

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 22510 of 2022

*Odisha Construction Corporation
Limited & another*

.....

Petitioners

Mr. S.K.Nath, Adv.

Vs.

*The Chairman, Directorate of
Industries-cum-Chairman, MSFEC
Industries, Directorate, Odisha,
Cuttack & another*

.....

Opposite Parties

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER

27.09.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. S.K. Nath, learned counsel for the petitioners.
3. The petitioners have filed this writ petition seeking to quash the order dated 19.05.2022 passed by the MSEFC in Case No. MSEFC No. 17/2021 under Annexure-11, whereby the MSEFC has declared the conciliation process under Section 18(2) of the MSMED Act, 2006 as failed between the parties and initiated arbitration proceeding under Section 18(3) of the MSMED Act, 2006 and directed both the parties to file counter/written statements and additional documents, if any, by the next sitting.
4. Mr. S.K. Nath, learned counsel for the petitioners contended that the Water Resources Department had engaged the petitioners to undertake certain works, i.e., supply of labour, materials, hire charges of machineries for construction of pond with embankment at Samanga area for sourcing of 75 MLD of drinking water to Puri township. As such, the petitioners had discharged its obligation as per the agreement executed with the Water Resources Department.

But to undertake such work, the petitioners had engaged opposite party No.2. As the said work was not completed, the final bill was not paid to the petitioners, for which the petitioner raised demand from the opposite party no.2. As a consequence thereof, opposite party No.2 approached the MSEFC by filing a petition stating inter alia that it is not liable to pay the amount as demanded by the petitioners. Thereby, order impugned dated 19.05.2022 has been passed by the MSEFC by declaring the conciliation process under section 18(2) of the MSMED Act, 2006 as failed between the parties and initiated arbitration proceeding under Section 18(3) of the MSMED Act, 2006 and directed both the parties to file counter/written statement and additional documents, if any, by the next sitting. It is contended that MSEFC has no jurisdiction to pass such order and, thereby, the petitioners have approached this Court by filing the present writ petition seeking to quash the order impugned.

5. Having heard learned counsel for the petitioners and after going through the records, this Court finds that once the work has been allotted in favour of the petitioners, it has to perform its own obligation in terms of the agreement between the Water Resources Department and the petitioners. Instead of doing so, the petitioners had engaged sub-contractor without any agreement and without any condition and even without fixing a price to undertake the work. Therefore, the work could not be completed within the time specified. As a consequence thereof, a demand was raised by the petitioners against the opposite party No.2, for which opposite party No.2 approached the MSEFC. Even though the petitioners raised contention with regard to jurisdiction of MSEFC to

adjudicate the case, but ultimately the MSEFC came to a conclusion that conciliation process under section 18(2) of the MSMED Act, 2006 has failed between the parties and accordingly initiated arbitration proceeding under section 18(3) of the MSMED Act, 2006 and directed both the parties to file counter/written statements and additional documents, if any, by the next sitting. A contention was raised that since there is no such arbitration clause, as there was no agreement between the parties, the MSEFC should not have issued direction for initiation of arbitration proceeding. But if statute provides under Section 18(3) to have arbitration, it is open to the petitioners to participate in the said proceeding or not. It is also made clear that the impugned order passed by MSEFC is in the nature of recommendation. Therefore, it is open to the petitioners to abide by the same or not, on which this Court has expressed no opinion.

6. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE

Ashok/Kishore