

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.277 of 2015
Date of Decision.09.01.2015

The Chief Administrative Officer, COFMOW

.....Petitioner

Versus

The Micro & Small Enterprises Facilitation Council of Haryana and others
.....Respondents

Present: Mr. Sanjay Kumar Chhetry, Advocate for
Mr. Debabrata Borah, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The order impugned is a reference by the Chairman HMSEFC-cum-Director of Industries and Commerce under the Provisions of the Micro Small and Medium Enterprises Development Act, 2006. If any dispute arises under a contract at the instance of any enterprise to which the provision of 2006 Act is applicable, Section 18 contemplates that the matter would be decided either by the Council itself or may make a reference to an institution or centre for conducting conciliation and the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act would apply. Clause (3) contemplates a situation of where the conciliation is not successful and stands terminated, the Council may itself take up the dispute for arbitration and refer to it as an institution or centre providing for alternative dispute resolution services for such arbitration.

2. The grievance is that the Council could not have directed an arbitration to be carried out by an arbitrator appointed by it without reference to the provision under clause 3 that contemplates to such reference only on the failure of the Council to resolve the dispute by itself under clause (2). I have seen through the order and when the Director makes a reference on behalf of the Council to an Arbitrator, It must be taken that it was not possible to conciliate and resolve the dispute itself and therefore, the reference was made. It would make no difference that the reference is made to an institution or centre which will provide for alternative dispute resolution services or a direct reference to the arbitrator itself. There can be really no prejudice at all for the petitioner, for, there is no issue of bias. The provisions of Arbitration Act are sufficient to make possible for any party who is not satisfied with the Arbitrator to take such an issue before him and invite a decision thereon which is still capable of being assailed in higher forums in the manner contemplated under the Arbitration and Conciliation Act.

3. The counsel says that there is an independent arbitration agreement under the contract and that must allow for the parties to choose the arbitrator in the manner contemplated under the contract. It must be taken only as an additional method of appointment of an arbitrator and cannot exclude the application of the provisions of this Act. This is so in view of the *non obstante* clause that is set forth under Section 18 which begins with these expressions “notwithstanding anything contained in any other law for the time being in force”. A contract that provides for appointment of an arbitrator must be seen as

a contract as recognized by law and that provision will stand eclipsed by the *non obstante* clause that Section 18 provides for.

4. I find no substantial prejudice for the petitioner to approach this Court for any remedy under Article 226 of the Constitution. The writ petition is dismissed.

(K. KANNAN)
JUDGE

January 09, 2015
Pankaj*