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BRKH010036502023



Presented on : 11-04-2023
Registered on : 11-04-2023
Decided on : 16-03-2026
Duration : 2 years, 11 months, 5 days

IN THE COURT OF PRINCIPAL DISTRICT JUDGE

At Khagaria, (Bihar)

(Presided Over by Shri Rajesh Kumar Bachchan)

Civil Misc. Case No. 03 of 2023

(Net No. 07 of 2023)

IN THE MATTER OF:-

1. Secretary, Road Construction Department,
Vishweshwaraiah Bhawan, Bailey Road, Patna
2. Engineer-in-chief, Road Construction Department,
Vishweshwaraiah Bhawan, Bailey Road, Patna
3. Chief Engineer
N.H. Department, Bailey Road, Patna
4. The Collector, Khagaria
5. The Collector, Bhagalpur
6. The Chief Engineer
Ganga Pul Pariyojana Department, Bailey Road, Patna.
7. Superintending Engineer
N.H. Anchal Bhagalpur, P.S. and District- Bhagalpur
8. Executive Engineer
National Highway Division, Division Path Pramandal, Khagaria,
P.S. & District Khagaria, Now merged in N.H. Division, Bhagalpur.
.....Petitioners

Versus

Gopal Prasad Nawetiya,

S/o- Late Dwarika Pd. Nawetiya

R. Bachchan

At P.O.- Gogri (Jamalpur), P.S. Gogri,
District- Khagaria

.....Opposite Party

Appearances:

Shri Manwendra Kumar, Ld. G.P. for State

Shri Sonu Verma, Ld. Counsel for Opposite Party

:: J U D G M E N T ::

1. The petitioners (hereinafter referred as 'the employer') have preferred instant petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred as 'the Act') assailing the award dated 06.07.2017 passed by Sri Diwakar Jha Ld. Arbitrator and Rtd. Chief Engineer (Civil) in Title Suit No.38/2005 titled as Gopal Prasad Newatiya v. Bihar Govt. and Ors.

FACTUAL MATRIX

2. Respondent (hereinafter referred as 'the contractor') had filed a suit i.e. T.S. 38/2005 on 18.05.2005 praying his claim of Rs. 5,14,485/- be referred for arbitration and the Superintendent Engineer, NH Bhagalpur, P.S.& District Bhagalpur/Defendant No. 7 be directed to enter into arbitration and to make award. Ld. Court of Sub-Judge III referred the matter for arbitration vide order dated 03.08.2013. Ld. Arbitrator passed aforesaid award accepting the claim of the contractor against execution of work of supply of boulder on southern bank of river Koshi near bridge site of Dumrighat. Aggrieved and dissatisfied by the same the employer has filed instant objection to the award. Delay in filing petition was

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condoned by this Court vide order dated 13.04.2023.

3. Respondent/contractor after appearing in this matter filed response to the objection petition filed under Section 34 of the Arbitration and Conciliation Act and has stated that the miscellaneous case as filed by the petitioners is not maintainable either is law or on facts. The award in question will show that all legal and possible opportunities were given to the parties by the arbitrator and after taking their plea and documents into account a valid award was passed which in terms of Section 36 of Arbitration and Conciliation Act 1996 is a decree and enforceable under the CPC in the same manner if it were a decree of the Court. It is submitted that whatever the plea is available to the petitioners that lies in Title Suit No. 38/2005 and as such the presence Miscellaneous case being beyond the scope of any law, is not maintainable. There is no illegality or irregularity in the award in question and the same is legally enforceable.

ARGUMENTS

4. Ld. Counsel for the petitioners submits that according to the agreement matter could not have been referred to the arbitration on request of a private person. The entire arbitration proceeding was done beyond the scope of agreement which is illegal according to the Section 7 of the Act. Ld. Arbitrator violated Section 18 of the Act as well as the principle of natural justice. There is completely violation of Clause-23 to the agreement. The claim of the petitioners were barred by the Limitation Act. Ld. Arbitrator wrongly concluded that the plaintiff completed the work as per agreement rather the letter

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Nos. 237 dated 05.06.1984; 460 dated 19.07.1987; 169 dated 17.05.1987 referred by the Ld. Arbitrator itself goes to show that the plaintiff did not complete the work as per agreement rather he left the work without information. The measurement was done with respect to the work of the plaintiff and for which the entire payment was made by the defendant/State but the same was not considered. The arbitrator wrongly allowed interest @ 18% percent compoundable to be counted on every three month on alleged due although no amount of the plaintiff is due against the defendant. The alleged award is bad according to Section 31(3)(a)(b), 31(5), 31(7)(b) and also by Section 43 of the Act. The entire claim of the plaintiff is wrong and bad in law. The award is against the public policy. The arbitrator had no jurisdiction to pass award beyond the claim and document put by the plaintiff.

5. Per contra, the Ld. Counsel for the respondent/contractor has submitted that the impugned award is fit and proper and no interference is required in the same.
6. Heard both sides. Perused the record. Following point arises for the determination by this Court:

POINT FOR DETERMINATION

“Whether any interference is required in the impugned award by this Court under Section 34 of the Arbitration and Conciliation Act?”

DISCUSSION, DECISION AND REASONS THEREOF

7. Admitted facts of this case are that the contractor was allotted work for supply of boulder on southern bank of river Koshi near

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bridge site of Dumrighat in the year 1986-87 vide agreement No. 16 'H' 1986/1987. Date of commencement of the work was 28.08.1986 and date of completion was 27.05.1987. Estimated cost of the work was Rs.13,05,000/-. Final Bill was prepared on 15.03.1991 for Rs. 68,385/-. Parties had signed in the measurement book on 15.03.1991 which reads as "work was completed as per design and specification and no amount is due against the contract."

8. Section 34 of the Act prescribes grounds on which an arbitral award can be set aside. This section reads as under:

34. Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that]—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

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(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

²[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

- [(2A)
- (3)
- (4)
- (5)
- (6)

9. Contractor had claimed Rs.5,14,485/- for work done in the suit.

His claims are Rs. 68,385/- against bill; Rs. 3,25,000/- against re-handling and carriage (from village Kaithi to site) and Rs. 1,21,100/- for watch and ward. There is no statements of claim of contractor on record of Ld. Arbitrator. Employer has also not filed their statements of defence. Parties have also not led their evidence before Ld. Arbitrator.

10. Ld. Arbitrator has mentioned in the award that work was completed by the contractor after four years. Ld. Arbitrator has stated that the employer had to provide serviceable approach road for carriage of loaded truck to dump the material on the site and the department had also aggrieved for dumping of boulders at Kaithi. Ld. Arbitrator had referred the letter No. 460 dated 19.10.1987 and letter No. 237 dated 05.06.1987. Ld. Arbitrator

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has allowed the extra expenditure on account of handling of boulders @ Rs. 260/- per 100 C.ft. Ld. Arbitrator has also awarded Rs. 68,385/- outstanding against final bill. Ld. Arbitrator has awarded Rs. 1,01,200/- for watch and ward @ Rs. 1100/- per month. For loss of business due to delayed payment Rs. 1,61,222/- has been awarded.

11. Ld. Arbitrator has mentioned that the final bill was raised on 15.03.1991. He has not mentioned that the measurement was accepted by the contractor and on the same very day contractor has accepted that there is no dues against him. The measurement book bears signature of contractor on 15.03.1991. On that day the contractor did not make any protest regarding his claim. He sent first demand notice to the employer/department on 10.01.2005 which was for Rs. 7,68,127/-.

12. If any amount was due against bill or escalation or watch and ward or business loss that must be raised within three years from the final bill dated 15.03.1991. There is no acknowledgment of liability by the employer. Even if the defendant merely says, without admitting liability that it would like to examine the claim of the accounts, it may not amount to acknowledgment but this is not fact in this case. In the present case limitation for claims of the contractor expired on 14.03.1994. The entire claim of the contractor was clearly barred by limitation. When the Ld. Sub Judge, Gogari passed order for reference of the dispute between

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the parties to the arbitrator on 03.08.2013 claim of the contractor was already stale. A time barred claim is contrary to the fundamental policy of Indian Law. Thus, according to Section 34(2)(b)(ii) impugned award is liable to be set aside.

13. Moreover, Ld. Arbitrator adjudicated claims of the parties without statements of claim and statements of defence. As per Section 23 of the Act claimants 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 this particulars, unless the parties have otherwise agreed to as the required elements of those statements. Section 24 of the Act states that unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral arguments or whether the proceedings shall be conducted on the basis of documents and other materials. Section 31(3) of the Act provides that the arbitral award shall state the reason upon which it is based. Ld. Arbitrator gave cryptic reason for admitting claims of the contractor. Clause 5 of Section 31 provides that after the arbitral award is made, a signed copy shall be delivered to each party. Copy of award was not supplied by the Ld. Arbitrator to the parties.

14. Ld. Arbitrator did not adjudicate whether the prolongation of work had occurred due to delay on the part of the employer/department. Ld. Arbitrator has nowhere mentioned that



how he had arrived at conclusion that Rs. 68,385/- is pending against final bill despite the fact there is admission on behalf of contractor of 15.03.1991 that there is no amount outstanding. Thus, this Court arrives at conclusion that the claim of the contractor is barred by limitation and also has been passed contrary to the statutory provision of the Act.

ORDER

15. In view of the aforesaid discussions, award dated 06.07.2017 passed by Sri Diwakar Jha Ld. Arbitrator and Rtd. Chief Engineer (Civil) in Title Suit No.38/2005 title as Gopal Prasad Newatiya v. Bihar Govt. and Ors. is set aside.
16. Civil Misc. Petition 03/2023 is **allowed**. The original arbitration record and LCR be sent back with a copy of this judgment to the court concerned.

(Dictated and corrected by me)

(Dictated)

Rajesh Kumar Bachchan

(Rajesh Kumar Bachchan)
Sessions Judge,
Khagaria,
16.03.2026

Rajesh Kumar Bachchan

(Rajesh Kumar Bachchan)
Sessions Judge,
Khagaria,
16.03.2026

Date of Judgment	16-03-2026
Date of Reserving Judgment	06-01-2026
Uploading Date	19-03-2026
Uploaded by	Sushant Kumar (DEO)