

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.23 of 2015

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M/s Anil Sharma Son of Late Ram Chandra Singh. Resident of Mohalla - North Office Para, Doranda, District - Ranchi, State - Jharkhand.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Engineer-in-Chief Middle, Water Resources Department, "Sinchai Bhawan", Harding Road, Patna.
3. The Chief Engineer, Water Resources Department, Gaya.
4. The Superintending Engineer, Water Resources Department, Water Ways Circle, Gaya.
5. The Executive Engineer, Water Resources Department, Water Ways Division, Ghoshi, Jehanabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sandip Shahi, Mr. Manish Sahay, Advocate
For the Respondent/s : Mr. Kameshwar Pd. Gupta, GP 10
Mr. Binod Kumar, AC to GP 10

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 22-02-2019

Heard learned counsel for the parties.

2. The matter reached before Bihar Public works Contracts Disputes Arbitration Tribunal, arising out of a dispute of payment in respect of work done by the petitioner under a contract for the State of Bihar and other opposite parties. By the impugned award dated 27.11.2014, passed in Reference Case No. 74 of 2012, the Tribunal has allowed claim of the petitioner against escalation of the price and extra lead for carriage of construction material along with interest. However, the Tribunal has not awarded following three items as prayed by the



petitioners.

Relief no. 3 after setting aside the letter No. 340 and 476 dated 15.06.2012 and 11.08.2012 respectively, award of a sum of Rs. 3, 39, 78, 968/- which relates to expenditure during 25.05.2010 to 15.04.2012 for idle machineries i.e. tools and plants.

Relief No. 4, award of Rs. 3,47,31,597/- for loss of opportunity to earn profit elsewhere, as it is admitted that the petitioner had spent more than three years due to latches on the part of the respondent.

Relief No. 5, award of compensation as per clause 2 (A) for Rs. 41,85,528/-.

3. The aforesaid reliefs are interconnected for the reason that they have been claimed due to non-availability of the land for completion of project as the matter delayed due to land acquisition proceeding.

4. Learned counsel for the petitioner submits that the notice of tender which was part of the contract, specifically, provided in item no. 6 that the land is available. Therefore, condition No. 6.3.7 was not an impediment on grant of compensation under the aforesaid head. Clause 6.3.7 of the agreement reads as follows-



“It may take the department sometime to get possession of land through normal land acquisition procedure. The department will not be liable for any damage or compensation due to delay in start and suspension of the work on account of delay in getting possession of land or change in alignment.”

5. Learned counsel has relied on the judgment of this Court in Civil Revision No. 19 of 2014 M/s. Anil Sharma Vs. The State of Bihar and Others, disposed of on 15.09.2017, a copy at Annexure P-3. The said judgment was in the matter of this petitioner arising out of some different contract with the same department. A Single Judge Bench of this Court observed in para 11 to 13 as follows and remitted back the matter to the Tribunal for reconsideration of the claim of the petitioner:

11. “Having heard the contentions of both the parties, I went through the record. Certain facts are admitted in this case. It is an admitted position that petitioner and opposite party no. 4 entered into agreement on 24.03.2009 and the petitioner had to complete the allotted work within twelve months from the date of execution of the agreement. It is also an admitted position that NIT was published in newspaper on 18.01.2008 and



the aforesaid NIT was made part of agreement. Furthermore, it is an admitted position that in Clause 6 of the NIT, it was mentioned that the site for the work was available and in the aforesaid NIT, it was nowhere mentioned that the land for the site was under acquisition proceeding. Moreover, at the time of execution of the agreement dated 24.03.2009, it was again not disclosed by the department that the land in question was under acquisition proceeding. Therefore, there is nothing in the entire contract to show that the land in question was under acquisition proceeding. No doubt, in Clause 10 of the agreement, there was an advice to the bidders for inspection and examination of the site and its surroundings and satisfy themselves before submitting their tenders as to the nature of the ground and sub-soil, the form and nature of the site, the means of access to the site the accommodation they may require and in general to obtain all necessary information as to risks, contingencies and other circumstances which may influence or affect their tender. There was also provision in the said clause that a



bidder shall be deemed to have full knowledge of the site whether he inspects or not. The bare perusal of the aforesaid provision of the agreement goes to show that the aforesaid provision does not include non-availability of the site because aforesaid provision says that the bidder has only to verify the nature of the site and other related things particularly, in the circumstances when NIT contains a declaration that site for work was available and, therefore, in the aforesaid circumstances, no prudent person shall presume that the site for work was itself not available and, therefore, in my view, the Tribunal committed error in interpreting the aforesaid provision against the petitioner.

12. Similarly, so far as Clause 7.1 of the tender document part-1 (instruction to bidders general) as annexed at Annexure-D to the counter affidavit is concerned, the same only relates to preparation of bid and entering into a contract for construction of the work is available because the aforesaid clause is almost similar to the clause 10 of tender document part-1 and the aforesaid clause 7.1 relates to nature of the site of work as well as



other circumstances.

13. Clause 6.3.7 of the tender document part-II says that the department is not liable for any damage or compensation due to delay in start and suspension of the work on account of delay in getting possession of land or change in alignment. No doubt, the aforesaid Clause 6.3.7 is part of agreement but in the aforesaid clause, it has not been mentioned that the land shown in NIT was under process of acquisition and, therefore, the aforesaid clause will not help to the department because in my view, the department can take advantage of the aforesaid clause only in those cases where in the NIT it has, specifically, been mentioned that the land for the site is under process of acquisition. In the present case, admittedly, in the NIT, it was mentioned that the site for work was available and in the aforesaid publication, it was, nowhere, mentioned that the site was under acquisition proceeding. Therefore, I am of the opinion that the Tribunal committed error in rejecting the claim of the petitioner taking help of the aforesaid clause of the agreement.

6. Learned counsel for the respondent submits that



in a catena of decision of Hon'ble Supreme Court on the scope of judicial review of the order of the Arbitral Tribunal has already been settled that this Court while exercising supervisory jurisdiction cannot substitute its own view contrary to the view taken by the Tribunal based on material on the record. Attention is drawn that these judgments were not placed before the Hon'ble Single Judge who decided the Civil Revision application aforesaid.

7. Learned counsel has relied upon the judgment of M/s. Rabindra Kumar Gupta Vs. Union of India reported in 2010 (1) PLJR SC page 145 para 13 to 18 of the judgment in Rabindra Kumar Gupta cases are being re-produce below:

“13. The law with regard to scope and ambit of the jurisdiction of the courts to interfere with an arbitration award has been settled in a catena of judgments of this Court. We may make a reference here only to some of the judgments. In the case of State of Rajasthan vs. Puri Construction Co. Ltd. & Anothers, (1994) 6 SCC 485, this Court observed as follows:-

“The arbitrator is the final arbiter for the dispute between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate the facts. In Sudarsan Trading Co. vs. Govt. of Kerela, 1989 India law SC 463 it has been held by this Court that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that



jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid is a decision within the competency of the arbitrator. By purporting to construe the contract the court cannot take upon itself the burden of saying that this was contrary to the contract and as such beyond jurisdiction. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, the award cannot be examined by the court. Where the reasons have been given by the arbitrator in making the award the court cannot examine the reasonableness of the reasons. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisal of evidence. The arbitrator is the sole Judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a Judge on the evidence before the arbitrator.

In the case of Municipal Corpn. Of Delhi vs. Jagan Nath Ashok Kumar, (1987) 4 SCC 497, it has been held by this Court that appraisal of evidence by the arbitrator is ordinarily never a matter which the court questions and considers. It may be possible that on the same evidence the court may arrive at a different conclusion than the one arrived at by the arbitrator but that by itself is no ground for setting aside the award. It has also been held in the said decision that it is difficult



to give an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasies of the individual and the time and circumstances in which he thinks. In cases not covered by authority, the verdict of a jury or the decision of a Judge sitting as a jury usually determines what is 'reasonable' in each particular case. The word reasonable has in law prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably knows or ought to know. An arbitrator acting as a Judge has to exercise a discretion informed by tradition, methodized by analogy, disciplined by system and subordinated to the primordial necessity or order in the social life. Therefore, where reasons germane and relevant for the arbitrator to hold in the manner he did, have been indicated, it cannot be said that the reasons are unreasonable.”

14. In the case of Arosan Enterprises Ltd. vs. Union of India, (1999) 9 SCC 449, this Court upon analysis of numerous earlier decisions, held as follows:

"Be it noted that by reasons of a long catena of cases, it is now a well-settled principle of law that re-appraisal of evidence by the court is not permissible and as a matter of fact exercise of power by the court to reappraise the evidence is unknown to proceedings under section 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the Court unless of course, there exist a total perversity in the award or the judgment is based on a wrong



proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award.

The common phraseology "error apparent on the face of the record" does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The Court as a matter of fact cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view the award or the reasoning contained therein cannot be examined.....".

15. This view has been reiterated by this Court in the case of Oil & Natural Gas Corporation Ltd. vs. SAW Pipes Ltd. as follows:

"In the light of the aforesaid decisions, in our view, there is much force in the contention raised by the learned counsel for the appellant. However, the learned senior counsel Mr. Dave submitted that even if the award passed by the arbitral tribunal is erroneous, it is settled law that when two views are possible with regard to interpretation of statutory provisions and or facts, the Court would refuse to interfere with such award.

It is true that if the arbitral tribunal has committed mere error of fact law in reaching its conclusion on the disputed question submitted to it for adjudication then the Court would have no jurisdiction to interfere with the award. But, this would depend upon reference made to the arbitrator : (a) if there is a general reference for deciding the contractual dispute between the parties and if the award is based on erroneous legal proposition, the



Court could interfere; (b) It is also settled law that in a case of reasoned award, the Court can set aside the same if it is, on the face of it, erroneous on the provision of law or its application; (c) If a specific question of law is submitted to the arbitrator, erroneous decision in point of law does not make the award bad, so as to permit of its being set aside, unless the Court is satisfied that the arbitrator had proceeded illegally."

16. In the M/s. Kwaliti Manufacturing Corporation vs. Central Warehousing Corporation it was held:

"At the outset, it should be noted that the scope of interference by courts in regard to arbitral awards is limited. A court considering an application under Section 30 or 33 of the Act, does not sit in appeal over the findings and decision of the arbitrator. Nor can it re-assess or re-appreciate evidence or examine the sufficiency or otherwise of the evidence. The award of the arbitrator is final and the only grounds on which it can be challenged are those mentioned in Sections 30 and 33 of the Act. Therefore, on the contentions urged, the only question that arose for consideration before the High court was, whether there was any error apparent on the face of the award and whether the arbitrator misconducted himself or the proceedings."

17. Again it is reiterated in the judgment of Madhya Pradesh Housing Board vs. Progressive Writers and Publishers (2009) 5 SCC as follows:

"The finding arrived at by the arbitrator in this regard is not even challenged by the Board in the proceedings initiated by it under Section 30 of the Act. It is fairly well settled and needs no restatement that the award of the arbitrator is ordinarily final and the courts



hearing applications under Section 30 of the Act do not exercise any appellate jurisdiction. Reappraisal of evidence by the court is impermissible."

18. In this case, the Supreme Court notice the earlier judgment in the case of Ispat Engineering & Foundry Works, B.S. City, Bokaro vs. Steel Authority of India, B.S. City, Bokaro [(2001) 6 SCC 347] wherein it was held as follows:

"4. Needless to record that there exists a long catena of cases through which the law seems to be rather well settled that the reappraisal of evidence by the court is not permissible. This Court in one of its latest decisions [Arosan Enterprises Ltd. v. Union of India (1999) 9 SCC 449] upon consideration of decisions in Champsey Bhara & Co. v. Jivraj Balloo Spg. & Wvg. Co. Ltd. [Air 1923 PC 66], Union of India v. Bungo Steel Furniture (P) Ltd. [1967 1 SCR 324], N. Chellappan v. Secy., Kerala SEB [(1975) 1 SCC 289], Sudarshan Trading Co. v. Govt. of Kerala [(1989) 2 SCC 38], State of Rajasthan v. Puri Construction Co. Ltd. [(1994) 6 SCC 485] as also in Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan [(1999) 5 SCC 651] has stated that reappraisal of evidence by the court is not permissible and as a matter of fact, exercise of power to reappraise the evidence is unknown to a proceeding under Section 30 of the Arbitration Act, 1940. This court in Arosan Enterprises categorically stated that in the event of there being no reason in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, interference would still be not available unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition



of law. This Court went on to record that in the event, however, two views are possible on a question of law, the court would not be justified in interfering with the award of the arbitrator if the view taken recourse to is a possible view. The observations of Lord Dunedin in Champsey Bhara stand accepted and adopted by this Court in Bungo Steel Furniture to the effect that the court had no jurisdiction to investigate into the merits of the case or to examine the documentary and oral evidence in the record for the purposes of finding out whether or not the arbitrator has committed an error of law. The court as a matter of fact, cannot substitute its own evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties."

8. In view of settled principle that this Court cannot go into the disputed question of fact nor can re-appreciate the finding of the Tribunal on the basis of material available on the record or substitute its own finding. Therefore, there is no merit in this revision application. Accordingly, it stands dismissed.

(Birendra Kumar, J)

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