

V.M. Thomas Vs Tata Projects Limited, Hyderabad

Court: Andhra Pradesh High Court

Date of Decision: Feb. 23, 2001

Acts Referred: Arbitration and Conciliation Act, 1996 – Section 7

Citation: (2001) 2 ALD 588 : (2001) 2 ALT 488

Hon'ble Judges: S.B. Sinha, C.J

Bench: Single Bench

Advocate: Mr. B. Adinarayana Rao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The question which arises for consideration in this application is as to whether having regard to the settlement arrived at between the parties on

12-9-1998, the arbitration agreement contained in clause 56 of the contract survives. Certain facts are not disputed. The parties entered into a

contract for civil structural work for gas lift facilities at CPF, Gandhar. The agreement contained in arbitration an clause which is in the following

terms:

56.1: If any dispute shall arise between parties touching on the contract/agreement or the construction or operation thereof, or the rights, duties or

liabilities under these, except as to any matters, the decision of which is specially provided for by the General or the Special Conditions, such

disputes shall be referred to two arbitrators, one to be appointed by each party, and the said arbitrators shall together appoint an Umpire in writing

before entering on the reference and the award of the arbitrators or the Umpire, as the case may be, shall be final and binding on both the parties.

The arbitrators or the Umpire as the case may be, may, with the consent of the parties, enlarge the time from time to time for making and publishing

the award. Such arbitration shall be governed in all respects by the provisions of the Indian Arbitration Act, 1940 and the rules framed thereunder

and any statutory modification or reenactment thereof. The arbitration proceedings shall be held in Hyderabad.

2. Disputes and differences having arisen between the parties, discussions were held between them with regard to the said disputes and differences

on 11-8-1998 and 12-8-1998 and they entered into a final settlement which is to the following effect:

2.....it has been mutually agreed that a sum of Rs.25 lakhs (Rupees Twenty five lakhs only) will be paid to M/s. V.M. Thomas as a full and final

settlement towards closure of this contract. This takes into account all invoices of M/s. VMT, recoveries, advances, release of retention and

settlement of extra claims and all other items and claims executed by M/s. VMT against the work contract of M/s. TPL on M/s VMT

Ref.No.TPL/OCG/00/01 dated 31-1-1997 and all subsequent amendments and correspondences.

3. M/s. V.M. Thomas has agreed to provide a performance bank guarantee of Rs.13.9 lakhs (Rupees thirteen lakhs ninety thousand only) for the

warranty period till 31-10-1999 with further six months claim clause. The existing bank guarantee for security deposit of Rs. 13.9 lakhs already

submitted to M/s. TPL and presently valid will be converted into the (above) performance bank guarantee for the above value and validity by a

suitable amendment from the bank. This bank guarantee amendment will be furnished by M/s. VMT to M/s. TPL before 25-8-1998. The advance

payment guarantee will be returned by M/s. TPL for cancellation.

4. With the above mutually agreed settlement both the parties will not have any claim on each other. This is the final full and final settlement.

3. Pursuant to and in furtherance of the said agreement the petitioners herein have executed a no claim certificate stating:

We have submitted Final Bill for above Contract vide Bill No. Final settlement dated 12-8-1998 for Rs.25,00,000-00 (Rupees twenty five lakhs

only) for the complete execution of the above order. This is our last claim under the above order. We confirm that we have no outstanding further

claims of any nature whatsoever to make against the above order. We also certify that all our dues have been fully settled to our entire satisfaction

by TATA Projects Limited.

4. They also affirmed to an affidavit which is to the following effect:

We M/s. V.M. Thomas hereby furnish this affidavit as required under clause of the General Conditions of Contract for construction/erection and

commissioning with regard to the above contract.

We hereby declare that all lien arising out of the above contract has been released by us in full, which to the best of our knowledge and information

include all the labour, materials, lands, licences and other commitments for which the owner might be used on for which a lien could be filed. If any

lien remains unsatisfied after all payments are made to us, we shall refund to you all moneys that you may be compelled to pay in discharging such a

lien, including all costs and the attorney's fees so incurred.

This affidavit has been executed by duly authorised person on behalf of the contract.

5. The petitioners now contend that the aforementioned agreement had been obtained under duress and that having given rise to a disputed

question of fact, the petitioners are entitled to invoke the arbitration clause 56.

6. Sri B. Adinarayana Rao, learned Counsel appearing on behalf of the respondent, however, submits that having regard to the aforementioned

settlement dated 12-8-1998 and the petitioners having accepted the said amount of Rs.25,00,000/- in full and final settlement, the arbitration

agreement stood superseded and new agreement governs the parties. The learned Counsel in support of the said contention strongly relies upon a

decision of the apex Court in Nathani Steels Ltd. v. Associated Constructors Section 7 of the Arbitration and Reconciliation Act, 1996 reads

thus:

7. Arbitration agreement :--(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain

disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in,--

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and

the reference is such as to make that arbitration clause part of the contract.

7. The decision of the Apex Court in Nathani Steel's case was rendered when the Arbitration Act, 1940 was in force.

8. Although in terms of the provisions of the Arbitration and Reconciliation Act, 1996 the question as regards the jurisdiction of the arbitrator can

also be adjudicated upon by him having regard to the conduct of the parties, this Court is of the opinion that as a new agreement has been entered

into the arbitration clause has perished. In Nathani Steel's case (supra) it was held:

3.....Even otherwise we feel that once the parties have arrived at a settlement in respect of a any dispute or difference arising under a contract and

that dispute or the difference is amicably settled by way of final settlement by and between the parties, unless that settlement is set aside in proper

proceedings, it cannot lie in the mouth of one of the parties to the settlement to spurn it on the ground that it was a mistake and proceed to invoke

the Arbitration clause. If this is permitted the sanctity of contract, the settlement also being a contract, would be wholly lost and it would be open to

one party to take the benefit under the settlement and then to question the same on the ground of mistake without having the settlement set

aside.....

9. For the reasons aforementioned it must be held that there does not exist any arbitration clause which can be taken recourse to for referring the

disputes and differences between the parties. Hence, the arbitration application is dismissed.