



Arb. O.P. (Com. Div.) No.44 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.44 of 2025

M/s. REFORM DESIGN &

Planning Cell Pvt Ltd

Represented by Directore

225 B-Wing

Thirtharaj Complex

Ahmedabad-3800006

Gujarat

Indian

... Petitioner

vs.

1. Directorate Town and Country Planning,

Rep. by its Director

No. 807, Anna Salai

Chennai-600 002.

2. TCPO-Town and Country planning Office, Delhi

Rep by its Director

30.Azad Bhawan RdITO, IPEstate

Delhi 110 002 New Delhi.



Arb. O.P. (Com. Div.) No.44 of 2025

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3. The National Remote Sensing Agency

Rep by its Director

Department of Space, Government of

India Balanagar

Hyderabad-500625 Andrapradesh

... Respondents

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for the following reliefs :-

(a) appoint an arbitrator to adjudicate on the disputes and the claims raised by the petitioner against the respondent in relation to the GIS Based Master Plan formulation for Amrut Cities in Tamil Nadu as provided in Clause 49 of the Term of Reference dated 19.10.2017.

(b) direct the respondent to pay the costs of this petition;
and

(c) pass all such further or other orders as may be deemed fit
and

For petitioner	: Mr.P. Tamilvel
For Respondent	: Mr.R. Siddharth
	Addl. Govt. Pleader for R1

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an Arbitrator by this Court.



WEB COPY 2. There seems to be a dispute between the petitioner and the respondents 1 and 2 arising out of the Letter of Award issued by the 1st respondent, dated 13.03.2018. The petitioner is the Contractor appointed by the 1st respondent. According to the petitioner, certain sums of money are due and payable by the respondents 1 and 2 to the petitioner under the Letter of Award, dated 13.03.2018. The Special Conditions of Contract applicable to the respondents 1 and 2 contains an arbitration clause. The same is extracted hereunder :-

49. Disputes shall be settled by arbitration in accordance with the following provisions:

1. Selection of Arbitrators. Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions:

(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to The Government of Tamil Nadu, Housing and Urban Development Department, for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names there from, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, The Secretary, Housing and Urban Development Department, Government of Tamil Nadu shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.

(b) Where the Parties do not agree that the dispute concerns a technical matter, the Client and the Consultant shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel.



If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by The Principal Secretary, Municipal Administration and Water Supply, Government of Tamil Nadu.

(c) If, in a dispute subject to paragraph (b) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the Principal Secretary, Municipal Administration and Water Supply Department, Government of Tamil Nadu, to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.

2. Rules of Procedure. Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.

3. Substitute Arbitrators. If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.

4. Nationality and Qualifications of Arbitrators. The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(a) through 1(c) above shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Consultant's home country [Note: If the Consultant consists of more than one entity, add: or of the home country of any of their members or Parties or of the Government's country. For the purposes of this Clause, "home country" means any of:

(a) the country of incorporation of the Consultant [Note: If the Consultant consists of more than one entity, add: or of any of their members or Parties ; or

(b) the country in which the Consultant's [or any of their members' or Parties'] principal place of business is located; or

(c) the country of nationality of a majority of the Consultant's [or of any members' or Parties'] shareholders; or

(d) the country of nationality of the Sub-consultants concerned, where the dispute involves a subcontract.

5. Miscellaneous. In any arbitration proceeding hereunder:

(a) proceedings shall, unless otherwise agreed by the Parties, be held in Chennai, Tamil Nadu, India;

(b) the English language shall be the official language for all purposes; and

(c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.



WEB COPY 3. The petitioner has invoked the arbitration in accordance with the arbitration clause by issuing notice to the respondents on 18.03.2021 to comply with the requirements of Section 21 of the Arbitration and Conciliation Act, 1996. The said notice has been duly received by the 1st respondent and the same has not been replied. Since there exists an arbitration clause in the Special Conditions of Contract, which is applicable for the Letter of Award, dated 13.03.2018, which is the subject matter of the dispute and since there is no consensus between the parties with regard to the name of the Arbitrator, this petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator by this Court.

4. Counter has been filed by all the respondents. The 1st respondent has stated in their counter that the instant petition is not maintainable, since the petitioner has not followed the procedure contemplated under Clause 49 of the Special Conditions of Contract and the same is extracted hereunder :-

"49(1)(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, falling



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Arb. O.P. (Com. Div.) No.44 of 2025

agreement on the Identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to The Government of Tamil Nadu, Housing and Urban Development Department, for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names there from, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, The Secretary, Housing and Urban Development Department, Government of Tamil Nadu shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute."

5. According to the respondents 1 and 2, the petitioner has failed to follow the above mentioned procedure and therefore, this petition is not maintainable. The 3rd respondent has also filed the counter. In the counter filed by the 3rd respondent, they have categorically stated that they are neither parties to the arbitration agreement, nor parties to the Letter of Award, dated 13.03.2018, which is the subject matter of the dispute raised by the petitioner. Hence, according to them, the petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 against the 3rd respondent is not maintainable. In view of the contention raised by the 3rd respondent that they are not parties to the arbitration agreement and they are not parties to the Letter of Award, which is the subject matter of the dispute raised by the petitioner, this Court had directed the learned counsel for the petitioner to point out the relevant



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clauses in the contract, which is the subject matter of dispute to establish that the 3rd respondent is also responsible / bound by the terms and conditions of the Letter of Award as well as the Special Conditions of Contract, which contains the arbitration clause. However, the learned counsel for the petitioner is unable to point out any clause in the contract, which makes it clear that the 3rd respondent is also bound by the terms and conditions of the Letter of Award as well as the Special Conditions of Contract, which contains the arbitration clause.

6. The learned counsel for the petitioner submitted that the 3rd respondent is responsible for providing the satellite pictures. However, as seen from the contract, which is the subject matter of the dispute raised by the petitioner, the 3rd respondent who is not a party to the Letter of Award or a party to Special Conditions of Contract, which contains the arbitration clause has never agreed to provide satellite pictures to the petitioner as claimed by the petitioner in this petition.

7. The learned counsel for the petitioner also fairly submits that after perusal of the clauses contained in the Letter of Award as well as the Special Conditions of Contract, the 3rd respondent has not undertaken



to provide satellite pictures to the petitioner. Hence, the arbitration clause contained in the Special Conditions of Contract, which has been relied upon by the petitioner for filing this petition will not bind the 3rd respondent. Hence, they are an unnecessary party to this petition. However, the respondents 1 and 2 are bound by the Special Conditions of Contract as well as the Letter of Award, which is the subject matter of the dispute raised by the petitioner.

8. Insofar as the contention raised by the respondents 1 and 2 that the petitioner has not followed the procedure / methodology as prescribed under Clause 49 of Special Conditions of Contract is concerned, the same has to be rejected. The said clause makes it clear that the petitioner will have to agree that the dispute raised by them is a technical matter and only then the procedure contemplated in Clause 49 of Special Conditions of Contract will have to be followed.

9. In the case on hand, the petitioner never agreed to the respondents 1 and 2 that the dispute raised by the petitioner is a technical



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matter. Even though the respondents 1 and 2 have claimed in their counter that the contract of the petitioner was terminated only on account of improper submission of designs by the petitioner, however the petitioner has denied the said contention. Since the petitioner has not agreed that the dispute is a technical dispute, the methodology to be followed as per Clause 49 of Special /General Conditions of Contract is not applicable to the petitioner. When there exists an arbitration clause in the Special Conditions of Contract, which is applicable to the Letter of Award, which is the subject matter of the dispute between the petitioner and the respondents 1 and 2 and since the petitioner has invoked the arbitration in accordance with the arbitration clause by issuing notice to the 1st respondent on 18.03.2021 to comply with the requirements of Section 21 of the Arbitration and Conciliation Act, 1996 and since there is no consensus between the petitioner and the respondents 1 and 2 with regard to the name of the Arbitrator, this Court has to necessarily appoint an Arbitrator as prayed for in this petition. However, insofar as the 3rd respondent is concerned as observed earlier, there is no privity of contract between the petitioner and the 3rd respondent and since the arbitration clause which is available in the



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Special Conditions of Contract cannot be made applicable to the 3rd respondent, this petition filed by the petitioner against the 3rd respondent has to be dismissed. The arbitration agreement is only between the petitioner and the respondents 1 and 2. Accordingly, this petition stands dismissed as against the 3rd respondent.

10. For the foregoing reasons, this Arbitration Original Petition is allowed as prayed for insofar as respondents 1 and 2 are concerned and this Court issues the following directions :-

a) This Court appoints Hon'ble Mr. Justice K. Ravichandrababu, a former Judge of the Madras High Court, residing at 1D, Crescent Castle, 13/6, II Crescent, Park Road, Gandhi Nagar, Adyar, Chennai – 600 020 (Mobile No. 9444011433) as the sole Arbitrator to adjudicate the dispute between the parties arising out of the Letter of Award, dated 13.03.2018 entered into between the parties.

(b) The Arbitrator shall be paid his remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act, 1996.

(c) Both the parties shall equally share the arbitrator's fees.

(d) The Arbitrator shall conduct the arbitration in



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Arb. O.P. (Com. Div.) No.44 of 2025

accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

11. Liberty is also granted to the respondents to file an application under Section 16 of the Arbitration and Conciliation Act, 1996 before the sole Arbitrator, in case they decide to raise objection with regard to the arbitrability of the dispute.

04.06.2025

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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Arb. O.P. (Com. Div.) No.44 of 2025

ABDUL QUDDHOSE, J.

vsi2

Arb.O.P (Com.Div.) No.44 of 2025

04.06.2025