

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.143 of 2014

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1. Sheo Ballam Pd. Son of Late Badhiya Yadav Resident of Mohalla-Punaichak, P.S.-Lal Bahadur Shastri Nagar, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through The Secretary, Building Construction Department, Vishwesherraya Bhawan, Bailey Road, Patna.
2. The Executive Engineer, Building Construction Department, Patliputra Division, Near High Court, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uma Shankar Tiwary

For the Respondent/s : Mr. Sc-10 Sheo Shankar Pd.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

4 28-04-2017 Heard learned counsel appearing for the petitioner as well as learned counsel for the respondents.

2. This revision application has been preferred against an Award dated 15.05.2014 passed by the learned Bihar Public Works Contract Arbitration Tribunal, Patna, in Reference Case No. 96 of 2010 by which the learned tribunal has disposed of the aforesaid reference case on the ground that this Court had granted one month's time to the petitioner in Request Case No. 73 of 2007 to file reference case but the reference case was filed after seven and half months and, therefore, the aforesaid reference case was time barred and further more, the tribunal expressed its inability to extend the period of limitation as fixed by this Court in



Request Case No. 73 of 2007.

3. The brief fact of the present dispute is that the petitioner executed some works pursuant to some agreements entered by the parties right from 1992 to 97 but payment of the aforesaid work was not made to the petitioner, upon which, the petitioner filed CWJC No. 11005 of 2002, which was disposed of on 14.10.2014 by this Court with a direction to the petitioner to file a representation before the Chief Engineer, Building and the Chief Engineer was directed to examine the claim of the petitioner and pass a reasonable order.

4. Pursuant to the aforesaid direction, the petitioner filed a representation before the concerned Chief Engineer but the said concerned Chief Engineer did not examine the claim of the petitioner himself rather referred the aforesaid representation to Liability Committee. It is pertinent to note here that the said Chief Engineer was one of the members of the aforesaid Liability Committee. More over, the Liability Committee examined the claim of the petitioner and recommended for payment of only for two works whereas the aforesaid Liability Committee did not give any finding regarding remaining three works of the petitioner. Being aggrieved by the decision of Liability Committee, the petitioner gave a notice to the Chief Engineer on 30.05.2007 for



appointment of an Arbitrator but when no Arbitrator was appointed, the petitioner filed a Request Case No. 73 of 2007 before this Court. A co-ordinate Bench of this Court disposed of the aforesaid Request Case no. 73 of 2007 on 22.01.2010 giving liberty to the petitioner to file a petition before the tribunal within a month from the date of order and the tribunal was directed to consider and decide the petition filed on behalf of the petitioner on merit and further more, the tribunal was granted liberty to consider the maintainability and legality of the claim of the petitioner in view of special provisions of law as well as case laws.

5. After disposal of Request Case No. 73 of 2007, the petitioner filed Reference case No. 96 of 2010 on 22.08.2010. The impugned order goes to show that when the aforesaid reference was filed on 12.08.2010, the tribunal accepted the aforesaid reference case for hearing on merit and subsequently, opposite party appeared and filed their written statement claiming that the relevant documents relating to the claim of the petitioner were missing from the office. However, the tribunal summoned one Junior Engineer of the concerned department and the aforesaid Junior Engineer admitted before the tribunal that the work, as claimed by the petitioner, had been done by him. However, the tribunal refused to give any relief to the petitioner



on the ground, as mentioned above.

6. Learned counsel appearing for the petitioner submits that it is admitted position that the tribunal had earlier condoned the delay and accepted the aforesaid reference case for hearing on merit but subsequently, when the final award was passed, the tribunal rejected the claim of the petitioner award on the ground of maintainability. He submitted that the tribunal relied upon a decision reported in (2002) 3 SCC 165 but as a matter of fact the aforesaid decision is not applicable in the present case because it is settled law that once the delay is condoned, the same court cannot reject the claim on the ground of limitation.

7. Learned counsel appearing for the petitioner further submits that, no doubt, this Court in Request Case No. 73 of 2007, vide order dated 22.02.2010 gave liberty to the petitioner to file reference case within a month from the date of order but as a matter of fact the order dated 22.02.2010 passed in Request Case No. 73 of 2007 was not communicated to the petitioner by the office of the concerned learned counsel of the petitioner and when the petitioner got knowledge of the order dated 22.02.2010 passed in Request Case No. 73 of 2007, he immediately filed the reference case and orally prayed before the tribunal for condonation of delay. The tribunal having accepted the oral payer



of the petitioner proceeded to hear the aforesaid reference case and, therefore, at later stage of the aforesaid proceeding, the tribunal had got no power to say that the period of limitation could have only been extended by the Hon'ble High Court.

8. On the other hand, learned counsel appearing for the opposite party submits that a coordinate bench of this Court gave only one month time to the petitioner to file reference case but admittedly, after seven months of the aforesaid order, the reference case was filed and that is why the tribunal held that the Hon'ble Court could have only extended the period of limitation. He further submits that the hands of the courts is not fettered to dismiss the claim of a person on the ground of limitation even at later stage of the proceedings.

9. Having heard rival contentions of both the parties and having gone through the records, I find that reference case was filed after seven months from the date of order dated 20.01.2010 passed in Request Case No. 73 of 2007. It is an admitted position that at the preliminary stage of the reference case, the tribunal condoned the delay and proceeded to hear the aforesaid reference case. Therefore, it is obvious from the aforesaid fact that the tribunal had already condoned the delay and therefore, in my view, at the later stage of the proceeding, the



tribunal was not right to say that only Hon'ble High Court could have extended the period of limitation. Moreover, it is settled law that if once the delay is condoned, in the same proceeding, at later stage, the Court cannot recall the aforesaid order of condonation of delay that, too, without giving proper opportunity to hear the affected party on the aforesaid point. Moreover, in this case, the dismissal of the claim of the petitioner on the point of limitation came as surprise to him because at the initial stage the aforesaid reference case, the delay was condoned but when final award was passed, the petitioner came to know that his claim was rejected on the ground of limitation. Therefore, in my view, the tribunal has committed an error in passing the impugned Award, which cannot sustain in the eye of law.

10. On the basis of the aforesaid discussion, this civil revision is allowed and the impugned Award dated 15.05.2014 passed in Reference Case No. 96 of 2010 is set aside and the matter is remitted back to the concerned tribunal with a direction to the tribunal to decide the matter on merits and pass a fresh order in accordance with law.

(Hemant Kumar Srivastava, J)

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