

(2025) 02 JH CK 0012

Jharkhand High Court

Case No: Writ Petition (C) No. 6244 Of 2022

M/s K.D. Infraengicon Private
Limited

APPELLANT

Vs

Jharkhand Micro and Small Scale
Enterprises Facilitation Council
through the Under Secretary

RESPONDENT

Date of Decision: Feb. 6, 2025

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Arbitration and Conciliation Act, 1996 - Section 20, 23, 24, 25, 34, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81
- Micro, Small and Medium Enterprises Development Act, 2006 - Section 3(5)(C), 18(2), 18(3), 19

Hon'ble Judges: Gautam Kumar Choudhary, J

Bench: Single Bench

Advocate: Shresth Gautam, Rishu Ranjan, Abhishek Singh, Yogendra Yadav, Ashok Kumar Yadav, Ranjan Kumar, Pratyush Kumar Jha, Chitrajan Kumar Jha

Final Decision: Allowed

Judgement

Gautam Kumar Choudhary, J

1. Instant writ petition has been filed for quashing the order contained in Memo No.2140 dated 29.11.2022 passed in connection with Case No.

JHMSEFC-43/2021 corresponding to New Case No. JH/20/S/JKH/00286 whereby and whereunder claims of the respondent no.3 against the

petitioner have been allowed.

2. Petitioner is a private limited company and claim of Rs.21,94,982.79 with interest was raised by respondent no.3 before the Jharkhand Micro and

Small Scale Enterprises Facilitation Council, Ranchi towards the supply of Thermoplastic Road Marking Paint, Potters Glass Beads, Catalysts, RPM

Epoxy kit etc. in the year 2019.

3. Notice was issued vide letter no.1519 dated 10.08.2021 by MSMED Facilitation Council to file reply within a period of seven days. In pursuant to

the notice issued, the petitioner appeared and raised preliminary objections. The Council held its meeting on 25.08.2021 and admitted the case. Further

sittings were held on 14.12.2021, 01.06.2022 and finally on 12.09.2022, when the award was passed which is under challenge before instant writ

petition.

4. It is argued by the learned counsel on behalf of petitioner that the provisions of the MSMED Act, 2006 (hereinafter in short referred as "2006

Act") have been given a complete go by the Council and therefore, it cannot be termed as arbitral award. As per Section 18(2) of 2006, Act,

the Facilitation Council is mandated to conduct conciliation of the dispute between the parties either by itself, or, by an institution without compliance of

which no further reference can be made to its arbitration under Section 18(3) of 2006, Act. In the present case, neither Conciliator was ever appointed

nor conciliation proceedings were held. In the absence of valid reference being made to conciliation in terms of Section 18(2) of 2006, Act, there can

be no reference to arbitration and therefore, the question of adjudication of the dispute by the Council does not arise. Section 18(2) of MSMED Act,

2006 mandates that procedure of Sections 64 - 81 of Arbitration and Conciliation Act, 1996 (in short hereinafter referred as "Act, 1996") is to be

followed and non-adherence of it, deprives the petitioner from the opportunity of filing pleading and evidence before the Arbitrator.

5. It is argued that the manner in which arbitral proceeding was concluded in one day i.e. 12.09.2022, shows that provisions of the Arbitration and

Conciliation Act, 1996 were completely bypassed. Reliance is placed on the judgment placed by this Court in W.P. (C) No.5804 of 2022 which was

upheld in L.P.A. No. 475 of 2023. This order was passed in the light of ratio laid down by the Hon'ble Supreme Court in *Jharkhand Urja Vikas*

Nigam Limited Vs. State of Rajasthan and Others, (2021) 19 SCC 206, wherein it has been held that the Council was obliged to conduct conciliation

for which the provisions of Sections 65 to 81 of the Act, 1996 would apply, as if the conciliation was initiated under Part III of the 2006, Act. Under Section 18(3), when the Conciliation fails and stands terminated, the dispute between the parties can be resolved by arbitration. The Council is empowered either to take up arbitration on its own or to refer the arbitration proceedings to any institution as specified in the said Section. It is open to the Council to arbitrate and pass an award, after following the procedure under the relevant provisions of the Act, 1996, particularly Sections 20, 23, 24 and 25. If this has not been done, the order becomes nullity as it runs contrary to the provision of 2006, Act and Act, 1996. On similar facts and situation, the order passed by the MSMED Council was remanded by the High Court of Gujarat in *Principal Chief Engineer Vs. Manibhai & Brothers (Sleeper) & 1*, 2012 SCC OnLine Guj 2422.

6. It is argued by the learned counsel, Mr. Pratyush Kumar Jha appearing on behalf of private respondent that the writ petition is not maintainable in view of ratio laid down by Hon^{ble} Supreme Court in *India Glycols Limited & Another Vs. Micro and Small Enterprises Facilitation Council, Medchal* ^{â€} *Malkajgiri & Others*, 2023 SCC OnLine SC 1852, wherein it was held that in terms of Section 19 of the MSMED Act, 2006, an application for setting aside an award of the Facilitation Council cannot be entertained by any Court unless the appellant has deposited 75% of the amount in terms of the award. Once facilitation Council proceeds to arbitrate upon the dispute, provisions to the Act, 1996 will apply to the dispute, hence available remedy is Section 34 of the Act, 1996. In this view of the matter, petition under Article 226/227 of the Constitution instituted by the appellants, was not maintainable. It is argued that MSMED Act is a complete code, having specific provisions for appeal which has been enacted with that object. Sub-section (5)(C) of Section 3 of 2006, Act provides that no act or proceeding of the Board shall be invalid merely by reason of any irregularity in the procedure of the Board not affecting merits of the case.

7. Having considered the submissions advanced on behalf of both sides, there cannot be any semblance of doubt that Section 19 of the MSMED Act mandates, that no application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre

providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any Court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such Court. Order under challenge is purportedly an award and not an interlocutory order which could not have been agitated before this Court.

8. The moot question that falls for consideration is if the impugned order can be said to be an arbitral award in the proper sense of term? If it is accepted that it is arbitral award then this writ petition is barred in view of the statutory remedy available under Section 19 of the MSMED, Act 2006 and as per the ratio laid down in India Glycols Limited & Another case (supra).

9. In the present case, no arbitration proceeding was held, shall be manifest from the very impugned order itself. As per para 5 (vii/viii) of the Award, it is evident that conciliation under Section 18(2) of MSMED Act, 2006 was held between both the parties from 14.12.2021 to 12.09.2022 without success. Thereafter, on the very same day i.e. on 12.09.2022, the award was passed. There is no mention that reference for arbitration was made by the Council. The Petitioner was therefore deprived of opportunity to submit statements, documents or other evidence before the Council, which is required under Section 23 of the 1996 Act. Procedure adopted by the Council completely bypassed the provisions contained in Act, 1996. The facts of this case is distinguishable from the facts of India Glycols Limited & Another case (supra), as it was a proper arbitral award that was sought to be challenged in a writ petition, on the ground that the very claim was barred by limitation, whereas in the present case, the impugned order cannot be called an arbitral award. This Court is of the view that as the impugned order cannot be called an "arbitral award" within the meaning of Act, 1996, therefore, it will be amenable to writ jurisdiction. Impugned order was passed in complete disregard of the procedure under the Act, 1996, it is therefore, not sustainable.

10. The impugned order is set aside. The matter is remanded back to the Jharkhand Micro and Small Scale Enterprises Facilitation Council (JMSEFC)

for passing order afresh as per law. Both sides to appear before the Council on 17th February 2025.

Writ Petition is allowed. Pending Interlocutory applications stands disposed.