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

WRIT PETITION NO.1339 OF 2025

VAIBHAV
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Chemtrade Global Index LLP,
Through Its Authorised Representative
Pradeep Dube ... Petitioner
V/s.
Bhange Organic Chemicals Pvt. Ltd. &
Anr. ... Respondents

Mr. Karl Tamboli with Mr. Mohammed Zain Khan
(through V.C.) and Danish Ansari i/by One Legal for
the petitioner.

CORAM : AMIT BORKAR, J.

DATED : MARCH 19, 2025

P.C.:

1. By this writ petition filed under Article 227 of the Constitution of India, the petitioner assails the legality and propriety of the order dated 3rd December 2024, passed by the Micro and Small Enterprises Facilitation Council, Nashik, in exercise of powers under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act"). Respondent No.1 had instituted Petition No.1015 of 2023 before Respondent No.2, seeking recovery of an amount of Rs.54,56,860/-, allegedly due and payable towards conversion charges of Ethyl Acetate.

2. In response to the said proceedings, the petitioner filed a detailed reply on 20th February 2024, categorically denying the claim of Respondent No.1 and contending that the said demand was not only unfounded but was mala fide and motivated with the sole intent of harassing the petitioner. The petitioner further raised a preliminary objection regarding the territorial jurisdiction of Respondent No.2, asserting that Respondent No.1 did not fall within the territorial jurisdiction of Respondent No.2. Additionally, the petitioner assailed the maintainability of the petition on the ground that the person who instituted the proceedings, namely, Ms. Anvita Sanjay Bhange, was not duly authorized to file the said petition. It was urged that the necessary documents authorizing the said individual to represent Respondent No.1 and to initiate proceedings under the MSMED Act had not been placed on record, rendering the petition legally untenable. However, it is pertinent to note that the petitioner, in its reply, did not raise any objection regarding the non-registration of Respondent No.1 under Section 8 of the MSMED Act.

3. Upon adjudication of the dispute, Respondent No.2, by an award dated 3rd December 2024, directed the petitioner to pay the sum of Rs.54,56,860/-, as claimed by Respondent No.1. Aggrieved by the said award, the petitioner has preferred the present writ petition challenging the legality, validity, and jurisdictional competence of the said decision.

4. Learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Tamil Nadu Cements Corporation Limited vs. Micro and Small Enterprises*

Facilitation Council & Ors. to contend that the decision of the Hon'ble Supreme Court in *M/s India Glycols Limited & Anr. vs. Micro and Small Enterprises Facilitation Council Medchal Malkajgiri & Ors.*, 2023 SCC OnLine SC 1852, which held that a petition under Article 227 of the Constitution of India challenging an award under the MSMED Act was not maintainable, has been referred to a Larger Bench for authoritative determination. It is, therefore, submitted that the bar against entertaining a writ petition under Articles 226 and 227 of the Constitution of India would not apply to the facts of the present case, inasmuch as Respondent No.1 was not registered as an MSME on the date of filing of the claim, rendering the entire proceedings before Respondent No.2 without jurisdiction.

5. Learned counsel further submits that Respondent No.2 lacked the jurisdiction to entertain the claim of Respondent No.1, and consequently, the award dated 3rd December 2024 is void ab initio. In support of this contention, reliance is placed on the judgment of the Hon'ble Supreme Court in the case of *Gujarat State Civil Supplies Corporation Limited vs. Mahakali Foods Private Limited (Unit 2) and Another*, (2023) 6 SCC 401, wherein, at paragraph 52.6, it has been held that a party that does not qualify as a "supplier" within the meaning of Section 2(n) of the MSMED Act, 2006, cannot avail of the benefits of the said enactment. It has further been held that subsequent registration under the MSMED Act would operate prospectively and not retrospectively.

6. The petitioner has also placed reliance on the judgment of the Hon'ble Supreme Court in *Silpi Industries & Ors. vs. Kerala State Road Transport Corporation & Ors.* to fortify the argument that an entity that is not registered as an MSME on the date of execution of the contract and supply of goods or services cannot claim the benefits of the MSMED Act by way of subsequent registration. It is contended that any claim raised under the MSMED Act by an entity that was not registered at the relevant time is legally unsustainable, and the Facilitation Council, being a statutory body, cannot assume jurisdiction in the absence of such registration.

7. Having meticulously considered the Petitioner's contentions, it is evident that the substratum of the challenge raised by the petitioner is the alleged non-registration of Respondent No.1 under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act") on the date of initiation of proceedings before the Facilitation Council. However, a scrutiny of the record reveals that this issue was neither canvassed before Respondent No.2 nor urged as a ground in the reply filed by the petitioner before the arbitral tribunal.

8. The law is well settled that a litigant cannot be permitted to raise a plea at the appellate or writ stage when such a plea was neither raised nor urged before the original adjudicating authority. The principle underlying this proposition is rooted in the doctrine of procedural fairness and judicial discipline, which mandates that parties must set forth their contentions at the earliest stage before the forum of first instance. The Supreme Court in *Greater Mohali*

Area Development Authority v. Manju Jain, (2010) 9 SCC 157, at page 164, has expounded upon this principle in unequivocal terms, observing thus:

"26. Respondent 1 raised the plea of non-receipt of the letter of allotment first time before the High Court. Even if it is assumed that it is correct, the question does arise as to whether such a new plea on facts could be agitated before the writ court. It is settled legal proposition that pure question of law can be raised at any time of the proceedings but a question of fact which requires investigation and inquiry, and for which no factual foundation has been laid by a party before the court or tribunal below, cannot be allowed to be agitated in the writ petition. If the writ court for some compelling circumstances desires to entertain a new factual plea the court must give due opportunity to the opposite party to controvert the same and adduce the evidence to substantiate its pleadings. Thus, it is not permissible for the High Court to consider a new case on facts or mixed question of fact and law which was not the case of the parties before the court or tribunal below. [Vide *State of U.P. v. Dr. Anupam Gupta*, 1993 Supp (1) SCC 594 : AIR 1992 SC 932; *Ram Kumar Agarwal v. Thawar Das*, (1999) 7 SCC 303; *Vasantha Viswanathan v. V.K. Elayalwar*, (2001) 8 SCC 133; *Anup Kumar Kundu v. Sudip Charan Chakraborty*, (2006) 6 SCC 666 : 2006 SCC (L&S) 1521; *Tirupati Jute Industries (P) Ltd. v. State of W.B.*, (2009) 14 SCC 406 : (2010) 2 SCC (L&S) 338; and *Sanghvi Reconditioners (P) Ltd. v. Union of India*, (2010) 2 SCC 733.]"

9. This salutary principle squarely applies to the case at hand. The petitioner, despite having ample opportunity to raise the issue regarding Respondent No.1's registration status before the Facilitation Council, remained silent at that stage. The law does not permit a litigant to sit idle before the original forum and then

seek to introduce a new plea at a later stage when the consequences of adverse findings become apparent.

10. It is also pertinent to note that judicial review under Article 226 of the Constitution of India is not an appellate forum where factual determinations made by lower authorities can be revisited de novo unless the impugned order suffers from jurisdictional errors, patent illegality, or violation of principles of natural justice. The petitioner, having failed to raise the objection regarding Respondent No.1's registration status before the Facilitation Council, cannot now be allowed to circumvent procedural discipline and seek a fresh adjudication at the writ stage.

11. The principles of judicial review and the scope of writ jurisdiction do not extend to allowing a litigant to mend its case at its convenience. The burden lies upon the petitioner to establish that the foundational facts for relief were placed before the competent authority at the appropriate stage. In the present case, the petitioner has not demonstrated any justifiable reason for failing to agitate this issue before the Facilitation Council. Therefore, entertaining such a plea at this stage would not only be impermissible in law but would also set an unhealthy precedent, encouraging parties to bypass procedural mandates and seek adjudication at belated stages, thereby undermining the sanctity of adjudicatory processes.

12. It is imperative to underscore that the Facilitation Council, acting as an arbitral tribunal under Section 18(3) of the MSMED Act, is vested with the authority to adjudicate upon all disputes

referred to it. The Supreme Court, in the case of *Gujarat State Civil Supplies Corporation Limited v. Mahakali Foods Private Limited (Unit 2)*, (2023) 6 SCC 401, has categorically held that the issue of whether a supplier is registered under the MSMED Act is a jurisdictional issue that must be raised before the Facilitation Council.

13. The petitioner's reliance on *Silpi Industries & Ors. v. Kerala State Road Transport Corporation & Ors.*, (2021) 3 SCC 777, is also misplaced. That decision enunciates the principle that benefits under the MSMED Act cannot be retrospectively claimed by an entity that was not registered at the relevant time. However, it does not absolve a party of its obligation to raise such a plea before the appropriate forum at the appropriate stage. The record unequivocally demonstrates that Respondent No.1's registration status was not disputed before the Facilitation Council, and hence, the petitioner is estopped from raising the same before this Court.

14. In view of the foregoing discussion, it is evident that the attempt to introduce a new factual plea at the writ stage is legally untenable. The writ court, in the absence of any compelling reason warranting departure from settled principles, cannot countenance such an approach. Accordingly, the petitioner's attempt to agitate Respondent No.1's registration status at this belated juncture stands impermissible and is consequently rejected. Thus, in the absence of any foundational challenge before the Facilitation Council, the petitioner cannot be permitted to belatedly invoke the extraordinary jurisdiction of this Court under Article 227 of the Constitution to challenge the award rendered against it. The

petitioner's remedy, if any, lies in filing an application under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the award on permissible grounds.

15. In view of the foregoing, this Court finds no merit in the writ petition. Accordingly, the same is dismissed. No costs.

16. Pending interlocutory application(s), if any, stand disposed of.

17. At this stage, learned Advocate for the petitioner seeks extension of ad-interim relief. For the reasons stated above, the request for extension of ad-interim relief is rejected.

(AMIT BORKAR, J.)