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W.A.No.1792 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.12.2023

DELIVERED ON : 15.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

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M/s.BHARAT SANCHAR NIGAM LIMITED,
Represented by its Chief General Manager,
Southern Telecom Projects,
No.25, BSNL Towers, Greenways Lane,
Raja Annamalai Puram,
Chennai-600 028. ... Appellant

Vs.

1. Micro and Small Enterprises Facilitation Council,
Jaipur (Third),
Office of Commissioner of Industries,
Government of Rajasthan, Udyog Bhavan,
Tilak Marg, Jaipur,
Rajasthan-302 005.
2. M/s. Purma Plast Private Limited,
Represented by Sri Raghuveer Sharma,
B-494, RIICO Industrial Area, Phase I,
Bhiwadi, Alwar, Rajasthan. ... Respondents



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Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order, dated 08.06.2021 made in W.P.No.12230 of 2021.

For Appellant : Mr.T.R.Rajagopalan
Senior Counsel
for Mr.S.Gopinathan

For R-2 : Mr.Abishek Jenasenan

JUDGMENT

[Judgment of the Court was delivered by **P.DHANABAL, J.**]

This appeal has been preferred as against the order passed in W.P.No.12230 of 2021 wherein, the appellant herein has filed writ petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the first respondent in Case No.RJ/02/S/RJS/00630 award, dated 17.03.2020 and quash the same.



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2. The writ petition was filed by this appellant challenging the award, dated 23.10.2019 passed against the petitioner by the Arbitral Tribunal, (i.e.,) Micro and Small Enterprises Facilitation Council on the ground that the procedures under the Arbitration and Conciliation Act have not been followed and no notice was served to the petitioner for commencement of arbitral proceedings. Without serving notice, arbitral proceedings cannot be commenced and the averment of arbitrator itself has not been communicated to the petitioner and without giving opportunity to the petitioner, the *ex parte* award was passed by the Council.

3. The learned Single Judge after hearing both the sides dismissed the writ petition by holding that the very same award has been challenged by the same petitioner before this Court in O.P.No.443 of 2020 and the said OP was dismissed by this Court vide order, dated 10.12.2020 on the



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ground of delay in challenging the award and as against the same, O.S.A.No.101 of 2021 is preferred and the same is pending before the Hon'ble Division Bench of this Court. Therefore, the writ petition is not maintainable when the award is put to challenge in original petition and it is always open to the party to raise objection including procedural infirmities and jurisdictional *lacuna* and maintaining two parallel proceedings one on merits and other one on procedural infirmities, is impermissible and such a dual course is certainly not open to the petitioner. Further, maintaining two proceedings (i.e.,) one under the constitutional law and another under arbitration law may likely to give rise to conflict of views, by Courts exercising different jurisdiction, undermining the concept of uniform dispensation of justice. Therefore, the writ petition was dismissed at the stage of admission itself. As against the dismissal order, the present writ appeal has been preferred by the appellant.

4. The learned Counsel for the appellant would contend that



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the MSEFC Council has passed order without jurisdiction and as per Rule 18 of the MSMDE Act, the Facilitation Council can facilitate the dispute between the parties and if the Facilitation Council is failed, then after following the procedures, the same Council can be acted as arbitrator.

But the said appointment of arbitrator has to be informed to the parties.

In this case, the procedures have not been followed and the procedure under Section 18 has not been followed and thereby, the award passed by the Facilitation Council is without jurisdiction. Therefore, the proceedings are liable to be set aside by allowing by the order of this Court. Already the appellant has filed writ petition. But the learned Single Judge dismissed the writ petition, since the appeal is pending before the Hon'ble Division Bench of this Court. The appeal as against the order passed in arbitration appeal is not a bar to challenge the very same jurisdiction of the MSEFC Council. Therefore, the writ petition is well maintainable and that appeal proceedings are under Arbitration and Conciliation Act and the scope is very limited and thereby, the present writ petition is well



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maintainable. Further this Court has territorial jurisdiction to entertain the petition, since part of cause of action arose within the jurisdiction of this Court. Therefore, the order passed by the learned Single Judge in W.P.No.11348 of 2021 is liable to be set aside by allowing this appeal.

5. The learned Counsel for the respondents would contend that this Court has no jurisdiction to entertain the writ petition. Already the Facilitation Council situated at Rajasthan has passed the order and thereby, the Rajasthan High Court has only jurisdiction. Though the part of cause of action was arose within the jurisdiction of this Court, already the parties have availed the jurisdiction of Rajasthan and the Facilitation Council also passed order in Rajasthan. Therefore, the writ petition is only maintainable before the Rajasthan High Court. Further, already the same appellant filed arbitration petition before this Court and the same pending. Therefore, the learned Single Judge after analyzing all the facts, dismissed the petition by holding that the writ petition is not maintainable, since already the same order has been challenged before



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this Court through arbitration petition and there cannot be parallel proceedings and thereby, the order passed by the Writ Court is in accordance with law and the present appeal is liable to be dismissed.

6. This Court heard both the sides and perused the available records carefully.

7. The issue to be decided in this case is whether this Court is having territorial jurisdiction to entertain the writ petition.

8. According to the appellant, the Facilitation award is passed without following the provisions of the Micro Small and Medium Enterprises Development Act, 2006. Therefore, this Court has to decide the preliminary issue raised by the learned counsel for the respondents.



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9. According to the appellant, the order passed by the MSEFC Council is without jurisdiction and the procedure under Rule 18 of the MSMED Act have not been followed and notice in respect of the appointment of arbitrator has not been served to the appellants and arbitral proceedings contemplated under Arbitration and Conciliation Act have not been followed and thereby, the award passed by the Facilitation Council is without jurisdiction and not in consonance with Section 18 of MSMED Act. Section 18 of MSMED Act reads as follows:

“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.

(2)On receipt of a reference under sub-section (1), the Council shall either itself conduct



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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 subsection (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 subsection (1) of section 7 of that Act.

(4)Notwithstanding anything contained in any



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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.”

10. Therefore, the aforesaid provision clearly shows that the Facilitation Council has to follow the procedure and if there is any failure, then they should follow the provisions of the Act and they can act as arbitrator and adjudicate the dispute and pass the award. According to the appellant, the part of the cause of action has been arisen within the jurisdiction of this High Court. Hence, the appellant filed the writ petition before this Court.

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11. Learned counsel for the second respondent submitted that this Court has no jurisdiction for filing the writ petition before this Court. Even though the learned Single Judge has passed an order dismissing the writ petition on the ground that the original petition filed by the appellant came to be dismissed on the ground of limitation. Hence, there cannot be an parallel proceedings. Learned counsel for the second respondent strongly objected that the writ petition filed before this Court is without having any territorial jurisdiction on the following reasons:

- (i) The Facilitation Council is situated at Rajasthan and the order has been passed by the MSEF Council at Rajasthan.
- (ii) Though the part of cause of action arose at Chennai, the parties availed the jurisdiction of Rajasthan by filing a petition before the MSEF Council at Rajasthan. Once they availed the jurisdiction of Rajasthan MSEF Council, the appellant / writ petitioner cannot file a writ petition



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before this Court Challenging the order passed by the MSEF Council situated at Rajaschan.

(iii) According to the second respondent, already they filed original arbitration petition before this Court and the same is pending. While pending arbitration proceedings, parallel proceedings by challenging the same proceedings through the writ petition is not maintainable.

12. In this case, it is admitted that the MSEFC Council has passed order on 10.12.2020 and the same was challenged by the appellant through arbitration OP No.334 of 2021 on the file of this Court and the same is pending.

13. The main contention of the appellant is that the Facilitation Council passed the order without jurisdiction and without following the procedures. Therefore, the order passed by the Facilitation Council is without jurisdiction and the same is nullity. But the contention of the



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respondent is that the same appellant by admitting the award passed by the Facilitation Council challenged the order before this Court by invoking the Arbitration and Conciliation Act. Therefore, the appellant himself admitted the award passed under the Arbitration and Conciliation Act. In this context, it is relevant to refer the order passed by the Facilitation Council. In the order itself stated that notice for conciliation proceedings was issued to both the supplier and the purchaser on 10.02.2020, which was attended by the supplier, despite giving final warning to attend the second meeting nobody represented on the purchaser side consecutively, the supplier requested the Council that the case is being delayed in such a way that it goes to the extent of closing the factory itself. Therefore, the supplier requested the Council to dispose the case as early as possible vide Section 16 of MSMED Act and also stated in the order that as prescribed in Section 16 of MSMED Act, using its powers, the Council has therefore, decided to pass order for the payment of monthly compound interest of three times per month as per RBI's current interest rate payable for the delayed payment. Therefore,



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the order itself shows that it was passed under Section 16 of MSMED Act, 2006 and there is no record to show that the conciliation proceedings were converted into arbitral proceedings by invoking Section 18(3) of MSMED Act.

14. According to Section 21 of the Arbitration and Conciliation Act, the arbitration proceedings would commence on the date on which a request for the dispute to be referred to Arbitration is received by the respondent. Therefore, in this case, on perusal of order itself, it shows that the notice was not served to the respondents and the order was also passed in the absence of respondents without serving notice for appointment of the arbitrator, the Facilitation Council passed the order. Further, the order itself shows that the order passed in the Rajasthan. Though the tender process were processed at Chennai and part of cause of action arose within the jurisdiction of this Court once the parties availed the jurisdiction of Rajasthan State by initiating proceedings before the MSEFC, Rajasthan, then the appellant have to approach the High



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Court of Rajasthan. Therefore, the Rajasthan High Court only having jurisdiction to entertain the writ petition.

15. The learned counsel appearing for the appellant has relied on the following judgments:

- (i) ***Kusum Ingots & Alloys Ltd., vs. Union of India and another***, reported in (2004) 6 SCC 254.
- (ii) ***Alchemist Ltd., and another vs. State Bank of Sikkim and Another*** reported in (2007) 11 SCC 335,
- (iii) ***Naval Kishore Sharma vs. Union of India and others*** reported in (2014) 9 SCC 329,
- (iv) ***Union of India vs. Sanjiv Chaturvedi and others*** reported in (2023) 5 SCC 706, and
- (v) ***State of Goa vs. Summit Online Trade Solutions Pvt., Ltd., and others*** reported in (2023) 7 SCC 791.



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16. On a careful perusal of the said judgments, it is clear that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit / petition. In the case on hand, though the part of cause of action arose at Chennai in respect of the transactions, the parties have already chosen to avail the jurisdiction of Rajasthan i.e. MSEF Council and thereby, the appellant cannot avail the jurisdiction of this Court and hence above cited case laws will not be applicable to the case on hand.

17. Learned counsel appearing for the second respondent relied on the decision of the Hon'ble Division Bench of this Court in Tecpro Systems Limited vs. Union of India, 2016-5-L.W.865.

18. On a careful perusal of the said judgment also is clear that part of cause of action arose within the jurisdiction of the Court, the Court has territorial jurisdiction to entertain the suit / petition.



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19. In this context, on perusal of papers, it is observed that already the same appellant BSNL Limited, Mumbai, has filed the writ petition as against the same respondent (i.e.,) Purma Plast Private Limited by challenging the award passed by the same MSEFC Council before the Rajasthan High Court in W.P.No.13067 of 2020. In the said case, since the order was passed by MSEF Council at Rajasthan, the writ petition was filed before the Rajasthan High Court. Therefore, once the parties availed the jurisdiction of Rajasthan MSEF Council, then the Rajasthan High Court only has territorial jurisdiction and this Court has no territorial jurisdiction to entertain this writ petition. The above said aspect has not been considered by the learned Single Judge.

20. Considering the aforesaid facts, we are in agreement with the contention of the learned counsel for the second respondent that the conciliation proceedings were taken place at Rajasthan and in similar matter in W.P.No.13067 of 2020, the appellant also approached the



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Rajasthan High Court and the same is pending disposal. Therefore, the appellant is also aware of the aforesaid proceedings for having the territorial jurisdiction in the Rajasthan High Court. Now, by invoking the Article 226 of the Constitution of India before this Court for entertaining the writ petition is a valid reason on the side of the second respondent.

21. Therefore, we are of the view that the aforesaid writ petition filed by the appellant is without jurisdiction. To that effect we modify the findings of the learned Single Judge and we come to the conclusion that the writ petition cannot be entertained and the same is without jurisdiction. Hence, the writ petition is liable to be dismissed on the ground of lack of jurisdiction. Insofar as the merits of the case are concerned, it is for the appellant to work out his remedy before the jurisdictional Court, if he is so advised. To that extent, the findings of the learned Single Judge are modified. It is made clear that in view of answering to the preliminary issue, we have not gone into the other issues raised by the appellant. Therefore, all these issues are left open and it can



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be agitated before the jurisdictional Court and the same shall be decided on its own merits without influence by any of the observation in this proceedings.

22. With the above liberty to the appellant, to work out his remedy before the appropriate forum, this writ appeal is disposed of.

(D.K.K.J.,)

(P.D.B.J.,)

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NCC: Yes / No
Index : Yes / No
Internet : Yes
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To

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Pre-delivery Judgment made in

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