



O.P.No.189 of 2016

In the High Court of Judicature at Madras

Reserved on 09.12.2025	Delivered on: 15.12.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

O.P.No.189 of 2016

M/s.Ramky Infrastructure Ltd.,
Ramky House, Rajbhavan Road,
Somajiguda, Hyderabad-500 082.

...Petitioner

Vs

1,M/s.I.T.Expressway Limited,
No.171, 2nd Floor, TNMB Building,
South Kesavaperumalpuram,
Raja Annamalaipuram, Chennai-28.

2.Mr.S.Arunachalam,
Arbitrator, Plot No.69,
3rd Street, Soumya Nagar,
Medavakam, Chennai.

3.Mr.V.K.Shrotriya,
Arbitrator, A-3, Sector J,
Aliganj, Lucknow-225 024.

4.Mr.P.Sridharan,
Arbitrator, Plot No.50,
U.R.Nagar, Anna Nagar
West Extension, Chennai-101.

...Respondents



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PETITION under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the arbitral award dated 25.7.2015 passed by the respondents 2,3 and 4 to the extent dismissing the claim made by the petitioner and allow the claim petition filed by the petitioner before the Arbitral Tribunal and for costs.

For Petitioner : Mr.V.Kuberan for
M/s.Rank Associates

For R1 : Mr.D.Balaraman and
Mr.B.Lakshman Prasad

ORDER

This is a petition filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the award dated 25.7.2015 passed by the Arbitral Tribunal to the extent it dismissed the claim petition filed by the petitioner and to allow the claim petition.

2. Heard both.

3. The facts leading to filing of this petition are as follows:

(i) The first respondent awarded a work of construction and



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maintenance of service ducts on IT Corridor and improvement and maintenance of East Coast Road (ECR) Link Road to the petitioner through a letter of intent (LoI) dated 29.9.2005. The parties formally entered into an agreement on 12.10.2005. The agreement originally covered two components of work namely the construction and maintenance of service ducts on the IT Corridor for a length of 37,250 RMTs and the improvement and maintenance of the ECR Link Road to construct four laning ECR Link Road for 2.2 Kms connecting Old Mahabalipuram Road (OMR) and the ECR.

(ii) The duration of the contract was fixed as 7 months (221 days) and the intended commencement date was fixed as 12.10.2005 and the intended completion date was fixed as 12.5.2006. In so far as the first work was concerned, it was divided into three milestones. The first milestone (MS1) was from Madhya Kailash Temple to SRP Tools Km 0/0 - Km 3/050. The second milestone (MS2) was from Karapakkam Bridge to Siruseri Km 20/400 - Km 30/400. The third milestone (MS3) was from SRP Tools to Karapakkam Bridge Km 13/282 - Km 20/400.

(iii) Due to delay in the completion of works, the first extension was granted for three months upto 14.8.2006. There was a further



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delay in the completion of works and hence, the second extension of time was granted for two months upto 14.10.2006.

(iv) In view of the above delay, a separate agreement called as supplemental agreement dated 29.11.2006 was entered into and the work pertaining to the ECR Link Road was specifically excluded from the original contract. A fresh tender was called for by the first respondent and the petitioner submitted a fresh quote on 26.6.2007, based on which, a fresh agreement was entered into on 06.7.2007 for a total contract price of Rs.6,63,44,978/-. The ECR Link Road was supposed to be completed within six months from 03.7.2007. The scope of this work was construction of road and cross drainage, improvement of the existing road, formation of new road and maintenance works.

(v) Disputes arose during the execution of the contract primarily concerning delays that were attributed to the first respondent for the non payment of certified payments and unilateral finalization of rates for variation items not part of the original bill of quantities (BoQ). The petitioner complained of delays at various stages of execution of the work due to halt in the construction of box culverts and failure to provide necessary inputs like kerb drawings and distances for gantry



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works.
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(vi) The petitioner submitted their interim payment certificates (IPCs) numbering 5. IPC - 1 and 2 were certified and a part payment was made to the petitioner after a significant delay. There was a delayed payment even in respect of IPC - 3. Subsequent payments were not released and the core dispute arose between the parties for payments to be made in respect of IPC - 5.

(vii) Even though the petitioner made a claim for Rs.3,57,12,398.29 Ps based on the report of the Variation Committee, what was paid was only Rs.77,98,388/-. According to the petitioner, the Variation Committee took a unilateral decision without affording an opportunity to the petitioner. Even though the work involved 14 variation items (non BoQ items), only 12 items were tentatively finalised and other heads were disallowed by the first respondent.

(viii) A significant variation arose in respect of the quantity of the materials supplied, which the petitioner valued approximately at Rs.4.25 Crores and it was finally revised to Rs.3.57 Crores. Since the payments were not made, a letter dated 04.5.2011 was issued by the petitioner calling upon the first respondent to pay a sum of Rs.3,60,75,840/- with interest at the rate of 6% per annum and the



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petitioner also invoked the arbitration clause.

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(ix) An Arbitral Tribunal was constituted, before which, the petitioner made the following claims:

"(a) to direct the respondent to effect payment of dues under IPC-05, for a value of Rs.3,57,12,398.29 Ps (as per the debit note details sent by TNRDC on 01.2.2011 as annexed as Annexure C25), which is inclusive of the amount due for the variation orders for non-BoQ items, along with interest as under the contract at 6% p.a.; and

(b) to direct the respondent to pay to the claimant the costs incurred by the claimant for the present proceedings."

(x) Before the Arbitral Tribunal, the first respondent filed a statement of defence and asserted that the petitioner failed to mobilise the requisite man power, machinery and materials and thereby committed fundamental breach of their obligation, that due to the slow progress of work, the first respondent was compelled to supply construction materials and arrange for the machinery at the site at a cost approximately to the tune of Rs.425 lakhs, which was advanced to the petitioner without interest and that as such, the petitioner got extra benefits and financial support from the first respondent.



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Ultimately, the first respondent narrowed down the dispute into only two aspects namely the dispute in the quantities of variation items and the dispute relating to rates of variation items.

(xi) Before the Arbitral Tribunal, the petitioner examined C.W.1 and marked Ex.C.1 to Ex.C.25. The first respondent examined R.W.1 and marked Ex.R.1 to Ex.R.26.

(xii) Based on the pleadings and based on the subsequent developments that took place during the arbitral proceedings, the only issue, which was canvassed and dealt with by both the parties, pertained to payment of dues under IPC - 5 that was certified by the first respondent for a cumulative value of Rs.5,00,58,787/-. The Arbitral Tribunal, through a majority award (2:1), awarded a sum of Rs.77,98,388/- to the petitioner towards payment of dues under IPC -5 without interest. Aggrieved by that, the above petition has been filed before this Court by the petitioner/claimant.

4. The learned counsel appearing on behalf of the petitioner made the following submissions:

(a) The Arbitral Tribunal accepted the contention of the first respondent while arriving at the variation rates for the non BoQ items



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as per Clause 37.2 of the agreement whereas the same ought to have been calculated as per Clause 37.1 of the agreement. The issue involved the variation cost to be fixed for those items not available in the BoQ, which was covered under Clause 37.1 of the agreement whereas Clause 37.2 of the agreement dealt with those items, which were available in the BoQ and it would not be applicable to the facts of the present case.

(b) The Arbitral Tribunal relied upon the report of the Variation Committee. Before the Variation Committee submitted the report, the petitioner was not put on notice. The report was prepared behind the back of the petitioner and the said report was not binding on the petitioner.

5. Per contra, the learned counsel appearing on behalf of the first respondent submitted as follows:

The Arbitral Tribunal was perfectly justified in adopting Clause 37.2 of the agreement while fixing the rates for the variation items. On a demurrer, it was submitted that the petitioner did not submit the rate analysis with supporting documents to consider under Clause 37.1 of the agreement for deriving the rates for the non BoQ items. Apart



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from that, after the first respondent had derived the rates of the 14 non BoQ items and the decision was communicated to the petitioner through the letter dated 09.7.2010, the petitioner did not dispute the said rates derived by the first respondent. The same is evident from the letter dated 01.2.2011 written by the first respondent. The petitioner, for the first time, raised this issue only before the Arbitral Tribunal. Hence, the petitioner could not turn around and take a plea before this Court that the rate fixed for the 14 non BoQ items was not acceptable to them.

6. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.

7. This case involved the work awarded to the petitioner towards improvement and maintenance of the ECR Link Road. Even though the contract was awarded along with yet another work of construction and maintenance of service ducts on the IT corridor, the ECR Link Road work was segregated and a separate contract was entered into on 06.7.2007. The dispute pertained to variation items (non BoQ items).



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Initially, it pertained to both quantities and rates.

8. During the hearing before the Arbitral Tribunal, the petitioner agreed in so far as the quantities were concerned, which is evident from paragraph 8.16 of the award wherein it has been stated that the petitioner had accepted in so far as the difference of quantity was concerned and that therefore, the dispute on the difference of Rs.60,32,801/- due to quantification was eliminated from the scope of the award. The Arbitral Tribunal confined itself only to the rates.

9. The contention on the side of the petitioner is that new rates were to be fixed for the non BoQ items as per Clause 37.1 of the contract whereas the rates were fixed by a committee appointed by the first respondent without affording an opportunity to the petitioner.

10. The first respondent took a stand that the rate analysis submitted by the petitioner based on quotation did not contain any invoice or bills in support of the quotation to substantiate the rates of material. In view of the same, the same was returned back to the petitioner. Even thereafter, it was not re-submitted with the



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supporting invoices/bills pertaining to the purchase of materials (non BoQ items).

11. The first respondent, on their side, took the assistance of the Committee, which determined the rates of the variation items as per Clause 37.2 of the agreement by adopting the relevant schedule of rates of Chennai National Highways Circle for the year 2007-08 based on the Ministry of Road Transport & Highways (M.O.R.T. & H) Standard Data Book.

12. The rates that were fixed were also communicated to the petitioner through the letter dated 09.7.2010. But, the petitioner did not choose to dispute the rates. The petitioner took a stand that they did not receive this letter. This stand taken by the petitioner was falsified by the fact that the petitioner themselves had enclosed this document along with the proof affidavit filed by the petitioner's witness.

13. Under Clause 37.1, it is the duty of the petitioner to provide the Engineer the quotation with all supporting vouchers and the details



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of non BoQ items and on receipt of the same, the Engineer would assess the quotation within 7 days or within any longer period before the variation was ordered.

14. In the case in hand, the petitioner failed to fulfil this requirement provided under Clause 37.1.

15. As per Clause 37.2, wherever similar item description is available in the BoQ, the rate available in the BoQ is used for calculating the variation and if not, the relevant rate should be fixed.

16. The stand taken by the first respondent is that since the petitioner failed to satisfy the requirement under Clause 37.1, the first respondent proceeded to take the assistance of the Variation Committee, which fixed the rate for the similar variation items as per Clause 37.2 of the conditions of contract adopting the relevant schedule of rates of the Chennai National Highways Circle for the year 2007-08. This rate fixed was opposed for the first time only before the Arbitral Tribunal.



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17. In view of the above, the Arbitral Tribunal rendered a finding that the rates determined by the first respondent for the non BoQ items were as per the terms of the agreement and the same were acted upon by the Arbitral Tribunal. This view taken by the Arbitral Tribunal is certainly a possible view and it does not suffer from either perversity or patent illegality. When such possible view was taken by the Arbitral Tribunal, this Court cannot sit on appeal and take a different view considering the constraints imposed under Section 34 of the Act. Therefore, this Court is not inclined to interfere with the award passed by the Arbitral Tribunal.

18. In the result, the above original petition stands dismissed. No costs.

15.12.2025

Index : Yes (or) No
Neutral Citation : Yes (or) No

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P.D.ORDER in
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