



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

CWP-10935-2024

Date of decision: 13.05.2024

M/S ERICSSON INDIA PRIVATE LIMITED AND ANOTHER

.....Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

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

Present: - Mr. Anil Kher, Senior Advocate with
Mr. Sahil Khunger, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the award dated 05.01.2024 passed by the District Micro and Small Enterprises Facilitation Council, S.A.S. Nagar whereby the claim petition No. 245 of 2022 instituted by the respondent No.3 against the petitioner herein had been decided.

2. Learned Counsel appearing on behalf of the petitioner has *inter alia* raised the following arguments.

i) That the claim in question was with respect to interest on delayed payment and that the proceeding for claiming interest on delayed payment is not admissible under the scheme of the Micro Small and Medium Enterprises and the Chapter V of the said MSMED Act, 2006 stipulates proceedings only

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with respect to the pending dues that have not been released within a time frame.

ii) He submits that the procedure contemplated under the MSMED Act, 2006 has not been followed and that even though the petitioner had submitted a mail to the respondent raising various objections towards the continuation of the proceedings, however, no response was sent to the petitioners and the final award was passed on 05.01.2024.

iii) That the essential plea taken by the petitioner with respect to the plea of limitation and maintainability of the claim has not been examined and the Facilitation Council also failed to take into consideration that the respondent-claimant was a medium Enterprises and that under the Scheme of the MSMED Act, 2006 the remedy is prescribed only for Micro and Small Enterprises and not for the Medium Enterprises.

3. Learned Counsel for the petitioner also contended that the objections raised by the petitioner with respect to the sustainability of the claim have not been examined and no opportunity was afforded to the petitioner to prove its case. It is submitted that the staggering illegality in the proceedings raised before the District Micro and Small Enterprises Facilitation Council can be derived from the fact that as against the total liability of Rs. 48.96 lacs approximately, an amount of Rs. 3 Crores has been awarded only towards interest on delayed payment. He submits that the said proceedings thus prima facie show arbitrariness by the Facilitation Council in compounding and capitalizing the interest liability itself. He also makes a reference to the judgment of the Division Bench of the Jharkhand High Court in the matter of



“G.P.T Infraprojects Limited and Another versus State of Jharkhand, through Secretary and Others” reported as 2024 *SCC OnLine Jhar 184* to contend that notwithstanding the availability of alternative statutory remedy, the writ petition can always be invoked when there is jurisdictional error on the part of the Facilitation Council. While referring to the above said judgment, it is contended that the Single Bench of the Jharkhand High Court had dismissed the writ petition on the ground of an alternative and efficacious remedy available to the petitioner which such judgment was set aside by the Division Bench of the Jharkhand High Court by placing reliance on various precedent judgments not only of the Jharkhand High Court but also of the Supreme Court of India and the matter was remanded to the Facilitation Council for passing a fresh award after affording an opportunity of hearing to the petitioner.

4. I have heard learned Counsel appearing on behalf of the petitioner and have gone through the documents available on record with their able assistance.

5. Without disputing the ratio laid down by the Hon’ble Supreme Court as also the Division Bench Judgment of the Jharkhand High Court with respect to the maintainability of the writ petition despite availability of alternative remedy, the Hon’ble Supreme Court has held in the judgment of ***“Radha Krishan Industries versus State of Himachal Pradesh”*** reported as ***(2021) 6 SCC 771*** that ordinarily the Writ Court should not interfere when an efficacious alternative remedy has been prescribed under the statutory scheme and a person should ordinarily exhaust his remedies.



6. Further, in so far as the Division Bench judgment of the Jharkhand High Court is concerned, the same is otherwise not applicable to the facts of the present case since it has been informed by the counsel for the petitioner, before commencing an argument that they have already preferred objections under Section 34 of the Arbitration and Conciliation Act, 1996 before the competent Court. In the said case before the Division Bench of the Jharkhand High Court, the objections had not been filed and the petitioners therein had approached the High Court directly. Per contra, as on the date, the petitioners herein have not only challenged the Award before the District Judge by impugning the said award in statutory appeal but have also availed parallel remedy by filing the instant writ petition.

7. It is a settled position in law that a person aggrieved cannot avail two parallel remedies against the same grievance at one point of time.

8. At first instance it was stated that petitioner has approached Principal District Judge against the award but later it was said that objection under Section 34 of Arbitration & Conciliation Act, 1996 had been filed on 10.04.2024 i.e. before listing of the present case. This Court need not go into the question as to the inter play of the appellate remedy provided under Section 19 of the MSMED Act, 2006 and the scope of Arbitration & Conciliation Act, 1996 especially when a statutory remedy of appeal has been provided under the statute. The same not being an issue before this Court and when this Court is not examining the matter on maintainability, the said questions need not be delved into.

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9. Undisputedly, alternative statutory remedy had been invoked at the time when the case was listed before this Court. If a person has opted to pursue his remedies under a specific statute, he cannot be permitted to switch at his convenience in a bid to fish favourable forum. Having elected a procedure, the process and remedies available thereunder need to be exhausted.

10. Undeniably, all these grounds were always open and available to the petitioner and it is not the case that the appellate authority under law is not competent to examine the legal issues pertaining to limitation, jurisdiction or maintainability. Hence, there are no exigent circumstances as to why the process invoked be not exhausted by the petitioner.

11. Any over indulgence in such matter is likely to give rise to a trend of attempting at forum shopping in a quest for a favourable order. This would not only have chaotic effect on judicial discipline but is also likely to give premium to a mischievous litigant who may resort to such tactics and cause dis-service to substantial justice.

12. Considering the facts of the present case in light of the facts noticed above, jointly or severally, the present writ petition deserves to be dismissed.

13. Ordered accordingly.

(VINOD S. BHARDWAJ)**JUDGE****MAY 13, 2024***Vishal Sharma*

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No