

Gujarat Infrastructure Development Board vs Infrastructure Development

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Court : Karnataka

Decided On : Dec-01-2025

Judge : E.S.Indiresh

Appeal No. : WP/13741/2023

Appellant : Gujarat Infrastructure Development Board

Respondent : Infrastructure Development

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF DECEMBER, 2025 BEFORE THE HON'BLE MR. JUSTICE E.S.INDIRESH WRIT PETITION NO. 13741 OF 2023 (GM-RES) BETWEEN: GUJARAT INFRASTRUCTURE DEVELOPMENT BOARD BLOCK NO.18, 8TH FLOOR, UDYOG BHAVAN, SECTOR-11 GANDHINAGAR-382010, GUJARAT REP. BY MR. JWALESH ZAVERI, SENIOR MANAGER (ADMINISTRATION). PETITIONER (BY SMT. MANASI KUMAR, ADV.) AND:

1. INFRASTRUCTURE DEVELOPMENT CORPORATION
(KARNATAKA) LTD., Digitally signed by

NANJUNDACHARI YAMUNA BAI ROAD, Location: HIGH

KARNATAKA BENGALURU-560001 REPRESENTED HEREIN BY ITS
AUTHORIZED SIGNATORY A COMPANY AS PER COMPANIES ACT
2013.

2. MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL,
BENGALURU DEPARTMENT OF INDUSTRIES AND COMMERCE NO.
49, FIRST FLOOR, KHANIJA BHAVAN RACE COURSE ROAD,
BENGALURU-560001 -2- REPRESENTED BY THE DIRECTOR
(MSME), INDUSTRIES AND COMMERCE DEPARTMENT
CONSTITUTED UNDER MSME ACT, 2006. RESPONDENTS (BY DR.
M SUNIL SASTRY, ADV. FOR R1 SRI MAHANTESH SHETTAR, AGA
FOR R2) THIS PETITION IS FILED UNDER ARTICLES 226 AND 227

OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE
IMPUGNED ORDER DATED 16/03/2023 STYLED AS AN AWARD
PASSED BY R-2 UNDER THE MICRO, SMALL AND MEDIUM
ENTERPRISES DEVELOPMENT ACT, 2006 IN CASE NO.119 OF 2021
FILED BY R-1 (ANNEXURE-A) NO.MSEFC/BNG/I
DECK.119/AWARD/2021-22/22-23. THIS PETITION, COMING ON FOR
PRELIMINARY HEARING IN B GROUP, THIS DAY, ORDER WAS
MADE THEREIN AS UNDER: CORAM: HON'BLE MR. JUSTICE
E.S.INDIRESH

ORAL ORDER

Heard learned counsel appearing for the parties.

2. In this petition, the petitioner is assailing the order

dated 16.03.2023, an award passed by respondent No.2 (Annexure-A).

3. It is submitted by Smt.Manasi Kumar, learned

counsel appearing for the petitioner by referring to the agreement between the parties as per Annexure-B dated -3- 14.08.2018 and the said agreement was terminated as per the letter dated 16.10.2020 (Annexure-C). Further, respondent No.1 herein has registered with the Ministry of Micro, Small and Medium Enterprises as per Annexure-G on 15.12.2020, subsequent to the termination of the agreement. Therefore, it is contended that, the respondent No.1 herein has no jurisdiction to approach the Tribunal/Council, as per the resolution of dispute at Annexure-A to the petition. In this regard, learned

counsel appearing for the petitioner refers to the judgment

of the Honble Supreme Court in the case of M/S.VAISHNO ENTERPRISES v/s HAMILTON MEDICAL AG & ANOTHER reported in (2022) 1 SCR 771 and in the case of NITESH ESTATES LTD. v/s MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL OF HARYANA AND OTHERS reported in 2022 SCC Online SC 1198 and accordingly, sought for interference of this Court stating that Micro and Small Enterprises Facilitation Council, Bangalore has no -4- jurisdiction to entertain the petition filed by the respondent No.1 herein.

4. Per contra, learned counsel appearing for respondent

No.1 reiterates the averments made in the statement of objections and contended that the petitioner is having efficacious remedy to approach the Competent Tribunal and accordingly, sought for dismissal of writ petition.

5. In the light of the submissions made by the learned

counsel appearing for the parties, it is not in dispute as to the agreement between the petitioner and respondent No.1 on 14.08.2018 (Annexure-B) wherein the petitioner had addressed a letter dated 16.10.2020 (Annexure-C), rescinding the contract with respondent No.1 herein. It is also forthcoming from Annexure-G that the respondent No.1 herein has secured registration on 15.12.2020 with the Competent Authority, which is subsequent to the execution of the agreement at Annexure-B to the writ petition. -5-

6. In this regard, it is relevant to mention here the declaration of law made by the Honble Supreme Court in the case of M/S.VAISHNO ENTERPRISES (supra) at paragraphs 8 and 8.1 which reads as under:

8. The short question which is posed for consideration before this Court is the jurisdiction of the Council under the MSME Act with respect to the dispute between the appellant and the respondent.

8.1 It was the case on behalf of Respondent No.1 - Buyer that as the Respondent No.1 - buyer is located outside India and is having its registered office at Switzerland the Council would have no jurisdiction to enter into the dispute between the appellant and the respondent. On the other hand, it is the case on behalf of the appellant that the agreements were executed between the parties at Delhi and the services were rendered by the appellant in India and even the Respondent No.1 is conducting its business in India through registered service centres at New Delhi, Mumbai, Kolkata, Bangalore and it had appointed a power of attorney/special agent which is based in Delhi, and after having availed the services rendered by the appellant and doing business in India, thereafter it will not be open for Respondent No.1 to contend that with respect to the dispute -6-

between the appellant and the respondent, the Council would have no jurisdiction under the MSME Act. However, while considering the main issue whether the parties shall be governed by the MSME Act or not, the relevant clause under the Agreement is required to be considered which reads as under: 9. CHOICE OF LAW

This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of India. The parties agree to resolve their differences, disputes, if any, mutually, within 30 days of the initiation of the dispute which can be extended by the mutual consent of the parties, if necessary. In the event the parties

are not able to resolve the differences by way of the said mutual dialogues, they are at a liberty to initiate appropriate actions as per law.

8.2 It is not in dispute that the contract/agreement between the appellant and the respondent has been executed on 24.08.2020. Therefore, the laws of India applicable at the time of contract/agreement shall be applicable and therefore the parties shall be governed by the laws of India prevailing/applicable at the time when the contract was executed. It is admitted position that the date on which a contract/agreement was executed i.e. on 24.08.2020 the appellant was not registered MSME. Considering the relevant provisions of the MSME Act more particularly Section 2(n) read with Section 8 of the -7-

MSME Act, the provisions of the MSME Act shall be applicable in case of supplier who has filed a memorandum with the authority referred to in sub-section (1) of Section 8. Therefore, the supplier has to be a micro or small enterprise registered as MSME, registered with any of the authority mentioned in sub-section (1) of Section 8 and Section 2(n) of the MSME Act. It is admitted position that in the present case the appellant is registered as MSME only on 28.08.2020. Therefore, when the contract was entered into the appellant was not MSME and therefore the parties would not be governed by the MSME Act and the parties shall be governed by the laws of India applicable and/or prevailing at the time of execution of the contract. If that be so the Council would have no jurisdiction to entertain the dispute between the appellant and the Respondent no.1, in exercise of powers under Section 18 of the MSME Act. Therefore, in the aforesaid peculiar facts and circumstances of the case, more particularly the terms of the Agreement, the order passed by the learned Single Judge confirmed by the Division Bench holding the Council would have no jurisdiction with respect to Respondent No.1 is not required to be interfered with. -8-

8.3. However, at the same time, the larger question/issue whether in a case where the buyer is located outside India but has availed the services in India and/or done the business in India with the Indian supplier and the contract was executed in India the MSME Act would be applicable or not and/or another larger issue that in case the supplier is subsequently registered as MSME the Council would still have jurisdiction are kept open to be considered in an appropriate case bearing in mind Section 18 as well as Section 8 of the MSME Act and the judgments of this Court in the case of M/s Shilpi Industries vs. Kerala State Road Transport Corporation, C.A. No.1570-78 of 2021 [2021 SCC Online SC 439] arising under the provisions of MSME Act and Shanti Conductors Pvt. Ltd. Vs. Assam State Electricity Board, (2019) 19 SCC 529 in which case a similar provision under the Small Scale and Ancillary Industries Undertakings, Act, 1993 came up for consideration before this Court.

7. It is also relevant to extract the declaration of law made by the Honble Supreme Court in the case of NITESH ESTATES LIMITED at paragraphs 2 to 4, which read as under: -9-

2. It is the case on behalf of the appellant that at the time when brokerage agreement was entered into between the appellant and respondent no.2, respondent no.2 was not registered as micro enterprise under the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as `MSMED Act) and, therefore the initiation of proceedings by respondent no.2 under the MSMED Act was bad in law. On the other hand, it is the case on behalf of respondent no.2 that subsequently in the year 2016, respondent no.2 got the registration under the MSMED Act retrospectively w.e.f. 2006 and therefore, the proceedings initiated by the respondent under the MSMED Act were maintainable. It is also the case on behalf of respondent no.2 that when respondent no.2 filed proceedings before the National Company Law Tribunal, Bengaluru (hereinafter referred to as `NCLT), the appellant

agreed that let the proceedings under the MSMED Act be proceeded further.

3. On the order passed by the NCLT, it is the

case on behalf of the appellant that there was no question of any concession to be given by the appellant that the proceedings before the Micro and Small Enterprises Facilitation Council may go on as the very initiation of the proceedings under the - 10 - MSMED ACT were under challenge before the High Court by way of present writ petition.

4. Having heard learned counsel appearing on

behalf of the respective parties, the question which is posed for consideration of this Court is whether the proceedings initiated by respondent no.2 under MSMED Act would be maintainable and/or permissible as at the time of entering into the borkerage agreement, respondent no.2 was not registered as micro enterprise. The issue involved is squarely covered against the respondents in view of the decision of this Court in Silpi Industries Etc. Vs. Kerala State Road Transport Corporation and Another 2021 SCC OnLine SC 439 as well as the subsequent decision of this Court in Vaishno Enterprises Vs. Hamilton Medical AG and Another 2022 SCC OnLine SC 355, taking the view that for initiation of proceedings under the MSMED Act, the registration of the complainant/application as micro enterprise shall be must. The subsequent registration of respondent no.2 with retrospective effect from 10 years back will not be of any assistance and/or help to respondent no.2.

8. Following the declaration of law made by the Honble

Supreme Court in the aforementioned cases and taking - 11 - into consideration the contract between the petitioner and respondent No.1 as per Annexure-B, I am of the view that, Micro and Small Enterprises Facilitation Council, Bengaluru has no jurisdiction to entertain the petition filed by the respondent No.1 herein.

9. In that view of the matter, I find force in the submission made by the learned counsel for the petitioner. In the result, I pass the following:

ORDER

(i) The writ petition is allowed.

(ii) The impugned order dated 16.03.2023 passed by

respondent No.2 (Annexure-A) is hereby set aside. However, it is open for the parties for resolution of dispute in a manner known to law, in terms of the contractual obligation, as per Annexure-B to the writ petition. Sd/- (E.S.INDIRESH)
JUDGE MPK CT:bms

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