

# **Tamil Nadu Electricity Board vs A.P. Micro And Small Enterprises ... on 10 January, 2025**

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\*HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

+WRIT PETITION Nos.2771, 2778 and 2779/2013

WP No.2771/2013

Between:

#Tamil Nadu Electricity Board .....PETITIONER

AND

\$ A P Micro And Small Enterprises Facilitation Council .....RESPONDENT(S)  
and Others

JUDGMENT PRONOUNCED ON 10.01.2025

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments?

- Yes -

2. Whether the copies of judgment may be marked to Law  
Reporters/Journals

- Yes -

3. Whether Their Ladyship/Lordship wish to see the fair  
copy of the Judgment?

- Yes -

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DR.JUSTICE K. MANMADHA RAO

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+WRIT PETITION Nos.2771, 2778 and 2779/2013

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# Between:

#Tamil Nadu Electricity Board

...PETITIONER

AND

\$ A P Micro And Small Enterprises Facilitation Council  
and Others

...RESPONDENT(S)

! Counsel for the Petitioner : Sri C.R. Sridharan

Sri G.V.S. Ganesh

! Counsel for Respondents: Sri O.Manohar Reddy  
Sri P. Sri Raghuram  
Sri D.V.Sivadarshan  
GP for Industries and Commerce

<gist :

>Head Note:

? Cases referred: 1. (1988) 2 Supreme Court Cases 602

2. 2001 (6) ALD 549 (DB)

3. (2001) 6 SCC 356

4. (2006) 5 SCC 752

5. (2014) 7 SCC 340

6. AIR 1986 Supreme Court 626

7. (1999) 8 SCC 122

8. AIR 1958 Supreme Court 86

9. AIR 1971 SC 33

10. AIR 1966 SC 197
11. AIR 1986 SC 626
12. (1995) 1 SCC 614
13. AIR 1968 SC 13
14. 1994 (69) ELT 482
15. 1994 (72) ELT 263
16. (2005) 10 SCC 704
17. (2004) 4 SCC 671
18. (2002) 9 SCC 613
19. (2004) 4 SCC 677
20. (1995) 4 SCC 153
21. (1989) 2 SCC 163
22. AIR 1971 SC 740
23. AIR 1980 AP 30
24. (2001) 8 SCC 470
25. (2019) SCC 681
26. WP No.(L) NO.4049 of 2020 dated 27.10.2020
- 27 2023 SCC OnLine SC 1852
28. 2023 SCC OnLine SC 1852
29. 2024 SCC OnLine 4718
30. (2024) 4 S.C.R 506
31. 2023 SCC OnLine TS 627
32. 2014 (6) ALD 266
33. (2012) 6 SCC 345
34. (2015) 6 SCC 773
35. AIR 2019 SC 3558

APHC010506912013

IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI  
(Special Original Jurisdiction)

[3310]

FRIDAY ,THE TENTH DAY OF JANUARY  
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO

WRIT PETITION NO: 2771, 2778 and 2779/2013

Between:

Tamil Nadu Electricity Board

...PETITIONER

AND

A P Micro And Small Enterprises Facilitation Council and ...RESPONDENT(S)  
Others

Counsel for the Petitioner:

1. G V S GANESH

Counsel for the Respondent(S):

1. D S SIVADARSHAN

2. K S GOPALA KRISHNAN

3. GP FOR INDUSTRIES & COMMERCE

The Court made the following:

COMMON ORDER:

As the issue involved in all these writ petitions is one and the same, they are being taken up for hearing as well as disposed of by way of this Common Order.

2. All the writ petitions have been filed assailing the orders passed by A.P. Micro and Small Enterprises Facilitation Council-1st respondent dated 11.11.2011 in Case Nos.180/04, 38/07 and 39/07. In view of the above order, the 1st respondent Council directed the writ petitioners to pay the amounts to the 2nd respondent in the writ petitions towards goods said to have been supplied to the writ petitioners and interest.

3. Since the facts in all the writ petitions are similar and identical, therefore WP No.2771 of 2013 is taken as lead case, and the facts therein hereinafter will be referred to for convenience.

4. Brief facts of the case are that, the Tamil Nadu Electricity Board came into being and has remained the energy provider and distributor. It got restructured itself into TNSEB. For the purpose of generation of Electricity, it had established generation plants throughout the State of Tamil Nadu. It is stated that 1st respondent-Council constituted under the provisions of the erstwhile repealed The Interest on Delayed Payments to Small Scale and Ancillary Industries Undertaking Act, 1993. The Petitioner has issued tender notifications for supply of ACSR/AAA Conductors, i.e., All Aluminum Alloy Conductor and accordingly, issued Purchase Order The tender bid submitted by the Respondent No.2 had been accepted by the Petitioner and various Purchase Orders were placed by the Petitioner with specific terms and conditions stipulated therein. The Petitioner having purchased the goods under various purchase orders from R-2 and had paid the entire amount of the goods. It is further stated that all the bills raised by 2nd respondent have been duly cleared by the Petitioner from time to time after deducting the discounts as per the mutually agreed terms of the contract. It is further stated that the 2nd respondent has resorted to prefer reference in Form - I claiming the entire value of the purchase orders amounting to Rs.71,39,442-06 contending that the Petitioner has illegally deducted the subsidies/liquidated damages though all the transactions were between 29/12/1997 and 31/10/2000 and 1st respondent has entertained the claims of the 2nd respondent. Upon receipt of notices from R-1 Council, the Petitioner filed its Counter Statement. Without considering the same R-1 Council passed impugned order directing the Petitioner to pay an amount of Rs.14,17,823/- towards Principal and Rs.57,21,619/- as interest totaling to Rs.71,39,442/- as on 30/06/2004, being the price of goods supplied to the Respondent together with interest due from 12/02/1998 to 30/06/2004. Aggrieved by the same, the present writ petition came to be filed.

5. The pleadings which are cited in WP No.2771 of 2013 the same are adopted in other writ petitions vide WP No.2778 and 2779 of 2013.

6. This Court, vide order dated 31.01.2013, while issuing Rule Nisi, has granted interim direction, which reads as under:

A perusal of the order challenged in the writ petition discloses that the A.P. Micro and Small Enterprises Facilitation Council, directed the petitioner to pay a sum of Rs.70,32,070/- towards principal and Rs.32,19,193/- towards interest. However, in the claim petition, the relief sought for by the 2nd respondent is only as regards the interest on account of delayed payments. The matter needs to be examined.

There shall be interim stay as prayed for.

7. The counter affidavit has been filed in WP No.2771 of 2013 and the same are adopted by the 2nd respondent in all other writ petitions. While denying the allegations made in the petition, inter alia, contended that, The Micro, Small and Medium Enterprises Development Act, 2006 was legislated with a intent to save the small enterprises from the teeth of financial crisis and to ensure their survival and competitiveness in the field of industry. The Government thus has given support and

strength to small enterprises. This Respondent is one such small scale industry and as such exempted from making even EMD and Security Deposit as per GO Ms No. 1020 dt. 30-11- 1976 governed by the provisions of The Micro, Small and Medium Enterprises Development Act, 2006. It is an exclusive self-contained Act creating exclusive jurisdiction to a class of Micro, Small and Medium Enterprises in the country. A compendious reading of the provisions of The Micro, Small and Medium Enterprises Development Act, 2006 makes it clear that the provisions of Arbitration and Conciliation Act, 1996 is applicable to the proceedings conducted by the 1st Respondent Statutory Body. Analysing Section 19 of Micro, Small and Medium Enterprises Development Act, 2006 and provisions of Arbitration and Conciliation Act, 1996 clearly show that the remedy of the Writ Petitioner is misconceived and the present writ petition is not maintainable assailing the Award passed by the 1st Respondent. It is further stated that whenever the Award of Micro, Small and Medium Enterprises Development Act 2006 is under challenge and seeks stay of enforcement of its order, a statutory deposit of 75% is mandatory as per S.19 of the Act. The petitioner cannot bypass this statutory deposit and seeks stay by invoking Article 226 of the Constitution of India when an efficacious remedy is available under Arbitration & Conciliation Act, 1996.

8. The reply affidavit has been filed by the petitioners to the counter affidavit filed by the 2nd respondent. in the reply affidavit, while denying the allegations made in the counter affidavit, it is stated that, the repeated allegations of the 2nd respondent pointing out the absurdity on the part of the petitioner contending that the amount due still subsist until it is cleared and is well within the limitation period and that the petitioner herein did not insist upon before the respondent NO.1 are wholly untenable as the law is well settled and is otherwise. It is further stated that, when piece-meal and inordinate delayed payments were made by the Petitioner herein the same will not estoppe the Respondent to make a legitimate claim before the Respondent No. 1 for the value of the stocks supplied with interest on delayed payments is as vague as could be and the same is hereby denied particularly for want of any particulars showing the amounts received and the alleged balance due, the particulars of which patently lacked either before the Respondent No. 1 in the claim or before this Hon'ble Court. It is further stated that the Respondent No. 1 Authority has give a go-by to the mandatory requirements of the statute and the impugned Order of the Respondent No. 1 Authority is wholly without jurisdiction and as such the Respondent No. 2 herein has not made out any case. Therefore, prayed to allow the writ petitions.

9. Heard Sri C.R. Sridharan, learned Senior Counsel representing Sri G.V.S Ganesh, learned counsel appearing for the petitioners; Sri O.Manohar Reddy, learned counsel appearing for the 1st respondent Sri P. Sri Raghuram, learned Senior counsel representing learned counsel for the 2nd respondent; Sri D.V. Sivadarshan, learned counsel for the respondent and learned Government Pleader for Industries and commerce appearing for the official respondents.

10. On hearing, Sri C.R. Sridharan, learned Senior Counsel appearing for the petitioners while reiterating the contents made in the petitions, argued that, though the impugned order of the Respondent No.1 Council was received by the Petitioner on 29/11/2011, which is a Government organization and the matter has been placed before the competent authority for the purpose of taking decision on the further course of action to be initiated on behalf of the Petitioner. In the said process, sufficient time has been taken to arrive at a decision to challenge the said order by initiating

appropriate legal proceedings. Accordingly, the Petitioner Board was required to take opinions of its Standing Counsel at Chennai and who, in turn, advised the Petitioner to initiate appropriate proceedings in the State of Andhra Pradesh. He submits that, thereafter, a final decision has been taken to challenge the impugned orders by filing Writ Petitions as the impugned reference as well as the consequential order of the Respondent No.1 Council is beyond the purview of the IDP Act as well as MS & MED Act, 2006 totally lacking in jurisdiction and the effect of the impugned order directing the Petitioners to pay huge amounts even when the claims of the Respondent No.2 are highly misconceived and are not maintainable.

11. To support his contentions, learned Senior Counsel has placed reliance on a catena of decisions reported in (i) A.R Antulay versus R.S Nayak and another<sup>1</sup>, wherein the Hon'ble Apex Court held that :

It appears that when this Court gave the aforesaid directions on 16th February, 1984, for the disposal of the case against the appellant by the High Court, the directions were given oblivious of the relevant provisions of law and the decision in Anwar Ali Sarkar's case (*supra*).

See Halsbury's Laws of England, 4th Edn, Vol. 26, page 297, para 578 and page 300, the relevant notes 8, 11 and 15; Dias on Jurisprudence, 5th Edn., pages 128 and 130; Young v. Bristol Aeroplane Co. Ltd., [1944] 2 AER 293 at 300. Also see the observations of Lord Goddard in Moore v. Hewitt, [1947] 2 A.E.R. 270 at 272-A and Penny v. Nicholas, [1950] 2 A.E.R. 89, 92A. "per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the Court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong ...

..

It is a settled rule that if a decision has been given per incuriam the court can ignore it."

(ii) In T. Zakariah and others v. A.P.S.C. Cooperative Finance Corporation Limited, Hyderabad and others<sup>2</sup>, wherein the High Court of Judicature of Andhra Pradesh at Hyderabad held that :

"In A.R. Antulay v. R.S. Nayak, , the Apex Court held:

In giving the directions this Court infringed the Constitutional safeguards granted to a citizen or to an accused and in justice results therefrom. It is just and proper for the Court to rectify and recall that injustice, in the peculiar facts circumstances of this case.

xx xx xx By reason of giving the directions on 16th February, 1984 this Court had also unintentionally caused the appellant the denial of rights under Article 14 of the

Constitution by denying him the equal protection of law by being singled out for a special procedure not provided for by law. When these factors are brought to the notice of this Court, even if there are any technicalities this Court should not feel shackled and decline to rectify that injustice or otherwise the injustice noticed will remain forever a blot on justice. It has been said long time ago that "Actus Curiae Nerninern Gravabit" an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense and affords a safe and certain guide for the administration of the law.

(1988) 2 Supreme Court Cases 602 2001 (6) ALD 549 (DB)

(iii) In a case of Fuerst Day Lawson Ltd. Versus Jindal Exports Ltd.,3, wherein the Apex Court held that :

The other argument with emphasis was that the Thyssen judgment is `per incuriam as it was pronounced ignoring Section 1(3) and the notification bringing Act into force from 22.8.1996. It is useful to refer to certain decisions of this Court before taking a decision whether the Thyssen judgment is `per incuriam or not as to the date of commencement of the Act in the given situation.

In Mamleshwar Prasad and Another vs. Kanhaiya Lal (Dead) through L.Rs. (1975 (2) SCC 232) reflecting on the principle of judgment per incuriam, in paras 7 & 8, this Court has stated thus:-

7. Certainty of the law, consistency of rulings and comity of courts all flowering from the same principle converge to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission. No such situation presents itself here and we do not embark on the principle of judgment per incuriam.

8. Finally it remains to be noticed that a prior decision of this Court on identical facts and law binds the Court on the same points in a later case. Here we have a decision admittedly rendered on facts and law, indistinguishably identical, and that ruling must bind.

This Court in A.R.Antulay vs. R.S. Nayak & Another (1988 (2) SCC 602), in para 42 has quoted the observations of Lord Goddard in Moore vs. Hewwit [(1947) 2 All.ER 270] and Penny vs. Nicholas [(1950) 2 All.ER 89] to the following effect:-

Per incuriam are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned,

so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.....

This Court in State of U.P. & Another vs. Synthetics & Chemicals Ltd. & Another (1991 (4) SCC 139) in para 40 has observed thus :-

40. 'Incuria literally means 'carelessness. In practice per incuriam appears to mean per ignoratium.

English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority. (Young v. Bristol aeroplane co. Ltd). .....

The two judgments (1) Punjab Land Development and Reclamation Corporation Ltd., Chandigarh vs. President Officer, Labour Court, Chandigarh and Others (1990 (3) SCC

682) and (2) State of U.P. and Another vs. Synthetics and Chemicals Ltd. and Another (1991 (4) SCC

139) were cited in support of the argument. Attention was drawn to paras 40, 41 and 43 in the first judgment and paras 39 and 40 in the second judgment. In these two judgments no view contrary to the views expressed in the aforesaid judgments touching the principle of judgment per incuriam is taken. A prior decision of this court on identical facts and law binds the Court on the same points of law in a latter case. This is not an exceptional case by inadvertence or oversight of any judgment or statutory provisions running counter to the reason and result reached. Unless it is a glaring case of obtrusive omission, it is not desirable to depend on the principle of judgment 'per incuriam. It is also not shown that some part of the decision based on a reasoning which was demonstrably wrong, hence the principle of per incuriam cannot be applied. It cannot also be said that while deciding Thyssen, the promulgation of the first Ordinance, which was effective from 25.1.1996, or subsequent Ordinances were not kept in mind more so when the judgment of Gujarat High Court in Western Shipbreaking Corporation (*supra*) did clearly state in para 8 of the said judgment thus:-

(2001) 6 Supreme Court Cases 356

8. We now come to the arbitration and Conciliation Ordinance, 1996 which was promulgated on 16.1.1996 and brought into force with effect from 25.1.1996. The second Ordinance, 1996 was also promulgated on 26.3.1991 as a supplement to main Ordinance giving retrospective effect from 25.1.1996. The Ordinance received assent of the President on 16.8.1996 giving the retrospective effect from 25.1.1996. Thus the Ordinance has now become an Act. All the provisions of the Ordinance as well as Act are same.

Therefore, the use of word The Ordinance shall also mean the Act and vice versa. It appears in the portion extracted above there is a mistake as to the date of promulgation of the second Ordinance as 26.3.1991. But the correct date is 26.3.1996.

(iv) In another case reported in Mayuram Subramanian Srinivasan versus CBI<sup>4</sup>, wherein the Apex Court held that :

"Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. English Courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law", as held in Young v. Bristol Aeroplane Co. Ltd. (1944) 2 All E.R. 293, is avoided and ignored if it is rendered, "in ignoratium of a statute or other binding authority". Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution of India, 1950 (in short the 'Constitution') which embodies the doctrine of precedents as a matter of law.

(v) In anger case reported in Union of India and others versus R.P. Singh<sup>5</sup>, wherein the Apex Court held that :

".....Per incuriam are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong." At a subsequent stage of the said decision it has been observed as follows: -

".... It is a settled rule that if a decision has been given per incuriam the court can ignore it."

12. Learned Senior Counsel for the petitioners has also placed reliance on a decision of Hon'ble Supreme Court reported in (i) M/s Filterco and another vs. Commissioner of Sales Tax, M.P and another<sup>6</sup> , wherein the Apex Court held that :

"....Further Section 38(3) of the Act requires that a substantial portion of the tax has to be deposited before an appeal or revision can be filed. In such circumstances we consider that the High Court ought to have considered and pronounced upon the merits of the contentions raised by the parties and the summary dismissal of the Writ Petition was not justified. In such a situation, although we would (2006) 5 Supreme Court Cases 752 (2014) 7 Supreme Court Cases 340 AIR 1986 Supreme Court 626 have, ordinarily, set aside the judgment of the High Court and remitted the case to that Court for fresh disposal, we consider that in the present case it would be in the interests of both sides to have the matter finally decided by this Court at the present stage itself especially since we have had the benefit of elaborate and learned arguments addressed by the counsel appearing on both sides."

(ii) In another case reported in Steel Authority of India Ltd. Versus J.C Budharaja, Government and Mining Contractor <sup>7</sup> , wherein the Apex Court held that :

"Contractor not seeking any reference within three years from the date when the cause of action arose, i.e., from 29-8-1979- Only in 1985 when the dispute arose with

regard to the second agreement, the respondent giving notice on 2-12-1985 to appoint an arbitrator - Arbitrator appointed with a specific reservation regarding the tenability, maintainability and validity of reference as also on the ground that the claim was barred by the period of limitation and it pertained to excepted matters in terms of the general conditions of the contract Held, the claim before the arbitrator in November-December 1985 was barred by the period of limitation - Letter written in 1983 by the appellant repudiating the respondent's claim on account of damages or losses sustained by him would not give a fresh cause of action as on that date the cause of action for recovering the said amount was barred by the period of three years prescribed under Article 137 of the Limitation Act, 1963-Under S.3 of the Limitation Act, it was the duty of the arbitrator to reject the claim as it was on the face of it, barred by the period of limitation..."

"The Court also referred to the earlier decision in Panchu Gopal Bose Vs. Board of Trustees for Port of Calcutta [1993(4) SCC 338], where the Court observed as under: -

The Period of limitation for commencing an arbitration runs from the date on which the cause of arbitration accrued, that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration takes place upon the dispute concerned.

Therefore, the period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued. Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued.

Applying the aforesaid ratio in the present case, right to refer the dispute to the arbitrator arose in 1979 when Contractor gave a notice demanding the amount and there was no response from the appellant and the amount was not paid. The cause of action for recovery of the said amount arose from the date of the notice. Contractor cannot wait indefinitely and is required to take action within the period of limitation. In the present case, there was supplementary agreement between the parties. Supplementary agreement nowhere provides that so-called right of the contractor to recover damages was in any manner saved. On the contrary, it specifically mentions that contractor was yet to execute a considerable portion of the work more particularly described in the schedule to the agreement. And that the contractor has agreed to complete the said balance work on the terms and conditions enumerated in the agreement. Now, in this set of circumstances, contractor cannot wait and approach the authority or the court for referring the dispute to the arbitrator beyond the period of limitation. Section 37 of the Arbitration Act specifically provides that provisions of the Indian Limitation Act shall apply to the arbitrations as they apply to proceedings in the Court."

(1999) 8 Supreme Court Cases 122

13. Learned Senior Counsel for the petitioners has also placed reliance on decisions of Hon'ble Supreme Court reported in (i) State of U.P v. Mohammad Nooth<sup>8</sup>; (ii) Hirday Naraiah vs. Income Tax Bareily<sup>9</sup>; (iii) In M.G Abrol vs Shantilal Chhotelal and Co<sup>10</sup>; (iv) In Filterco & another vs. Commissioner of Sales Tax, MP<sup>11</sup>; (v) In another case reported in Dr. Bala Krishna Agarwal vs. State of U P & Others<sup>12</sup>; (vi) In Collector of Customs and Excise vs. A.S Bava<sup>13</sup>; (vii) In a case of Bhadrachalam Paper boards Ltd vs Union of India<sup>14</sup>; (viii) In another case reported in Reckitt & Colman of India Ltd., vs Asst. Collr. Of C.Ex. Hyderabad<sup>15</sup>; (IX) In Shree Subhlaxmi Fabrics (P) Ltd vs Chand Mal Baradia & others<sup>16</sup>; (x) In Hanil Era Textiles Ltd vs Puromatic Filters (P) Ltd<sup>17</sup>; (xi) In Shriram City Union Finance Corporation Ltd vs. Rama Mishra<sup>18</sup>; (xii) In New Moga Transport Insurance Co Ltd vs. United India Insurance Co. Ltd<sup>19</sup>; (xiii) In Angil Insultations vs Davy Ashmore India Ld<sup>20</sup>; (xiv) In ABC Laminart Pvt Ltd vs A P Agencies, Salem<sup>21</sup>; (xv) In Hakam Singh vs Gammon (India) Ltd<sup>22</sup> and in EID Parry (India) Limited vs Savani Transports Pvt Ltd<sup>23</sup> AIR 1958 Supreme Court 86 AIR 1971 SC 33 AIR 1966 SC 197 AIR 1986 SC 626 (1995) 1 SCC 614 AIR 1968 SC 13 1994 (69)ELT 482 1994 (72) ELT 263 (2005) 10 SCC 704 (2004) 4 SCC 671 (2002) 9 SCC 613 (2004) 4 SCC 677 (1995) 4 SCC 153 (1989) 2 SCC 163 AIR 1971 SC 740 AIR 1980 AP 30

14. Learned Senior Counsel for the petitioners while relying on the above decisions, submits that, being the position in law, the respondent No.1- Council constituted under the aforesaid IDP Act had no jurisdiction whatsoever to entertain any claim arising out of any transaction which are beyond the period of limitation. Therefore, the Council has, totally without any authority of law and jurisdiction, entertained the claim filed by the respondent No.2 on 2.8.2004 nearly after 9 months from the last date of such transaction and thus, there is a palpable assumption of non-existent jurisdiction. Therefore, learned Senior counsel submits that, without prejudice, viewed from any angle, the impugned order is wholly unsustainable in the eye of law as the same is rendered without any reasons much less, valid reasons whatsoever and therefore prayed to allow the writ petitions.

15. Per contra, Sri O. Manohar Reddy, learned counsel for the 1st respondent vehemently opposed for allowing the writ petitions, as the writ petitions filed under Article 226 of the Constitution of India challenging the Award after the stipulated time limit under Section 34 of the Act is over, cannot be entertained and prayed to dismiss the writ petitions.

16. To support his contentions, Sri O. Manohar Reddy, learned counsel has placed reliance on a catena of decisions reported in (i) Union of India versus Popular Construction Co.<sup>24</sup>, wherein the Hon'ble Apex Court held that :

(2001) 8 Supreme Court Cases 470 As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase 'but not thereafter'

wholly otiose. No principle of interpretation would justify such a result.

Apart from the language, 'express exclusion' may follow from the scheme and object of the special or local law. "Even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine

3. [1974] 2 SCC 133.

4. Patel Naranbhai Marghabhai v. Deceased Dhulabhai Galbabhai, [1992] 4 SCC 264. whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation".<sup>5</sup> Here the history and scheme of the 1996 Act support the conclusion that the time limit prescribed under Section 34 to challenge an Award is absolute and unextendable by Court under Section 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need "to minimise the supervisory role of courts in the arbitral process".<sup>6</sup> This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms :

"5. Extent of judicial intervention. - Notwithstanding anything contained in any other law for the time being in force, in matter governed by this Part, no judicial authority shall intervene except where so provided in this Part."

The 'Part' referred to in Section 5 is Part I of the 1996 Act which deals with domestic arbitrations. Section 34 is contained in Part I and is therefore subject to the sweep of the prohibition contained in Section 5 of the 1996 Act.

Furthermore, section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with"

sub Section 2 and sub Section 3. Sub Section 2 relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub section (3) would not be an application "in accordance with" that sub section. Consequently by virtue of Section 34 (1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that "where the time for making an application to set aside the arbitral award under Section 34 has expired.....the award shall be enforced and the Code of Civil Procedure, 1908 in the same manner as if it were a decree of a court". This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award and upon (he judgment so pronounced a decree shall follow". Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the Court.

5. Hukum Narain Yadav v. Lalit Narain Mishra (supra)

6. 4(v) of the Statement of Objects and Reasons of the Arbitration and Conciliation Act, 1996.

If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the Court's powers by the exclusion of the operation of Section 5 of the Limitation Act.

(ii) In another case reported in Assistant Commissioner (CT) LTU, Kakinada and others versus Glaxo Smith Kline Consumer Health Care Limited<sup>25</sup>, wherein the Apex Court held that :

In the backdrop of these facts, the central question is:

whether the High Court ought to have entertained the writ petition filed by the respondent? As regards the power of the High Court to issue directions, orders or writs in exercise of its jurisdiction under Article 226 of the Constitution of India, the same is no more res integra. Even though the High Court can entertain a writ petition against any order or direction passed/action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law (see Baburam Prakash Chandra Maheshwari vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar<sup>8</sup> and also Nivedita Sharma vs. Cellular Operators Association of India & Ors.<sup>9</sup>). In Thansingh Nathmal & Ors. vs. Superintendent of Taxes, Dhubri & Ors.<sup>10</sup>, the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise selfimposed restraint and not entertain the writ petition, if an alternative effective remedy is available to the aggrieved person. In paragraph 7, the Court observed thus: "7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Article 226 and sought to reopen the decision of the Taxing Authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles.

(iii) In another case reported in Union of India through Chief Administrative Officer (construction) Central Railway, Mumbai CSMT versus Maharashtra Steel Fabricators & Erectors<sup>26</sup>, wherein the High Court of Judicature at Bombay Ordinary Original

Civil Jurisdiction, held that :

The respondent urged that the High Court had ample power to grant relief under Article 226 of the Constitution of India. The Supreme Court rejected the contention and laid down the following position of law. The powers of the High Court under Article 226 of the Constitution are no doubt wide, but not wider than the powers under Article 142 of the Constitution. There is a distinction between the powers of the High Court under Article 226 and of the power of the Supreme Court under Article 142 of the Constitution of India to do complete justice between the parties. If the Supreme Court may not issue certain directions in exercise of powers under Article 142 of the Constitution, it cannot be that the High Court can take a different approach under Article 226 of the Constitution. The High Court cannot disregard the statutory period. The High Court should not issue a writ inconsistent with the legislative intent. Doing so would frustrate the legislative scheme and intention behind the statutory provisions. The law laid down Assistant Commissioner (CT) LTU, Kakinada squarely applies to the present case. If the legislative intent is to close the challenge to an arbitral Award after a particular period of time, then it must be adhered to. Therefore this writ petition filed under Article 226 and 227 of the Constitution of India challenging arbitral award after the stipulated time limit under the section 34 of the Act is over, cannot be entertained.

(220)19 Supreme Court Cases 681 WP No.(L) No.4049 of 2020 dated 27.10.2020

17. Learned Counsel for the 1st respondent has also placed reliance on a decision of Hon'ble Supreme Court reported in India Glycols Limited and another versus Micro and Small Enterprises Facilitation Council, Medchal<sup>27</sup>, wherein the Apex Court held that:

Section 19 provides recourse against an award of the Facilitation Council in the following terms:

"19. Application for setting aside decree, award or order -- No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of 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.

the case, subject to such conditions as it deems necessary to impose." 10 In terms of Section 19, an application for setting aside an award of the Facilitation Council cannot be entertained by any court unless the appellant has deposited seventy-five per cent of the amount in terms of the award. In view of the provisions of Section 18(4), where the Facilitation Council proceeds to arbitrate upon a dispute, the provisions of the Act of 1996 are to apply to the dispute as if it is in pursuance of an arbitration agreement under sub-section (1) of Section 7 of that Act. Hence, the remedy which is provided under Section 34 of the Act of 1996 would govern an award of the Facilitation Council. However, there is a super added condition which is imposed by Section 19 of MSMED Act 2006 to the effect that an application for setting aside an award can be entertained only upon the appellant depositing with the Council seventy-five per cent of the amount in terms of the award. Section 19 has been introduced as a measure of security for enterprises for whom a special provision is made in the MSMED Act by Parliament. In view of the provisions of Section 18(4), the appellant had a remedy under Section 34 of the Act of 1996 to challenge the award which it failed to pursue. 11 In the judgment of this Court in Gujarat State Civil Supplies Corporation Limited (supra), a two-Judge Bench of the Court has observed, in the course of drawing its conclusions, that:

"The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/Arbitral Tribunal under Section 18(3) of the MSMED Act 2006 would be governed by the Arbitration Act, 1996."

12 The appellant failed to avail of the remedy under Section 34. If it were to do so, it would have been required to deposit seventy-five per cent of the decadal amount. This obligation under the statute was sought to be obviated by taking recourse to the jurisdiction under Articles 226/227 of the Constitution. This was clearly impermissible.

13 For the above reasons, we are in agreement with the view of the Division Bench of the High Court that the writ petition which was instituted by the appellant was not maintainable. 2023 SCC OnLine SC 1852

18. Learned counsel for the 1st respondent while relying on the above decisions submits that Section 19 has been introduced as a measure of security for enterprises for whom a special provision is made in the MSMED Act by parliament. In view of the provisions of Section 18(4), the petitioners had a remedy under Section 34 of the Act of 1996 to challenge the award which it failed to pursue. Therefore, prayed to dismiss the writ petitions.

19. Learned Government Pleader appearing for the official respondent vehemently opposed for allowing the writ petitions and prayed to dismiss the same.

20. On the other hand, Sri P. Sri Raghuram, learned Senior counsel appearing for the 2nd respondent while denying the contents made by the petitioners, submits that the petitioner is the respondent before the AP Micro and Small enterprises Facilitation counsel (APMSEFC). The 2nd respondent filed claim petition before the Council arising out of purchase orders by which goods were supplied to the petitioner by the 2nd respondent claiming the arrears of amount due on the invoices raised by the respondent. the claim was raised when the petitioners failed to make payment by the appointed date and thus incurred a penalty by way of interest and contemplated under the Micro small and medium enterprises development Act 2006. He submits that the amount claimed in the claim petition consist of claim, which arises out of Section 15, 16 and 17 of MSMED Act 2006, which reads as under:

15. Liability of buyer to make payment.--

Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

**SEC 16: DATE FROM WHICH AND RATE AT WHICH INTEREST IS PAYABLE:**

where any buyer fails to make payment of the amount to the supplier, as required under Sec 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier are in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

**SEC 17: RECOVERY OF AMOUNT DUE:** for any goods supplies or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under SEC. 16.

**SEC.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 sec. 17, make a reference to the micro and small enterprises facilitation council.

(2) on receipt of a reference under sub-Sec. 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 Sec 65 to 81 of the

Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under part III of that Act.

21. Learned Senior Counsel submits that, in the instance case, there is no dispute this respondent is a small scale industry. There is also no dispute that were purchase orders between the parties and there was liability to make payment on the supplies made by the respondent to the petitioner. However, according to the MSMED Act, 2006, the movement there is a delay in payment of the amounts due beyond the appointed date, the penalty in the form of interest as stipulated under Sec. 15, 16 and 17 will be fastened and the buyer is liable to make this payment as penalty and the total amount becomes due and there will not be any distinction between the principle amount and the interest as it is by way of penalty. He further submits that the petitioner has placed 6 purchase orders on this respondent. The purchase orders vide the P.O. No. 93, dt.26.10.1998 P.O No.98 dated 28.10.1998 and all the material were supplied and the claim petitions were filed by the 2nd respondent before 1st respondent are on 01.09.2005 and 01.06.2005 i.e., within three years therefore the contention of the petitioner that the claims are barred by the limitation is untenable. Learned Senior Counsel further submits that, the petitioners have not paid the due amounts to the 2nd respondent. .

22. Learned Senior Counsel further submits that the award was passed by the 1st respondent on 11.11.2011 and the petitioners have filed writ petitions of 22.01.2013. It is only to avoid 75% of the awarded amount under Section 19 of the 2006 Act, the present writ petitions were filed. If really, aggrieved by the award of the 1st respondent, immediately thereon, the petitioners ought to have approached competent court. As per section 34 of the Arbitration and Conciliation Act, an appeal before the competent court, can be filed before expiry of 90 days. But, in the instant case, the writ petitioners without approaching the competent court, within the time, approached this Hon'ble Court after lapse of 14 months. No explanation offered by the petitioners to that extent. Learned Senior Counsel further submits that the writ petitioners never challenge the interim order dated 07.11.2009 passed by the 1st respondent. In view of the doctrine of principle of merger, the interim order dt.07.11.2009 is no longer as on date, as it is merged in the final order.

23. It is settled that originally the relief under Article 226 of the Constitution of India, is not available if an efficacious remedy available under the statute itself. Admittedly statute provide, an appeal this award passed by the 1st respondent. the petitioners utterly failed to explain the reasons for not approaching the competent Civil Court which provided under the statute. He submits that the liability is a continue liability as per Section 22 of 2006 Act. Therefore the buyer/petitioners statutorily bound to acknowledge the liability, year after year, in their public accounts, question of any limitation arising out of such transaction could not arise

24. To support his contentions, learned Senior Counsel has placed reliance on a catena of decisions reported in India Glycols Limited and another versus Micro and Small Enterprises Facilitation Council, Medchal-Malkajgiri and others<sup>28</sup>, wherein the Hon'ble Apex Court held that :

9 Section 19 provides recourse against an award of the Facilitation Council in the following terms:

"19. Application for setting aside decree, award or order -- No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of 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.

the case, subject to such conditions as it deems necessary to impose." 10 In terms of Section 19, an application for setting aside an award of the Facilitation Council cannot be entertained by any court unless the appellant has deposited seventy-five per cent of the amount in terms of the award. In view of the provisions of Section 18(4), where the Facilitation Council proceeds to arbitrate upon a dispute, the provisions of the Act of 1996 are to apply to the dispute as if it is in pursuance of an arbitration 2023 SCC OnLine SC 1852 agreement under sub-section (1) of Section 7 of that Act. Hence, the remedy which is provided under Section 34 of the Act of 1996 would govern an award of the Facilitation Council. However, there is a super added condition which is imposed by Section 19 of MSMED Act 2006 to the effect that an application for setting aside an award can be entertained only upon the appellant depositing with the Council seventy-five per cent of the amount in terms of the award. Section 19 has been introduced as a measure of security for enterprises for whom a special provision is made in the MSMED Act by Parliament. In view of the provisions of Section 18(4), the appellant had a remedy under Section 34 of the Act of 1996 to challenge the award which it failed to pursue ..

2 The appellant failed to avail of the remedy under Section 34. If it were to do so, it would have been required to deposit seventy-five per cent of the decretal amount. This obligation under the statute was sought to be obviated by taking recourse to the jurisdiction under Articles 226/227 of the Constitution. This was clearly impermissible.

13 For the above reasons, we are in agreement with the view of the Division Bench of the High Court that the writ petition which was instituted by the appellant was not maintainable.

(ii) In another case reported in Tamilnadu Generation and Distribution Corporation Limited and others versus State of U.P and others<sup>29</sup>, wherein the High Court of Allahabad held that :

"In the instant writ petition under Article 226 of the Constitution of India has been filed challenging the order dated 01.01.2024 whereby respondent no.2 (Zonal Micro and Small Enterprises, Facilitation Council (MSEFC), Meerut Zone, Meerut) (for short 'the Facilitation Council') has declared an award of a total sum of Rs.1,49,48,762/- in favour of respondent no.3, in exercise of powers under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short 'the MSME Act, 2006').

..

Respondent no. 3 raised preliminary objection with regard to maintainability of the writ petition on the ground of availability of alternative remedy of filing objections against the impugned award under Section 34 of the Arbitration and Conciliation Act, 1996, read with Section 18(3) of the MSME Act, 2006. Additionally, it is also contended that unless 75% of the amount in terms of impugned award is deposited by the petitioners, the challenge would not be maintainable in view of Section 19 of the MSME Act, 2006. In support of his submission, he places reliance on the judgment of Supreme Court in the case of M/s India Clycols Limited and another Vs. Micro and Small Enterprises Facilitation Council, Medchal - Malkajgiri and others in Civil Appeal No.7491 of 2023, arising out of SLP (C) No.9899 of 2023, decided on 06.11.2023.

19. Application for setting aside decree, award or order.-- No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case subject to such conditions as it deems necessary to impose."

Xxx 2024 SCC OnLine 4718 he appellant failed to avail of the remedy under Section 34. If it were to do so, it would have been required to deposit seventy-five per cent of the decretal amount. This obligation under the statute was sought to be obviated by taking recourse to the jurisdiction under

Articles 226/227 of the Constitution. This was clearly impermissible.

13. For the above reasons, we are in agreement with the view of the Division Bench of the High Court that the writ petition which was instituted by the appellant was not maintainable."

(iii) In another case reported in *Mrinmoy Maity v. Chhanda Koley and others*<sup>30</sup>, wherein it was held that :

For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court Xx If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction.

((iv) In another decision reported in *National Small Industries Corporation Ltd., NSIC versus State of Telangana*, rep. by its Pr.

Secretary, Industries Department and others<sup>31</sup>, wherein the High Court of Telangana at Hyderabad held that :

By filing this petition under Article 226 of the Constitution of India, petitioner has prayed for setting aside of the award dated 03.11.2022 passed by the Telangana State Micro and Small Enterprises Facilitation Council, Ranga 4 HCJ & NTRJ Reddy Region (briefly referred to hereinafter as 'the Facilitation Council') in Case No.236/MSEFC/2020.

Xx Be that as it may, we are not inclined to entertain the writ petition for two reasons. Firstly it is now trite law that an award passed by the Facilitation Council under Section 18 of the MSME Act can be questioned under Section 34 of the Arbitration and Conciliation Act, 1996 (briefly referred to hereinafter as 'the 1996 Act').

5.1. We see no reason to by-pass the remedy provided under the 1996 Act read with the MSME Act and entertain the writ petition.

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(v) In another case reported in Ballarpur Industries Ltd., Chanderpur District, Maharashtra v. A.P. Micro Small Enterprises Facilitation Council, Hyderabad and another<sup>32</sup>, wherein the High Court of Judicature, Telangana and Andhra Pradesh at Hyderabad held that "Micro, Small Medium Enterprises Development Act 2006 - Sections 18, 19 - Award passed by Council under S.18 - writ petition against - Not maintainable - only remedy that is available to petitioner is under S.34 of Arbitration Act.

(vi) In another case reported in Goodyear India Limited versus Norton Intech Rubbers Private Limited and another<sup>33</sup> , wherein the Hon'ble Apex Court held that : the learned Single Judge having considered the submissions made on the said provision came to the conclusion that on a plain reading of the section, the Court had no discretion to either waive or reduce the amount of seventy five percent of the award as a pre-deposit for filing of the appeal and, accordingly, dismissed the original petition, with leave to the petitioner to deposit an amount, amounting to seventy five percent of the award within an extended period of six weeks. The Division Bench before whom the aforesaid appeal was preferred concurred with the judgment of the learned Single Judge and while dismissing the appeal, extended the period for deposit of the aforesaid amount by a further period of six weeks.

25. On a perusal of the material on record, this Court observed from the counter statement filed by the petitioners herein in Ref No.180 of 2004, 2014 (6) ALD 266 (2012) 6 Supreme Court Cases 345 which is impugned in WP No.2771 of 2013, wherein the Micro and Small Enterprises Facilitation Counsel at Hyderabad held that, a reading of the provision under Section 17 of Act, 27 of 2006, the Act does not provide for recovery of the principal amount when a dispute arises as to what is the principal amount. In the instant case the respondent had paid all the principal amounts under the purchase orders. But the claimant has raised a dispute contending that the discount amount and liquidated damages which have been deducted as per the mutually agreed terms, ought not to have been deducted. Since this dispute relates to the principal amount payable but does not relate to interest for delayed payment, it is outside the scope of Act, 27 of 2006. Consequently the Facilitation Council does not have jurisdiction to entertain this dispute. It is submitted that it cannot go into the question of validity or legality of the deduction of interest and liquidated damages made as per the agreed terms between the parties.

26. Further, it is the contention of learned Senior Counsel for the petitioners that, in the above stated counter, it was clearly mentioned by the petitioners herein that the respondent conducted a meeting of all its suppliers including the claimant. All of them agreed in that meeting, including the claimant, that the respondent may recover Rs.1,550/- per M.T while releasing the pending bills. It is further contentions of learned Senior Counsel that, similarly the claim for recovery or liquidated damages is also barred by limitation taking into consideration the dates when balance bill amounts were paid after deduction of the amount of liquidated damages. The balance amount were received

without any objection and in full satisfaction. The liquidated damages have been imposed as per mutually agreed terms of contract. Therefore the council has no jurisdiction to entertain or consider the dispute raised against imposition of liquidated damages.

27. On hearing the submissions of the learned counsels and on perusing the material on record, it is an admitted fact that the petitioners placed purchase orders to the 2nd respondent. in pursuance of the same, the 2nd respondent supplied material. It is the contention of the respondents counsel that the Section 18(4) of the 2006 Act, says that "Notwithstanding anything contained in any other law for 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 and therefore submits that the 1st respondent having its jurisdiction.

28. In Union of India vs. Shri Kant Sharma<sup>34</sup>, wherein the Hon'ble Supreme Court has held that though the jurisdiction of the High Court under Article 226 of the Constitution of India and that of the Supreme Court under Article 32 of the Constitution of India, cannot be circumscribed by the provisions of any enactment, but they certainly have due regard to the legislative intent evidenced by the Act and exercise their jurisdiction consistent with the Act. Furthermore, when statutory forum is created by law for redressal (2015) 6 SCC 773 of grievances, a writ petition should not be entertained ignoring the statutory dispensation. Thus, the High Court should not entertain petition under Article 226 of the Constitution of India if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of itself contains a mechanism for redressal of grievance.

29. The provisions contained in the MSMED Act with the aid of the 1996 Act are self-contained, providing therein the statutory mechanism of conciliation and/or reference to arbitration. They also provide that the award passed by the Facilitation Council shall be deemed to be an award passed under the 1996 Act. If the order/award passed by the Facilitation Council is an award under the 1996 Act, the same can be assailed under the MSMED Act, read with the provisions of the 1996 Act and writ remedy under Article 226 of the Constitution of India, is not available.

30. The argument canvassed by the learned Senior counsel for the writ petitioners based on violation of principles of natural justice, if accepted, would wreak havoc with the judicial hierarchy, inasmuch as every decree passed by the trial court can be challenged by preferring writ petition under Article 226/227 of the Constitution of India, on the ground of violation of principles of natural justice by the trial court.

31. Supreme Court in Sterling Industries v. Jayprakash Associates Ltd.<sup>35</sup> has clearly disapproved the stand adopted by some High Courts that AIR 2019 SC 3558 any order passed by an arbitral tribunal is capable of being corrected by the High Court under Articles 226 or 227 of the Constitution of India. Adverting to Section 34 of the 1996 Act, Supreme Court has held that intervention by the High Court under Articles 226 or 227 of the Constitution of India in an arbitral award is not permissible.

32. This Court is also not inclined to entertain the writ petition because under Section 19 of the MSME Act, no application for setting aside an award passed by the Facilitation Council shall be entertained by any Court unless the party challenging the award deposits 75% of the amount in terms of the award. No such deposits have been made.

33. Further, MSME Act is a special legislation to protect and further the interest of MSMEs. The Act provides for a dedicated dispute resolution mechanism under Section 18. To ensure that interest of the MSME is protected and to weed out frivolous challenge to an award passed by the Facilitation Council under Section 18, the statute has put in a caveat: any challenge to such an award would be entertained only upon deposit of 75% of the awarded amount.

34. That being the position and without expressing any opinion on merits, this Court is of the view that the writ petitions are clearly misconceived. Therefore, This Court found no merit in the instant writ petitions, as devoid of merits and the same are liable to be dismissed.

35. Accordingly, all the Writ Petitions are dismissed. There shall be no order as to costs. As a sequel, interlocutory applications, if any pending, shall stand closed.

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DR. K. MANMADHA RAO, J.

Date : 10 -01-2025 GvL HON'BLE DR. JUSTICE K. MANMADHA RAO WRIT PETITION Nos: 2771, 2778 and 2779 of 2013 Date :10.01.2025 GvL