

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.289 of 2016

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Kamlesh Singh, Son of Ramjee Prasad Singh, Resident of Anisabad, P.S
Gardanibagh, Dist Patna

... .. Claimant/Petitioner

Versus

1. The State of Bihar, through the Secretary, Building Construction Department, Govt. of Bihar, Nirman Bhawan, North Bailey Road, Patna.
2. The Chief Engineer (South), Building Construction Department, Govt. of Bihar, Nirman Bhawan, North Bailey Road, Patna
3. The Superintending Engineer, South Bihar Circle, B.C.D., Punaichak, Patna.
4. The Executive Engineer, Building Construction, Central Division , Near High Court, Patna.

... .. Respondents/Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Uma Shankar Tiwary, Advocate
For the State	:	Mr. R. B. Pd. Yadav, AAG-XI

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 06-11-2018

Heard both sides.

2. The petitioner has filed this civil revision to set aside the impugned award dated 31.08.2016, passed in Reference Case No.108 of 2015 by the learned Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna (hereinafter referred to as ‘the Tribunal’).

3. Factual matrix of the case can be summarized as follows:

On 27.10.2009, the Chairman-cum-Director General of Police (Central Appointment Council) wrote a letter to the Secretary, Building Construction Department requesting for



direction to the concerned authorities to get the barricading wall at Back Harding Road, Patna around Quarter Nos.8 to 11 so that the control of the mob may be maintained on the occasion of centralized collection of applications for appointment of Police Personnel scheduled to be held on 01.11.2009. The said work was to be executed within 3-4 days and there was no enough time to float tender for the said work. Keeping in view the urgency of the work, the Executive Engineer, Opposite Party No.4, issued work order to the petitioner on 28.10.2009 to get the work done before 31.10.2009. The petitioner finished the work of barricading. The Junior Engineer took the measurement on 05.11.2009 in presence of the petitioner and recorded the measurement on 21.02.2010 vide M.B. No.11318. The work was approved by the Assistant Engineer on 22.02.2010. The Executive Engineer sanctioned the work but even after lapse of many years, the payment could not be made. The work done by the petitioner as assessed by the competent authority was worth Rs.6,78,500/-. The Superintending Engineer also gave technical sanction on 07.11.2009. The Secretary, Opposite Party No.1, wrote letter to the Chairman-cum-Director General of Police, Centralized Selection Council for allotment of the work done. The petitioner has submitted his bill on 23.05.2015 to the Opposite Party No.4 on the basis of the approval of the



Superintending Engineer, Opposite Party No.3 but no payment was made and the petitioner thereafter filed Reference Case No.108 of 2015 before the Tribunal. The learned Tribunal held that the work was finally approved and sanctioned by the respondents on 21.11.2009 and the same was submitted to the Executive Engineer on 22.10.2010 but even after lapse of five years, the petitioner took no step nor filed any reference and held that there is no sufficient cause shown for presenting the reference after the period of limitation and accordingly reference was dismissed.

4. The learned counsel for the petitioner submits that the Bihar Public Works Contracts Disputes Arbitration Tribunal Act is supplemental to the Arbitration and Conciliation Act, 1996. There is no provision of limitation for filing petition for reference in the Arbitration and Conciliation Act, 1996, therefore, the residuary provisions of Article 137 of the Limitation Act shall prevail over the provisions as contained in Section 9 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act as the same is contrary to the provisions of principal act. It is further submitted that in view of the provisions of Article 18 of the Limitation Act, the claim of the petitioner is not barred. The period of limitation shall be three years when the work is done and Articles 25 and 26 of the schedule of the Limitation Act shall not be applicable.



5. It is further submitted that the Hon'ble Supreme Court in the case of Madras Port Trust vs. Hymanshu International By Its Proprietor V. Venkatadri (Dead) By L.R.s, reported in (1979) 4 SCC 176 held that resort to plea of limitation by public authority to defeat just claim of citizen is deprecated. The Hon'ble Supreme Court held in paragraph-2 that the plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of a citizen. It is high time that government and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. It is further submitted that the Hon'ble Supreme Court in the case of Inder Singh v. Delhi Development Authority, reported in AIR 1988 SC 1007 held that the limitation starts from the date of denial of payment. It is further submitted that on the point of limitation, the petitioner has not been heard and, therefore, in view of the law laid down by the Hon'ble Supreme Court in the case of Commr. Nagar Parishad, Bhilwara v. Labour Court, reported in (2009) 3 SCC 525, the order rejecting the claim of the petitioner is bad.



6. On the other hand, the learned counsel for the State controverting and refuting the submissions of the learned counsel for the petitioner submits that from the date of sanction of the work the cause of action would arise but the petitioner filed the reference after five years. Section 9 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act provides limitation for one year but Section 18 of the aforesaid Act also vests power in the Tribunal to condone the delay in making reference to the Tribunal beyond the period of limitation. It is submitted that Bihar Public Works Contracts Disputes Arbitration Tribunal Act is a special Act and there is specific provision for filing reference within one year under Section 9 of the Act. Provisions of Section 29 of the Limitation Act provides that the Act of Limitation shall not affect the special provision of any Act. Section 25 of the Indian Contract Act provides that if any period of limitation is prescribed in a special Act, Section 4 to 24 of the Limitation Act shall not apply only in so far as and to the extent to which they are not expressly excluded by such special or local law.

7. It is evident from the facts that the petitioner was entrusted to get the barricading wall at back Harding Road, Patna in Quarter No.8 to 11 within two-three days before 01.11.2009 for collecting application forms for appointment of police personnel



scheduled to be held on 01.11.2009. There was no enough time to float tender for the said work. In view of the urgency of the work, the Executive Engineer, opposite party no.4, issued work order to the petitioner on 28.10.2009 to get the work done before 31.10.2009. The petitioner finished the work of barricading before 01.11.2009 and after completion of collecting the application forms the Junior Engineer did the measurement work on 05.11.2009 and recorded the measurement on 21.02.2010 vide MB No.11318. The Assistant Engineer approved the work on 22.02.2010 and the Executive Engineer sanctioned the work worth Rs.6,78,500/-. The Superintending Engineer technically sanctioned the work on 07.11.2009. The Tribunal held that work was finally approved and sanctioned by the respondent on 21.11.2009 and the bill was submitted to the Executive Engineer on 22.10.2010 but even after lapse of five years, the petitioner did not take any step nor filed any reference in the Tribunal and, therefore, the reference was made to the Tribunal beyond the period of limitation and petitioner could not be able to show any plausible explanation for condonation of delay in making reference.

8. In the case of Madras Port Trust (supra), Section 10 of the Madras Post Trust Act was under consideration before the Hon'ble Supreme Court and it was held that the technical ground



for rejecting the well founded claim of the applicant should not be adopted by the public authority unless of course the claim is not well founded and by reason of delay in filing it. The evidence for the purpose of resisting such a claim has become unavailable.

9. In the case of Major (Retd.) Inder Singh Rekhi v. Delhi Development Authority, reported in AIR 1988 SC 1007, it is held that Article 137 of the Limitation Act, 1963 would apply to any petition or application filed in a civil court. In that case it has been held in para 4 of the judgment that in order to be entitled to order of reference under S. 20, it is necessary that there should be an arbitration agreement and secondly, difference must arise to which this agreement applied. In this case, there is no dispute that there was an arbitration agreement. There has been an assertion of claim by the appellant and silence as well as refusal in respect of the same by respondent. Therefore, a dispute has arisen regarding non-payment of the alleged dues of the appellant. The question is for present case when did such dispute arise. The High Court proceeded on the basis that the work was completed in 1980 and, therefore, the appellant became entitled to the payment from that date and the cause of action under Art. 137 arose from that date. But in order to be entitled to ask for a reference under S. 20 of the Act there must not only be an entitlement to money but there must



be a difference or a dispute must arise. It is true that on completion of the work a right to get payment would normally arise but where the final bills as in this case have not been prepared as appears from the record and when the assertion of the claim was made on 28th Feb, 1983 and there was non-payment, the cause of action arose from that date, that is to say, 28th of Feb. 1983. It is also true that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by a claimant is the accrual of the cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator under S. 8 or a reference under S. 20 of the Act.

10. From perusal of the aforesaid judgment, it appears that the cause of action does not arise on the date of completion of the work but the cause of action arises when the final bill is prepared and in that case the final bill was submitted on 28th Feb. 1983 and the reference was made in January, 1986. It was found that reference was made within three years and the same was not time barred but in the present case the final bill was prepared and submitted on 22.10.2010 and, therefore, the cause of action arose on 22.10.2010 but the reference was made only in the year 2015



that is after five years from the date of accruing cause of action. In the aforesaid case, the Hon'ble Supreme Court has also held that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders for payment. In the case of Commissioner, Nagar Parishd, Bhilwara vs. Labour Court, Bhilwara & Anr., reported in (2009) 3 SCC 525, the Hon'ble Supreme Court held in para 4 of the judgment that it is not in dispute that there was a delay of 178 days in filing the appeal against the order of the learned Single Judge dated 12-3-2004. While rejecting the application for condonation of delay, the High Court had considered the merits of the appeal and then rejected the application for condonation of delay. It has been held in para 5 that while deciding an application for condonation of delay, it is well settled that the High Court ought not to have gone into the merits of the case and would have only seen whether sufficient cause had been shown by the appellant for condoning the delay in filing the appeal before it. The Hon'ble Supreme Court examined the application filed under Section 5 of the Limitation Act before the High Court and it has been held that the delay of 178 days has been properly explained by the appellant but in the present case there is no such explanation offered and given by the petitioner at the time of filing the reference case in the year 2005.



11. It is admitted that the work was done on 28.10.2009, 29.10.2009 and 30.10.2009 before start of collecting the application. The work was issued on 05.11.2009. The Junior Engineer entered the measurement of the work in the M.B. Book on 21.02.2010 vide M.B. No.11318 and 21.02.2009 to 22.02.2010 the Assistant Engineer approved the work and the Executive Engineer also sanctioned the work done by the petitioner but the petitioner did not take any step or file any reference case before the Tribunal within one year or within three years. Sub section (a) of Section 9 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act prescribes the period of limitation for presenting the reference before the Tribunal. If any dispute arises for execution of the contract work, Section 18 of the Act vests power in the Tribunal to condone the delay in presenting the reference case beyond the period of limitation that is one year. The Arbitration and Conciliation Act does not provide any period for reference under Section 20 of the Act and, therefore, it has been admitted that where there is no provision for period of limitation providing for presentation of reference Article 137 of the Limitation Act, 1963 shall be applicable and the period for limitation is three years but in the present case the period of presenting reference is specifically provided by the Bihar Public



Works Contracts Disputes Arbitration Tribunal Act provided that the aggrieved party shall present reference within one year from the date of cause of action. Section 18 of the Act also provides for condonation of delay but the petitioner did not state any plausible reason for condonation of delay in presenting the reference in the year 2015 although the bill was sanctioned on 22.10.2010. The learned Tribunal has discussed all the facts and held that there is no proof of raising grievance between 21.02.2010 the date on which the work was sanctioned to 03.07.2015 when the reference was made and thus the reference is hopelessly barred by law of limitation.

12. Having considered the facts aforesaid, this civil revision petition is thus, dismissed.

(Prabhat Kumar Jha, J.)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.01.2019
Transmission Date	NA

