

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.36051 of 2021
(Through hybrid mode)**

M/s. Paradeep Phosphates Ltd. Petitioner

Mr. D.P. Nanda, Senior Advocate
Ms. S. Moharana, Advocate

-versus-

***Micro and Small Enterprises Opposite Parties
Facilitation Council, Pune and
another***

CORAM: JUSTICE ARINDAM SINHA

**ORDER
05.09.2022**

**Order
No.
04.**

1. Mr. Nanda, learned senior advocate appears on behalf of petitioner and presses for hearing and order.
2. None appears on behalf of opposite party no.2.
3. The writ petition was moved on 29th November, 2021, service directed and interim order made. Text of order made on 29th November, 2021 is reproduced below.

“1. Mr. Nanda, learned senior advocate appears on behalf of petitioner and submits, under challenge is notice dated 24th September, 2021 issued by opposite party no.1 under section 18 of Micro, Small and Medium Enterprises Development Act, 2006 (MSMED). He submits, negotiation between opposite party no.2 and his client for entering into the contract was held on 29th

August, 2018. That negotiation became a contract by issuance of work order dated 11th March, 2019 carrying jurisdiction clause 2, to give civil Courts, in Bhubaneswar and High Court of Orissa to have sole and exclusive jurisdiction. He demonstrates acceptance of the work order including its terms and conditions by drawing attention to page-2 in the petition filed by opposite party no.2 before opposite party no.1.

2. He submits further, at the time of negotiation and contract opposite party no.2 initially was not registered as a small or medium enterprise and later suppressed it had obtained registration. It obtained certification on 15th November, 2019 having filed for it earlier on 19th October, 2018. That it had filed for obtaining such registration was not made known to his client. As such, the contract in question, if has given rise to disputes, such disputes must be adjudicated in compliance with clause 13 in the contract. He relies on ad interim orders dated 25th October, 2017 passed in W.P.(C) No.22083 of 2017, 19th October, 2019 passed in W.P.(C) No.2194 of 2019 and order dated 1st September, 2021 passed in W.P.(C) No.25114 of 2021 made by two different coordinate Benches, to pray for issuance of ad interim order restraining opposite party no.1 from proceeding any further, pursuant to impugned notice.

3. It is to be adjudicated whether opposite party no.2 is a supplier and there can be application of chapter 5 in MSMED Act to the contract entered into by it before it

obtained registration as contended by petitioner. Even though contract was by said work order dated 11th March, 2019 but submission made on behalf of petitioner that there was non-disclosure is accepted at this stage since opposite party no.2 appears to have accepted work order with the jurisdiction clause, even though it was already then registered as a medium or small enterprise.

4. There will be ad interim order of stay of impugned notice.

5. Let there be service of the petition on opposite party no.2. Petitioner will put in requisites for service by speed post with A.D. It goes without saying, opposite party no.2 will be at liberty to apply for vacating the order.

6. List on 20th December, 2021.”

4. The record shows service was duly made on 13th December, 2021 on opposite party no.2. On 25th July, 2022 there was submission of opposite party no.2 being represented. Text of order dated 25th July, 2022 is reproduced below.

“1. Ms. Moharana, learned advocate appears on behalf of petitioner.

2. Mr. Kamal, learned advocate appears on behalf of opposite party no.2 and prays for adjournment. Ms. Moharana responds that the Council is issuing notices for proceeding.

3. *The writ petition was moved on 29th November, 2021, when there was ad interim order of stay of impugned notice. Liberty was given to noticed opposite party no.2 to apply for vacating the order. Today said opposite party has appeared and prays for adjournment.*

4. *The ad interim order is converted to interim order of stay of impugned notice till next date.*

5. *List on 4th August, 2022, as prayed for by Mr. Kamal.”*

Next date was 5th August, 2022, when the learned advocate did not appear. Text of order dated 5th August, 2022 is reproduced below.

“1. Mr. Nanda, learned senior advocate appears on behalf of petitioner and refers to order dated 25th July, 2022. None appears on behalf of opposite party no.2.

2. Text in order dated 25th July, 2022 is reproduced below.

“1. Ms. Moharana, learned advocate appears on behalf of petitioner.

2. Mr. Kamal, learned advocate appears on behalf of opposite party no.2 and prays for adjournment. Ms. Moharana responds that the Council is issuing notices for proceeding.

3. The writ petition was moved on 29th November, 2021, when there was ad interim order of stay of impugned notice. Liberty was given to noticed opposite party no.2 to apply for vacating the order. Today said opposite party has appeared and prays for adjournment.

4. The ad interim order is converted to interim order of

stay of impugned notice till next date.

5. List on 4th August, 2022, as prayed for by Mr. Kamal”

In event said opposite party continuous to go unrepresented adjourned date or thereafter, there will be adverse presumption for adjudication and disposal of the writ petition.

3. List on 22nd August, 2022. Interim order to continue till next date.

4. Petitioner will communicate website copy of this order to learned advocate of opposite party no.2.

5. Mr. Nanda hands up print of mail dated 26th August, 2022 sent by his associate to mail ID of opposite party no.2 (SEJAL Internationals) to demonstrate service of, inter alia, order dated 25th July, 2022 on said opposite party.

6. Court adversely presumes against opposite party no.2 to not be a supplier. Impugned notice dated 24th September, 2021 is accordingly set aside and quashed.

7. The writ petition is disposed of.

(Arindam Sinha)
Judge