

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6175 of 2017

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Bihar State Hydroelectric Power Corporation Ltd. Sone Bhawan, Birchand
Patel Marg, Patna – 800001 Through its'Chief Engineer.

... .. Petitioner

Versus

1. Union Of India through the Principal Secretary, Government of India,
Industry Department, New Delhi.
2. The Chairman, Micro and Small Enterprises Facilitation Council Govt. of
National Capital Territory of Delhi, Udyog Sadan, 419, FIE Patarganj,
Industrial Area, Delhi – 110092.
3. M/s Mecamidi Hpp India Pvt. Ltd. B- 156, Freedom Fighter Enclave, Neb
Sarai, New Delhi- 110058 through it's Managing Director.
4. Delhi International Arbitration Centre.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 6267 of 2017

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Bihar State Hydroelectric Power Corporation Ltd. Sone Bhawan, Birchand
Patel Marg, Patna – 800001 Through its'Chief Engineer.

... .. Petitioner/s

Versus

1. The Union Of India through the Principal Secretary, Government of India,
Industry Department, New Delhi.
2. The Chairman, Micro and Small Enterprises Facilitation Council Govt. of
National Capital Territory of Delhi, Udyog Sadan, 419, FIE Patarganj,
Industrial Area, Delhi – 110092
3. M/s Mecamidi Hpp India Pvt. Ltd, B- 156, Freedom Fighter Enclave Neb
Sarai, New Delhi- 110058 through it's Managing Director.
4. Delhi International Arbitration Centre.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shambhu Nath Choubey, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, Sr. Advocate
		Mr. Amarnath Deo, Advocate
		Mrs. Kanak Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 09-07-2019

Heard learned counsel for the petitioner and

learned senior counsel assistant by learned Advocate on



Record on behalf of respondent no. 3 in both the cases.

Although the matters are listed under the heading “For Orders – On Petition”, however, with consent of the parties the writ applications have been heard for final disposal in view of the only question of law involved in the present case as to whether the order as contained in Annexure ‘4’ bearing No. F.50/MSEFC/Delhi/2017/304 dated 28.02.2017 issued by the Chairman, Micro and Small Enterprises Facilitation Council, Government of NCT of Delhi is without jurisdiction.

Brief facts

The facts of the case are not in dispute. By virtue of an agreement bearing on 02/Elect/2013-14 dated 30.04.2013, the petitioner entered into a purchase agreement and respondent no. 3 was assigned work of renovation and modernization and capital overhauling of Chandil Hydel Power Station, Chandil. The work was not completed allegedly as per the completion schedule of the agreement. A dispute arose between the parties. The respondent no. 3 being a Micro Enterprise initiated a proceeding under the provisions of the Micro Small and



Medium Enterprises Development Act, 2006 (hereinafter referred to as the “Act of 2006”). The Act of 2006 has been enacted with an object to provide the facilitation, promotion, development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. Section 18 of the Act of 2006 falls under Chapter-V of the Act which deals with matters relating to delayed payments to micro and small enterprises. Section 18 is quoted hereunder for a ready reference: -

“18. (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 17, 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 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 it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 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 Arbitrator or Conciliator under this section in a dispute between the supplier 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.”

Since a dispute arose between the petitioner and respondent no. 3 with respect to the payments, the respondent no. 3 who is admittedly having its place of business in the National Capital Territory filed an



application for conciliation in accordance with the provisions of Section 18 of the Act of 2006. The proceedings were initiated by the Micro and Small Enterprises Facilitation Council, Delhi, conciliations were held but ultimately in the last meeting dated 10.02.2017 the Council found that both the claimant and respondent could not arrive at mutual settlement. Thus, the Council reached to a conclusion that since both the parties are not interested in conciliation to resolve the dispute and felt that conciliation is not possible in this case, the conciliation proceeding had to be terminated. The Council therefore terminated the conciliation proceeding and referred the matter under section 18(3) of the Act of 2006 to the Delhi International Arbitration Centre (in short 'DIAC') for initiating arbitration proceedings as per the Arbitration and Conciliation Act, 1996.

As it appears from the records and the submissions made at the bar, the petitioner participated in the conciliation proceeding at Delhi without raising any objection as to the territorial jurisdiction of the Council or competence of the Council to enter into the conciliation



proceeding under the Act of 2006. In fact, even today, the competence of the Council to enter into the Conciliation & Arbitration is not under challenge, what is under challenge is the place where the arbitration proceeding may be conducted by the Council.

Submission on behalf of the petitioner

It is the contention of Mr. Choubey representing the petitioner that under the agreement the parties had agreed under clause 1.38.10 that the place of arbitration shall be at Patna and all legal proceedings, if any, arising out of and in connection with the said clause shall be in the court of competent jurisdiction at Patna in the State of Bihar. It is his submission with reference to Section 20 of the Act of 2006 that under section 20 it is provided that the State Government shall by notification, establish one or more Micro and Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification. Learned counsel points out that by virtue of the provisions made under section 20 of the Act of 2006, now the State Government has already notified a Facilitation Council, and, therefore, in



his submission the proposed arbitration proceeding should be held at Patna only.

Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the Case of *Swastik Gases Pvt. Ltd. Vs. Indian Oil Corporation Limited* reported in (2013) 9 SCC 32.

Stand of the Respondent No.3

Mr. P.K. Shahi, learned senior counsel assisted by Mr. Amarnath Deo, learned counsel submits that the Act of 2006 is in the nature of a special statute. Although under the provisions of the Arbitration and Conciliation Act 1996, the parties can choose a venue and place of sitting of the arbitral tribunal but sub-section (4) of section 18 of the Act of 2006 is a later statute which starts with *non-obstante* clause which specifically provides that the Facilitation Council or centre provided under the dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India. (emphasis supplied)

Learned senior counsel submits that being fully



aware of this provision of sub-section (4) of section 18 when the conciliation proceeding was initiated by the Council at Delhi, the petitioner did not raise any objection as to the territorial jurisdiction of the Council to hold a conciliation proceeding at Delhi. This according to learned senior counsel for the respondent no. 3, amounts to an act of acquiescence on the part of the petitioner, therefore, having submitted to the jurisdiction of the Council at Delhi, it is submitted, the petitioner now cannot turn around and take a plea of territorial jurisdiction that too when sub-section (4) of section 18 specifically says that the Facilitation Council or centre shall exercise jurisdiction in respect of the disputes of the supplier who are within the jurisdiction of the Council. In this case, it is not in dispute that the respondent no. 3 is within the jurisdiction of the Council at Delhi.

Learned senior counsel therefore submits that the plea of the petitioner that because there is a Facilitation Centre established in the State of Bihar in terms of Section 20 of the Act of 2006, therefore, the Arbitration Proceeding should be held at Patna is wholly misconceived and is in



complete contradiction to the provision of law as contained in sub-section (4) of Section 18.

Consideration

Having heard learned counsel for the petitioner as learned senior counsel assisted by learned Advocate on Record on behalf of respondent no. 3, this court is of the considered opinion that the issue raised by the petitioner at this stage is wholly misconceived and is not fit to be accepted. The fact that the respondent no. 3 is a micro unit and therefore has got the privileges granted under the Act of 2006 is not in dispute. It is also not in dispute that pursuant to failure of the contract when a dispute arose between the parties, the respondent no. 3 brought it before the Council under the Act of 2006 at Delhi and a Conciliation Proceeding was started in which the petitioner participated but no objection as to territorial jurisdiction was ever raised. Mr. Choubey, learned counsel for the petitioner has again on query by this court admitted that in course of the conciliation proceeding the petitioner had not raised any objection as to territorial jurisdiction of the Council and no such pleading has been brought on the record with the writ



application.

This court has already taken note of sub-section (4) of Section 18 of the Act of 2006 which starts with *non-obstante* clause and confers jurisdiction on the Facilitation Council or centre providing alternative dispute resolution services to act as an Arbitrator or Conciliator in a dispute between the supplier located within its jurisdiction and the bar located anywhere in India.

Since the respondent no. 3 is located within the jurisdiction of Facilitation Council at Delhi, if the Council having failed to get the dispute amicably settled between the parties in course of conciliation proceeding, referred the dispute for arbitration in terms of section 18 (3) of the Act of 2006, no fault may be found with the same. In fact, as stated above, it has not been argued before this court that the Facilitation Council under the Act of 2006 would not be competent to enter into the Arbitration. Thus, it is not a case of inherent lack of jurisdiction. The only challenge is as to the place of the Facilitation Centre/Council where such arbitration proceeding should be commenced. This court is unable to agree with the submission of Mr. Choubey,



learned counsel for the petitioner that because the State Government has established a Facilitation Council at Patna, therefore now the Arbitration Proceeding may be held only at Patna and nowhere else.

This court finds that in view of the specific recital in the sub-section (4) of section 18 the plea of Mr. Choubey is not fit to be accepted. The another reason for which the court would not be willing to accept the submission of Mr. Choubey is that the petitioner has already submitted itself to jurisdiction of the Council at Delhi, has participated in the Conciliation Proceeding and thereby acquiesced to the jurisdiction of the Council at Delhi. So far as the judgment of the Hon'ble Supreme Court in the case of **Swastik Gases Pvt. Ltd. (supra)** is concerned, this court finds that in the said case the provisions of the Act of 2006 had not fallen for consideration and the context in which the present case is to be decided were not present before the Hon'ble Supreme Court in the case of **Swastik Gases (supra)**, thus, the said judgment would not be applicable to the facts of the present case.

In result, this court finds that the writ



application has no merit. It is dismissed. All the
Interlocutory Applications stand disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	19.07.2019
Transmission Date	

