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W.P. No. 4861 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 4861 of 2024

and

W.M.P. Nos. 5311 and 5312 of 2024

Chennai Petroleum Corporation Limited,
Having its registered office at
536, Anna Salai,
Teynampet,
Chennai – 600 018
Represented by its Company Secretary

... Petitioner

-VS-

1. Micro and Small Enterprises Facilitation Council,
Chennai Region,
Represented by its Secretary/Regional Joint
Director of Industries and Commerce,
A-30, Thiru Vi Ka Industrial Estate,
Guindy,
Chennai – 600 032.

2. M/s. M.Govindaraj Contractor & Earth Movers,
Plot No. C-1, Flat No. F2,
Jansi Aishwariyam Apartments,
Thiruvallur Nagar,
MKN Road, Alandur,
Chennai – 600 016
Represented by its Proprietor

... Respondents



W.P. No. 4861 of 2024

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records of the First Respondent pertaining to the arbitration proceedings bearing reference number MSEFC/CR/423/2022, initiated vide notice appended to e-mail dated 07.09.2023 and quash the same.

For Petitioner : Mr. E.Om Prakash
for Mr. S.Arjun Suresh

For Respondents : Mr. V.Ravi,
Special Government Pleader (for R1)

O R D E R

Heard Mr. E.Om Prakash, Learned Senior Counsel appearing for the Petitioner and Mr. V.Ravi, Learned Special Government Pleader appearing for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. Having regard to the nature of order proposed to be passed in the Writ Petition, which would not cause any prejudice to the Second Respondent, notice to him is dispensed with.

3. It is the case of the Petitioner that it had awarded a contract for piling and



W.P. No. 4861 of 2024

civil works for Silos for Coke Handling System in its Refinery at Manali, which must be treated as 'works contract' that falls outside the purview of claims that could be entertained by the First Respondent, viz., Micro and Small Enterprises Facilitation Council, under Section 18 of the Micro Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the MSMED Act' for short). However, the Second Respondent has made a claim for recovery of the amounts due from the Petitioner under the said contract before the First Respondent which has been taken on its file as No. MSEFC/CR/423/2022, but the objections raised by the Petitioner during the hearings on 15.09.2023, 23.11.2023 and 26.02.2024 regarding its maintainability have not been taken into account, which has necessitated the filing of this Writ Petition.

4. In this context, it would be useful to extract Section 16 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the A & C Act' for short), which reads as follows:-

16. Competence of arbitral tribunal to rule on its jurisdiction.

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,

—(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and



W.P. No. 4861 of 2024

WEB COPY

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

Taking note of the relevant legal provisions, it has been observed by the Honb'le Supreme Court of India in the authoritative pronouncement in ***Gujarat State Civil Supplies Corporation Limited -vs- Mahakali Foods Private Limited***



W.P. No. 4861 of 2024

[(2023) 6 SCC 401] as follows:-

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30. When the Facilitation Council or the institution or the centre acts as an Arbitrator, it shall have all powers to decide the disputes referred to it as if such arbitration was in pursuance of the arbitration agreement referred to in subsection (1) of Section 7 of the Arbitration Act, 1996 and then all the trappings of the Arbitration Act, 1996 would apply to such arbitration. It is needless to say that such Facilitation Council/institution/centre acting as an arbitral tribunal would also be competent to rule on its own jurisdiction like any other arbitral tribunal appointed under the Arbitration Act, 1996 would have, as contemplated in Section 16 thereof.

4. In view of the same, it is informed that the Petitioner has by e-mail on 27.02.2024 (today) filed a petition under Section 16 of the A & C Act before the First Respondent to determine the question that the claim made by the Second Respondent against the Petitioner in respect of the 'works contract' does not come under its jurisdiction conferred by Section 18 of the MSMED Act.

5. Having regard to the aforesaid submissions made, this Court without expressing any view on the merits of the controversy involved, passes the following order:-



W.P. No. 4861 of 2024

- (i) before passing any final order in the Proceedings No. MSEFC/CR/423/2022, the concerned authority shall immediately examine the petition filed by the Petitioner under Section 16 of the A & C Act on 27.02.2024 regarding the jurisdiction of the First Respondent to entertain the claim of the Second Respondent;
- (ii) if it is found that any other details or supporting documents is necessary, the deficiencies in that regard shall be informed in writing to the persons concerned requiring the same to be furnished within a specified time frame for the same;
- (iii) in the event of not being satisfied with the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner and all other persons concerned to explain their position in that regard; and
- (iv) a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.



W.P. No. 4861 of 2024

27.02.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 22.03.2024

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To

The Secretary/Regional Joint Micro and Small Enterprises
Facilitation Council,
Chennai Region,
Director of Industries and Commerce,
A-30, Thiru Vi Ka Industrial Estate,
Guindy,
Chennai – 600 032.



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W.P. No. 4861 of 2024

P.D. AUDIKESAVALU, J.

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W.P. No. 4861 of 2024

27.02.2024