2026:MHC:4346

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.10.2026
DELIVERED ON : 29.10.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.No.2187 of 2025
CNR:{HCMA011519922025}
and C.M.P.Nos.16737 of 2025
and 14192 of 2026

The Tamil Nadu Medical Services
Corporation Limited
417, Pantheon Road, Egmore,
Chennai, Rep by its Managing Director.

Appellant(s)

Vs

1. Uttar Pradesh State Micro and
Small Enterprises Facilitaion Council
Sarvodaya Nagar, G.T. Road, Kanpur,
Uttar Pradesh - 205005,
Rep by its Chairman.

2. Atul Generators Pvt Ltd
Rep by its Director,
Nunhai, Agra - 282 006.

Respondent(s)

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PRAYER: Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 18.10.2024 passed by the learned Single Judge in W.P.No.10688 of 2024.

For Appellant(s): Mr.P.V.Balasubramaniam
Additional Advocate General
asst by Mr.Edwin Prabakar

For Respondent(s): Mr.Sathish Parasaran,
Senior Counsel
for Mr.T.Sundaranathan
for R2

R1 - Service awaited

JUDGMENT

THE CHIEF JUSTICE

This intra-court appeal arises from the judgment and order dated 18.10.2024, passed by the learned Single Judge in W.P.No.10688 of 2024, whereby the learned Single Judge dismissed the writ petition filed by the appellant herein challenging an arbitral award dated 28.11.2016 passed by the Uttar Pradesh State Micro and Small Enterprises Facilitation Council (first respondent) under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 [for brevity, "*the MSMED Act*"].

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2.1. The facts in a nutshell are that, on 20.05.2009, the appellant/corporation issued a purchase order in favour of the second respondent for the procurement, supply and installation of 130 Diesel Generator sets across various Primary Health Centres in the State of Tamil Nadu, followed by a repeat order for 4 additional Diesel Generator sets on 22.10.2009.

2.2. It is stated that, upon completion of supplies, the second respondent raised bills for the full value. However, the appellant deducted an amount of Rs.19,71,049/- by way of liquidated damages, citing delayed delivery schedules.

2.3. It is averred that aggrieved by the unilateral deduction, the second respondent invoked Section 18 of the MSMED Act by filing Claim Petition No.26 of 2012 before the first respondent/ Council. Upon failure of conciliation, the Council entered upon the reference as an arbitral tribunal and rendered an award on 28.11.2016, directing the refund of the withheld principal along with statutory compound interest under Section 16 of the MSMED Act.

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2.4. The appellant challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 [for brevity, "*the 1996 Act*"] read with Section 19 of the MSMED Act before the Commercial Court at Kanpur Nagar, Uttar Pradesh, in Arbitration Miscellaneous Case No.274 of 2023. The said challenge was dismissed on merits on 30.10.2023.

2.5. Pursuant thereto, the appellant approached the writ court under Article 226 of the Constitution of India seeking quashment of the award dated 28.11.2016 passed in Claim Petition No.26 of 2012. The learned Single Judge dismissed the writ petition on 18.10.2024, leading to the filing of the present writ appeal.

2.6. It is a matter of record that, on 16.07.2025, a Division Bench of this court stayed further proceedings on the award and that stay was extended on 24.09.2025 until further orders.

3.1. Learned Additional Advocate General appearing on behalf of the appellant contended that the proceedings before the first respondent/Council suffered from jurisdictional flaws and procedural

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infirmities and, therefore, a writ petition under Article 226 of the Constitution of India was maintainable to correct fundamental jurisdictional errors, regardless of the remedy under statutory arbitration law.

3.2. It is further submitted that the petition under Section 34 of the Act was dismissed solely on the grounds of delay and not on merits. Moreover, in *Tamil Nadu Cements Corporation Ltd. v. Micro and Small Enterprises Facilitation Council (SLP (C) Diary No.3776 of 2023, order dated 22.01.2025)*, the Supreme Court referred to a Larger Bench the key issues specifically concerning the maintainability of writ petitions against Council orders and whether a Council that conducts conciliation can subsequently act as an arbitrator and, therefore, it is pleaded that the award be kept in abeyance.

4.1. Learned Senior Counsel appearing on behalf of the second respondent submitted that that an arbitral award under Section 18(3) of the MSMED Act carries the status of an award under the 1996 Act. Once an award is passed and an application

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under Section 34 of the 1996 Act has been filed and decided, the statutory remedy prescribed by law is an appeal under Section 37 of the 1996 Act. A writ petition under Article 226 of the Constitution of India cannot be used to bypass the statutory scheme.

4.2. It is further submitted that the appellant took part in conciliation and in the arbitration. It filed a reply and raised a jurisdiction objection. Having invoked Section 34 of the 1996 Act and lost, the appellant cannot now raise a plea that the order passed by the first respondent/Council is not an award. He submitted that the appellant cannot approbate and reprobate. He added that the award passed by the first respondent/Council has merged into the order passed by the Commercial Court, Kanpur Nagar. The writ petition and this appeal are an attempt to reopen a settled dispute and no part of the cause of action arose within the jurisdiction of this court.

4.3. He further submitted that the reference made by the Supreme Court in *Tamil Nadu Cements* (supra) is clearly distinguishable, as it involved instances where the Council issued a

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decree for payment immediately upon the failure of conciliation, thereby leaving the aggrieved party with no recourse other than a writ petition. He added that, in stark contrast, the facts of the present case are fundamentally different.

5. The core issues falling for determination in this appeal are:

(i) *Whether a writ petition under Article 226 of the Constitution of India is maintainable against an arbitral award passed under Section 18 of the MSMED Act, after an unsuccessful challenge under Section 34 of the 1996 Act?*

(ii) Whether a party can bypass the statutory appellate remedy prescribed under Section 37 of the 1996 Act by invoking the extraordinary writ jurisdiction of the High Court?

6. Under Section 18(3) of the MSMED Act, upon the failure of conciliation, the Facilitation Council either takes up the dispute for arbitration itself or refers it to an institution or centre, whereupon the provisions of the 1996 Act apply as if there was an arbitration

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agreement. Further, Section 18(4) of the MSMED Act contains an overriding non-obstante clause vesting the Council with statutory jurisdiction to act as an arbitral tribunal, and any decision/award rendered pursuant thereto possesses the identical legal status, efficacy and binding force as an arbitral award passed under the 1996 Act.

7. The 1996 Act is a self-contained code designed to minimize judicial intervention in arbitral matters. Section 34 of the 1996 Act provides a robust judicial review mechanism to set aside an award on limited grounds, while Section 37 of the 1996 Act provides a specific statutory appeal against an order granting or refusing to set aside an arbitral award. In the present case, the appellant consciously filed a petition under Section 19 of the MSMED Act read with Section 34 of the 1996 Act before the competent Commercial Court at Kanpur Nagar against the award passed by the Council. The appellant also raised a ground qua Section 29A of the Act, which stipulates the time limit for arbitral award and applies only to an arbitral award. A party cannot call the order an award for one purpose and a nullity for another. Having suffered an adverse order

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on 30.10.2023, the appellant's legal recourse was exhaustively confined to filing an appeal under Section 37 of the 1996 Act.

8. It is a foundational tenet of administrative and constitutional jurisprudence that where a statute creates a special right or liability and provides an exhaustive machinery for its enforcement and redressal, a party cannot bypass that statutory hierarchy by invoking the extraordinary discretionary writ jurisdiction under Article 226 of the Constitution of India. Permitting a writ petition against an award, which eventually merged into the order passed by the Commercial Court, Kanpur Nagar, particularly when the statutory remedy is an appeal under Section 37 of the 1996 Act, would subvert the legislative intent of speedy resolution embedded in both the 1996 Act and the MSMED Act.

9. In light of the foregoing legal principles, this court affirms the view taken by the learned Single Judge and the issues raised are, thus, answered against the appellant. The appellant cannot invoke the extraordinary writ jurisdiction under Article 226 of the Constitution as a substitute for a statutory appeal under Section 37

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of the 1996 Act.

Accordingly, this appeal is dismissed and the order dated 18.10.2024 passed by the learned Single Judge in W.P.No.10688 of 2024 is hereby confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed and the interim order granted is vacated.

(SUSHRUT ARVIND DHARMADHIKARI, CJ) (G.ARUL MURUGAN,J)
29.10.2026

Index : Yes
Neutral Citation : Yes
sasi

To:
The Chairman
Uttar Pradesh State Micro and
Small Enterprises Facilitaion Council
Sarvodaya Nagar, G.T. Road, Kanpur,
Uttar Pradesh – 205005.

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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

(sasi)

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