

**1IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

WRIT PETITION No. 2339 of 2023

BETWEEN:-

**AGRAWAL PANCHAYAT NYAS UJJAIN THROUGH
ITS PRESIDENT VIJAY AGRAWAL S/O SHRI
LAXMINARAYAN AGRAWAL, AGED ABOUT 59
YEARS, 87 SARDAR VALLABH BHAI PATEL MARG
INFRONT OF KHANDELWAL DHARSHALA
BUDHWARIYA DISTRICT UJJAIN (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI ANKUR MODI, ADVOCATE)

AND

- 1. M/S PROTEK AQUA SOLUTINOS PVT. LTD.
THROUGH ITS DIRECTOR KISHORE
BUNDELA S/O SUNDARLALJI BUNDELA 58 B
DWARKAPURI DISTRICT INDORE (MADHYA
PRADESH)**
- 2. AGRAWAL SAMAJ SIMHASTA SAMITI 19,
FAWWARA CHOWK, UJJAIN (MADHYA
PRADESH)**
- 3. AGRAWAL SAMAJ SIMHASTA SAMITI
THROUGH ITS PRESIDENT ASHOK GARG
M/S LAKSHMI BIEN MILL 67/5 AAGAR
ROAD, UJJAIN (MADHYA PRADESH)**
- 4. AGRAWAL SAMAJ SIMHASTA SAMITI
THROUGH ITS GENERAL SECRETARY
SHAILENDRA GARG M/S SHIVANI SALES
CORPORATION NEAR LAL MASJID, UJJAIN
(MADHYA PRADESH)**
- 5. M.P. MICRO SMALL AND MEDIUM
ENTERPRISES FACILITATION COUNCIL
VIDHYANCHAL BHAWAN, BHOPAL
(MADHYA PRADESH)**

.....RESPONDENTS

*(SHRI RAUNAK CHOUKSE, ADVOCATE FOR RESPONDENT NO.1)
(SHRI M.K. JAIN, LEARNED COUNSEL FOR THE RESPONDENTS NO.2,3
AND 4.)*

RESERVED ON :21.06.2023

PRONOUNCED ON :31.07.2023

This petition coming on for orders this day, the court passed the following:

ORDER

1] This petition has been filed by the petitioner under Article 226 of the Constitution of India against the order dated 23.12.2022, passed in MSEFC/871/2018 by the respondent no.5/M.P Micro Small and Medium Enterprises Facilitation Council. Vide the impugned order, the facilitation council has held that despite the fact the petitioner/non-applicant no.1 is not a signatory in the agreement which was executed between the respondent no.1/applicant and the respondent nos.2 to 4/non-applicants, still he cannot wriggle out of his responsibility to make payment to the applicant. Since, the petition is against the order passed by Facilitation Council which is an arbitration tribunal, the writ petition is being entertained under Art.227 of the Constitution.

2] In brief, facts of the case are that the respondent no.1/applicant M/S Protek Aqua Solutions Pvt. Ltd entered into an agreement with the respondents no.2,3 and 4/ non-applicants no.2 to 4 for supply of water cooler filters and other accessories which were to be used during “Simhastha, 2016”. In the aforesaid agreement, there was also a reference

of the petitioner Agrawal Panchayat Nyas Ujjain as the body which had created “Agrawal Samaj Simhastha Samiti Ujjain” as a registered society.

3] Admittedly, after the execution of the aforesaid agreement, certain dispute arose between the applicant and the non-applicant no.2 to 4, which led the applicant/respondent no.1 M/s Protek Aqua Solutions Pvt. Ltd to lodge its claim before Facilitation Council, Bhopal under Section 18 of the M.P. Micro Small & Medium Enterprises Act, 2006 (hereinafter to be referred to as “MSME Act”). In the said case, the replies have also been filed by the petitioner/non-applicant no.1 as also by respondents no.2,3 and 4/non-applicant no.2,3 and 4 and the final award was passed on 28.12.2021 (Annexure P-11) directing the non-applicant to pay the sum of Rs.18,85,935/- as principal amount, and Rs.52,01,415/- as interest, thus, the total amount comes to Rs.70,87,350/-. The aforesaid award was challenged by the petitioner in **W.P.No.9085/2022 (Agrwal Panchayat Nyas Ujjain Vs. M/s Protek Aqua Solution Pvt and others)** which was decided by the Co-ordinate Bench of this Court on 03.08.2022. In the aforesaid petition the petitioner's claim was that it is neither a buyer nor a supplier and is not a signatory to the agreement dated 09.02.2016, and is purely a separate entity registered under the M.P. Public Trust Act, but despite specific objections having raised before the Facilitation Council there was no adjudication of the said issue, hence, this Court, while considering the fact that the objections raised by the petitioner has not been considered and decided by the MSME Council, the matter has been remanded back to the Facilitation Council to decide the objections raised by the petitioner regarding maintainability of the reference *qua* petitioner under the provisions of the MSME Act.

4] After the matter was remanded back, Facilitation Council has again decided matter vide impugned order dated 23.12.2022(Annexure P-11), holding that the petitioner cannot escape its liability to make the payment on behalf of the respondents no.2 to 4.

5] Shri Ankur Modi, learned counsel appearing for the petitioner has submitted that the Facilitation Council has erred in holding that the petitioner is also a necessary party in the case despite holding that it is neither the signatory to the agreement dated 09/02/2016, nor the purchaser of the goods but has still held that it is liable to make the payment to the applicant.

6] It is further submitted by Shri Modi, that the petitioner is a public trust created under the Public Trust Act whereas respondent no.2 Agrawal Panchayat Nyas Ujjain is a Society registered under the Societies Registrikaran Adhiniyam, 1973, and as such both of them are different distinct entities, created under different laws, hence, the petitioner cannot be held liable of the acts of respondent/non-applicant no.2.

7] Counsel has submitted that the guarantee of the agreement has also been furnished by Agrawal Samaj Simhastha Samiti Ujjain only without any interference or support by the petitioner which only demonstrates that the petitioner has nothing to do with the aforesaid agreement and merely because the respondent no.2 society was created by the petitioner would not make it liable for its acts. It is also submitted that the office bearers of the Society are also different then the office bearers of the petitioner's Trust. Thus, it is submitted that in the present case, the Facilitation Council had patent lack of inherent jurisdiction in holding that the petitioner is also liable to pay the amount.

8] In support of his submissions, Shri Modi has also relied upon various decisions of the Supreme Court viz., **Punjab State Power Corporation Ltd Vs. Emta Coal Limited and another reported in (2020) 17 SCC 93, in the case of Arun Kumar and others Vs. Union of India (UCO) and others (Civil Appeal No.3270 of 2003 and Transferred Cases (c) No.101 and 102 of 2006 decided on 15.09.2006) and by the High Court of Karnataka in the case of Karnataka Power Transmission Corporation Limited VS. Govt. of Karnataka reported in 2019 SCC online Kar 2184.**

9] On the other hand, Shri Raunak Chouksey, learned counsel for the respondent no.1/M/S Potek Aqua Solutions Pvt. Ltd, a registered MSME has submitted that no illegality has been committed by the Facilitation Council in passing the impugned order as for all practical purposes Agrawal Samaj Simhastha Samiti is a creation of the petitioner/Agrawal Panchayat Nyas Ujjain which was created for the purposes of providing certain facilities to public at large during Simhastha, 2016 at Ujjain, which is also apparent from the agreement which was entered into between the answering respondent M/S Potek Aqua Solutions Pvt. Ltd and Agrawal Samaj Simhastha Samiti which is filed as Annexure P-3 in which in the first para itself it is mentioned that Agrawal Samaj Simhastha Samiti 2016 has been created by Agrawal Panchayat Nyas Ujjain as a registered Society. It is submitted that the petitioner Trust cannot escape its liability to make the payment of its agent only on the ground, that the agent is different entity when it is not.

10] Counsel has also submitted that in the entire application filed before the Facilitation Council the claim is made not only against the Agrawal

Samaj Simhastha Samiti but also from Agrawal Panchayat Nyas Ujjain as both the parties have been referred to jointly as the non-applicants in the pleadings of the said application.

11] Shri Raunak Chouksey, learned counsel has also submitted that even otherwise, the petition is not at all maintainable for a simple reason that as per Section 16 of the Arbitration and Conciliation Act 1996 (hereinafter to be referred to as “Act of 1996”), the Arbitral Tribunal which is in the present case is Facilitation Council is Competent to rule on its jurisdiction and if the petitioner's contention is that the Facilitation Council has no jurisdiction over it then also the provision of Section 16 have to be mandatorily complied with which clearly provides that a plea that the arbitral tribunal has no jurisdiction shall be raised at an early stage not later than the submission of the statement of defence and it shall decide the plea either rejecting the plea or continue with the arbitral proceedings and make an arbitral award and the party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34 of the Act of 1996.

12] Thus, it is submitted that there is no scope left for any writ to be entertained under Article 227 of the Constitution of India when the Act of 1996 itself is clear about the procedure which is to be followed by the Arbitral Tribunal and in the present case Arbitral Tribunal has ruled on its jurisdiction and thus, at this stage its order cannot be interfered with.

13] In support of his submission, learned counsel for the respondents has placed reliance on the judgement passed by the Supreme Court of India in the case of **Bhaven Construction Vs. Executive Engineer Sardar Sarovar Narmada Nigam Ltd reported in the case of AIR ONLINE 2021 SC 6 :2022 (1) SCC 75.**

14] On the other-hand, counsel appearing for the respondents no.2, 3 and 4 has also opposed the prayer, and has submitted that no case for interference is made out as the petitioner is equally liable for the acts of respondents no.2,3 and 4 and only because the liability is likely to be imposed on the petitioner, the efforts are being made to shrug off the same by contending that the respondents Agrawal Samaj Simhastha Samiti is a different entity.

15] Heard learned counsel for the parties and perused the record.

16] From the record, this Court finds that so far as the order passed by the Facilitation Council is concerned, the relevant paras of the same reads as under:-

“ आवेदक क्रमांक-1 द्वारा दिनांक 17.11.2022 को माननीय मध्यप्रदेश उच्च न्यायालय, इंदौर द्वारा प्रकरण क्रमांक WP/9085/2022 के निर्णय के परिप्रेक्ष्य में कथन एवं दस्तावेज प्रस्तुत किये जा चुके हैं तथा तत्संबंध में आवेदक द्वारा प्रतिउत्तर प्रस्तुत किया जा चुका है। अनावेदक क्रमांक-1 आवेदक के साथ अनुबंध हस्ताक्षरी नहीं था, तथापि यह आवेदक के प्रति भुगतान की दावेदारी से उन्मुक्त नहीं हो सकता है, क्योंकि :-

अ. यह अविवादित है कि अनावेदक क्रमांक-1 द्वारा ही सिंहस्थ मेला आयोजन की व्यवस्थाओं की देख रेख हेतु अनावेदक क्रमांक-2 सिंहस्थ मेला समिति का गठन किया गया था।

उद्योग संचालनालय, मध्यप्रदेश, भोपाल
(मध्यप्रदेश सूक्ष्म और लघु उद्यम फेसिलिटेशन काउंसिल)
शाखा: एम.एस.ई.एफ.सी. सहायक :
शरद व्यास, सहायक वर्ग-2
प्रभारी : श्री शशिभूषण दुबे, सहायक संचालक
उप संचालक : श्री राजेश अग्रवाल, सचिव, एम.एस.ई.एफ.सी.
प्रकरण क्रमांक : एम.एस.ई.एफ.सी. / 871 / 2018
विषय : आवेदक मेसर्स प्रोटेक एक्वा सोल्यूशंस प्रा.लि.,

इंदौर विरुद्ध 1. श्री अग्रवाल पंचायत न्यास, उज्जैन, 2. अग्रवाल समाज सिंहस्थ समिति, उज्जैन एवं 2 अन्य।

गत पृष्ठ से,

ब. विधिक रूप से पृथक अस्तित्व होने के बावजूद अनावेदक क्रमांक-2 अनावेदक क्रमांक-1 के पूर्ण नियंत्रण एवं देखरेख में कार्य कर रहे थे। यहां तक कि अनावेदक क्रमांक-2 के पदाधिकारी अनावेदक क्रमांक-1 से या उनके द्वारा नियुक्त होते थे।

स. वर्तमान प्रकरण में अनावेदक क्रमांक-2-4 की भूमिका सिंहस्थ मेले के आयोजन हेतु अनावेदक क्रमांक-1 के एजेन्ट के रूप में है। भारतीय संविदा विधि अनुसार एजेन्ट द्वारा किये गये कार्यो हेतु अनावेदक क्रमांक-1 मालिक (Principal) उत्तरदायी है।

उक्त कारणों से अनावेदक क्रमांक-1 की आपत्ति को अमान्य किया जाता है। “

17] A perusal of the order clearly reveals that the Facilitation Council has relied upon the fact that the Agrawal Samaj Simhastha Samiti and Agrawal Panchayat Nyas Ujjain are creations of Agrawal Samaj and despite the fact that both of these are different entities respondent no.2 is being controlled and is working under the guidance of the petitioner/Agrawal Panchayat Nyas Ujjain and infact the office bearers of respondent no.2 are also appointed by the petitioner only and in the present circumstances, the role of respondent no.2 /Agrawal Samaj Simhastha Samiti is that of an agent of Agrawal Panchayat Nyas Ujjain, who is the Principal.

18] At this juncture, it would be apt to refer to the decision rendered by the Supreme Court in the case of *Punjab State Power Corpn. Ltd. (supra)*, relied upon by the learned counsel for the petitioner, which is a short judgment and reads as under:-

“1. The impugned judgment dated 10-12-2019 is grounded on the fact that the impugned order passed by the Arbitral Tribunal

on 8-1-2017 was challenged only 2½ years late and the petitioner filed the writ petition at the last minute after the arguments had concluded before the Arbitral Tribunal. Based on this ground, the writ petition has been dismissed, filed under Article 227 of the Constitution directly against a Section 16 application without following the drill of Section 16 of the Arbitration Act.

2. Shri K.V. Viswanathan, learned Senior Counsel appearing for the petitioner, has argued before us, based on our judgment in *Deep Industries Ltd. v. ONGC*, and para 17 in particular, which is set out hereinbelow: (SCC p. 714)

“17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non-obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.”

3. According to Shri Viswanathan, one look at the joint venture agreement and the arbitration clause therein would make it clear that the third party in this case had not been referred to at all, as a result of which there is a patent lack of inherent jurisdiction within the meaning of para 17 of *Deep Industries Ltd.*

4. We are of the view that a foray to the writ court from a Section 16 application being dismissed by the arbitrator can only be if the order passed is so perverse that the only possible conclusion is that there is a *patent* lack in inherent jurisdiction. A *patent* lack of inherent jurisdiction requires no argument whatsoever — it must be the perversity of the order that must stare one in the face.

5. Unfortunately, the parties are using this expression which is in our judgment in *Deep Industries Ltd.*, to go to the Article 227 Court in matters which do not suffer from a patent lack of

inherent jurisdiction. This is one of them. Instead of dismissing the writ petition on the ground stated, the High Court would have done well to have referred to our judgment in *Deep Industries Ltd.* and dismiss the Article 227 petition on the ground that there is no such perversity in the order which leads to a *patent* lack of inherent jurisdiction. The High Court ought to have discouraged similar litigation by imposing heavy costs. The High Court did not choose to do either of these two things.

6. In any case, now that Shri Viswanathan has argued this matter and it is clear that this is not a case which falls under the extremely exceptional category, we dismiss this special leave petition with costs of Rs 50,000 to be paid to the Supreme Court Legal Services Committee within two weeks. Pending applications stand disposed of.”

(emphasis supplied)

19] On perusal of the record, it is apparent that the petitioner has raised an objection that the Facilitation Council has no jurisdiction to pass any order against it, to which, the Facilitation Council has held that it has the jurisdiction to pass order against the petitioner. Testing the facts of the case on the anvil of the dictum of the Supreme Court in case of ***Punjab State Power Corpn. Ltd. (supra)***, this Court has no hesitation to hold that no interference in the impugned order is called for to invoke the jurisdiction of this court under Art.227 of the Constitution.

20] The Hon'ble Supreme Court in the case of Bhaven Construction (supra) has held in paragraph 25 and 26 which reads as under :-

“25. It must be noted that Section 16 of the Arbitration Act, necessarily mandates that the issue of jurisdiction must be dealt first by the tribunal, before the Court examines the same under Section 34. Respondent No. 1 is therefore not left remediless, and has statutorily been provided a chance of appeal. In ***Deep Industries case (supra)***, this Court observed as follows:

“22. One other feature of this case is of some importance. As stated herein above, on 09.05.2018, a Section 16 application had been dismissed by the learned Arbitrator in which substantially the same contention which found favour with the High Court was

taken up. The drill of Section 16 of the Act is that where a Section 16 application is dismissed, no appeal is provided and the challenge to the Section 16 application being dismissed must await the passing of a final award at which stage it may be raised under Section 34.”

(emphasis supplied)

26. In view of the above reasoning, we are of the considered opinion that the High Court erred in utilizing its discretionary power available under Articles 226 and 227 of the Constitution herein. Thus, the appeal is allowed and the impugned Order of the High Court is set aside. There shall be no order as to costs. Before we part, we make it clear that Respondent No. 1 herein is at liberty to raise any legally permissible objections regarding the jurisdictional question in the pending Section 34 proceedings. “

(emphasis supplied)

21] Although, the learned counsel has also placed on record other judgements of the Supreme Court to submit that arbitration clause is also binding on the group of companies etc. but this court refrains from entering into that arena of touching upon the merits of the case, and leaves the question to be decided in appeal. In view of the aforesaid discussion, no interference is called for as the petitioner has the remedy to challenge the final award passed by the Facilitation Council under Section 34 of the Act of 1996 wherein all the grounds as are available to them under law, can be raised.

22] Accordingly, the **petition sans merits, stands dismissed.**

(SUBODH ABHYANKAR)
JUDGE

