

S.R.JOSHI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE CIVIL JURISDICTION**

**WRIT PETITION NO.6201 OF 2019**

Indian Oil Corporation Limited  
Haldia Refinery  
Haldia  
West Bangal 721 605

... Petitioner

*Versus*

1 Maharashtra Micro and Small Enterprises  
Facilitation Council, Konkan Region, Thane  
M.I.D.C. Commercial Complex, 2<sup>nd</sup> Floor  
Near Modela Woollen Mill, Wagle  
Industrial Estate, Thane 400 604.

2 ChemClearnzio India Pvt. Limited  
at B-9/1, Pendhar Village Road,  
MIDC Taloja, Tal – Panvel,  
District – Raigad 410 208.

... Respondents

Mr. Shubham Sawant with Ms. Tanhishtha Singh, Mr. Harshit Trivedi  
and Mr. Sagar Satam i/b. Meharia & Co., for the Petitioner.  
Ms. Kausar Banatwala with Mr. Vandit Joshi i/b. Tushar Goradia, for  
Respondent No.2.

CORAM: G. S. KULKARNI &  
FIRDOSH P. POONIWALLA, JJ.  
DATED: 28<sup>th</sup> FEBRUARY, 2024

**ORAL JUDGEMENT (Per FIRDOSH P. POONIWALLA, J.):**

This Petition has been filed under Article 226 of the Constitution of India.

2 The Petitioner is the Indian Oil Corporation Limited. On 24<sup>th</sup> October, 2013, a tender bearing No. HMLAA13097 was issued by the Petitioner for the work of Decontamination jobs in Vis Breaker Unit (Unit 37) at Haldia Refinery (“Subject Work”).

**SMITA  
RAJNIKANT  
JOSHI**

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3           On 15<sup>th</sup> November, 2013, a letter of acceptance was issued to Respondent No.2 with respect to the Subject Work.

4           On 19<sup>th</sup> November, 2013, the Petitioner issued a Work Order, by which the Subject Work was awarded to Respondent No.2. The total contract value of the Work Order was Rs.1,69,05,910.32/-. The completion period was 7 days for the actual job and was to be reckoned from the date of handing over the work site.

5           On 5<sup>th</sup> March, 2014, a letter was issued by the Petitioner to Respondent No.2, wherein, upon carrying out an inspection, Respondent No.2 was informed that, according to the internal reports, the decontamination job had failed as per the contract agreement between the parties.

6           On 16<sup>th</sup> December, 2016, a Petition was filed by Respondent No.2 under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (the “MSME Act”) before the Micro and Small Enterprises Facilitation Council (“the Council”) wherein Respondent No.2 made monetary claims against the Petitioner.

7           Thereafter, conciliation proceedings were carried on before the Council. In the context of the said conciliation proceedings, correspondence has been exchanged between the parties. One of the complaints of the Petitioner is that it did not receive Order-sheets/ Roznama of the conciliation proceedings.

8           On 5<sup>th</sup> March, 2019, during conciliation proceedings before Respondent No.1-Council, Respondent No.1- Council formed a view that the conciliation proceedings had failed and the matter would be taken up for Arbitration and, accordingly, an order to that effect was passed on the said

date. It is the case of the Petitioner that, despite various reminders, the Roznama recording the said order has not been furnished to the Petitioner.

9           On 23<sup>rd</sup> April, 2019, the Petitioner filed an application challenging the jurisdiction of Respondent No.1 in the matter. It is the case of the Petitioner that the said application is pending adjudication.

10          On 30<sup>th</sup> April, 2019, a Protest Application was filed by the Petitioner before Respondent No.1 - Council.

11          It is in this factual scenario that the Petitioner has approached this Court, in its writ jurisdiction under Article 226 of the Constitution of India, seeking following final reliefs:-

“(a)       *Allow the present Writ Petition;*

(b)       *A writ of and/or in the nature of Declaration do issue:*

(i)       *Declaring that the Respondent No.1 is bound to conduct the conciliation proceeding in compliance with the provisions of the Part III of the Arbitration and Conciliation Act, 1996;*

(ii)       *Declaring that the Respondent No.1 is bound to conduct the arbitration proceedings as per the provisions of the Part I of the Arbitration and Conciliation Act, 1996 read with MSME Act;*

(iii)       *Declaring that if an arbitration agreement exists between the parties then the same has to be followed;*

(iv)       *Declaring that the Respondent No.1 cannot act as both a conciliator and as an arbitrator as per the provisions of the Arbitration and Conciliation Act, 1996;*

(c)       *Appropriate Writs and/or orders and/or direction do issue as would afford complete relief to the Petitioner;*

- (i) Direction upon the Respondent No.1 for issuance of conciliation order sheet/roznama;*
- (ii) Direction upon the Respondent No.1 to adjudicate and pass reasoned order on the Application dated 08.08.2018 requesting the order sheet and/or Roznama of the MSME Petition till date;*
- (iii) Direction upon the Respondent No.1 to adjudicate and pass reasoned order on the Application dated 11.11.2018 to follow-up on previous application dated 08.08.2018;*
- (iv) Direction upon the Respondent No.1 to adjudicate and pass reasoned order on the reminder application dated 11.03.2019 for follow-up on the previous applications dated 08.08.2018 and 01.11.2018 filed by the Petitioner;*
- (v) Direction upon the Respondent No.1 to adjudicate and pass reasoned order on the Application dated 23.04.2019 challenging jurisdiction of the Respondent No.1 filed by the Petitioner before the Respondent No.1;*
- (vi) Direction upon the Respondent No.1 to adjudicate and pass reasoned order on the Protest Application dated 30.04.2019 filed by the Petitioner before the Respondent No.1*
- (d) A writ of and/or in the nature of Certiorari do issue calling upon the Respondent No.1 to transmit to this Hon'ble Court entire file in respect of MSME Petition the proceedings being Petition No.2 of 2017 so that the same may be examined / quashed and conscionable justice done;*
- (e) A writ of and/or in the nature of Prohibition prohibiting the Respondents and each one of them from giving any effect or further effect to the MSME Petition;*
- (f) Appropriate Writs and/or orders and/or direction do issue as would afford complete relief to the Petitioner."*

12           A perusal of the reliefs sought by the Petitioner shows that the Petitioner is seeking various orders from this Court in respect of the proceedings before the Respondent No.1-Council. In our view, the granting of any such relief would amount to this Court interfering in the proceedings before the Respondent No.1-Council. We are of the view that this Court, in its Writ Jurisdiction, ought not to interfere in the proceedings going on before the Council and, therefore, for this reason, we are not inclined to entertain this Writ Petition in respect of such reliefs sought by the Petitioner.

13           In these circumstances, the only relief which calls for consideration of this Court is the submission of the Petitioner that Respondent No.1- Council, having acted as the conciliator between the Petitioner and Respondent No.2, cannot now act as an Arbitrator to arbitrate upon disputes and differences between the Petitioner and Respondent No.2.

14           In support of this submission, the Petitioner has relied upon the provisions of Section 80 of the Arbitration and Conciliation Act, 1996 (“the Arbitration Act”) which, *inter alia*, provides that, unless otherwise agreed by the parties, the conciliator would not act as an Arbitrator. It is the submission of the Petitioner that, in light of the provisions of Section 80 of the Arbitration Act, the Respondent No.1-Council, having acted as the conciliator, cannot now act as an Arbitrator. In this regard, the Petitioner has also sought to rely upon Section 18(3) of MSME Act which provides that the provisions of the Arbitration Act would apply to an Arbitration before the Council.

15           In support of its submission, the Petitioner has relied upon the following judgements;

- (a) Judgement of the Supreme Court in *Bharat Boradband Network Limited v/s. United Telecoms Limited*<sup>1</sup>
- (b) Judgement of this Court in *Gujarat State Petronet Limited v/s. Micro and Small Enterprises Facilitation Council*<sup>2</sup>
- (c) Judgement of this Court in *M/s. Steel Authority of India Ltd v/s. Micro, Small Enterprises Facilitation Council*<sup>3</sup>

16 On the other hand, it is the submission of Respondent No.2 that Section 18 (3) of the MSME Act clearly provides that the Council can act both as conciliator and as an Arbitrator and, therefore, Respondent No.1- Council is entitled to carry on the arbitration between the Petitioner and Respondent No.2 despite having held the conciliation proceedings. It is the submission of Respondent No.2 that Section 80 of the Arbitration Act is not applicable in such a case. In support its submission, Respondent No.2 relied upon a judgement of the Supreme Court in *Gujarat State Civil Supplies Corporation Limited v/s. Mahakali Foods Private Limited* (Unit-2)<sup>4</sup>.

17 Before considering the rival contentions of the parties, it would be appropriate to set out the relevant statutory provisions. In this context, Section 18 (before its amendment by Act No.32 of 2023) and Section 24 of the MSME Act, are relevant and are set out herein below:-

#### **18. Reference to Micro and Small Enterprises Facilitation Council.—**

*(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.*

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**1** 2019 SCC Online SC 547

**2** 2018 SCC Online Bom.2039

**3** AIR 2012 Bom 178

**4** (2023) 6 SCC 401

(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 (26 of 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 (26 of 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.

24            *Overriding effect:- The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."*

18            Section 80 of the Arbitration Act reads as under:-

*"80:- Role of conciliator in other proceeding. - Unless otherwise agreed by the parties:-*

*(a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial*

*proceeding in respect of a dispute that is the subject of the conciliation proceedings;*

*(b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.”*

19           A perusal of Section 18(3) of the MSME Act shows that, under Section 18(3) of the Act, when the conciliation initiated before the Council is not successful and stands terminated without any settlement between the parties, the Council has an option to take up a dispute for arbitration itself. It is only after the Council takes up the dispute for arbitration that the provisions of the Arbitration Act would apply to the said dispute, as if the Arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act. This is clear from the words “*shall then*” in Section 18(3). Therefore, as per the Scheme of Section 18 (2) and (3) of the MSME Act, the Council can act as the conciliator, and if that conciliation fails, the Council can also act as an Arbitrator. In the light of these clear provisions in Section 18(2) and (3) of the MSME Act, and in the light of the fact that the Arbitration Act would apply only after the Council has taken up the dispute for arbitration, the question, of the provisions of Section 80 of the Arbitration Act applying, does not arise at all. For these reasons, we are of the view that Respondent No.1- Council, having acted as the conciliator, can also act as the Arbitrator.

20           Further, assuming for the sake of argument that Section 80 of the Arbitration Act is applicable to the Arbitration before the Council under Section 18(3) of the MSME Act, then there would be a conflict between the provisions of Section 18 (3) of the MSME Act, which allows the Council to act as the conciliator and the arbitrator, and Section 80 of the Arbitration Act which bars the conciliator from acting as an arbitrator. Assuming that there is a conflict, by virtue of the provisions of Section 24 of the MSME Act, which provides that the provisions of Sections 15 to 23 of the MSME Act would

have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, the provisions of Section 18 (3) of the MSME Act would prevail over the provisions of Section 80 of the Arbitration Act. The consequence of the same would be that the Council can act both as conciliator and as an arbitrator. For these reasons also, we are of the view that Respondent No.1- Council can act both as conciliator and as the arbitrator in respect of the disputes between the Petitioner and Respondent No.2.

21 Further, this issue is no longer *res integra*. The position in law that the Council can act both as conciliator and as an arbitrator, has been accepted by the Supreme Court in its judgement in Gujarat State Civil Supplies Corporation Ltd, (supra). Paragraphs 11.3 (iii), 47 and 52.3 of the said judgement clearly lay down the said position in law, and read as under:-

*“11.3(iii) Whether the Micro and Small Enterprises Facilitation Council, itself could take up the dispute for arbitration and act as an arbitrator, when the Council itself had conducted the conciliation proceedings under sub-section (2).*

*47 The aforesaid legal position also dispels the arguments advanced on behalf of the counsel for the buyers that the Facilitation Council having acted as a Conciliator under Section 18(2) of the Msmed Act, 2006 itself cannot take up the dispute for arbitration and act as an arbitrator. Though it is true that Section 80 of the Arbitration Act, 1996 contains a bar that the Conciliator shall not act as an arbitrator in any arbitral proceedings in respect of a dispute that is subject of conciliation proceedings, the said bar stands superseded by the provisions contained in Section 18 read with Section 24 of the Msmed Act, 2006. As held earlier, the provisions contained in Chapter V of the MSMED Act 2006 have an effect overriding the provisions of the Arbitration Act, 1996. The provisions of the Arbitration Act, 1996 would apply to the proceedings conducted by the Facilitation Council only after the process of conciliation initiated by the Council under Section 18(2) fails and the Council either itself takes up the dispute for arbitration or refers to it to any institute or centre for such*

*arbitration as contemplated under Section 18(3) of the Msmed Act, 2006.*

*52.3:- The Facilitation Council, which had initiated the conciliation proceedings under Section 18(2) of the Msmed Act, 2006 would be entitled to act as an arbitrator despite the bar contained in Section 80 of the Arbitration Act.”*

22 In the light of the law laid down by the Supreme Court in its judgement in Gujarat State Civil Supplies Corporation Ltd, (supra), it is not necessary for us to deal with the judgements referred to by the Petitioner, except for stating that the judgement of this Court in Gujarat State Petronet Limited (supra), to the extent that it holds that, under the provisions of Section 18 of the MSME Act, the Council cannot act both as the conciliator and as the arbitrator, stands overruled by the judgement of the Supreme Court in the case of Gujarat Civil Supplies Corporation Ltd. (supra).

23 For all the aforesaid reasons, and in the light of the aforesaid discussion, we dismiss this Petition.

24 The ad-interim relief granted by this Court by its Order dated 3<sup>rd</sup> November, 2021 also stands vacated.

25 In the facts and circumstances of the case, there will be no order as to costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)