

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

114

CWP-8505-2024

Date of decision: 19.04.2024

GENERAL MANAGER TELECOM (D),BSNL, BATHINDA

.....Petitioner

VERSUS

M/S H.V. CONSTRUCTION CO AND ANOTHER

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Rajesh Gupta, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the Award dated 19.10.2023 passed in Case No. BTI-92 by respondent No.2-Micro and Small Enterprises Facilitation Council, Bathinda whereby the petitioner department had been directed to make a payment of Rs. 2,73,409/- within a period of one month failing which interest has been fastened in accordance with Section 16 of the Micro Small and Medium Enterprises Development Act, 2016 (for short “the MSMED Act, 2006”).

2. The petitioner-BSNL has approached this Court averring that respondent No.1 is a partnership firm engaged in execution of works like laying of underground cables and others associated works

like trenching, jointing, cable pulling etc. A agreement was executed between the petitioner and the respondent No.1 on 05.02.2018 for trenching and pipe laying of cable pulling, cable slicing and termination, preparation of joint chamber, fixing, painting and other assorted works in Nathana Block in GMT (D) Bathinda. After the execution of the works, respondent No.1 submitted bills/invoices for reimbursement of the same and on failure of the petitioner to release the same, a claim petition was filed under Section 18 of the MSMED Act, 2006. The petitioner-BSNL filed its reply raising an objection as regards maintainability of the claim petition. It is alleged that the impugned Award dated 19.10.2023 has been passed by the respondents without considering the objections raised by the petitioner including that the proceedings arising out of and in relation to the works contract could not be brought before the Facilitation Council.

3. Learned Counsel appearing on behalf of the petitioner contends that the Facilitation Council is not competent to examine the payment disputes relating to a works contract in view of the settled law. He contends that if an order has been passed by an authority which is without jurisdiction, there is no requirement of exhausting the alternative remedies and a person aggrieved can approach the High Court directly under Article 226 of the Constitution of India.

4. Counsel for the petitioner was confronted as to whether the issue of maintainability can be examined by the Appellate Forum or not, to which he fairly conceded that the said issue of maintainability can also be examined by the Appellate Authority. It has also been pointed out to the Counsel that Section 19 of the

MSMED Act, 2016 provides for a remedy of appeal and that a mis-declaration has been made in Para No. 16 of the writ petition that the petitioner has no alternative speedy or efficacious remedy of appeal or revision.

5. I have heard learned Counsel appearing on behalf of the petitioner at length and have gone through the documents appended alongwith the present writ petition. However, without disputing the position in law that a writ petition would be maintainable where the proceedings are per se illegal or in violation of the principles of natural justice, however, the same does not mean that every case where such issue is raised or alleged must always be brought before the writ Court without following the procedure prescribed in law against such orders. The Hon'ble Supreme Court has held in the matter of ***“Radhakrishnan Industries versus State of Himachal Pradesh”*** reported as (2021) 6 SCC 771 that ordinarily a person must exhaust his alternative remedies as have been statutorily prescribed before approaching the High Court. I fail to find any compelling reasons or circumstances in which the petitioner-General Manager Telecom (D), BSNL, Bathinda would suffer grave hardship or impediment in preferring an appeal before the competent authority. In the absence of any exceptional circumstances necessitating indulgence of the High Court failing which interest of justice would stand defeated, I am of the opinion that the petitioner must take recourse to the alternative remedies that are prescribed as per the statute.

6. The present writ petition is accordingly dismissed at this stage without commenting on the merits of the present case lest it may

prejudice rights of either of the parties, with liberty to the petitioner to pursue his alternative remedies in accordance with law.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 19, 2024

Vishal sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No