# IN THE HIGH COURT OF JUDICATURE AT PATNA
**CIVIL REVISION No.135 of 2019**

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M/s Bharti Construction through its Proprietor Binay Kumar Shrivastava aged about 59 years, Son of Anant Prasad Shrivastava, Resident of Village- Baghi, P.S.- Muffasil, District- Begusarai.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner, Department of Road Construction, Government of Bihar, Vishveshwaraiya Bhawan, Bailey Road, Patna.
2. The Engineer in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Government of Bihar, Vishveshwaraiya Bhawan, Bailey Road, Patna.
3. The Superintending Engineer, Road Construction Department, Darbhanga.
4. The Executive Engineer, Road Construction Department, Begusarai.

... ... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Anjani Kumar Jha, Adv

For the Respondent/s : Mr.Amit Prakash GA-13

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**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA**

CAV ORDER

11 09-12-2025 This civil revision application is filed under Section 13 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 (hereinafter referred to as the Act 2008) for setting aside the awards passed by the Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna, (hereinafter referred to as the Tribunal) by which the Tribunal has dismissed the Reference Case No. 96 of 2014 under Section 9 of the Act 2008, denying any relief to the petitioner and even imposing a cost of Rs 10,000/- to be paid to the respondent by the petitioner.

**2.** Heard the learned counsel for the petitioner and the learned counsel for the respondent.

**3.** The case of the petitioner in brief is that the petitioner, being a registered proprietorship firm engaged in civil works within the State of Bihar, seeks a direction for the release of admitted dues totalling Rs. 2,86,750/-, along with 18% compound interest. The petitioner was duly allotted and executed seven specific contracts for the repair and widening of various roads, including the Barauni Railway Station approach and the Khagaria-Parihara-Bakhri road, during the financial years 1995-96 through 1999-2000. Accordingly, the works were completed strictly in accordance with specified norms and were subsequently measured and inspected by the competent authority. Crucially, upon a specific request, the Executive Engineer verified the relevant documents and, vide an enquiry report dated 11.12.2001, admitted the Petitioner's claim, citing a paucity of funds as the sole reason for non-payment. Despite this admission of liability and the lapse of over a decade, the Respondents have failed to liquidate the outstanding dues.

**4.** Further, it is stated by the petitioner that the dispute arose between the parties in relation to said contract, the petitioner filed Reference case no. 96 of 2014 before the learned

Tribunal under Section 9 of the Bihar Public Works Contract Disputes Arbitration Act, 2008, which was dismissed vide order dated 15.05.2015. Upon challenge, this Court vide order dated 05.07.2017 set aside the said dismissal and specifically remanded the matter to the Tribunal for a fresh decision on merits. Despite this explicit judicial direction, the Learned Tribunal, in passing the impugned award, failed to abide the order of this Court. Instead, the Tribunal proceeded on the erroneous presumption that the petitioner had suppressed the earlier order dated 15.05.2015. This finding is demonstrably perverse, as the earlier dismissal and the subsequent remand order by this Court were integral parts of the record before the Tribunal.

**5.** In light of the antecedent facts and the specific directions issued by this Court in the remand order, it was directed to the learned Tribunal to decide the present case on merits and not on the point of limitation. It is a settled canon of jurisprudence that the Law of Limitation is a statute of repose, peace, and justice, yet it remains fundamentally an adjective law. Procedural prescriptions are intended to facilitate the administration of justice, not to stifle it. The Tribunal appears to have lost sight of the cardinal principle that technicalities cannot be permitted to override the cause of substantial justice. As has been famously observed in ***Sushil Kumar Sen v. State of Bihar*** reported in ***(1975) 1 SCC 774***, "*procedure is the handmaid of justice and not its mistress*". When substantial justice and technical considerations are pitted against each other, the cause of substantial justice must prevail. To deny the petitioner an adjudication on merits, particularly when the delay was not attributable to any *mala fides* on their part, would be antithetical to the maxim '*ubi jus ibi remedium'* (where there is a right, there is a remedy). The impugned order, therefore, suffers from a patent illegality by allowing procedural technicalities to defeat the substantive rights of the petitioner.

**6.** The central issue before this Court is whether the learned Tribunal was justified in dismissing the Reference Case no. 96 of 2014 on the ground of limitation and imposing costs, particularly when this very Court, by its earlier order dated 05.07.2017, had set aside the previous dismissal and remanded the matter for adjudication on merits.

**7.** It is a matter of grave concern that the learned Tribunal has chosen to gloss over the specific directions issued by this Court. The doctrine of '*judicial discipline'* and '*hierarchical propriety'* mandates that a subordinate forum is bound by the directions of the Higher Court. As held by the Hon'ble Supreme Court in ***Tirupati Balaji Developers Pvt. Ltd. v. State of Bihar*** reported in **(2004) 5 SCC 1**, held–

> *"9...The superior forum shall have jurisdiction to reverse, confirm, annual or modify the decree or order of the forum appealed against and **in the event of a remand the lower forum shall have to re-hear the matter and comply with such directions as may accompany the order of remand**. The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below and **failure on the part of latter to carry out such directions or show disrespect to or to question the propriety of such directions would - it is obvious - be destructive of the hierarchical system in administration of justice**. The seekers of justice and the society would lose faith in both.*"

Thus, the hierarchy of courts is not just a matter of administrative convenience but a fundamental principle of the administration of justice. By dismissing the petition again on the *same* technical ground of limitation, which was effectively overruled by the remand order, the Tribunal has committed a judicial impropriety.

**8.** The learned Tribunal's finding that it lacks jurisdiction to condone delay is legally unsustainable. The law has been settled by the Hon'ble Supreme Court in ***Bihar Industrial Area Development Authority v. Rama Kant Singh*** reported in **(2022) SCC OnLine SC 329** is –

> "*15. As the 2008 Act provides for a specific period of limitation, Article 137 of the Schedule in the 1963 Act will not apply. To that extent, the Arbitration Tribunal has committed an error. Under Section 18 of the 2008 Act the Arbitration Tribunal has the power to condone the delay. The High Court recorded a finding that as the representation made by the respondent against the order of termination of the contract was kept pending for an inordinately long time and was not at all decided, the delay was explained by the respondent. The High Court, by recording the said finding in para 10 of the impugned judgment, held that sufficient cause was made out by the respondent for the delay. As observed earlier, the Arbitration Tribunal has the power to condone the delay in making a reference.....*"

**9.** The Apex Court explicitly held that Section 18 of the *Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008,* confers the power upon the Tribunal to condone delay in making a reference if sufficient cause is shown. The limitation prescribed under Section 9 is not an absolute bar when the delay is satisfactorily explained.

**10.** In the instant case, the delay was occasioned because the Petitioner was pursuing his remedy before the Departmental Authorities (High Power Liability Enquiry Committee), who had admittedly issued an enquiry report acknowledging the dues but rejected its claim vide order no. 199 dated 02.08.2006. The Tribunal ought to have appreciated that the Petitioner cannot be penalised with costs for a delay that was largely attributable to the respondents' own inaction in settling the admitted claims. Further, the imposition of cost upon the Petitioner, who has been running from pillar to post for admitted dues since 2001, is wholly perverse. It adds insult to injury. A litigant who approaches the Tribunal pursuant to a High Court remand order cannot be saddled with costs for the Tribunal's refusal to adjudicate the matter on the merits.

**11.** The learned Tribunal has dismissed the claim primarily on the reasoning that since there was no written arbitration agreement under the *Arbitration and Conciliation Act, 1996*, the Petitioner's only remedy was a Civil Suit. The Tribunal concluded that since no suit was filed within three years of the work (Article 18 of the Limitation Act), the claim became "deadwood" and could not be "revived" by the *Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008*.

**12.** This Court finds the aforesaid reasoning to be fundamentally flawed and legally unsustainable for the following reasons:

> ***(i)*** *The Tribunal failed to appreciate the effect of the Enquiry Report dated 11.12.2001 (Annexure 1). In this report, the Competent Authority (Executive Engineer) explicitly admitted the Petitioner's claim and cited "paucity of funds" (Annexure 2) as the sole reason for the non-payment to the petitioner. Under Section 18 of the Limitation Act, 1963, a written acknowledgement of liability made before the expiration of the prescribed period extends the limitation period. The claim, therefore, was not "barred" or "dead" but was kept alive by the Respondent's own admission.*
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> ***(ii)*** *The Tribunal erred in drawing a parallel with the 1996 Act. The Bihar Act of 2008 is a beneficial piece of legislation intended to provide a speedy statutory forum for works contracts, regardless of whether a formal written arbitration clause existed. To hold that a valid claim, admitted by the Department, cannot be adjudicated merely because it originated prior to 2008, would defeat the very object and purpose of the Act.*
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> ***(iii)*** *The Respondents admitted the dues but delayed payment due to lack of funds. They cannot now turn around and plead limitation. As*

*the State, being a welfare State, cannot invoke technical pleas of limitation to defeat the legitimate claims of a citizen after admitting its liability.*

**13.** The primary objection raised regarding the applicability of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008, to a dispute originating in the year 2000, is found to be devoid of merit. A plain reading of Section 22 of the Act reveals the unambiguous legislative intent to confer jurisdiction upon the learned Tribunal over work contracts irrespective of their date of execution. The provision contains a non obstante clause stating that the Act regulates disputes arising from any "Contract Agreement entered into before or after commencement of this Act." Section 22 of the State Act is read as follows:

> **"***22*. ***Overriding effect of this Act -*** *Notwithstanding anything contained in any other law, rule, order, scheme, or contract agreement entered into before or after commencement of this Act, any dispute as defined in Section 2(e) of this Act shall be regulated under the provisions of this Act Rules and Regulations framed thereunder, and absence of arbitration clause in any contraes agregment shall not have effect excluding any dispute from the the purview of this Act"*

**14.** I am fortified in this view by the judgment of the Hon'ble Apex Court in ***State of Bihar & Ors. v. Brahmaputra Infrastructure Ltd.*** Reported in **(2018) 17 SCC 444**. The Apex Court, while interpreting Section 22, held –

> "4. *The scheme of Sections 8, 9 and 22 of the State Act shows that* ***in the absence of an agreement stipulating the applicability of the Central Act, the State Act applies to works contracts.*** *Since in the present cases, an arbitration agreement exists and stipulates the applicability of the Central Act, the State Act will not apply. We, thus, do not find any ground to interfere with the impugned order*"

**15.** In the facts of the present case, it is an admitted position that there exists no arbitration agreement between the parties that does not preclude the petitioner to approach under the Act of 2008. Additionally, the settled law is that the cause of action or the dispute arose prior to the enactment of the 2008 Act does not oust the jurisdiction of this Tribunal. I, therefore, hold that the reference is maintainable and the dispute is liable to be adjudicated under the provisions of the Act of 2008. Thus, the finding of the Tribunal that the claim was barred and could not be entertained is set aside.

**16.** Ordinarily, this Court would remand the matter back to the Tribunal. However, considering that the work was executed nearly two decades ago (1995-2000) and the

Petitioner has already faced one round of remand in 2017, sending the matter back again would be a travesty of justice. The doctrine of *finality of litigation* demands that this Court settle the controversy here and now.

**17.** The factual matrix on record remains undisputed; it is admitted that the Petitioner was allotted the work through due process and that the same was duly executed, measured, and completed to the satisfaction of the authorities. Crucially, the Enquiry Report of 2001 unequivocally confirms the satisfactory nature of the work and the genuineness of the claimed dues. The Respondent State, having raised no dispute regarding the quantum of work performed, has sought to resist the claim solely on the technical ground of limitation.

**18.** It is a settled principle that the Government cannot enjoy the benefit of the work done by a contractor without paying for it. Such action amounts to 'unjust enrichment', which is anathema to Article 14 of the Constitution of India. The Petitioner has successfully established his claim for the principal amount of Rs. 2,86,750/-.

**19.** In view of the foregoing discussions, the civil revision is allowed with the following directions:

*(i) The impugned Award passed by the Tribunal, including the direction imposing*

*costs upon the Petitioner, is hereby quashed and set aside.*

*(ii) The respondent Authorities are directed to pay the admitted principal amount of Rs. 2,86,750/- to the petitioner.*

*(iii) Considering the long delay, the petitioner is entitled to compound interest @ 6% per annum from the date of the Enquiry Report (11.12.2001) till the date of actual payment.*

*(iv) The payment shall be made within a period of three months from the date of receipt/production of a copy of this order, otherwise the petitioner shall be entitled to receive the principal amount which is Rs. 2,86,750/- with compound interest @ 9% per annum from the date of the Enquiry Report (11.12.2001) till the date of actual payment.*

*(v) There shall be no order as to further costs.*

**(Ramesh Chand Malviya, J)**

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