

*** THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

+ WRIT PETITION No.2358 of 2023

% 16.02.2023

Between:

The National Small Industries Corporation Ltd. NSIC
Petitioner

VERSUS

The State of Telangana,
Rep. by its Pr. Secretary, Industries Department,
Secretariat, Hyderabad & 6 others
Respondents

! Counsel for Petitioner : Mr. J.Prabhakar,
learned Senior Counsel
representing Ms. D.Venkata
Padmaja, learned counsel
for the petitioner.

^ Counsel for the respondents: Mr. H.Venugopal,
learned Government Pleader
for Industries and
Commerce Department for
respondent No.1.

Mr. Gollakota Satya
Jagannat, learned counsel
for respondent No.3.

Mr. P.Govind Reddy,
learned Special Counsel
representing State of

Andhra Pradesh for
respondent Nos.5 & 6.

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> HEAD NOTE:

? Cases referred

¹ 2023 SCC OnLine SC 95

² AIR 2019 SUPREME COURT 3558

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT PETITION No.2358 of 2023

ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. J.Prabhakar, learned Senior Counsel representing Ms. D.Venkata Padmaja, learned counsel for the petitioner. We have also heard Mr. H.Venugopal, learned Government Pleader for Industries and Commerce Department for respondent No.1; Mr. Gollakota Satya Jagannat, learned counsel for respondent No.3; and Mr. P.Govind Reddy, learned Special Counsel representing State of Andhra Pradesh (respondent Nos.5 & 6).

2. By filing this petition under Article 226 of the Constitution of India, petitioner has prayed for setting aside of the award dated 03.11.2022 passed by the Telangana State Micro and Small Enterprises Facilitation Council, Ranga

Reddy Region (briefly referred to hereinafter as 'the Facilitation Council') in Case No.236/MSEFC/2020.

3. Learned Senior Counsel for the petitioner submits that petitioner is a statutory Government of India enterprise and acts as a facilitator to Micro, Small and Medium Enterprises (briefly referred to hereinafter as 'MSMEs). Petitioner is not a supplier within the meaning of Section 2(n) of the Micro, Small and Medium Enterprises Development Act, 2006 (briefly referred to hereinafter as 'the MSME Act'). As a facilitator, it had facilitated procurement of contract by the 3rd respondent by entering into consortium amongst MSMEs in respect of tenders floated by respondent Nos.5 & 6. Petitioner is not liable to pay the amount claimed by the 3rd respondent which are in fact recoverable from respondent Nos.5 & 6. Liabilities of respondent Nos.5 & 6 cannot be fastened onto the petitioner. This being a jurisdictional error, the writ petition is maintainable. Therefore, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India may set aside the award and direct

respondent Nos.5, 6 & 7 to make payment to the petitioner in terms of the award.

4. At the outset, we are a little perplexed by the nature of the relief sought for by the petitioner. On the one hand, petitioner seeks quashing of the award, but on the other hand, petitioner seeks a direction to respondent Nos.5, 6 & 7 to make payment to the petitioner in terms of the aforesaid award.

5. Be that as it may, we are not inclined to entertain the writ petition for two reasons. Firstly it is now trite law that an award passed by the Facilitation Council under Section 18 of the MSME Act can be questioned under Section 34 of the Arbitration and Conciliation Act, 1996 (briefly referred to hereinafter as 'the 1996 Act').

5.1. We see no reason to by-pass the remedy provided under the 1996 Act read with the MSME Act and entertain the writ petition.

5.2. When this was pointed out to learned Senior Counsel for the petitioner, he has placed reliance on a

decision of the Supreme Court in **Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority**¹ to contend that notwithstanding the alternative remedy, the writ petition would be maintainable when it is a question of jurisdiction.

5.3. That was a case where the High Court had declined to entertain the writ petition assailing an order of assessment and had relegated the petitioner to the remedy of appeal under Section 33 of the Haryana Value Added Tax Act, 2003. It was in that context Supreme Court held that mere availability of an alternative remedy of appeal or revision would not oust the jurisdiction of the High Court under Article 226 of the Constitution of India and render a writ petition non-maintainable. Drawing a distinction between maintainability and entertainability of a writ petition, Supreme Court has observed that entertainability of a writ petition is entirely within the realm of discretion of the High Court, writ remedy being discretionary. Even though a writ

¹ 2023 SCC OnLine SC 95

petition may be maintainable, yet the same may not be entertained by the High Court for various reasons.

5.4. We are afraid the decision of the Supreme Court in **Godrej Sara Lee Ltd.** (supra) is not an authority for the proposition that challenge to an award made by the Facilitation Council under the MSME Act can be made in a proceeding under Article 226 of the Constitution of India by-passing the remedy provided under Section 34 of the 1996 Act.

6. As a matter of fact, Supreme Court in **M/s. Sterling Industries v. Jayprakash Associates Ltd.**² has clearly disapproved the stand adopted by some High Courts that any order passed by an arbitral tribunal is capable of being corrected by the High Court under Articles 226 or 227 of the Constitution of India. Adverting to Section 34 of the 1996 Act, Supreme Court has held that intervention by the High Court under Articles 226 or 227 of the Constitution of India in an arbitral award is not permissible.

² AIR 2019 SUPREME COURT 3558

7. We are also not inclined to entertain the writ petition because under Section 19 of the MSME Act, no application for setting aside an award passed by the Facilitation Council shall be entertained by any Court unless the party challenging the award deposits 75% of the amount in terms of the award. No such deposit has been made.

8. MSME Act is a special legislation to protect and further the interest of MSMEs. The Act provides for a dedicated dispute resolution mechanism under Section 18. To ensure that interest of the MSME is protected and to weed out frivolous challenge to an award passed by the Facilitation Council under Section 18, the statute has put in a caveat: any challenge to such an award would be entertained only upon deposit of 75% of the awarded amount.

9. That being the position and without expressing any opinion on merit, we are of the view that the writ petition is clearly misconceived. Petitioner being a Government of India enterprise ought not to have filed such a writ petition.

10. Accordingly, the Writ Petition is dismissed. We impose a cost of Rs.50,000.00 (Rupees fifty thousand only) to be paid by the petitioner to the third respondent.

11. Miscellaneous applications pending, if any, in this Writ Petition shall stand closed.

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

Date: 16.02.2023

Note: L.R. copy to be marked.
(B/o.)
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