

(2020) 02 PAT CK 0215

In the Patna High Court

Case No : Civil Revision No. 198, 199 Of 2017

State Of Bihar And Ors

APPELLANT

Vs

M/S Madan Kumar Singh

RESPONDENT

Date of Decision : 14-02-2020

Acts Referred:

Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 — Section 13

Citation : (2020) 02 PAT CK 0215

Hon'ble Judges : S. Kumar, J

Bench : Single Bench

Advocate : Ashok Kumar Debey, Sanjeev Kumar, Rajeev Shekhar, A.K. Debey, Manish Sahay

Final Decision : Dismissed

Judgement

Heard the parties.

2. These civil revision under Section 13 of Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 have been filed on behalf of State of Bihar for setting aside the judgment and award dated 20.01.2017 passed in Reference Case No. 87 of 2015 and Reference Case No. 86 of 2015 passed by Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008, Patna by which the learned tribunal has held claimant/opposite party to be entitled to get payment of Rs. 28,38,406/- and Rs. 11,06,434/- with 10 % interest per annum from the date of filing of application till its realization.

3. Claimant/opposite party in Reference Case No. 87 of 2015 being successful bidder enter into an agreement no. 10 SBD of 2010-11 with the respondent Executive Engineer to execute the work N.H.107 covering length of 5.65 Km. for the year 2010-11 with an estimated cost of Rs. 4,62,18,217/- and time of completion was nine months.

4. Case of claimant/opposite party before the tribunal was that during execution of work, Dumri Pul collapsed as a result of which instead of work being

completed within nine months it took 22 months to complete the work. It was further stated by the claimant that there was encroachment at working site and he requested the authorities to remove said encroachment and same was removed after 22 months from the date of work order. Claimants requested authorities to provide the increase in railways freight including loading and unloading charges for the distance covered between railway rack point to the construction site. It is further stated that due to encroachment, general election of 2010 and collapse of Dumri Pul, the department extended the completion time. In the agreement there was provision of 02 Km. for the distance covering from railway rack point to the construction site in the estimate but in fact the actual distance covering from railway rack point to the construction site was 06 Km. and as such he claimed for increased railway freight.

5. Respondent in their reply stated that work was completed after 17 months of stipulated time. The minimum of carriage between the rail head and road route is considered for payment and only 400 meter out of 5.65 Km. was affected by encroachment and other site was free from any hindrance and encroachment but still petitioner took 6 months more to complete the balance work. The respondent further stated that once the rate was finalized in the agreement on the basis of tender and rate negotiations no increase rate is allowed due to increase in cost of materials, as such, the claim of the claimant on the basis of increased railway freight and new carriage rate is against the terms of agreement. The respondent further stated that there is no provision of statutory interest in the agreement so the claim for interest is not maintainable.

6. The tribunal found that the date of commencement of work was 28.08.2010 and date of completion was 27.05.2011 (09 months) but work was completed on 05.01.2013 due to encroachment at site, general election 2010 and collapse of Dumri Pul. Engineer-in-chief with consent of Secretary Road Construction Department extended the date of completion up to 05.01.2013. The delay was not attributable to the claimants. BOQ was prepared on the basis of railway freight of 2008-09 whereas work was completed in 2012-13 due to reasons for which claimant cannot be blamed. Distance from railway rack point to the construction site was about 06 Km. whereas estimate was prepared of only 02 Km. and as such found claimant to be entitled to get payment of Rs. 28,38,406/- with simple interest @ 10 % from the date of filing i.e. 26.05.2015 till its realization.

7. In Reference Case No. 86 of 2015 petitioner claimed that working road site was passing through built up area where there was no availability of local earth for the construction of road but there was no provision of carriage of earth work as such, for the sake of work petitioner vide letter dated 06.12.2011 requested the authorities to allow the carriage of earth work and make payment accordingly. Executive Engineer vide letter dated 10.12.2011 permitted petitioner to carry earth work for residential and market portion however, he was paid only for the local earth work and not of the earth work being carried for the built up

area and authority recommended the claim amount of Rs. 11,06,434/- to be paid to the claimant being the actual carriage cost.

8. Respondent/appellant denied the claim as same was not claimed with measurement within time as per Clause 6 of S.B.D. agreement and work was completed after 17 months of stipulated time. The work was carried out without permission of the authorities.

9. Tribunal has held that no work is gratuitous as such, department must pay for the work done by petitioner and held petitioner to be entitled for the payment of cost of carriage of earth work amounting to Rs. 11,06,434/- with simple interest @ 10 percent per annum from the date of filing till its realization.

10. After hearing the counsel for the petitioners and opposite parties and perusing the judgment and award passed by the tribunal, this court does not find any infirmity or material irregularity in the order passed by tribunal accordingly, the present revision petitions filed by State of Bihar is dismissed.