

(2021) 04 CHH CK 0004
Chhattisgarh High Court
Case No: W.P.(227) No. 22 Of 2021

Sew Infrastructure Limited

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: April 12, 2021

Acts Referred:

- Micro, Small And Medium Enterprises Development Act, 2006 - Section 18, 18(2), 18(3), 18(5)
- Arbitration And Conciliation Act, 1996 - Section 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81
- Code Of Civil Procedure, 1908 - Section 89
- Constitution Of India, 1950 - Article 227

Hon'ble Judges: Rajendra Chandra Singh Samant, J

Bench: Single Bench

Advocate: Amit Soni, B.P. Banjare, P.R. Patankar

Final Decision: Disposed Of

Judgement

Rajendra Chandra Singh Samant, J

1. This petition has been brought under Article 227 of the Constitution of India praying to quash the proceeding on application for reference dated

18.09.2018, before the respondent No.3.

2. The facts of the case in brief is this, that the respondent No.4 moved an application under Section 18 of the Micro, Small and Medium Enterprises

Development Act, 2006 (in short 'the Act, 2006'), before the Facilitation Council i.e. respondent No.3 on 18.09.2018. This application has been

entertained by the respondent No.3. and the same is being proceeded with and notice has been issued to the petitioner for appearance in that

proceeding.

3. It is submitted that the proceeding so initiated is against the provisions of Section 18 of the Act, 2006. Section 18 (2) of the Act provides that on

receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or

centre providing alternate dispute resolution services, by making a reference to such an institution or center, for conducting conciliation and the

provisions of Section 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a dispute as if the conciliation was initiated under Part

III of that Act. The petitioner has not given any notice for such conciliation.

4. Reliance has been placed on the judgment of Supreme Court in case of Haresh Dayaram Thakur Vs. State of Maharashtra & Ors, reported in

(2000) 6 SCC 179, judgment of High Court of Gauhati in Oil & Natural Gas Corporation Ltd. & Anr. Vs. Government of Assam & Ors. reported in

2009 SCC OnLine Gau 7, judgment of Madras High Court in M/s. Ramesh Conductors P. Ltd. Vs. M & SE Facilitation Council & Ors., reported

in 2015 SCC OnLine Mad 13110 and on the judgment of High Court of Judicature at Patna in Civil Writ Jurisdiction Case No. 14884 of 2016 between

Reliance Communications Ltd. Vs.

The State of Bihar & Ors., dated 11.04.2017. It is submitted that in all these judgments there is clear finding, that the conciliation proceeding under

Section 18 (2) of the Act, 2006 is a must, therefore, it is prayed that the respondent No.3 be directed to comply the Section 18 (2) of the Act, 2006,

before proceeding to decide the reference.

5. Counsel for the respondent No.4 opposes the petition and the submission made in this respect. It is submitted that the respondent No.3 has followed

the procedure as provided under the Act, 2006. Section 18 (5) of the Act, 2006 provides time within which the matter has to be decided and that time

limit has already crossed. It is submitted that the case law cited by the petitioner are not applicable in this case. Relying on the judgment of Gujrat

High Court in Principal Chief Engineer Vs. Manibhai & Brothers (Sleeper) and Anr., reported in AIR 2012 GUJRAT 44, the judgment of Bombay

High Court in M/s. Steel Authority of India Ltd. & Anr. Vs. Micro, Small Enterprise Facilitation Council, reported in AIR 2012 BOMBAY 178 and

the judgment of High Court of Madras in Prime Technologies & Ors. Vs. Hamsa Watch Glass Pvt. Ltd. in O.S.A. No. 246 of 2015 and M.P. No.1 of

2015, decided on 25th November, 2015, it is submitted that the matter is pending before the Facilitation Council, therefore, the present petition can not be entertained, which may be dismissed.

6. In reply, it is submitted by the learned counsel for the petitioner that so far the petitioner has no information about any conciliation proceeding.

Hence, it is prayed that the petitioner be allowed and relief be granted to the petitioner.

7. I have heard the learned counsel for the parties and perused the documents placed on record.

8. Respondent No.4 has filed the copy of minutes of meeting (Annexure R-4/1). In Sr. No. 20 of the minutes, there is mention of present case

between the respondent and the petitioner. It is mentioned that the petitioner was served with notice on 13.01.2020, who gave appearance on

20.01.2020 and subsequent to which, he has filed his written statement on 06.04.2019. It is mentioned, that both the parties were given opportunity to

compromise the dispute under Section 18 (2) of the Act, 2006. The parties negotiated, but could not come to any terms, therefore, the Council has then

ordered on 15.12.2020 that both the parties could not come to terms, hence, the proceeding under Section 18 of the Act, 2006 is closed and the

proceeding under Section 18 Â of the Act is initiated.

9. The words in Section 18 (2) of the Act, 2006 give a mandate that the Council shall itself conduct conciliation in the matter or may seek assistance

of any institution or center providing alternative dispute resolution services. The only word used in this provision is 'conciliation'. The word 'conciliation'

is though found mentioned in the Arbitration and Conciliation Act, 1996, in Section 89 of Code of Civil Procedure and in the Act, 2006 and also in other

enactments, but the word has not been specifically defined in any of these acts. Conciliation is procedure adopted for alternate dispute resolution in

which neutral person proposes the parties in dispute to come to agreement for resolving the dispute between them, further there are specific provisions

for conciliation in Arbitration and Conciliation Act, 1996. Therefore, the term 'compromise' has different meaning than term 'conciliation'. In a

compromise, both the parties in dispute strictly negotiate with each other, whereas, in conciliation proceeding one neutral person is engaged in

confidential manner to bring about the settlement of dispute between the parties and granted opportunity for compromise itself would not be sufficient.

10. In case of Haresh Dayaram Thakur (supra), case law cited by the petitioner side, it is clearly held that the conciliation is must, before the

Facilitation Council proceeds under Section 18 (3) of the Act, 2006 and further. In case of M/s. Steel Authority of India Ltd. (supra), the High Court

of Bombay has held, that as there was separate arbitration proceeding present between the parties, therefore, the Council was required to proceed

under Section 183. of the Act, 2006. Here in this case circumstances are different as the order sheets and minutes of the proceeding do not mention

that any conciliation proceeding has been taken up by the respondent No.3. In Prime Technology (supra), the Madras High Court has given decision

that on proceeding at this stage of execution, which is not a case at present in this matter.

11. The supervisory jurisdiction of the High Court is available in such cases under Article 227 of the Constitution of India. In case of Shalini Shyam

Shetty & Another Vs. Rajendra Shankar Patil, reported in (2010) 8 SCC 329 and various other pronouncement, the Apex Court has settled that the

supervisory jurisdiction can be exercised by the High Court for the purpose of ensuring that the Courts and tribunals act within the bounds of their

authority. In the present case minutes of meeting, regarding which, there is mention herein above, shows that the parties were given opportunity to

compromise and negotiate for terms and parties failed in that, subsequent to which, the proceeding under Section 18 (2) of the Act, 2006 has been

closed and Facilitation Council has ordered for proceeding under Section 18 (3) of the Act. In my view that the proceeding under Section 18 (2) of the

Act, 2006 is still not over as the conciliation proceeding has not taken place, therefore, it is held that the respondent No.3 has failed to exercise its

authority under Section 18 (2) of the Act, either by involving itself or by handing over the matter to any other institutions or centers providing alternate

dispute resolution services.

12. Hence, the order of the respondent No.3 for proceeding under Section 18 (3) of the Act is erroneous and illegal regarding, in which interference is required for by this petition. Hence, this petition is allowed. The respondent No.3 is directed to take up the proceeding for conciliation under Section 18 (2) of the Act, 2006, which should be strictly a conciliation process as mentioned herein above in this matter, which may be by the Facilitation Council itself or by any institution providing alternate dispute resolution services, before taking up the proceeding under Section 18 (3) of the Act, 2006 and any further.

13. Accordingly, this petition is disposed off.