

THE HONOURABLE SRI JUSTICE P. SAM KOSHY

Civil Revision Petition Nos.3136 and 3162 of 2024

COMMON ORDER :

Since the issue in the Revisions is one and the same, they are being disposed of by this Common Order.

2. Heard Mr.Vikram Pooserla, learned Senior Counsel appearing on behalf of Mr. P. Gautham Rao, learned counsel for the petitioner.

3. The instant Civil Revision Petitions are filed by the petitioner under Article 227 of the Constitution of India challenging the Common Order dated 15.06.2024 in Case No.Ref.No.235/MSEFC/2019 & Ref.No.237/MSEFC/2019 passed by the Micro and Small Enterprises Facilitation Council (for short, 'the MSEFC') under Section 16 of the Arbitration and Conciliation Act, 1996 (for short, 'the impugned order').

4. For convenience, the facts in Civil Revision Petition No.3136 of 2024 are discussed hereunder.

5. The challenge in the instant Revision is primarily to the order that was passed on 15.06.2024 to the extent that the MSEFC has, on a petition raised by the petitioner, so far as the

claim of the claimant being barred by limitation was ordered to be decided while deciding the claim on merits.

6. For ready reference, the relevant portion of the order passed by the MSEFC is reproduced as under :

“... ..

3. *The Facilitation Council shall continue Arbitration Proceedings and give Final Award on Merits as per provisions of MSMED Act, 2006. Jurisdictional issues raised by parties will be determined based on facts established during Arbitration and will be part of Final Award.”*

7. Learned Senior Counsel appearing on behalf of the petitioner submitted that in view of the decision of the Hon'ble Apex Court in the case of **Silpi Industries and others vs. Kerala State Road Transport Corporation and another**¹, the provisions of Limitation Act, 1963 applies on the Micro, Small and Medium Enterprises Development Act, 2006 as well. According to him, in terms of the revised Rules of the Telangana State Micro and Small Enterprises Facilitation Council Rules, 2017, Rule 10(3) thereof prescribes that the Council shall not enter upon the merits of the subject matter in dispute till it has decided on any challenge to jurisdiction or any challenge to any of its members. According to him, since the petitioner has already raised categorical objection in respect of the claimant's claim being barred by limitation, the

¹ (2021) 18

Council ought to have decided the said issue at the threshold, and only in the event of the said issue being decided against the petitioner, would there be a necessity for entering into the merits of the case and decide the issue.

8. In support of his contentions, learned Senior Counsel for the petitioner relied on the decisions of the Hon'ble Apex Court in the case of **Kvaerner Cementation India Limited vs. Bajrangal Agarwal and another**² and **Uttarakhand Purv Sainik Kalyan Nigam Limited vs. Northern Coal Field Limited**³; and also in the case of **SARR Freights Corporation vs. Dredging Corporation of India Limited**⁴ decided by a Division Bench of this Court in Civil Revision Petition No.1570 of 2019, dated 20.12.2019.

9. In the teeth of the observations made in the various catena of decisions referred supra and taking into consideration the impugned decision by the MSEFC, this Court does not find illegality on the part of the said MSEFC in holding that the issue on limitation raised by the respondent to be also decided while deciding the claimant's claim on merits.

² (2012) 5 S.C.C. 214

³ (2020) 12 S.C.C. 455

⁴ CRP.No.1570 of 2019, dated 20.12.2019, DB

10. However, this Court, at this juncture, would like to make an observation that when issues touching the sustainability or maintainability of the claim is raised and even if the Council decides the said issue while deciding the case on merits, it goes without saying that the issue of maintainability, particularly if it is an issue on the question of limitation, the said issue has to be decided as the first issue and only thereafter if required would the Council proceed to decide the case on merits.

11. Therefore, in the case on hand, it is directed that the MSEFC after the pleadings are concluded, to frame the issue of limitation as the first issue and decide the said issue first. That only in the event if the issue stands decided against the petitioner would there be a necessity for the MSEFC to proceed further and decide the case on merits.

12. With the aforesaid observations, the Civil Revision Petitions stand disposed of. No costs.

13. As a sequel, miscellaneous applications pending if any, shall stand closed.

P. SAM KOSHY, J

Date: 18.10.2024
Ndr