

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 15.04.2025
Pronounced on: 21.04.2025

WP(C) 2673/2024, CM 583/2025
CM 7273/2024

Union Territory of J&K through
Executive Engineer, PHE M&P Division,
Having its registered office at
1 HMT Zanikote Srinagar J&K - 190012

...Petitioner(s)/Appellant(s)

Through: Mr. Abdul Rashid Malik, Sr. AAG &
Mr. Mohammad Younis, Assisting Counsel

Vs

1. M/S JTL Infra Limited
Through its Managing Director
Sh. Rakesh Garg having its registered address a
Gholu Majra Derbasi Ambala Highway
Derabassi Mohali Punjab
2. Micro & Small Enterprises Facilitation
Council (MSEFC) SAS Nagar Mohali
Punjab through its Chairman

...Respondent(s)

Through: Mr. Jahangir Iqbal Ganai, Sr. Advocate with
Ms. Mehnaz Rather, Advocate

CORAM:

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

J U D G M E N T

1. Petitioner - Union Territory of J&K through Executive Engineer, PHE M&P Division, has assailed the award/order dated 01.06.2023, passed by Chairman, Micro and Small Enterprises Facilitation Council [hereinafter be referred as "MSEFC"], SAS Nagar Punjab, in terms of which respondent No. 1 has been held entitled to the payment of Rs. 2,75,65, 355.00/- as principal amount along with interest as delayed amount up to 31.05.2023.

Factual Matrix

2. The Jal Shakti Department invited tenders for bidding for supply of ISI marked GMS tubes of assorted sizes, ranging from 15 MM to 100 MM,

125MM and 150 MM from registered/GeM approved manufacturers vide e-NIT No. PHE/M&P/01 of 2018-19/e-tender dated 06-04-2018. Out of six bidders, the firm M/S JTL Infra Limited, Chandigarh was declared lowest for all the items of the advertised diameters in both light and medium class categories as such three supply orders were issued in favour of the claimant firm. The material from the firm i.e., respondent No.1 was received as and when supplied as per the supply orders and payments were made to the firm from time to time as per the payment clauses of the terms and conditions of the E-NIT.

3. It is stated that the delay of finalization/closure of the contract for supply of GMS Tubes from respondent No. 1 to the Department of Jal Shakti had occurred, owing the delay in supplies from the Firm itself, which consequently impeded the settlement of delay.
4. It is stated that once the settlement of delay was confirmed, firm and final rates were established and after imposition of penalty clause net amount payable to the firm and the payment was made as per the terms and conditions laid in E-NIT. Respondent No. 1 filed a claim petition/reference under Section 18 of the Micro Small and Medium Enterprises Development Act, 2006 for recovery of Rs. 19,38,92,339/-, which includes Rs. 16,89,79,714.26/- as principal amount and Rs. 2,49,12,624.74/- as interest upto 31.12.2019, before the Punjab Micro and Small Enterprises Facilitation Council at S.A.S Nagar Mohali.
5. The Chairman Micro and Small Enterprises Facilitation Council, SAS Nagar passed award dated 01.06.2023, the operative portion of which is reproduced as under:

“Therefore in view of the findings above, the claimant is held entitled to the payment of Rs. 2,75,65,355.00/- as principal alongwith interest as delayed payment upto 31.05.2023. The reference of the claimant is accepted not only for the pending principal amount as stated above, but also with interest there upon as per provisions of Section 16 of MSMED Act, 2006 and an award of pending principal amount of Rs. 2,75,65,355.00/- alongwith interest of Rs. 8,77,32,279.00/- upto 20.04.2023 (Total

amounting to Rs. 11,52,97,635.00/-) as per Calculation Sheet attached as Annexure A-1 is hereby passed in favour of the claimant and against the respondent, who is liable to pay the same to claimant. The respondent shall be further liable to pay future interest on delayed payments as per provision of the MSMED Act to the claimant on Awarded amount from 01.06.2023 till its realization”.

6. Petitioner has challenged the impugned award on the ground that the same has been passed in a very mechanical way, and in a slip shod manner without providing any opportunity of being heard to the petitioner. The MSE Facilitation Council has exceeded jurisdiction by taking cognizance of the reference made by respondent company on account of interest on delayed payment of goods by the petitioner as the said agreement executed between the parties does not have any clause pertaining to the payment of interest on delayed payment and above all there is no delay on part of the petitioner department.
7. The object and scope of Micro, Small and Medium Enterprises Development Act of 2006 is facilitating promotion and development of Micro and Small Enterprises and Section 18 of the Act also provides for conciliation and the dispute resolution between the parties with regard to any amount due under Section 17 of the Act by making a reference to the Micro and Small Enterprises Facilitation Council. The jurisdiction assumed and exercised by the Council over the matter and subsequent passing of an ex-parte award in favour of the respondent No.1 is *non est* in the eyes of law.
8. Learned senior AAG Mr. Abdul Rashid Malik in support of his submissions has relied upon judgments passed by the Supreme Court in case titled “*Gammon Engineers and Contractors Private Limited vs. Rohit Sood*” reported as 2024 SCC Online Bom 3304; “*Tamil Nadu Cements Corporation Limited vs. Micro and Small Enterprises Facilitation Council and Another*” reported as 2025 SCC Online SC 127; “*Union Territory of J&K and Anr vs. Aibak Electric Industries Barzulla*” in petition bearing CM(M) No. 293/2023 decided on 14.12.2023.

9. Per contra, in reply filed by respondent no.1, it is stated that respondent being entitled in law made a reference under section 18(1) of the Act for recovery of amount due to him. The Facilitation Council duly conducted conciliation proceedings as per Section 18(2) of the MSMED Act, and upon failure of conciliation, arbitration proceedings were initiated, during which adequate opportunity was provided to the petitioner to present its defense. The council itself had an authority as per statute to adjudicate upon the arbitration. The matter was considered by the council in its entirety and upon consideration, the claim of the petitioner was admitted for pending principal amount along with interest as delayed payment. Since the dispute has been decided by the Council, as per the mandate of section 18(3) of the Act and in law, the award can only be challenged by taking recourse to Section 34 of the Arbitration and Conciliation Act, 1996. The application can only be entertained by the Court if the appellant has deposited with it 75% of the amount in terms of the award.
10. It is stated that the petitioner instead of taking recourse to the remedy provided in law as per mandate of Act of 2006, has directly approached this court through the medium of the writ petition, that too, without there being any application for depositing 75% of the awarded amount, as provided under Section 19 of MSME Act, 2006. It is stated that it is a settled proposition of law that this Court cannot entertain a petition under Article 226/227 of the Constitution of India, if an alternate remedy is provided and the statute under which the action complained of has been taken, itself contains a mechanism for redressal of grievances. It is also stated that this Court lacks territorial jurisdiction over the subject matter on account of the fact that the proceedings have been conducted at the supplier location i.e., SAS Nagar Punjab in compliance with the provisions of MSME Act.
11. Learned senior counsel Mr. Jahangir Iqbal Ganai appearing for respondent No. 01 has relied upon judgments passed by the Supreme Court in case titled "*Ms. India Glycols Limited vs. Micro and Small Enterprises Facilitation Council, Medchal Malkajgiri and Others*" reported as AIR 2024 Supreme Court 285; "*Union Territory of Ladakh and Others vs. Jammu and Kashmir National Conference and Others*"

reported as 2023 SCC Online SC 1140; “*NBC India Limited vs. The State of West Bengal*” reported as 2025 SCC Online SC 73; *Gujarat State Civil Supplies Corporation Limited v. Mahakali Foods Private Limited and Another* reported as 2023 (6) SCC 401.

12. Heard learned counsels for the parties and perused the material on record.
13. Learned senior counsel representing respondent No. 01 has taken preliminary objection with respect to the maintainability of the instant writ petition under Article 226/227 of the Constitution of India, as an alternate remedy is available against an award passed by Micro, Small and Medium Enterprises Development Act 2006, read with the Arbitration and Conciliation Act, 1996 in terms of Section 19 of MSMED Act. Section 18 & 19 of the MSMED Act is reproduced as under:

18. Reference to Micro and Small Enterprises Facilitation Council –

- (1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section make a reference to the Micro and Small Enterprises Facilitation Council.
- (2) 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 centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.
- (3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.
- (4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an this section in a dispute between located within its jurisdiction and a buyer located anywhere in India.
- (5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

19. Application for setting aside decree, award or order-

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:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case subject to such conditions as it deems necessary to impose.

14. It is specifically stated in Section 19 of MSMED Act that no application for setting aside any award made by the Council shall be entertained by any court, unless the appellant has deposited 75% of the awarded amount. The jurisdiction has also been prescribed in the Act as an Arbitrator or Conciliator under this section in a dispute between the supplier and buyer. Section 18 (4) provides the appellant a remedy under section 34 of the Arbitration and Conciliation Act of 1996, to challenge the award.

15. The Supreme Court of India in case titled “***M/s India Glycols Limited vs. Micro and Small Enterprises Facilitation Council, Medchal Malkajgiri and Others***” in paragraphs 14 & 15 has held as under:

14. “Mr Parag P Tripathi, senior counsel appearing on behalf of the appellant sought to urge that the view of the Facilitation Council to the effect that the provisions of the [Limitation Act](#) 1963 have no application, which has been affirmed by the Division Bench in the impugned judgment, suffers from a perversity, and hence a petition under [Article 226](#) of the Constitution ought to have been entertained. We cannot accept this submission for the simple reason that [Section 18](#) of the MSMED Act 2006 provides for recourse to a statutory remedy for challenging an award under the Act of 1996. However, recourse to the remedy is subject to the discipline of complying with the provisions of [Section 19](#). The entertaining of a petition under Articles 226/227 of the Constitution, in order to obviate compliance with the requirement of pre-deposit under [Section 19](#), would defeat the object and purpose of the special enactment which has been legislated upon by Parliament.

15. For the above reasons, we affirm the decision of the Division Bench by holding that it was justified in coming to the conclusion that the petition under Articles 226/227 of the Constitution instituted by the appellant was not maintainable. Hence, it was unnecessary for the High Court, having come to the conclusion that the petition was not maintainable, to enter upon the merits of the controversy which arose before the Facilitation Council”.

16. In terms of the judgment supra, it has been held by three judges bench of Supreme Court that petition under Article 226/227 of the Constitution instituted by the applicant is not maintainable under MSMED Act. The appellant therein, was directed to take recourse to the proceedings under section 34 of the Act of 1996.
17. Learned counsel for the petitioner has relied upon the judgment passed by Supreme Court in M/s Tamil Nadu Cements Corporation Limited vs Micro and Small Enterprises Facilitation Council and Another reported as 2025 SCC online SC 127. He has stated that as to whether petition under Article 226/227 can be entertained by this court or not has already been referred to the larger bench of five judges as such till the decision is taken by the larger bench in terms of judgment supra, instant petition deserves to be entertained and decided by this court. Paragraphs 18 & 19 of the judgment supra for facility of reference is referred hereinbelow:

18. Recently, in [Tecnimont Private Limited \(Formerly known as Tecnimont ICB Private Limited\) v. State of Punjab and Others](#), in regard to the question relating to alternative remedy where the disputed amount is required to be deposited to avail the statutory remedy, this Court observed that there is some divergence of opinion, albeit several cases like [Shyam Kishore](#) (supra) have attempted to find a solution to provide some support in cases involving extreme hardship where the writ petition would not be dismissed on the ground of equally efficacious alternative remedy.

19. In the light of the aforesaid decisions, we deem it appropriate to refer the following questions raised in the present appeal to a larger Bench of five Judges, namely:

- (i) Whether the ratio in M/s [India Glycols Limited](#) (supra) that a writ petition could never be entertained against any order/award of the MSEFC, completely bars or prohibits maintainability of the writ petition before the High Court?*
- (ii) If the bar/prohibition is not absolute, when and under what circumstances will the principle/restriction of adequate alternative remedy not apply?*
- (iii) Whether the members of MSEFC who undertake conciliation proceedings, upon failure, can themselves act as arbitrators of the arbitral tribunal in terms of [Section 18](#) of the MSMED Act read with Section 80 of the A&C Act?*

The first and second question will subsume the question of when and in what situation a writ petition can be entertained against an order/award passed by MSEFC acting as an arbitral tribunal or conciliator.

18. Since the decision has not been taken by the larger bench, in terms of the judgment passed by Supreme Court in case titled *M/s Tamil Nadu Cements Corporation Limited vs Micro and Small Enterprises Facilitation Council and Another* till date, therefore judgment passed in case of *M/s India Glycols Limited supra*, wherein it has been held that the petition under Article 226/227 of the Constitution of India is not maintainable in assailing an award under MSMED Act 2006, by a larger bench of three judges will be binding as against the judgment of two judges bench in case of *Jharkhand Urja Vikas Nigam Limited v. State of Rajasthan and others*.
19. The Judgment referred by Mr. Abdul Rashid Malik, learned Senior AAG passed in case titled “Union Territory of J&K and Anr vs. Aibak Electric Industries Barzulla” in petition bearing CM(M) No. 293/2023 decided on 14.12.2023 is not applicable to the case of the petitioner on account of the fact that Section 19 of MSMED Act and the judgment passed by Supreme Court *supra*, which have relevance in the instant case, have not even been discussed therein.
20. Learned senior counsel representing respondent No. 1 has stated that any reference made to the larger bench does not unsettle declared law. He has relied upon the judgment passed by Supreme Court in *Union Territory of Ladakh and others vs Jammu and Kashmir National Conference and Another* reported as 2023 SCC online SC 1140. It is appropriate to reproduce paragraphs 32 to 35 of the said judgment as under:

32.That apart, it is settled that mere reference to a larger Bench does not unsettle declared law. In [Harbhajan Singh v State of Punjab](#), (2009) 13 SCC 608, a 2-Judge Bench said:

“15. Even if what is contended by the learned counsel is correct, it is not for us to go into the said question at this stage; herein cross-examination of the witnesses had taken place. The Court had taken into consideration the materials available to it for the purpose of arriving at a satisfaction that a case for exercise of jurisdiction under Section 319 of the Code was made out. Only because the correctness of a portion of the judgment in *Mohd. Shafi* [(2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : (2007) 4 SCR 1023 : (2007) 5 Scale 611] has been doubted by another Bench, the same would not mean that we should wait for the decision of the larger Bench, particularly when the same instead of assisting the appellants runs counter to their contention.”

33. In [Ashok Sadarangani v Union of India](#), (2012) 11 SCC 321, another 2-Judge Bench indicated:

“29. As was indicated in [Harbhajan Singh](#) case [[Harbhajan Singh v. State of Punjab](#), (2009) 13 SCC 608: (2010) 1 SCC (Cri) 1135], the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in [Gian Singh](#) case [(2010) 15 SCC 118] need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.”

34. On the other hand, when it was thought proper that other Benches of this Court, the High Courts and the Courts/Tribunals below stay their hands, the same was indicated in as many words, as was the case in [State of Haryana v G D Goenka Tourism Corporation Limited](#), (2018) 3 SCC 5854:

“9. Taking all this into consideration, we are of the opinion that it would be appropriate if in the interim and pending a final decision on making a reference (if at all) to a larger Bench, the High Courts be requested not to deal with any cases relating to the interpretation of or concerning [Section 24](#) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Secretary General will urgently communicate this order to the Registrar General of every High Court so that our request is complied with.

35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in [National Insurance Company Limited v Pranay Sethi](#), (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.

21. It is clearly stated in the judgment supra that till the reference made by Supreme Court in case titled *M/s Tamil Nadu Cements Corporation Limited vs Micro and Small Enterprises Facilitation Council and Another* is considered and decided by the larger bench, Judgment passed in *M/s India Glycols Limited* shall be binding on this court and would hold law.

22. From the above, the court has come to the conclusion that petition under Article 226/227, thereby challenging award passed by Facilitation Council MSMED Act, is dismissed as not maintainable. However, liberty is granted to the petitioner to take recourse to appropriate proceedings in terms of MSMED Act.

(MOKSHA KHAJURIA KAZMI)
JUDGE

SRINAGAR

21.04.2025

AAMIR (PS)

Whether approved for reporting Yes

