



W.A.(MD)No.1267 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.02.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

W.A.(MD)No.1267 of 2020

M/s.Alfa Therm Limited,
6, Community Centre,
Mayapuri, Phase - 1,
New Delhi.

... Appellant / 2nd Respondent

Vs.

1.The Commissioner,
Usilampatti Municipality,
Usilampatti,
Madurai District,
Tamil Nadu.

... 1st Respondent / Petitioner

2.The Chairman,
Micro and Small Enterprises Facilitation
Council of Haryana,
Office of Director of Industries and Commerce,
Haryana, 30 Bays Building,
1st Floor, Sector 17,
Chandigarh.

... 2nd Respondent / 1st Respondent

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to set aside the order dated 01.10.2019 passed in W.P.(MD).No.10002 of 2019 on the file of this Court.



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For Appellant : Mr.Mr.S.Ravi, Senior Counsel,
For M/s.Gupta and Ravi.

For Respondents : Mr.K.Mahendran,
Standing Counsel for R1.
No appearance for R2.

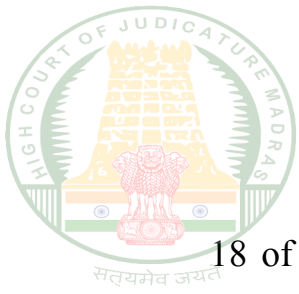
JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

Heard the learned senior counsel for the appellant and the learned standing counsel for Usilampatti Municipality.

2.This writ appeal is directed against the order dated 01.10.2019 allowing W.P.(MD)No.10002 of 2019 filed by the Commissioner, Usilampatti Municipality by the learned Single Judge.

3.The Commissioner of Usilampatti Municipality and the appellant entered into an agreement on 26.02.2016. It was a solid waste management agreement. The appellant was to supply certain machineries / equipment and install them. Dispute arose between the parties. The appellant who is a registered MSME filed an application under Section



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18 of the Micro Small and Medium Enterprise Development Act, 2006

before the Chairman, Micro and Small Enterprises Facilitation Council, Haryana at Chandigarh. The said Facilitation Council issued notice along with Claim Application No.954 of 2019 to the Commissioner, Usilampatti Municipality. The Commissioner, Usilampatti Municipality questioned the said notice on the ground that Micro and Small Enterprises Facilitation Council, Haryana lacks the territorial jurisdiction to entertain the claim lodged by the appellant. The writ petition was allowed vide order dated 01.10.2019 in the following terms:-

“11. In the instant case, the project itself is for supply, delivery and erection of pre-processing unit and refinement unit. There are disputes between the petitioner and the second respondent in respect of quantum of supply, delivery and erection of the unit. Section 15 mandates that the buyer, on completion of supply, shall make payment on or before the date agreed between them. From the peculiar circumstances of the present contract, it could be seen that it is not mere supply of goods, but also coupled with service to be rendered by a supplier. Admittedly, communications reveal that only 80% of supply of goods were made and service was not completed by the supplier. The supplier insists that as per the contract, they are entitled to payment of money on supply of 80% of the materials and 20% on completion



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of erection of the unit. The very same agreement specifies the jurisdiction of Courts at Chennai. If that being so, Council which is within the jurisdiction of Chennai only will have power to issue notice. The judgment in **Fleetguard Filters Private Limited (supra)** dealt with a situation where the supplier was situated at Haryana. It is true to state that Section 18(4) overrides the all other laws and confers jurisdiction to the Facilitation Council where the supplier is located. In that case, the supplier was located in Haryana within its jurisdiction. But, in the instant case, it could be seen from the agreement and invoices that the registered office at New Delhi and the Factory at Haryana. The contract entered between the parties and other communications disclose the place of business of the second respondent only at New Delhi. In that view of the matter, the second respondent, having entered into a contract within the State of Tamil Nadu and having registered office at New Delhi, can make reference to the appropriate Micro and Small Enterprises Facilitation Council within these two places. It cannot be at every place, where it has a factory or branch office. Then it will amount to forum shopping. The object of the Act is to promote the Micro, Small and Medium Entrepreneurs. The non obstante clause has been incorporated for the purpose of avoiding delay, to expedite the payment process and to protect the entrepreneurs from protracted litigations and from financial crisis. But it will not entail the supplier to abuse the process, and pressurise the buyer to budge to illegal and exorbitant demands and to run to places of supplier's choice.



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12. *There shall be limitations for the Council to exercise jurisdiction. The word 'location under Section 18(4) of the Act' means that the place from where the supplier runs his business or in other words, where he has the registered office or Head Office. It is made with an object to facilitate the entrepreneurs to have easy access to justice and hassle free recovery. In the instant case, as observed above, the registered office of the second respondent is at New Delhi and the contract and correspondences have taken place only from New Delhi. Therefore, it shall be construed that the supplier is located at New Delhi. Therefore, the first respondent Council does not have jurisdiction to entertain the reference and it is abuse of process of law. The judgment relied on by the second respondent is not applicable to the case on hand, as the facts and circumstances of this case are entirely different.*

13. *Secondly, the contract is a composite contract for supply of goods and for rendering service in erecting pre-processing and refinement unit. The second respondent cannot segregate the same and insist for payment only for supply of materials leaving out the incomplete services rendered. Therefore also, I consider that the claim of the second respondent is not in consonance with Section 15 making the petitioner/buyer liable for payment of amount and the reference is premature and abuse of process. However, this issue can be decided only through conciliation or arbitration or through any other alternative dispute resolution methods. Be that as it may, for inviting parties to conciliation, the Facilitation Council shall have jurisdiction. In*



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the instant case, I have already held that Micro and Small Enterprises Facilitation Council at Haryana has no territorial jurisdiction to issue the impugned notice. Therefore, the impugned notice issued by the first respondent is liable to be set aside and accordingly, it is set aside.”

Challenging the same, this writ appeal came to be filed.

3.The learned senior counsel for the appellant drew our attention to Section 18 of the Micro Small and Medium Enterprise Development Act, 2006 (unamended). It 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 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



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dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (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 sub-section(1) of section 7 of that Act.

(4) Notwithstanding anything contained in any 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.”

He pointed out that Section 18(4) envisages the filing of claim application before that facilitation council within whose jurisdiction the supplier is located. The expression “supplier” has been defined in Section 2(n) of the Act. It reads as follows:-



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“2.(n) "supplier" means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes.”

4. Section 8(1) of the Micro Small and Medium Enterprise Development Act, 2006 is as follows:-

“8. Memorandum of micro, small and medium enterprises. _

(1) Any person who intends to establish,--

(a) a micro or small enterprise, may, at his discretion; or

(b) a medium enterprise engaged in providing or rendering of services may, at his discretion; or

(c) a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951),

shall file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3):

Provided that any person who, before the commencement of this Act, established--



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(a) a small scale industry and obtained a registration certificate, may, at his discretion; and

(b) an industry engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), having investment in plant and machinery of more than one crore rupees but not exceeding ten crore rupees and, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.O. 477(E), dated the 25th July, 1991 filed an Industrial Entrepreneur's Memorandum,

shall within one hundred and eighty days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act.”

5.Our attention was also drawn to S.O. 1643(E) dated 29.09.2006 issued by the Central Government. It contains the format in which the memorandum has to be filed by the MSME. The learned senior counsel for the appellant categorically stated that even though the appellant has its registered office at New Delhi, their factory is located at Sonapat, Haryana and they had registered themselves with the District Industries Centre at Sonapat, Haryana.



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6.It is true that Clause 12 of the agreement dated 26.02.2016 entered into between the parties mentions that Courts at Chennai alone will have the jurisdiction. But then Section 18(4) of the Act contains the overriding the clause.

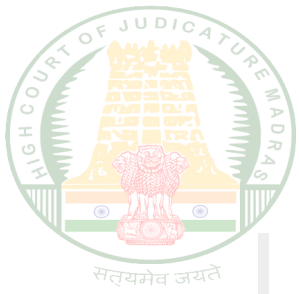
7.The Hon'ble Supreme Court in the decision reported in **(2023) 6 SCC 401 [Gujarat State Civil Supplies Corporation Limited Vs. Mahakali Foods Private Limited (Unit 2)]** had held as follows:-

“52.The upshot of the above is that:

52.1. Chapter-V of the MSMED Act, 2006 would override the provisions of the Arbitration Act, 1996.

52.2. No party to a dispute with regard to any amount due under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Micro and Small Enterprises Facilitation Council, though an independent arbitration agreement exists between the parties.

52.3. The Facilitation Council, which had initiated the Conciliation proceedings under Section 18(2) of the MSMED Act, 2006 would be entitled to act as an arbitrator despite the bar contained in Section 80 of the Arbitration Act.



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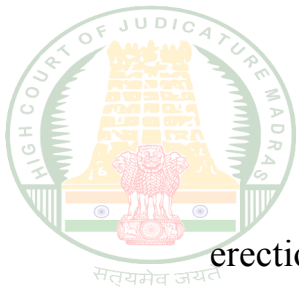
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52.4. *The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/arbitration tribunal under [Section 18\(3\)](#) of MSMED Act, 2006 would be governed by the [Arbitration Act, 1996](#).*

52.5. *The Facilitation Council/institute/centre acting as an arbitral tribunal by virtue of [Section 18\(3\)](#) of the MSMED Act, 2006 would be competent to rule on its own jurisdiction as also the other issues in view of [Section 16](#) of the Arbitration Act, 1996.*

52.6. *A party who was not the 'supplier' as per the definition contained in [Section 2\(n\)](#) of the MSMED Act, 2006 on the date of entering into contract cannot seek any benefit as the 'supplier' under the [MSMED Act, 2006](#). If any registration is obtained subsequently the same would have an effect prospectively and would apply to the supply of goods and rendering services subsequent to the registration."*

8.The learned standing counsel for the municipality would argue that the aforesaid decision reported in **(2023) 6 SCC 401 [Gujarat State Civil Supplies Corporation Limited Vs. Mahakali Foods Private Limited (Unit 2)]** will not apply to the facts of this case. According to him, the contract between the parties involves not only supply but also



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erection and fulfilment of few other functions. He therefore contends that the Facilitation Council, Haryana will not have jurisdiction.

9.As rightly pointed by the learned senior counsel for the appellant, even this point regarding jurisdiction can be urged before the Facilitation Council. The Municipality is permitted to raise the preliminary objection and if it is so raised before the Facilitation Council, it shall be decided first before the matter is taken up on merits.

10.We therefore have to necessarily hold that even though the appellant had agreed that the Courts at Chennai alone will have jurisdiction, that would still not bind him. It is well settled that there can be no estoppel against statute. Thus, the provision of the Micro Small and Medium Enterprise Development Act, 2006 will prevail over any contract clause in the agreement between the parties. We are therefore satisfied that the Facilitation Council, Haryana at Chandigarh will have the territorial jurisdiction to entertain the appellant's claim. The learned Single Judge had not given the fullest weight and effect to the overriding clause / non-obstinate clause set out in under Section 18(4) of the Act.



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We therefore set aside the impugned order passed by the learned Single Judge. The writ appeal is allowed.

11.The Facilitation Council, Haryana at Chandigarh shall issue fresh notice to the Commissioner, Usilampatti Municipality and if possible, the proceedings shall be conducted through video conferencing mode. No costs.

(G.R.S. J.) & (M.J.R. J.)
04.02.2025

NCC : Yes/No
Index : Yes / No
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and
M.JOTHIRAMAN, J.

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