

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.115 of 2014

=====

Shri Krishna Nandan Singh Son of Late Raghuwar Dayal Sharma Resident
of Village - P.C. Colony, Kankarbagh, P.S.- Kankarbagh, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Road Construction Department,
Vishweshwarraiya Bhawan, Bailey Road, Patna
2. The Chief Engineer (South Wing), Road Construction Department,
Vishwasarraiya Bhawan, Bailey Road, Patna
3. The Superintending Engineer, Road Construction Department, Central
Circle Chhajubagh, Patna
4. The Executive Engineer, Road Construction Department, New Capital
Division Lodipur, Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Raj Shekhar

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

14 01-09-2017 Heard learned counsel for the petitioner as well as
learned counsel appearing for the opposite parties.

2. This revision petition has been preferred against an
award dated 10.04.2014 passed by the Bihar Public Works
Contracts Disputes Arbitration Tribunal, Patna (hereinafter to be
referred to as “the Tribunal”) in Reference Case No.117/10
whereunder the learned Chairman and the Member of the
aforesaid Tribunal dismissed claim of the petitioner being time
barred.

3. It is an admitted position that the petitioner was



allotted some work in the year 1995 and the final bills of the aforesaid works were prepared in the year 1995 – 1996 but the payment was not made to the petitioner. However, it appears that in the year 2006, the petitioner gave a legal notice to the concerned Department. But even then his payment was not made and, thereafter, Request Case was filed before this Court but in the meantime, Tribunal was constituted and that was the reason the petitioner withdrew the aforesaid request case and filed above stated Reference Case before the Tribunal.

4. Learned counsel appearing for the petitioner submits that the Tribunal committed error in rejecting the claim of the petitioner on the ground of limitation because prior to giving a legal notice the petitioner had given several letters to the concerned officials but all went in vain and, thereafter, the petitioner gave legal notice and in response to the legal notice, the concerned Department accepted the dues of the petitioner and apart from this, again, the Executive Engineer admitted the dues of the petitioner during the pendency of the reference case which is evident from perusal of Annexure-A to the counter affidavit. He submits that the aforesaid admission of the concerned Department gave a fresh cause of action to the petitioner but Tribunal failed to take note of the aforesaid fact and committed illegality in passing



the impugned order.

5. On the other hand, learned counsel appearing for the respondents refuting the above stated submission argued that the admittedly, the cause of action to the petitioner arose in the year 1995 but the reference case was filed in the year 2010, i.e., after more than fifteen years. He submits that Article 137 of the Limitation Act prescribes three years period of limitation from the date when the right to apply accrues this and, therefore, the Tribunal rightly dismissed the claim of the petitioner on the ground of limitation. He further submits that so far Annexures- A and B of the counter affidavit are concerned, the same are external correspondences of the Department and the aforesaid correspondences cannot be treated as admission of the Department.

6. Having heard the rival contentions of the parties I went through the record. Admittedly, the first cause of action of the petitioner arose in the year 1995 when the final bill was prepared but even after preparation of final bill no payment was made to the petitioner. It is also an admitted position that legal notice was given in the year 2006. Although the petitioner claims that prior to 2006, he had given several letters to the department for payment of his dues but the Department denies the receipt of



the aforesaid letters. Moreover, legal notice of the year 2006 is admitted by both the parties. It is also an admitted position that in response to the aforesaid legal notice, Executive Engineer wrote a letter to his Superior authority which is Annexure-B to the counter affidavit and in the aforesaid Annexure-B the pendency of the dues of petitioner was admitted. Apart from this, an information regarding the aforesaid letter was given to the petitioner vide Memo No.1493 dated 16.06.2006. Therefore, the aforesaid fact goes to show that in the year 2006, the concerned Department admitted the dues of the petitioner and, therefore, the aforesaid admission of the Department extended the cause of action. Moreover, again, vide Memo No.630 dated 26.02.2009 the Department admitted the dues of the petitioner and asked the petitioner to produce evidence in respect of the completion of the work. Further more, in the year 2010, again the concerned Department admitted the dues of the petitioner which is evident from Annexure-A to the counter affidavit.

7. In my view, the aforesaid admission of respondents gave a fresh cause of action and the learned Tribunal committed error in treating the claim of the petitioner as time barred.

8. Learned counsel appearing for the State submits that the revisional court has a very limited power while exercising



the power under Section 100 of Civil Procedure Code and the aforesaid revisional power should be exercise with cautious and sprangly. No doubt, the above proposition of law cannot be denied but the revisional court can correct the illegality committed by Subordinate court while exercising the revisional power. In the present case, the Tribunal failed to take note of the above stated facts.

9. In the aforesaid circumstance, this revision petition stands allowed and Award dated 10.04.2014 is set aside and the matter is sent back to the learned Tribunal for passing a fresh order on the point of limitation in accordance with law, keeping in mind the observation given in this order.

(Hemant Kumar Srivastava, J)

AnilKrSinha/-

U			
---	--	--	--

