

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.26 of 2018

1. The State of Bihar, through the Principal Secretary, Water Resources Department, "Sinchai Bhawan", Harding Road, Patna.
2. The Engineer-in-Chief (Central), Water Resources Department, 'Sinchai Bhawan', Harding Road, Patna.
3. The Chief Engineer, Water Resources Department, Bhagalpur.
4. The Superintending Engineer, Water Resources Department, Sinchai Anchal, Bhagalpur.
5. The Executive Engineer, Water Resources Department, Sinchai Division, Bausi Banka.
6. Mr. Prabhanshu Shekhar, the Assistant Engineer, Water Resource Sub-Division, Panjwara Banka.
7. Mr. Ramawadhesh Singh, the Junior Engineer, Water Resource Sub-Division, Panjwara Banka.

... .. Petitioners

Versus

Chitragupta Construction Pvt. Ltd., Executive Director, Mr. Jai Sinha, S/o- Sri Umesh Prasad, R/o Thakurbari Road, At and P.O.- Jehanabad, District- Jehanabad, Pin- 804408, State- Bihar.

... .. Opposite Party

Appearance :

For the Petitioners	:	Mr. Sanjay Prasad, AC to AAG-4
	:	Mr. Deepak Sahay Jamuar, AC to AAG 4
For the Opposite Party	:	Mr. Manish Sahay, Advocate
	:	Mr. Anil Kumar Sinha, Advocate
	:	Mr. Sidharth Aditya, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

19 02-05-2023 Heard learned counsel for the petitioner and learned counsel for the opposite parties.

Re: Interlocutory Application No. 2004 of 2018

2. This application has been filed under Section 5 of the Limitation Act for condoning the delay of 663 days (date of award dated 12.05.2016 and date of filing dated 13.03.2018 excluding 5 days for obtaining certified copy of Award) in filing the instant Civil Revision Application.



3. The instant Civil Revision Application has been filed against the Award dated 12.05.2016 passed by the learned Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna in Reference Case No. 28 of 2011. The remedy against the Award passed by the tribunal is provided under Section 13 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 whereby any party aggrieved by the Award may file revision application within three months from the date of Award.

4. From perusal of the averments made in the limitation petition, it is contended that after getting the knowledge of the Award dated 12.05.2016 passed by the learned Tribunal in Reference Case No. 28 of 2011, it was brought to the notice of the Chief Engineer Irrigation Department, Bhagalpur, on 23.07.2016 and he sent the file to the department along with the statement of facts for filing the revision application. Thereafter, the file moved for obtaining legal formalities and lastly, the Secretary cum Legal Remembrancer, Bihar, rendered his opinion on 19.08.2016 and forwarded the file to the Advocate General, Bihar, for filing the revision application. It is contended that subsequently, the opinion was rendered by the Advocate General, Bihar, on 23.08.2016 and on 24.08.2016, the file was remitted to the Law Department for



taking necessary steps in this regard and it was kept pending for fixing the accountability and checking bills of all concerns from 24.08.2016 till 18.07.2017. Again, the file was sent to Advocate General, Bihar on 01.08.2017 and thereafter, revision application was prepared and brief was made ready for oath on 22.09.2017. It is further stated that upon re-opening of the court after Durga Puja vacation on 06.10.2017, a letter was given to the concerned department for instructing someone to file revision petition and again on 02.01.2018, a reminder letter was sent to department for deputing the authorized person to swear the affidavit of the revision application. It is apparent from the pleadings that after the letter dated 06.10.2017 was sent by the office of the Advocate General, Bihar, no person had turned up till 12.03.2018 and there is no explanation for not filing the civil revision application in time. After receiving of the letter dated 06.10.2017, it is surprising to note that the certified copy of the Award was applied on 01.03.2018, which was obtained by the petitioner on 06.03.2018 after about 657 days of the award dated 12.05.2016.

5. Learned counsel for the opposite party has filed counter affidavit in limitation matter and submitted that the explanation for the condonation of huge delay does not contain



acceptable and plausible reasons.

6. From the pleading of limitation petition, it appears that petitioners have failed to explain day to day delay. They have also failed to give plausible and acceptable explanation of delay in filing this Civil Revision application.

7. It is admitted fact that the instant impugned Award has been pronounced in presence of the learned counsel for the petitioners. It is submitted by the learned counsel for the opposite party that the instant Civil Revision application has been filed on 13.03.2008, after 669 days of delay and the petitioners have not given sufficient cause for delay and they have also failed to annex any chit of paper in support of their averments as made in the limitation petition. The said Award dated 12.05.2016 was pronounced in presence of both the parties, so, the petitioners cannot deny that they had no knowledge about such Award dated 12.05.2016. Learned counsel for the opposite party further submitted that after obtaining the certified copy of Award dated 12.05.2016, the opposite party had submitted the same in the Office of Executive Engineer on 10.06.2016 and in the Office of Chief Engineer as well as Superintending Engineer on 04.06.2016.

8. In the aforesaid facts and circumstances, the



petitioners cannot not deny the knowledge of such Award within statutory period of limitation.

9. Learned counsel for the opposite party has relied upon the decision of this Court that in the case of ***State of Bihar and others Vs. M/s Trimurti Construction***, passed in ***Civil Revision No. 48 of 2015*** vide order dated 23.09.2015, whereby Hon'ble Court was pleased to dismiss the limitation petition because the petitioners have failed to furnish acceptable and cogent explanation for delay of 9 months and 26 days in filing the revision application.

10. Learned counsel for the opposite party has also relied upon the decisions by the Hon'ble Apex court in the case of ***Postmaster General and others Vs. Living Media India Limited and another***, reported in ***2012 (3) SCC 563*** in order to emphasize that the State and its officers cannot be treated differently while considering the prayer for condonation of delay. Their lordships in the case of ***Postmaster General Vs. Living Media India Limited***, reported in ***2012 (3) SCC 563*** have held as follows:

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave



petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. *Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.*

29. *In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a*



special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

***30.** Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”*

11. After considering the judgment of the Hon’ble Apex Court as well as order of this Court and material on records of the present case, it is apparent that there was delay at every stage and there is no explanation except mentioning the dates of movement of files. Even according to the petitioners, they had applied for certified copy of the said Award dated 12.05.2016 on 01.03.2018 and the same was received on 06.03.2018. There is no explanation for not applying for the certified copy of the impugned Award dated 12.05.2016 within a reasonable time. The fact remains that the certified copy was applied only on 01.03.2018, i.e., after a period of nearly 657 days while the petitioners had already received the impugned



Award, which was submitted by the opposite party on 04.06.2016/10.06.2016.

12. It is apparent that there was lack of *bona fide* effort by the petitioners, who filed the revision application much after the prescribed time, and there was casual approach of the petitioners in taking steps for filing the instant Civil Revision application.

13. Considering the facts that there was no proper explanatory effort by the petitioners for the delay except the mentioning of various dates and the ratio decided in ***Postmaster General Vs. Living Media India Limited***, reported in **2012 (3) SCC 563**, the department has miserably failed to give any acceptable and cogent reason sufficient to condone such a huge delay of 665 days.

14. Accordingly, Limitation Petition (I. A. No. 2004 of 2018) is dismissed having no merit in it.

15. Consequent upon dismissal of Limitation Petition (I. A. No. 2004 of 2018), this revision application is also dismissed.

(Khatim Reza, J)

Sankalp/ & Shanu/-

U			
---	--	--	--

