

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.856 OF 2023

AFCONS Infrastructure Ltd. Thr. Its authorised signatory Rohit Kumar Chaturvedi

-VS-

The Micro and Small Enterprises Facilitation Council and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri D. V. Chauhan, Advocate for petitioner.

Shri A. S. Ambatkar, Advocate for respondent No.2.

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI JJ.

DATE : March 30, 2023

P. C.

In view of notice for final disposal issued earlier, we have heard the learned counsel for the parties at length.

The challenge raised in this writ petition is to the issuance of notice of acceptance of reference dated 20/10/2022 under Section 18(1) of the Micro, Small and Medium Enterprises Development Act, 2006 (for short, the Act of 2006). According to the petitioner such reference is not maintainable and is thus not liable to be entertained by the respondent No.1-Facilitation Council.

2. According to the petitioner, the respondent No.2 was issued Work Orders 25/02/2019 and 22/03/2019. The second Work Order dated 22/03/2019 came to be amended on 08/08/2019. A reference was made by the respondent No.2 on 26/03/2022 by claiming itself to be a supplier and being entitled to amounts due from the petitioner. Pursuant thereto the Facilitation Council issued notice to the petitioner on 12/10/2022. The act of the Facilitation Council of entertaining

the reference as filed by the respondent No.2 is under challenge.

3. Shri D. V. Chauhan, the learned counsel for the petitioner referred to various provisions of the Act of 2006 and especially Section 2(n) and Section 18 to urge that a reference made only by a Micro or Small Enterprise can be entertained under Section 18 of the Act of 2006. The registration of the respondent No.2 on 21/08/2017 was as a Medium Enterprise and not as a small enterprise. It was downgraded as a Small Enterprise only on 29/06/2021 and such down gradation would have prospective effect. Since the respondent No.2 was not a Small Enterprise when the reference was made, the Facilitation Council had no jurisdiction to proceed with the consideration of the reference under Section 18 of the Act of 2006. Reference was also made to the notification dated 26/06/2020 to urge that the change in such category would be effective from the next financial year. Placing reliance on the decision in *S. Govinda Menon vs. Union of India and anr. AIR 1967 SC 1274*, it was submitted by the learned counsel for the petitioner that the present was a fit case to issue a writ of prohibition. Reference was also made to the decision in *Silpi Industries Etc. vs. Kerala State Transport Corporation and anr. 2021 SCC OnLine SC 439* to urge that the reliefs prayed for in the writ petition ought to be granted.

4. Shri A. S. Ambatkar, the learned counsel for the respondent No.2 opposed the aforesaid submissions. According to him the petitioner failed to question the jurisdiction of the Facilitation Council to entertain the reference application. He referred to the provisions of Section 2(n)(iii) of the Act of 2006 to urge that the Facilitation Council had the necessary

jurisdiction to entertain the proceedings. Without raising such objection before the Facilitation Council and without permitting the said Council to examine its jurisdiction, the petitioner had rushed to this Court by filing the present writ petition. The petitioner ought to be directed to first raise objection to the jurisdiction of the Facilitation Council and after its decision the petitioner could assail the same if it was not satisfied. It was also submitted that since the respondent No.2 was registered under the Act of 2006, the Facilitation Council could entertain the proceedings.

5. We have heard the learned counsel for the parties and we have perused the documents on record. The petitioner seeks to challenge the jurisdiction of the Facilitation Council to entertain the reference application preferred by the respondent No.2 principally on the ground that the respondent No.2 is not registered either as a Micro or Small enterprise which is the pre-requisite condition for the Facilitation Council to entertain the reference proceedings. The registration as a Small Enterprise was on 29/06/2021 and it is only thereafter that the respondent No.2 could invoke the jurisdiction of the Facilitation Council. Since the dispute pertained to the period prior to registration of the respondent No.2 as a Small Enterprise, the Facilitation Council had no jurisdiction to entertain the reference at the behest of a Medium Enterprise. On the other hand, the respondent No.2 has sought to invoke the jurisdiction of the Facilitation Council on the premise of it being a 'supplier' as contemplated by Section 2(n) of the Act of 2006.

6. We find from the documents on record that the petitioner

after receiving the communication dated 26/03/2022 from the Facilitation Council, on 07/04/2022 has taken a stand that the respondent No.2 was not entitled to seek reference of the dispute between the parties under the Act of 2006. Its stand that the dispute was in relation to the period prior to registration of respondent No.2 as a Small Enterprises was put forward. The petitioner sought dismissal of the reference application on that ground. The Minutes of the Facilitation Council that have been placed on record indicate that without considering the aforesaid objection raised by the petitioners, the Facilitation Council was pleased to issue notice under Section 18 (1) of the Act of 2006 on 12/10/2022. This has prompted the petitioner to approach this Court by filing the present writ petition and seek a declaration that the registration of the reference application by the Facilitation Council was without jurisdiction.

We find that the petitioner having raised an objection to the jurisdiction of the Facilitation Council, it was necessary for the Council to have first considered the said objection on merits and thereafter to have proceeded with such an adjudication subject to it being satisfied that the respondent No.2 was justified in invoking such jurisdiction under Section 18 of the Act of 2006. Since there is a dispute raised that the reference was being sought with regard to matters between the parties prior to registration of respondent No.2 as a Small Enterprise, we find that it would be necessary for the Facilitation Council to first consider this aspect before proceeding with further consideration of the proceedings. The Facilitation Council is competent to consider whether it can exercise jurisdiction in the light of the documents placed before it including consideration

of the aspect as to whether the respondent No.2 was a Small Enterprise when the reference was made. On such finding being recorded, the matter can proceed ahead.

7. In view of aforesaid, the following order would serve the ends of justice :

Before proceeding with adjudication of the reference preferred by the respondent No.2, the respondent No.1-Facilitation Council shall first adjudicate the petitioner's objection dated 07/04/2022 as raised to the jurisdiction of the Facilitation Council. The parties are permitted to place before the Facilitation Council additional material in support of their respective submissions.

The Facilitation Council shall first consider the aspect of jurisdiction. Based on that adjudication, it shall take further steps in accordance with law. The contentions raised in the writ petition as well as in the reply are kept open for being raised before the Facilitation Council. Needless to state that either party aggrieved by such adjudication is free to challenge the same in accordance with law.

With these directions, the writ petition is disposed of.

No costs.

(M. W. Chandwani, J.)

(A. S. Chandurkar, J.)

Asmita

Digitally signed by ASMITA
ADWAIT BHANDAKKAR
Signing Date: 11.04.2023
14:55:38