly, these claims were found devoid of merit and have been rejected. So far as the claim under Schedule 7(b) amounting to Rs. 1,30,726/- on account of deduction for extension of time is concerned, the same was required to be adjusted by the Executive Engineer in the final bill, however, it appeared that such adjustment has not been carried out.

21. In Schedule No. 8, the contractor had claimed a sum of Rs. 8,93,966/- on account of refund of earnest money and security deposit. On behalf of the State, liability to pay the said amount was denied on the ground that the agreement was rescinded by the Executive Engineer vide Letter No. 601 dated 24.06.2002, pursuant to which the security deposit was forfeited under Clause 3(a) of the conditions of contract. Prior to such rescission, notices were issued to the contractor by the Executive Engineer vide Letter Nos. 321 dated 08.04.2002, 384 dated 07.05.2002, and 456 dated 20.05.2002. It is pertinent that under Clause 3(a) of the agreed conditions of contract, the authority to rescind the contract is exclusively vested in the Executive Engineer, and the said authority was exercised accordingly. Once the contractor had, under the terms of the contract, vested such authority in the Executive Engineer, he cannot subsequently challenge or question the exercise of that authority. Accordingly,



the arbitral tribunal found no merit in the claim, and the same has been rejected.

22. In Schedule 9(a), the contractor has claimed a sum of Rs. 25,53,000/- on account of idle machinery, labour, and maintenance of staff and camp at the site and at Ramgarh, and a further sum of Rs. 4,69,200/- under Schedule 9(b) towards expenses for maintaining camp, staff, and labour at the said locations. The State denied liability for the aforesaid claims. The contractor failed to produce any reliable evidence to establish that such losses were actually incurred on account of any failure on the part of the State to fulfill its contractual obligations. It has been held that while seeking extension of time for completion of the work, the contractor did not notify the Executive Engineer of any intention to claim compensation for delay during the extended period, as required under Sections 55 and 56 of the Indian Contract Act, 1872. In the absence of such notice, the contractor has not been found entitled to the said claims. Accordingly, in view of the above discussion, the claims under Schedule 9(a) and 9(b) have been rejected. Since all claims of the contractor have been rejected, therefore, there was no occasion to award any interest for any period.



Findings Regarding States' Claim

23. On behalf of the State, a claim of Rs. 7,41,328/- was made against the contractor on the basis of the final bill, being the excess amount received by the contractor up to the 15th running account bill. It is noted that payments made under running account bills are in the nature of advance payments, and the final bill was prepared on the basis of final measurements recorded after due notice to the contractor. Therefore, the contractor cannot evade liability to refund the said excess amount. However, the learned Arbitrator held that a sum of Rs. 1,30,726/- deducted on account of extension of time vide the 10th running account bill (MB No. 108, pages 61 and 91) is liable to be adjusted against the aforesaid amount, as the extension of time was duly granted by the Chief Engineer, WRD, Dehri vide Letter No. 249 dated 21.01.2000 up to 31.03.2000, and further extensions were recommended by the Executive Engineer, Superintending Engineer, and Chief Engineer up to 31.03.2002 vide Letter Nos. 1081 dated 12.09.2001, 2467 dated 28.09.2001, and 5620 dated 16.10.2001, respectively. The Executive Engineer had also directed the contractor to complete the work vide Letter Nos. 381 dated 08.04.2002, 384 dated 07.05.2002, and 456 dated 20.05.2002. In such circumstances, the



deduction of Rs. 1,30,726/- on account of extension of time found not justified the same was liable to be adjusted.

24. Next, a sum of Rs. 6,68,594/- was claimed by the State for rectification of the ditch. The contractor denied liability on the ground that there was no provision in the contract making him responsible for such rectification. The Arbitrator held that the earth was excavated from the toe of the canal under the supervision of the State authorities and payment was made after measurement. The contractor failed to produce any written instruction from the Executive Engineer authorizing excavation from the toe of the canal; rather, the Sub-Divisional Officer, vide Letter No. 149 dated 11.09.1998, had directed the contractor to excavate earth beyond the prescribed distance from the toe of the canal. Further, Clause 4.01 of the technical specifications clearly provides that an undisturbed strip of 15 meters from the outer toe of the embankment must be maintained. The Executive Engineer, vide Letter No. 441 dated 28.03.1999, directed the contractor to restore the toe of the canal, which the contractor failed to comply with. Under Clause 16 of the conditions of contract, the contractor was obligated to make good such defects. Accordingly, the State was found entitled to recover Rs. 6,68,594/- from the contractor towards rectification of the ditch, as claimed.



25. Finally, it was held that the contractor shall pay interest at the rate of 12% per annum on the aforesaid amount with effect from 13.09.2002, i.e., after fifteen days from Letter No. 892 dated 29.08.2002 issued by the Executive Engineer, until the date of actual payment.

Opinion of the learned Commercial Court

26. It appears from the records that the learned Additional District and Sessions Judge-X, Kaimur has decided the application under Section 34 of the Act of 1996. The learned court reproduced the pleadings of the parties and the opinion of the learned Arbitrator. Thereafter, the learned court took note of Section 34(2) of the Act of 1996 and the judgment of the Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation Limited vs. Saw Pipes Limited** reported in **AIR 2003 SC 2629**. In the concluding paragraph, the learned court recorded its views as under:-

“Considering facts, circumstances and evidence available on the record, the court is of the opinion that the petitioner has not succeeded to furnish any kind of proof as indicated by Hon'ble Supreme Court for setting aside the Arbitral Award in this case.

In view of the aforesaid discussions the petitioner is not entitled to get relief as sought for so this is hereby ORDERED that the instant suit is and the same be hereby dismissed on contest without cost.”



Submissions on behalf of the Appellant

27. Before this Court, learned counsel for the appellant has submitted that the impugned award suffers from the vice of non-observance of the fundamental principles of law. The opposite party submitted its counterclaims for the first time in the last meeting of the arbitral proceeding held on 04.09.2006 when the arbitral proceeding stood concluded. In this regard, learned counsel has placed the order dated 04.09.2006 recorded by the sole arbitrator.

28. Learned counsel further submits that the sole arbitrator has suo-motu admitted the counterclaims on behalf of the opposite party/Department and passed the impugned award. This has been done despite the fact that the learned arbitrator has himself recorded that the counterclaims were denied in the proceeding dated 20.10.2005, 20.06.2006 and 17.08.2006, however, it is submitted that these are contradictory statements in the impugned award as it is not even possible to deny a counterclaim which was submitted on 04.09.2006 only much before its submission, therefore, the proceeding recorded on 20.10.2005, 20.06.2006 and 17.08.2006 are having no sanctity.



29. Learned counsel submits that the learned sole arbitrator has awarded a sum of Rs. 7,41,328/- and Rs. 6,68,594/- with interest at the rate of 12% per annum from 13.09.2002 even as the impugned award has been passed on 29.09.2006 and the proceeding was started on 12.02.2005. The agreement was rescinded on 24.06.2002, therefore, there is no basis to award interest with effect from 13.09.2002. Learned counsel for the appellant submits that in this case the arbitrator did not lay down the procedures as required in terms of Section 24 of the Act of 1996. On perusal of the impugned award itself it would appear that the learned arbitrator has decided the whole case on the basis of pleadings and the annexures attached to the pleadings. No procedure for proof of documents have been either laid down or followed in course of the entire proceeding. The documents were not exchanged for admission or denial by the respective parties. The author of the document did not prove the same, still the learned arbitrator has treated the annexures to the pleadings as evidences.

Submissions on behalf of the State

30. Mr. Anjani Kumar, learned AAG-4 has opposed the appeal. It is submitted that the learned arbitrator has not committed any error in the nature of violation of the principles of fundamental policy and principles of law. The parties exchanged their pleadings



with annexures attached thereto and the arbitral proceeding has concluded on 04.09.2006.

31. Learned AAG-4 further submits that the learned court while considering the application of the present appellant under Section 34 of the Act of 1996 has refused to interfere with the award because none of the grounds stated under subsection (2) of Section 34 of the Act of 1996 was available to interfere with the impugned award.

Consideration

32. We have heard learned counsel for the appellant and learned AAG-4 for the State as also perused the records of the arbitration proceeding. It appears on perusal of the records that the claimant-appellant appeared before the sole arbitrator on 20.10.2005 and submitted his written claims. The departmental representative received a copy of the claim of the appellant. The records were kept for 12.11.2005 for submission of response on behalf of the Executive Engineer, Jamania Pump, Canal Division, Ramgarh. On 12.11.2005, the Executive Engineer prayed for time and he was allowed time till 15.12.2005 to submit his written response. On 15.12.2005, again the Executive Engineer submitted a letter before the sole arbitrator whereby he informed the arbitrator that he had not received any written statement of fact from the



department. Therefore, again prayer was made for time. Thereafter, records were fixed for 28.12.2005. From the order dated 28.12.2005 it appears that on the claim of the appellant, the Executive Engineer submitted his written response and copy thereof was made available to the appellant whereafter the records were fixed for next sitting on 16.01.2006.

33. Thereafter, the claimant-petitioner filed a petition for some documents and information, the copy of this letter of the claimant was handed over to the Executive Engineer and the Executive Engineer was directed to make available the records of the claimant. Later on the claimant was made available some documents and he was asked to visit the office of the Executive Engineer to peruse the rest of the documents.

34. Thereafter the records remained pending seeking extension of time from the High Court because the arbitral proceeding could not be concluded within the period prescribed by the High Court in its order passed in the writ application whereunder the arbitration proceeding was required to be concluded by 26.03.2006. The extension of time was granted by the High Court which is recorded in the order dated 18.05.2006. The next sitting of the arbitral tribunal was fixed on 05.06.2006. Thereafter the records were further fixed for making available



certain documents to the claimant. The records of the arbitral tribunal would show that both the parties were asked to submit their stand before the learned arbitrator. On 17.08.2006, both the parties were present and they placed their stand before the learned arbitrator. The records were fixed for 04.09.2006, on the said date the then Executive Engineer appeared and submitted his written stand before the learned arbitrator, copies whereof were served upon the claimant. On that very day, the parties were directed to make available the required amount for purchase of non-judicial stamp papers. The proceeding, therefore, concluded on 04.09.2006.

35. At this stage, this Court would briefly take note of the statutory provision under the Act of 1996 provided under Chapter V which deals with the conduct of arbitral proceedings. Section 23 and 24 of the Act of 1996 are being reproduced hereunder:-

“23. Statements of claim and defence.—(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.



¹[(2A) The respondent, in support of his case, may also submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.]

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

²[(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.]

24. Hearings and written proceedings.—(1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held:

¹[Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.]

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.

(3) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.”

1. Inserted by Act 3 of 2016, S. 11 (w.r.e.f. 23-10-2015).

2. Inserted by Act 33 of 20019, S. 5 (w.e.f. 30-8-2019).



36. It is evident that subsection (2A) and subsection (4) have been inserted in Section 23 vide Act No. 3 of 2016 and Act No. 33 of 2019 respectively, therefore, those provisions were not available at the time the present arbitration proceeding was being conducted. Similarly the second proviso to subsection (1) of Section 24 has been inserted vide Act No. 3 of 2016 with effect from 23.10.2015, therefore, we would not be guided by the newly inserted provisions. It is evident on a bare reading of Section 23 and Section 24 as existed at the relevant time that while filing of the statement of claims and the statement of defence, the parties may submit with their statements all documents they consider to be relevant. According to Section 24, unless otherwise agreed by the parties, the arbitral tribunal has to decide whether to hold oral hearings for the presentation of the evidence or for oral argument or whether the proceeding shall be conducted on the basis of documents and other materials.

37. In the present case, it is evident from the various orders passed by the learned arbitrator that at no stage of the proceeding, the learned Arbitrator decided as to whether to hold oral hearings for the presentation of evidence or for oral argument. The pleadings in form of statement of claims and statement of defence cannot take place of the oral or documentary evidence. The



minimum thing which was required to be done was to call upon the parties to admit or deny the documents submitted by both of them. If the existence of any document is admitted and the contents of the same is also admitted then that document would have been taken as a piece of evidence. There may be a case where existence of a document is admitted and by virtue of that the document may be marked an exhibit, still the contents of the document may be denied and in that case the party who wants to rely upon the contents of the document would be required to prove the same by bringing the competent witness to depose on those facts. Such a witness should be liable to be cross-examined by either side. Unless the documents are admitted or denied and their contents are proved, the learned arbitrator could not have considered that as a piece of evidence. Even as strict rules of evidence would not apply but these are to be followed as fundamental policy of law. It is also in consonance with the principles of natural justice.

38. On perusal of the records of the learned arbitral tribunal it would appear that on 04.09.2006, which was the last date of the sitting of the learned arbitral tribunal, the Executive Engineer Jamania Pump Canal Division, Ramgarh (Kaimur) submitted his written response vide a letter bearing number - KAM Bhabua-01



dated 04.09.2006 which we reproduce hereunder for a ready
reference:-

“OFFICE OF THE EXECUTIVE ENGINEER
ZAMANIA PUMP CANAL DIVISION RAMGARH (KAIMUR)

To,

The Sole Arbitrator-cum-Superintending Engineer
Water Ways Circle Bhabhua (Kaimur).

Sub:- Arbitration proceeding under Agreement No. 2 F2/98-99 for Earth work in
Zamania Pump Main Canal from 2.24 K.M. to 4.569 K.M. between Narayan
Prasad and the State of Bihar

Sir,

In obedience of your order I humbly put up the reply clause wise of
letter No. Nil dated 17.8.06 submitted by Sri Narayan Prasad, Contractor on the
basis of records available in the office of the Executive Engineer, Zamania
Pump Canal Division, Ramgarh as follows for your kind perusal and
consideration. Moreover the claims submitted by the agency one more or less
same as submitted by him vide his letter No. Nil dated 20.6.06 which was
replied by this office letter No. 523 dated 13.7.06. The agency is repeating the
same arguments repeatedly in each arbitration proceeding in different languages
just to make screw and so stretching the arbitration proceeding, which were
already replied earlier on the basis of the records available in this office. The
agency has been paid altogether Rs. 83,79,311/- (Rupees Eighty three lacs
seventy nine thousand three hundred eleven) but at the time of payment he had
not whispered a word or objected any matter, rather after six years he is
searching mistakes and lacuna in graph sheet and M.B's whose photocopies
have been given to him by your order. This is for your kind information and so
the replies are as follows:-

- | | |
|-------------|--|
| Cl. 1 | :- No comments |
| Cl. 2 to 10 | :- It is matter of records which needs no comment. |
| Cl. 11 | :- No comment. |
| Cl. 12 | :- Nothing is mentioned in the concerned agreement
regarding acquirement of temporary land for execution of
the work. |
| Cl. 13 | :- Same as replied in Cl. 5 (letter No. 523 dt. 13.7.06) |
| Cl. 14 | :- Same as replied in Cl. 10 & 11 (letter No. 523 dt.
13.7.06) |
| Cl. 15 | :- Payment of crop compensation is being done
departmently through sanctioned estimate by the competent
authority if so cases occur in the field as per necessity. |



Nothing is found in the record available in the office of the Executive Engineer, Zamania Pump Canal Division Ramgarh stating the necessity for payment of crop compensation related to this work either in shape of letter of concerned J.E., A.E., E.E or in shape of estimate proving the falseness of the statement of the agency.

Also nothing is mentioned regarding crop compensation in the concerned agreement.

- | | |
|--------------|---|
| Cl. 16 to 19 | Same as replied in Cl. 15 (Letter No. 523 dt. 13.7.06) |
| Cl. 20 to 22 | Same as replied in Cl. 15 & 16 (Letter No. 523 dt. 13.7.06) |
| Cl. 23 | Same as replied in Cl. 21 (Letter No. 523 dt. 13.7.06) and the matter of payment for machinery and establishment sitting idle is out of agreement executed. |
| Cl. 24 to 25 | Same as replied in Cl. 20, 22 & 23 (Letter No. 523 dt. 13.7.06) |
| Cl. 26 to 27 | It is matter of records which needs no comment. |
| Cl. 28 | As explained in cl. 24 & 25 the statement of the agency about his presence is contradictory as per his letter no. Nil dated. 21.10.02 as annexed (7) previously. |
| Cl. 29 | As explained in earlier clauses No. 24 & 25. The records available shows that final measurement have been taken on scheduled dates fixed giving the three notices to the agency to start the work or to be present at the time of taking of final measurement at site as per statement submitted by then Executive Engineer, Zamania Pump Canal Division Ramgarh vide his letter No. 1 Camp Bhabhua dated 17.8.06 |
| Cl. 30 | Same as Cl. No. 13 |
| Cl. 31 | It is matter of records which needs no comment. |
| Cl. 32 | No comment |
| Cl. 33(i) | In obedience of the direction of learned Sole Arbitrator all available graph sheets, Level Books, Photostate copies of M.B. of all bills numbering 1 to 15 related to this work have already been given to the agency earlier the related information have been submitted to your honour vide letter No. 423 dated 31.5.06 of this office. |

No rough prepared Level Book A/c bill wise is presently available in this office but the Level Book of final



measurement and pre level are available whose photostate copy have already been given to the agency. Levels taken at the time of preparing running A/c bills (1 to 15) have already been entered in M.B. which in more authenticated record than preparation of rough Level Book of respective A/c bill.

As per usual practice, designed cross-section is plotted at the interval of 30 M of the alignment, and for the running A/c bill the cross-sectional area of the executed earth work is calculated either geometrically or scaled on the graph sheet corresponding to the each level achieved in the working period. So it is not necessary to plot graph for the payment of each account bill separately. In this case at the interval of 30 M altogether 78 No. of cross sections have been drawn in 2.24 K.M. to 4.569 K.M. reach.

Cl. 33(ii)

Not available till date.

Cl. 34(i)

same as replied in Cl. 17(Letter No. 523 dt. 13.7.06) and hence the claim is denied.

Cl. 34(ii),
(iii) & (iv)

Matter of records and replied in Cl. 17(Letter No. 523 dated 13.7.06) and the agency was asked to be present at the time of taking measurement failing which the measurements taken by the department will be presumed to be accepted as explained in Cl. 2 (ख) of Letter No. 1 dated 17.8.06 submitted by then Executive Engineer, Zamania Pump Canal Division Ramgarh and hence claim is technically denied.

Cl. 36 to 46

As already explained earlier in Letter No. 523 dt. 13.7.06 and its claims 1 to 39 (vii).

And so, the agency is not entitled and hence all the claims are fully denied to get any amount rather the State of Bihar is entitled to recover according to final bill of the concerned work and for the rectification, a sum of Rs.14,09,922.00 with interest thereon in accordance with law from the contractor Sri Narayan Prasad for which a Award



may be passed by learned Sole Arbitrator in favour of the
State of Bihar.

Yours faithfully,
Signature/-
Executive Engineer
Zamania Pump Canal Dvn.
Ramgarh (Kaimur)

“पत्रांक—कैम्प भभुआ, 01

प्रेषक,

ई० नरेश प्रसाद,
कार्यपालक अभियंता,
योजना एवं मोनिटरिंग प्रमंडल — 16,
जल संसाधन विभाग, पटना ।
तत्कालीन कार्यपालक अभियंता,
जमानियाँ पम्प नहर प्रमंडल, रामगढ़ ।

सेवा में,

एकल विवाचक—सह— अधीक्षण अभियंता,
जलपथ अंचल, भभुआ ।

दिनांक 4-09-2006

विषय :- श्री नारायण प्रसाद, संवेदक एवं कार्यपालक अभियंता, जमानियाँ पंप नहर प्रमंडल,
रामगढ़ के बीच विवाचन की कार्यवाही में उपस्थित होने के संबंध में ।

प्रसंग :- एकल विवाचक—सह अधीक्षण अभियंता, जलपथ अंचल, भभुआ का पत्रांक
1236 दिनांक 28.7.2006

महाशय,

उपरोक्त विषय एवं प्रसंग के संबंध में आज दिनांक 4.9.06 को विवाचन की बैठक में निदेशानुसार उपस्थित हुआ ।
विवाचन के क्रम में मुझे निम्न बिन्दु पर अपना पक्ष रखने हेतु निर्देश दिया गया है :-

1. विषयाधीन कि०मी० में टो से सटे काटी गई मिट्टी के संबंध में

उपर्युक्त संदर्भ में प्रमंडलीय कार्यालय की संबंधित संचिका के अवलोकन से निम्नांकित वस्तु स्थिति स्पष्ट होती है :-

(क) मेरे द्वारा जमानियाँ पम्प नहर प्रमंडल, रामगढ़ का प्रभार लेते ही कार्यस्थल का निरीक्षण किया गया जिसके दौरान पाया गया कि 2.24 कि०मी० से 4.569 कि०मी० तक निर्माणाधीन नहर के करीब टो से सटे संवेदकों द्वारा मिट्टी काटी गई है, जो एकरारनामा की विशिष्टियों के प्रतिकूल है । अतः संबंधित सहायक अभियन्ताओं को 0.35 कि०मी० से 4.569 कि०मी० तक निर्माणाधीन नहर के दोनों तरफ काटी गई मिट्टी को एन०एस०एल० तक यथाशीघ्र भरने की दिशा में टोस कार्रवाई करने का निदेश मेरे पत्रांक 1631 दिनांक 31.12.98 द्वारा दिया गया ।

(ख) पुनः मेरे पत्रांक 441 दिनांक 28.3.99 द्वारा टो से सटे पूर्व में काटी गई खन्ता को मिट्टी से भरकर कम्पैक्शन करने का निदेश संबंधित संवेदक को दिया गया था एवं इसकी प्रति संबंधित अबर प्रमंडल पदाधिकारी एवं अधीक्षण अभियन्ता को आवश्यक कार्रवाई हेतु आग्रह किया गया था ।

(ग) इस क्रम में संवेदक के पत्र संख्या शून्य दिनांक 5.4.99 के संदर्भ में मेरे द्वारा (पत्रांक 783 दिनांक 10.6.99) टो से सटे खन्ता के भराई के संबंध में संवेदक द्वारा यथाकथित उच्चाधिकारी के आदेश की प्रति की माँग की गई परन्तु संवेदक द्वारा उच्चाधिकारी के द्वारा दिए गए ऐसे किसी निदेश की प्रति उपलब्ध नहीं कराई गई ।

यह आपके सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित ।

विश्वासभाजन
ह० / - 4.9.06
(नरेश प्रसाद)
कार्यपालक अभियंता”



39. Prior to the filing of the response dated 04.09.2006, the Executive Engineer, Jamania Pump, Canal Division, Ramgarh had submitted a written letter bearing number 523 dated 13.07.2006. We have noticed that these response in form of letters submitted by the Executive Engineer were not even supported by any affidavit.

40. In our considered opinion, the learned sole arbitrator has not followed the principles of natural justice and the findings recorded by the learned arbitrator are not based on evidences rather those are based on the pleadings alone. Since the learned arbitrator has not followed the fundamental principles of law in the matter of admissibility of evidence and appreciation thereof, we are of the considered opinion that the impugned order suffers from the vice of non-observance of the principles of natural justice and the fundamental policy of the Indian law. The procedure adopted by the learned arbitral tribunal is in conflict with the most basic notions of justice.

41. We, therefore, find that the learned court while considering the application under Section 34 of the Act of 1996 has completely missed out on these aspects of the matter and dismissed the title suit.



42. In result, we set aside the impugned order and the award of the learned arbitrator.

43. This appeal is allowed, however, there will be no order as to cost.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.04.2026
Transmission Date	

