

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD
CORAM:
*** HON'BLE SRI JUSTICE K. LAKSHMAN**
+ WRIT PETITION No.956 OF 2025

% Delivered on: 09-06-2025

Between:

M/s. V.K.S. Constructions

.. Petitioner

Vs.

\$ The State of Telangana and others

.. Respondents

! For Petitioner

: Mr. K.R.Kaushal Karan,
Party in person

For Respondents

: Mr. G.Madhusudhan Rao,
Ld.St.Counsel for R.3
Ld. Asst.Govt.Pleader for
Industries and Commerce

Gist

:

> Head Note

:

? Cases Referred

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¹ 2023 SCC OnLine Cal 1700.

² 2021 SCC OnLine Bom 13986.

³ 2015 SCC OnLine Del 13169.

⁴ (2007) 4 SCC 451.

⁵ 2021 SCC OnLine SC 884.

⁶ (2000) 6 SCC 293.

⁷ (2022) 1 SCC 75.

HON'BLE SRI JUSTICE K. LAKSHMAN**WRIT PETITION No. 956 OF 2025****ORDER**

Heard Mr. K.R. Kaushal Karan, appearing as party-in-person, representing the Petitioner, Mr. G. Madhusudhan Rao, learned standing counsel appearing for Respondent No. 3 and learned Asst.Govt.Pleader for Industries and Commerce, appearing for respondent Nos.1 and 2.

2. This writ petition is filed to declare the order dated 21.12.2024 passed in Case No.1292/MSEFC/2021 by 2nd respondent as non-arbitrable and illegal and to direct the Respondent No.2 to dispose of the case of the petitioner in accordance with the provisions of Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the MSME Act').

3. The present case involves a question whether a writ petition is maintainable against an order passed by the MSME Facilitation Council (Respondent No. 2 herein) under Section 16 of the Arbitration & Conciliation Act, 1996 (hereinafter 'the Act, 1996') holding that no jurisdiction to arbitrate exists.

4. Before deciding the issue under consideration, the relevant facts need to be stated. The Petitioner, a partnership firm, registered itself under the MSME Act. It had participated in the tender conducted by the Greater Hyderabad Municipal Corporation - respondent No. 3 for executing work relating to the 'Improvement of Nanakramguda Expressway Junction to Phoenix Info City via Nanakramguda village, Hyderabad'. The Petitioner was selected for quoting the lowest work expenditure. Accordingly, an agreement dated 25.06.2013 and a contract deed dated 25.06.2013 was entered into between the Petitioner and Respondent No. 3.

5. The Petitioner claims to have executed the work as per the work order dated 25.06.2013 issued by Respondent No. 3. The Petitioner raised an invoice dated 10.05.2016 seeking payment of Rs. 25,11,618/- As Respondent No. 3 failed to discharge its liability under Section 15 of the MSME Act, the Petitioner filed an online application dated 14.04.2020 through the Samadhan Portal for resolution of the dispute by the MSME Facilitation Council (hereinafter 'Council').

6. The Council had issued notice on three occasions i.e., on 05.11.2021, 22.03.2022, and 31.03.2023 directing Respondent No. 3

to appear for the conciliation meeting. Noting the failure of Respondent No. 3 in participating in the conciliation proceedings, the Council referred the matter to arbitration under Section 18 of the MSME Act. Accordingly, an arbitration notice dated 05.05.2023 was issued to Respondent No. 3.

7. During the arbitral proceedings, Respondent No. 3 objected to the jurisdiction of the Council on the ground that disputes arising out of works contracts cannot be adjudicated by the Council. They contended that the work order dated 25.06.2013 was in the nature of a works contract.

8. After hearing both the Petitioner and Respondent No. 3, the Council *vide* impugned order dated 21.12.2024 held that they have no jurisdiction to arbitrate the dispute. The said order was passed under Section 16 of the Act, 1996 holding that the MSME Act does not cover 'works contracts'.

9. The concluding portion of the impugned order is extracted below:

“D. DECISION OF THE COUNCIL ON WORKS CONTRACT ISSUE:

The Council has unanimously decided that MSEFC Ranga Reddy Region has no Jurisdiction for

arbitrating the subject matter of case falling under WORKS CONTRACTS and thus the claim is rejected as NON ARBITRABLE and the following order is issued:

ORDER

The Council unanimously decides that it has no jurisdiction to arbitrate the claim No. 1292/MSEFC/2021 Claimant M/s VKA Constructions, H. No. 11-13-1056/2, Road No. 9, Vasavai Colony, R K Puram – 500035 and Respondent M/s. O/o. Executive Engineer, PD-WZ, GHMC, Hyderabad, 7th floor, Abids Parking Complex, Hyderabad, Telangana – 500001.

The claim is deemed as Non-Arbitrable and hence dismissed.”

10. The Petitioner challenges the impugned order dated 21.12.2024 mainly on the ground that it indulges in the activity of ‘quarrying of stone and construction of roads.’ The said activity, according to the Petitioner, is classified as a manufacturing activity as per the National Classification Code. Therefore, the Petitioner contended that the work order dated 25.06.2013 is not a works contract. Further, it was contended that by virtue of registration under the MSME Act, the Petitioner is entitled for dispute resolution under Section 18. Likewise, reliance was placed on **Hindustan Petroleum Corpn. Ltd. v. W.B. State Micro, Small Enterprises Facilitation**

Council¹, to contend that the Council can adjudicate disputes arising out of a works contract.

11. Respondent Nos. 2 and 3 supported the findings of the Council in the impugned order. Further, 3rd respondent, in its counter affidavit, relied on the judgment passed by the Bombay High Court in **P.L. Adke v. Wardha Municipal Corpn./Council**² and **Shree Gee Enterprises v. Union of India**³, to contend that it cannot adjudicate disputes arising out of a works contract.

12. This Court need not go into the merits of the case dealing with the nature and interpretation of the contract in question as the present writ petition cannot be entertained. There is an efficacious and alternative remedy under Section 37 (2) of the Act, 1996. It is pertinent to note that the impugned order was passed under Section 16 of the Act, 1996. Against an order passed under Section 16 of the Act, 1996, a direct appeal is provided for under Section 37 of the Act, 1996. For the sake of convenience, both Section 16 and 37 of the Act, 1996 are extracted below:

¹2023 SCC OnLine Cal 1700.

²2021 SCC OnLine Bom 13986.

³2015 SCC OnLine Del 13169.

16. Competence of arbitral tribunal to rule on its jurisdiction.—(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with Section 34.

37. Appealable orders.—(1) [Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to

hear appeals from original decrees of the Court passing the order, namely:—

[(a) refusing to refer the parties to arbitration under Section 8;

(b) granting or refusing to grant any measure under Section 9;

(c) setting aside or refusing to set aside an arbitral award under Section 34.]

(2) Appeal shall also lie to a court from an order of the arbitral tribunal—

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of Section 16; or

(b) granting or refusing to grant an interim measure under Section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

13. As can be seen from the above provisions, if the arbitral tribunal decides its jurisdiction under Section 16 and holds that it has no jurisdiction, then such order is appealable. In this regard, reference may be made to the following paragraphs of the Supreme Court's decision in **National Thermal Power Corpn. Ltd. v. Siemens Atkeingesellschaft**⁴:

18. The expression “jurisdiction” is a word of many hues. Its colour is to be discerned from the setting in which it is used. When we look at Section

⁴(2007) 4 SCC 451.

16 of the Act, we find that the said provision is one, which deals with the competence of the Arbitral Tribunal to rule on its own jurisdiction. *SBP & Co. v. Patel Engg. Ltd.* [(2005) 8 SCC 618] in a sense confined the operation of Section 16 to cases where the Arbitral Tribunal was constituted at the instance of the parties to the contract without reference to the Chief Justice under Section 11(6) of the Act. In a case where the parties had thus constituted the Arbitral Tribunal without recourse to Section 11(6) of the Act, they still have the right to question the jurisdiction of the Arbitral Tribunal including the right to invite a ruling on any objection with respect to the existence or validity of the arbitration agreement. It could therefore rule that there existed no arbitration agreement, that the arbitration agreement was not valid, or that the arbitration agreement did not confer jurisdiction on the Tribunal to adjudicate upon the particular claim that is put forward before it. Under sub-section (5), it has the obligation to decide the plea and where it rejects the plea, it could continue with the arbitral proceedings and make the award. Under sub-section (6), a party aggrieved by such an arbitral award may make an application for setting aside such arbitral award in accordance with Section 34. In other words, in the challenge to the award, the party aggrieved could raise the contention that the Tribunal had no jurisdiction to pass it or that it had exceeded its authority, in passing it. This happens when the Tribunal proceeds to pass an

award. It is in the context of the various sub-sections of Section 16 that one has to understand the content of the expression “jurisdiction” and the scope of the appeal provision. In a case where the Arbitral Tribunal proceeds to pass an award after overruling the objection relating to jurisdiction, it is clear from sub-section (6) of Section 16 that the parties have to resort to Section 34 of the Act to get rid of that award, if possible. **But, if the Tribunal declines jurisdiction or declines to pass an award and dismisses the arbitral proceedings, the party aggrieved is not without a remedy. Section 37(2) deals with such a situation. Where the plea of absence of jurisdiction or a claim being in excess of jurisdiction is accepted by the Arbitral Tribunal and it refuses to go into the merits of the claim by declining jurisdiction, a direct appeal is provided. In the context of Section 16 and the specific wording of Section 37(2)(a) of the Act, it would be appropriate to hold that what is made directly appealable by Section 37(2)(a) of the Act is only an acceptance of a plea of absence of jurisdiction, or of excessive exercise of jurisdiction and the refusal to proceed further either wholly or partly.**

(emphasis supplied)

14. It is trite that existence of an alternative remedy is not always a bar to maintain a writ petition. However, exercise of power

under Article 226, when an alternative remedy is available, shall be in exceptional cases. In **Assistant Commissioner of State Tax v. Commercial Steel Limited**⁵, the Supreme Court has held as follows:

11. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. **The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:**

(i) a breach of fundamental rights;

(ii) a violation of the principles of natural justice;

(iii) an excess of jurisdiction; or

(iv) a challenge to the vires of the statute or delegated legislation.

(emphasis supplied)

15. In the present case, the Petitioner failed to show any infraction of his fundamental rights or violation of principles of natural justice or excessive exercise of jurisdiction. Moreover, the dispute between the Petitioner and Respondent No. 3 is in the realm of contracts. On numerous occasions, the Supreme Court has reiterated

⁵2021 SCC OnLine SC 884.

that contractual disputes involving interpretation of contracts cannot be entertained under Article 226.

16. In **Kerala SEB v. Kurien E. Kalathil**⁶, the Supreme Court has held as follows:

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. **The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any**

⁶(2000) 6 SCC 293.

amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies.

(emphasis supplied)

17. In **Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.**⁷, the Supreme Court has held that an order passed under Section 16 of the Act, 1996 cannot be challenged under Article 226 of the Constitution of India. Further, the Apex Court held that the question whether a particular contract is a works contract or not cannot be decided under writ jurisdiction. The relevant paragraph of the said judgments is extracted below:

25. The Gujarat Act was enacted in 1992 with the object to provide for the constitution of a tribunal to arbitrate disputes particularly arising from works contract to which the State Government or a public undertaking is a party. A works contract is defined under Section 2(k) of the Gujarat Act. The definition includes within itself a contract for supply of goods relating to the execution of any of the works specified under the section. However, a plain reading of the contract between the parties indicates that it was for both manufacturing as well as supply of bricks.

⁷(2022) 1 SCC 75.

Importantly, a contract for manufacture *simpliciter* is not a works contract under the definition provided under Section 2(k). The pertinent question therefore is whether the present contract, which is composite in nature, falls within the ambit of a works contract under Section 2(k) of the Gujarat Act. This is a question that requires contractual interpretation, and is a matter of evidence, especially when both parties have taken contradictory stands regarding this issue. It is a settled law that the interpretation of contracts in such cases shall generally not be done in the writ jurisdiction. Further, the mere fact that the Gujarat Act might apply may not be sufficient for the writ courts to entertain the plea of Respondent 1 to challenge the ruling of the arbitrator under Section 16 of the Arbitration Act.

(emphasis supplied)

18. In light of the aforesaid discussion, this Court holds as follows:

- i. The writ petition is dismissed as not maintainable;
- ii. The Petitioner is at liberty to avail the alternative remedy of appeal under Section 37 (2) of the Arbitration & Conciliation Act, 1996;
- iii. In the event, the Petitioner opts to not challenge the impugned order dated 21.12.2024, the remedy of filing a recovery suit or any such other remedy will remain open.

As a sequel thereto, miscellaneous applications, if any, pending in the Arbitration Application shall stand closed.

K. LAKSHMAN, J

Date: 09th June, 2025

**Note: L.R.copy to be marked.
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