

6th October,
2023
(AK)
08

W.P.A 6191 of 2022
IA No: CAN 2 of 2023

The Bihar Medical Services and Infrastructure
Corporation Limited
Vs.
West Bengal Micro Small Enterprises Facilitation Council,
Government of West Bengal and others

Mr. Umesh Prasad Singh
Mr. Kumar Manish
Mr. Surendar Kumar
Ms. Amrita Pandey

...for the petitioner.

Mr. Tapan Mukherjee
Ms. Sangeeta Roy

...for the State.

Mr. Pranit Bag
Mr. Anuj Kr. Mishra
Mr. R.R. Modi

...for the respondent no. 3.

In Re: CAN 2 of 2023

1. In view of sufficient reasons for the absence of the petitioner on the relevant date having been furnished in the application, CAN 2 of 2023 is allowed, thereby recalling the order dated June 27, 2023 passed in WPA 6191 of 2022 and restoring the said writ petition to its original file and number.

There will be no order as to costs.

In Re: WPA 6191 of 2022

2. On consent of the parties, the writ petition itself is taken up for hearing.

3. Learned counsel for the petitioner contends that the objection as to maintainability as raised by the respondents is not justifiable, since the condition for preferring an appeal under the MSME Act, 2006 is onerous.

4. It is contended that Section 19 of the said Act stipulates that 75% of the amount awarded has to be deposited as a pre-condition for preferring an appeal, which is onerous in the circumstances.

5. Secondly, learned counsel argues that the claimant, that is, the respondent no.3, was not competent to sue before the said authorities, having been registered subsequently under the MSME Act.

6. Hence, the award of the council, it is argued, was without jurisdiction.

7. That apart, learned counsel places reliance on *Silpi Industries and others vs. Kerala State Road Transport Corporation and others reported at MANU/SC/0390/2021* as well as the relevant orders of the Supreme Court extending the moratorium in respect of limitation period during the Covid period and argues that since the certified copy of the award was obtained by the petitioner

only on September 12, 2023, the petitioner is squarely covered by the said orders of the Supreme Court and, as such, the challenge is not hit by limitation as stipulated in the 2006 Act.

8. Considering the submissions of the parties *prima facie*, it is evident that the objections now sought to be raised by the petitioner as grounds of the challenge under Article 226 of the Constitution of India can very well be taken in a challenge under Section 34 of the Arbitration and Conciliation Act, 1996, read with Section 19 of the MSME Act, 2006.

9. In fact, the scope of a challenge under Section 34 is very limited, which cannot be exceeded and is somewhat different from the scope of interference in an application under Article 226 of the Constitution of India.

10. The mere fact that in terms of a statutory provision, there is a pre-condition of deposit of an amount for preferring an appeal, cannot be sufficient to argue that the appeal is onerous merely by the existence of such provision.

11. Since the provision of the MSME Act, that is, Section 19, stipulating the pre-deposit of 75%, is there in the statute book, it is evident that the said intention of the legislature *per se* cannot be construed as onerous.

12. If such a logic is accepted for entertaining a writ petition, where a challenge under Section 34 is available,

the same will not only open up a floodgate but will cast an aspersion as to the provision of statute being *ipso facto* onerous.

13. The said presumption cannot be taken in respect of a valid statute.

14. Hence, in the absence of any other circumstances, it cannot be said that merely due to the requirement of law to deposit 75% of the award amount, the challenge in a proper forum is onerous, and not an equally efficacious alternative remedy.

15. Thus, there is no scope of interference in this application under Article 226 of the Constitution of India in view of availability of an equally efficacious alternative remedy by way of a challenge under Section 34 of the Arbitration and Conciliation Act, 1996.

16. That apart, it has been repeatedly deprecated by the Supreme Court that unless the specific course of law, as stipulated in a statute, is exhausted by a person aggrieved with an order, the writ court ought not to interfere readily.

17. Keeping in view such aspects of the matter, even without going into the merits of the matter on any score, WPA 6191 of 2022 along with CAN 1 of 2022 (treating it to be in the day's list) are dismissed with liberty to the petitioner to approach the appropriate forum in a properly constituted challenge under Section 34 of the

Arbitration and Conciliation Act, 1996, if the petitioner so chooses.

18. Accepting the contention of learned counsel for the petitioner that a lenient view ought to be taken regarding the period of limitation, since the Supreme Court in several orders have been extending the moratorium regarding limitation during the Covid period, and in view of the pendency of the writ petition before this court for some time, the time limit as stipulated in 2006 Act for the purpose of preferring a challenge is required to be looked into leniently.

19. Hence, in the event the petitioner prefers a challenge under Section 34 of the 1996 Act within a week from date, it will be deemed that the said challenge is within the limitation as stipulated in the statute.

20. Leave is granted to the petitioner to take back the certified copy of the impugned award annexed to the writ petition upon furnishing duly certified photocopies thereof.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)