

Karnataka High Court

M/S Sri Bala Gopal Constructions ... vs Union Of India on 21 April, 2009

Author: S.Abdul Nazeer

IN THE HIGH COURT OF KARNATAKA AT BANGALOR'E.' :i\_"r...\_

DATED mls THE 21"" DAY 01: APRi.L 2009. D ;;f f r.-

BEFORE

THE HON'BLE MRJUSTICE S. 2iBDvsUl:. 'i

CIVIL MISCELLANEOUS r>r51'(T10:v..z\$?0.61;\*2()05f...

Between:

M/S Sri BalaG0pz:l C0nSEfL1CEi'()ni'\$7Lifi, } i  
(Formerly M/s Shree Jagannath C'0l]'sU'L3Cti()I1:s'.\_V \_\_

Reptd. By its Ma:12lging Direei6r," -- . ..  
6-3-1 .105, Rajbhav;lil'R:Q€d, SDm3.jigildé1; in  
Hyderabad W 5; 'V 9 f'

. . . . . Petitioner.

And :

Union of India, ii "

Reptd, F'

V ' ->'Fhe.VGene:ai\*-- Manager,  
'\_.S0'u€h'Wes:te.ajn\_j.Railxvay,  
2 Hubli,'K'a:f1.1afaka.

Tile C;i'.:l'1.ie'i'f/-Xdtinirristmtive Officer (C),  
». S0ri{.h\_\_Wester11 Raiiway,  
" \*1'\_8, Miiler Road.

r \_y\_BAé;nga1D1'e.

3 The Chief Engineer (C),  
South Western Railway,

Hubii, Karnataka. .... Respondents,

(By Sri NS. Sanjay Gowda, Adv.) This Civil Misc. Petition \$5 i'i1ed"iir1de1'«Seetion . the Arbitration and Conciliation Act, 1996 pi:\_a'yi.r;g to z1.pp'oititfa\_\_ Sole Arbitrator with regard to the dispute between thevpetitiorier ' and the respondent, etc. This Civil Misc. Petition coming o1=.\_for:\_Ad1nis:=;ior1 thiéi day, the Court made the following; " ' The petitioner

'iL<3:..\_a" \_'Liini;tedLCompany'.ji'eeor□b1°ated under the Companies7.Act. i1avii'1Vg:it.\$4'regi:::tei"ed' offic.e at Hyderabad. It was previously kiiowenhiztos {Si'iV'3'\$lg::il'1E1'ia[h Constructions Limited'. Its \_\_.name h2:\$--{ been chztnged. to the present name. It has been executing ""»=\_v\_orE<:\$'ef va.riot1x«Ce:1\_ti\*a1 and State Government Oi'ga11isat.io11s and their"in's:tru1nen't::iities. The second respoiident had called for tenders for e':~:ec.titit)ii of balance earthwork from Ch 40000 to Ch =.V'4ii5000'iih.etween Kadur and Chickmagaltir Stations of SOU[11~ \_ 'Western Raiiway in connectio?Nwith New 136 line between the said hm.

stations through NIT dated 17.10.1.998. The ol"l'er made by the petitioner was the lowest. Therefore, the second responde'r.t\_ accepted the offer of the petitioner through his letter dated ~ (Annexure 'B'). In terms of the said acceptance letter, i:i'it\_ial'y'al.tie M of the work. was Rs.l.,00,34,332/~ and the"enti're« \&\_zvo¢i'i<.;si1.At)"t'tlti completed within six months from the date o'f\_\_ac'<:Veptance\_jEe'tter\*i.e;.' i' the work should be completed on oj"~vt.t\$;ei7()i'e acceptance letter also £}1£111C1£1l,IL'1':€'£V\_i"Jt) pet'itio':iei tiorieposit an arnount of R33 lakhs towards security det)osi't'ai'1titheiA\$:aid' \_'.amount has since been recoveretl'i'r\_oi'n the rri\_nni'iig'~bil'l\$ \_"of tljie petitioner and the res onde\_nts--.h'aw.e Vtiaf-:;zii<'l\_oarnoiint 'icing with them. A \_ , J .

2..«.{It is\*the caSe'--.ol'v\_tlie. petitioner that after CO£'□}1Cl]CCIH€11l Vanci eixieeuuvtion'ot"eerLzt\_in quantity of work, the respondents failed to make-payment ftir work that was executed from August, 1999 and no woaj.ki'iig drawings were provideci for the bridges. Tliereforc, 'the'i.;5e'titi.o11er sustained huge losses on account of idling of eatahilisliiineilt well loss of business. Due to nomalloeation of \t {V funds Eo the subject work, paymenis were hard 10 come by. Due to hapliuzard planning by the respondents, the czlassifieation of C\_1,l\$..ll:f":-g was made adversely afl'eeEing the planning of the 'V' whereby it has snsI:1ine.d loss of abou1\_.R.s.\_\_1.8.7(;) 'con□ended that as Ehe respondents did not l':L'2}.I."li.':-ill\$li;IVT'I'll'C3f wqfig, iL:Vi::\_ Tr ' deemed that they have abandoned 1ll5.,:h<g;k enlini11a1\_i:Yg; of conéract by Ehe'esponden£s;\_.Even the exient possible, the respondeniaziiiilid 'i:p;f--p;yu and even on date, an aniciuntvof:Vab\_QLi1 final bill amoum and is yet £0 be released. Elie so eoinmitted by {he respondents, {he petitionei'l"\*susl£:1iiaed l:lllgCVl"()SS(iS through idling and loss on .. V21CC()ULLE.\$\*['])f lens of business. V " \_ "3.; li"iS""~lZL1\_:érE1es"contended than eonsekuensi upon issuing {he \_accep{£inee <leue:"," an agreement was eniered dated 20.12.2000. The "agi'ee;nent Came to be execuied nearly after one year five months \_.:al.'1:er execuieg para of the C}L&\$}iLEl€S due to non-zillocation of funcls I to the subject work. The respondents did not furnish the copy of agreement t.o the petitioner even on date due to which it is;"no«t'j\_\_£t \_\_ C position to file the copy of the said agreement bef<)>re..tlj'is However, the respondents accepted the:v"worl{"e.xectrtedt:by\_ the" petitioner and periodical payments were ntade--\_thou<.:;i1 ..be~latedE,{:."~.. Although the petitioner had exec'e.ted.\_ the ivwork. t<)>i'i..the:.\_"evX.tent possible, the 2" respondent issued notice,'on20.4;2{30?. though the petitioner is at fault and the .:i;aiAd'.ietter is"r--:1tv./Xrinexttre The agreement is governed by the»General"...Condiétions of contract governing the Eiiignteeifiig Departinent. o:fSi3tith'?Westerii Raiivvay and the Special Conditietns of'Contract appended to the agreement. Ciauses 63 and4\_\_6-3.-Vvoll' (Gener':1li""\_Co:1ditions of Contract deal with .v..1'esoitit.ion oi' dispute:-;..ptl'1rot,tgl't arbitration.

Since the respondents have not made any payments, petitioner addressed a letter dated 19.03.2002 to the respondent to pay certain amounts 'as stated in the said letter. As the respondents did not pay the amount demanded, the petitioner invoked Clause 64 of the 'General Conditions of Contract and requested the respondent to it g/.

constitute an arbitral Tribunal for resolving the dispute between the parties as per its notice at Annexure 'G'. Since the procedure has failed, petitioner has filed this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act') for appointment of a Sole Arbitrator to resolve the outstanding issue between the parties in accordance with the provisions of the agreement No.I/CKM/2000(01) of 31.01.2000 dated 20.12.2000.

4. The respondents have filed [Exhibit 1 to 3] containing that the agreement was issued to the petitioner on 9.7.1999 and the agreement was executed on 20.12.2000. Notices were issued to the petitioner about the poor progress of the work. It is further contended that the work was taken by the Railways on 16.10.2002 and the petitioner was asked to attend the office to sign the necessary papers on or before 27.4.2002. However, the petitioner did not attend the office and thus the petitioner has accepted the measurements. It is also contended that the petitioner did not raise any claims in writing within the period prescribed in the agreement, and thus deemed to have waived all its claims and the Railways discharged of all their liabilities and there is no dispute which require to be referred to arbitration. The claim is not only time barred but also they are barred for dismissal of the petition.

5. The petitioner has filed [Exhibit 4 to 6] containing that there is a change of name of the petitioner from 'M/s Sri Jagannath Construction' to 'Sri Balagopal Constructions Limited' and it is further contended that the respondents are not right in contending that the petitioner did not sign the papers as per Annexure 'C' and the respondents to pay the final bill even on date. Since there was no accord and satisfaction, the claims raised by the petitioner are still alive. As long as the final bill is not paid, all the terms of the agreement remain alive and hence it cannot be said that the claims raised by the petitioner are stale. It

6. I have heard the learned Counsel for the parties.

7. It is also not in dispute that the agreement between the parties is governed by General Conditions of Contract of the Engineering Department of South Western Railway and the conditions of the contract appended to it. Clause 63 and 64 of the General Conditions of Contract deal with the settlement of the dispute through arbitration, which are as under: "Settlement of disputes: A V V.

637, Mgtter. 63.7.1999; the Railway: All kind whatsoever arising out of the contract, whether the pre-completion of the work or after its completion before or after the determination of the dispute be referred by the Contractor to the

the Railway shall within 120 days after "r;<'c'ea.p:"t>r the Contractor's representation ntake and V " 4\_noti"f.y decision on all matters for which provision has fiteen made in ciauses 8(3), 18, 22(5), 39, 43(2), 45(3), 55, 55--A(5), 57, 57A, 61(1), 61(2) and 62(1.) (b) of K43 : ' General Conditions of the contract or in any clause fow 7 the special conditions of the contract shali be deemed» as 'excepted matters' shall stand specifically ext'-uded-,: from the purview of the arbitration~vcl.ause\_'landnot referred to arbitration.

64(I)(z').). Demand for Arbitrafiat}'\*tin the 'ex/'exit dispute or difference between:rt--he.A.arties lieie tons the construction or t)peratiorr\_pfo;'thils"--.cVoit'i\*act, or the respective rights and on any matter in ;qulesti'on, itiiispu-te on any accountgor Raiiways of anyVyVcerti\_i'i'ca\_te may claim to be ent!"!.Vtlecl\_ the R.ai'lw\_z1y\_ fails to make a decision within' E20 such case, but except in any of. the fex.cep.teG..--rnattei's' re'l'eri'ed to in clause '\$3 of these ic"ondi\_tion.~, the Contractor,' after 120 days A ' V. 3 'but iw:itliin'«.i:8{) days of his presenting his final claim on rnatters, shaii demand in writing that then ' lcllisptityelor :iil'ference be referred to arbitration. V \* :,4\_(ii)ll¥- The demand for arbitration shall specify the V' v matters which are in question or subject of the dispute or difference also the amount of claim l[€ZI'{'1~WlS{'', lit a-

Onty such dispute(s) or differeneets) in respect of which the demand has been tnacte, together wiéthnrrii' eounterelaitns or set or shall be referred to 2trbiti~\_a;ti--t3n and other matters shall not be inc1ttde.d\_--"i'nv--the reference.

(ii)(a) -- The arbitration proceedings shaii--.\_be ass»u'3frted ° to have eonamenceé from the .\_a written and V"-ç'tlli'i'\*£iii ii demand for arbitration received b'y..the..\_i'aiiway..

(b) The claimant shall sttbrni-t hisfi:1aini'sta.!:ingthat the facts stn ortinr: the eraivmsi» alongwiithv a'i'i[" relevant t s V V . :2 r documents a'ndi}t..ie reiiefi oi' re'mecii't:r)1.1s311t a atinst each elaimx iztti.:hVi.t1\_ .pe':'io'Ci-.o\_f 30 days from the date of appointment of "Tt'ii)uIt2ll.

(cg). The RaitWziy~sha1Içs;ub1nit its defence statement and . , e\_t.ai.nt(s), if any, within a period of 60 days of ii..\_rreci'ei;çt--«.\_.oo1" of ctairns from Tribunal thereafter, ',t1n1ess\_.ioi'ih\_erwtse extension has been granted by Ti1'ibLii1iE'.aiii V' ->{'r'.1'zi') --- No new ctaim shall be added during proceedings by either party. However, at party may amend or it I H supplement the original claim or defence thereof during {l'lC course of arbitraiion proceedings; subject 1'o... T acceptance by Tribunal; having due regard to the (}"3:~lE1}='.' ' in making it.

(iv) -- if the Contractor(s) does/do no: p'rei'ei' specific and final claims; in W.i"lil I}g, a periefi 1 90 days of receiving the intiiia'riiii):i1i.froni tlie that the filial bill is 1'eady for 'pay:ii;çni;"~ia\_ç/they 'wail ii; deemed to have waiifeeliijhisgtrhebir, and the Railway sha11,\_be disehahrged' [mid r"i>ei'e;i;ç;a-" of all iiabilities tindeigi-hthe. lycoairaez ":1V"t';v2~f.ç\_Z.)"\_.':V:(E{ of these claims." 1 'V 'V i V. J i

8. It'iiievideii:.\_fr(ii\*n.:Clatise~64(i)(iv) that if {he Contractor does notprefer his spvec:ifie'- and firiai claims in wriiing within a period 9Eo';laç2's« after reeeiiving the intimation from Railways that tihenfinal' for payment, he will be deemc-:cl to have V V' waivetlhis V\_c'l21.i.iiç~l'and the

Railway shall be discharged and released, all liabilities under the contract in respect of the said claim. Is it?

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9. Section 43 of the Arbitration Act provides for application of the Limitation Act to arbitration as it applies to the proceedings of the Court. It is as under:

"43. Limitations. (1) The Limitation Act, 1963, shall apply to arbitration proceedings; applies to proceedings in Court. (2) For the purposes of the Limitation Act, 1963 (XVI of 1963), the date referred in Section 2 of the Arbitration Act, 1996 shall be deemed to be the date referred in Section 2 of the Arbitration Act, 1996;

(3) to submit future disputes. It provides that any claim to which the Limitation Act shall be barred unless some step in the arbitration proceedings is taken within 21 days of the date on which the dispute arises to which the Limitation Act applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, it may on such terms, if any, the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the period of limitation under the Limitation Act, 1963 (XVI of 1963) with respect to the application for setting aside the arbitral award. In the present case, the petitioner's application for setting aside the arbitral award was filed on 14.12.2002. He has not made any claim in writing within 21 days of the date of receipt of the award. The petitioner's application for setting aside the arbitral award is barred by time. The petitioner ought to have filed this petition within three years of the receipt of the award. Article 137 of the Limitation Act lays down that any application for which no period of limitation is provided elsewhere in the schedule, three years allowed when the right to apply accrues. Thus, the application is barred by time. It is accordingly rejected. Appeal allowed. BMM/2142009