[2025] 6 S.C.R. 422 : 2025 INSC 689

M/s Harcharan Dass Gupta
v.
Union of India

(Civil Appeal No. 6807 of 2025)

14 May 2025

[Pamidighantam Sri Narasimha* and Joymalya Bagchi, JJ.]

Issue for Consideration

In a case covered under the Micro, Small and Medium Enterprises (Development) Act, 2006, whether the High Court erred in holding that the Delhi Arbitration Centre lacked jurisdiction to conduct arbitral proceedings on the ground that the contract between the appellant-supplier (located in Delhi) and the respondent (based in Bengaluru) provided that the seat for arbitration shall be at Bengaluru.

Headnotes†

Micro, Small and Medium Enterprises (Development) Act, 2006 – s.18(4) – Arbitration and Conciliation Act, 1996 – Overriding effect of MSMED Act over Arbitration Act – Seat of arbitration in cases covered under the MSMED Act:

Held: s.18(4), MSMED Act vests jurisdiction for arbitration in the Facilitation Council where the supplier is located – A private agreement between the parties cannot obliterate the statutory provisions – Thus, the agreement between the parties stands overridden by the statutory provisions under the MSMED Act – Appellant supplier-MSME is located in Delhi and as such the Facilitation Council, Delhi in exercise of its power, entrusted the conduct of arbitration through the institutional aegis of the Delhi Arbitration Centre – Impugned order set aside – Arbitral proceedings restored under the aegis of Delhi Arbitration Centre. [Paras 2, 9, 10, 11, 13]

Case Law Cited

Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd. **[2022] 19 SCR 1094 : (2023) 6 SCC 401 – relied on.**

List of Acts

Micro, Small and Medium Enterprises (Development) Act, 2006; Arbitration and Conciliation Act, 1996.

* Author

List of Keywords

Section 18(4) of Micro, Small and Medium Enterprises (Development) Act, 2006; Cases covered under the Micro, Small and Medium Enterprises (Development) Act, 2006; Seat of arbitration; Overriding effect of MSMED Act over Arbitration Act; Facilitation Council; Jurisdiction where the supplier is located; Location of supplier; Private agreement between the parties; MSMED Act; MSME; Agreement between the parties overridden by the statutory provisions; Delhi Arbitration Centre; Institutional aegis; Arbitral proceedings restored; Indian Space and Research Organisation (ISRO); Registered supplier under the MSMED Act; Construction of staff quarters.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6807 of 2025

From the Judgment and Order dated 22.04.2024 of the High Court of Karnataka at Bengaluru in WP No. 27269 of 2023

Appearances for Parties

Advs. for the Appellant:
Ms. Priya Kumar, Sr. Adv., Ms. Renuka Arora, Nishant Kumar.

Advs. for the Respondent:
Vikramjit Banerjee, A.S.G., Abhishek Singh, Raghav Sharma, Ishaan Sharma, C.K. Sharma, Ms. Archana Shurve Shinde, Dr. N. Visakamurthy.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

1. Delay condoned, leave granted.

2. The present appeal is directed against the order dated 22.04.2024 passed by the Karnataka High Court whereby the writ petition[1] filed by the respondent has been allowed, and it has been held that the Delhi

1 Writ Petition No. 27269 of 2023 (GM-RES).

Arbitration Centre lacks jurisdiction to manage arbitral proceedings as the contract between the appellant and the respondent provides that the seat for arbitration shall be at Bengaluru. For the reasons to follow and in view of the overriding effect of Micro, Small and Medium Enterprises (Development) Act, 2006[2] over the Arbitration and Conciliation Act, 1996[3] as affirmed by this Court in ***Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd.***,[4] we have allowed the appeal and restored the arbitral proceedings under the aegis of Delhi Arbitration Centre. We will first indicate the facts to the extent they are necessary for the determination of the issue, which are as follows.

3. The respondent herein, the Indian Space and Research Organisation (ISRO), based in Bengaluru, invited bids for construction of staff quarters in New Delhi by way of the tender notice[5] dated 16.01.2017. Appellant, a registered supplier under the MSMED Act was selected, leading to an agreement dated 11.09.2017 for the execution of the project.

4. In view of certain disputes between the parties, the appellant invoked jurisdiction of the Facilitation Council at Delhi under Section 18 of the MSMED Act. In exercise of powers under Section 18, the Facilitation Council issued a notice to the respondent on 30.03.2022 for conciliation, but the respondent refused to participate in the said proceedings. The non-cooperation of the respondent led to the inevitable consequence of the Facilitation Council taking its decision to refer the dispute to arbitration under Section 18(3) of the MSMED Act. As the arbitration was to be conducted through institutional through Delhi Arbitration Centre, the Centre proceeded further and appointed a sole arbitrator by way of a notice dated 28.05.2022.

5. The arbitral proceedings commenced on 08.06.2022 and by an order dated 26.09.2023, the arbitrator took the claim petition on record and directed the respondent to file its statement of defence within four weeks. Instead of filing its defence, the respondent chose to approach the High Court of Karnataka by filing a writ petition under

2 Hereinafter referred to as the 'MSMED Act.'

3 Hereinafter referred to as the 'Arbitration Act.'

4 (2023) 6 SCC 401.

5 E-Tender Notice No.CMG/ISRO-HQ/ET/CC 11/2016-17.

Article 226/227 challenging the assumption of jurisdiction by the Delhi Arbitration Centre and also the conduct of arbitral proceedings in Delhi. While hearing the writ petition, the High Court passed an *ex parte* dated 07.12.2023 order granting stay on further proceedings. Eventually, by the order impugned before us, the High Court disposed of the writ petition declaring that the Delhi Arbitration Centre, at the instance of the Facilitation Council, Delhi could not have assumed jurisdiction as it is contrary to the agreement between the parties.

6. In view of the specific terms of the agreement dated 11.09.2017 contained in Clauses 25 and 25A providing for settlement of disputes, it was agreed that the seat of arbitration shall be at Bengaluru. In view of the contractual clauses, the High Court held that the proceedings conducted by the Delhi Arbitration Centre and the arbitration to be without jurisdiction, and as such illegal and contrary to law.

7. We have heard the submissions by Ms. Priya Kumar, learned senior counsel appearing on behalf of the appellant and Mr. Vikramjit Banerjee, learned A.S.G. appearing on behalf of the respondent.

8. We have given our anxious consideration to the submissions of both the parties. In our view, the issue is no more *res integra* and is covered by the decision of this Court in ***Mahakali***. As we need to do nothing more than refer to the relevant portions of the binding precedent, the reasoning, as well as the conclusion in this decision are extracted herein for ready reference. At the outset, the following two paragraphs clearly explain the principle on the basis of which the court holds that the MSMED Act overrides the Arbitration Act:

> "***42.*** *Thus, the Arbitration Act, 1996 in general governs the law of Arbitration and Conciliation, whereas the MSMED Act, 2006 governs specific nature of disputes arising between specific categories of persons, to be resolved by following a specific process through a specific forum. Ergo, the MSMED Act, 2006 being a special law and the Arbitration Act, 1996 being a general law, the provisions of the MSMED Act would have precedence over or prevail over the Arbitration Act, 1996. In Silpi Industries case [Silpi Industries v. Kerala SRTC, (2021) 18 SCC 790 : 2021 SCC OnLine SC 439] also, this Court had observed while considering the issue with regard to the maintainability and counter-claim in arbitration proceedings initiated as per Section 18(3) of the MSMED Act, 2006 that the MSMED*

Act, 2006 being a special legislation to protect MSMEs by setting out a statutory mechanism for the payment of interest on delayed payments, the said Act would override the provisions of the Arbitration Act, 1996 which is a general legislation. Even if the Arbitration Act, 1996 is treated as a special law, then also the MSMED Act, 2006 having been enacted subsequently in point of time i.e. in 2006, it would have an overriding effect, more particularly in view of Section 24 of the MSMED Act, 2006 which specifically gives an effect to the provisions of Sections 15 to 23 of the Act over any other law for the time being in force, which would also include the Arbitration Act, 1996.

43. *The Court also cannot lose sight of the specific non obstante clauses contained in sub-sections (1) and (4) of Section 18 which have an effect overriding any other law for the time being in force. When the MSMED Act, 2006 was being enacted in 2006, the legislature was aware of its previously enacted Arbitration Act of 1996, and therefore, it is presumed that the legislature had consciously made applicable the provisions of the Arbitration Act, 1996 to the disputes under the MSMED Act, 2006 at a stage when the conciliation process initiated under sub-section (2) of Section 18 of the MSMED Act, 2006 fails and when the Facilitation Council itself takes up the disputes for arbitration or refers it to any institution or centre for such arbitration. It is also significant to note that a deeming legal fiction is created in Section 18(3) by using the expression "as if" for the purpose of treating such arbitration as if it was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996. As held in K. Prabhakaran v. P. Jayarajan [K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754 : 2005 SCC (Cri) 451] , a legal fiction presupposes the existence of the state of facts which may not exist and then works out the consequences which flow from that state of facts. Thus, considering the overall purpose, objects and scheme of the MSMED Act, 2006 and the unambiguous expressions used therein, this Court has no hesitation in holding that the provisions of Chapter V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996."*

9. Further, the Court proceeds to hold that even the agreement between the parties stands overridden by the statutory provisions under the MSMED Act:

> ***44.*** *The submissions made on behalf of the counsel for the buyers that a conscious omission of the word "agreement" in sub-section (1) of Section 18, which otherwise finds mention in Section 16 of the MSMED Act, 2006 implies that the arbitration agreement independently entered into between the parties as contemplated under Section 7 of the Arbitration Act, 1996 was not intended to be superseded by the provisions contained under Section 18 of the MSMED Act, 2006 also cannot be accepted. A private agreement between the parties cannot obliterate the statutory provisions. Once the statutory mechanism under sub-section (1) of Section 18 is triggered by any party, it would override any other agreement independently entered into between the parties, in view of the non obstante clauses contained in sub-sections (1) and (4) of Section 18. The provisions of Sections 15 to 23 have also overriding effect as contemplated in Section 24 of the MSMED Act, 2006 when anything inconsistent is contained in any other law for the time being in force. It cannot be gainsaid that while interpretating a statute, if two interpretations are possible, the one which enhances the object of the Act should be preferred than the one which would frustrate the object of the Act. If submission made by the learned counsel for the buyers that the party to a dispute covered under the MSMED Act, 2006 cannot avail the remedy available under Section 18(1) of the MSMED Act, 2006 when an independent arbitration agreement between the parties exists is accepted, the very purpose of enacting the MSMED Act, 2006 would get frustrated.*
>
> ***45.*** *…*
>
> ***46.*** *The submission therefore that an independent arbitration agreement entered into between the parties under the Arbitration Act, 1996 would prevail over the statutory provisions of the MSMED Act, 2006 cannot be countenanced. As such, sub-section (1) of Section 18*

of the MSMED Act, 2006 is an enabling provision which gives the party to a dispute covered under Section 17 thereof, a choice to approach the Facilitation Council, despite an arbitration agreement existing between the parties. Absence of the word "agreement" in the said provision could neither be construed as casus omissus in the statute nor be construed as a preclusion against the party to a dispute covered under Section 17 to approach the Facilitation Council, on the ground that there is an arbitration agreement existing between the parties. In fact, it is a substantial right created in favour of the party under the said provision. It is therefore held that no party to a dispute covered under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Facilitation Council under Section 18(1) thereof, merely because there is an arbitration agreement existing between the parties.

47. *The aforesaid legal position also dispels the arguments advanced on behalf of the counsel for the buyers that the Facilitation Council having acted as a Conciliator under Section 18(2) of the MSMED Act, 2006 itself cannot take up the dispute for arbitration and act as an arbitrator. Though it is true that Section 80 of the Arbitration Act, 1996 contains a bar that the Conciliator shall not act as an arbitrator in any arbitral proceedings in respect of a dispute that is subject of conciliation proceedings, the said bar stands superseded by the provisions contained in Section 18 read with Section 24 of the MSMED Act, 2006. As held earlier, the provisions contained in Chapter V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996. The provisions of the Arbitration Act, 1996 would apply to the proceedings conducted by the Facilitation Council only after the process of conciliation initiated by the Council under Section 18(2) fails and the Council either itself takes up the dispute for arbitration or refers to it to any institute or centre for such arbitration as contemplated under Section 18(3) of the MSMED Act, 2006.*

48. *When the Facilitation Council or the institution or the centre acts as an arbitrator, it shall have all powers to*

> *decide the disputes referred to it as if such arbitration was in pursuance of the arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996 and then all the trappings of the Arbitration Act, 1996 would apply to such arbitration. It is needless to say that such Facilitation Council/institution/centre acting as an Arbitral Tribunal would also be competent to rule on its own jurisdiction like any other Arbitral Tribunal appointed under the Arbitration Act, 1996 would have, as contemplated in Section 16 thereof.*"

10. The issue relating to 'seat of arbitration' in all cases covered under the MSMED Act is settled in view of the pronouncement of this Court in ***Mahakali***. This position is also true by virtue of the specific provision of the MSMED Act, that is, sub-Section (4) of Section 18, which vests jurisdiction for arbitration in the Facilitation Council where the supplier is located:

> "*(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*."

11. There is no dispute about the fact that the appellant-MSME is located in Delhi and as such the Facilitation Council, (South-West), GNCTD, Old Terminal Tax Building, Kapashera, New Delhi-110037. In exercise of its power, the said Council entrusted the conduct of arbitration through the institutional aegis of the Delhi Arbitration Centre. The conclusions drawn by us are the logical consequence of the statutory regime as also declared by this Court in ***Mahakali***.

12. Mr. Vikramjit Banerjee, learned ASG submits that the decision of this Court should not in any way prejudice any rights or contentions that his client may legitimately raise and contest before the arbitral tribunal. We have no hesitation in clarifying that we have not touched upon the merits of the matter. We also direct the learned arbitrator to permit the parties to raise and argue all questions of law and fact as are legally permissible.

13. In view of the above, we allow the present appeal and set aside the impugned order dated 22.04.2024 passed by the Karnataka High Court in Writ Petition No. 27269 of 2023 (GM-RES) and direct conduct and conclusion of arbitral proceedings.

14. With these directions, the civil appeal is disposed of. There shall be no order as to costs.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey