

(2025) 07 AHC CK 0806
In the Allahabad High Court
Case No : Writ Petition C No. 24614 Of 2025

M/S Kaleshwari Power Products Private Limited	APPELLANT
Vs	
State Of U.P. And Another	RESPONDENT

Date of Decision : 29-07-2025

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2025) 07 AHC CK 0806

Hon'ble Judges : Saurabh Shyam Shamshery, J

Bench : Division Bench

Advocate : Naman Agarwal, Nipun Singh, Santosh Kumar Singh, Vivek Kumar Singh

Final Decision : Dismissed

Judgement

Arindam Sinha, J

1. Petitioner says it is registered as a micro/small enterprises under provisions in Micro, Small and Medium Enterprises Development Act, 2006. It made supplies to various departments of Bharat Sanchar Nigam Limited (BSNL). Bills for the supplies remained unpaid. It took steps under provisions in section 18 of said Act. The issue of non-payment resulted in an arbitration reference and award stood made.

2. Mr. Sudhanshu Kumar, learned advocate appearing on behalf of petitioner draws attention to writing dated 21st March, 2025, in response to his client's requisition for copy of the award. By said writing his client was informed that stamp duty needs to be paid for the award copy to be made available. This requirement cannot be sustained because section 31 in Arbitration and Conciliation Act, 1996 provides for form of arbitral award, which is applicable in an arbitration reference by operation of provisions in the Act of 2006. Section 36 in the 1996 Act provides for enforcement. He relies on judgment of the Supreme Court in Appeal (Civil) 7940-7942 of 2001 (M. Anasuya Devi and Anr. vs. M.

Manik Reddy and Ors.) dealt with on judgment dated 16th October, 2003 to submit, law declared was, the question as to whether the award is required to be stamped and registered would be relevant, only when a party files the award for its enforcement under section 36 in the Act of 1996. Relied upon paragraph in 'JUDIS.NIC.IN' print is reproduced below.

"After we heard the matter, we are of the view that in the present case this issue was not required to be gone into at the stage of proceedings under Section 34 of the Act. In fact, this issue was pre-mature at that stage. Section 34 of the Act provides for setting aside of the Award on the ground enumerated therein. It is not in dispute that an application for setting aside the Award would not lie on any other ground, which is not enumerated in Section 34 of the Act. The question as to whether the Award is required to be stamped and registered, would be relevant only when the parties would file the Award for its enforcement under Section 36 of the Act. It is at this stage the parties can raise objections regarding its admissibility on account of non-registration and non-stamping under Section 17 of the Registration Act. In that view of the matter the exercise undertaken to decide the said issue by the Civil Court as also by the High Court was entirely an exercise in futility. The question whether an Award requires stamping and registration is within the ambit of Section 47 of the Code of Civil Procedure and not covered by Section 34 of the Act."

(emphasis supplied)

He submits, in the facts and circumstances his client has mounted vires challenge to clause (xii) under rule 6 in Uttar Pradesh State Micro and Small Enterprises Facilitation Council Rules, 2006, notified on 19th January, 2007. The clause (xii) is reproduced below.

"6.

(xii) The Council shall make an Arbitral award in accordance with section 31 of the Arbitration and Conciliation Act 1996 and within the time specified in sub-section (5) of section 18 of the Act. The award shall be stamped in accordance with the relevant law in force. Copies of the award shall be made available within seven days of filing of any application."

(emphasis supplied)

3. Mr. Kumar submits, requirement by entry 12 in schedule I-B in Stamp Act, 1899 providing for the rules applicable in Uttar Pradesh cannot be basis for the requisition made on his client, to provide stamp duty for making the award available. The award has not been published. He refers to the entry to point out that there has to be assessment on value of the award for purpose of treating it as a bond, to determine stamp duty payable. His client has not yet been informed of contents in the award and as such or even otherwise, the requisition is illegal.

4. He submits further, impugned clause (xii) under rule 6 in the notification was

promulgated in exercise of powers granted to the State Government by section 30 in the Act of 2006, to make rules. Section 30 is reproduced below.

"30. Power to make rules by State Government.—

(1) The State Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of the members and the procedure to be followed in the discharge of their functions by the members of the Micro and Small Enterprises Facilitation Council under sub-section (3) of section 23;

(b) any other matter which is to be or may be, prescribed under this Act.

(3) The rule made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House."

The offending clause in the rule cannot be said to be other matter, which is or may be prescribed under the Act. Said clause is not for purpose to carry out any provision in the Act. He reiterates his reliance on section 18 in the Act of 2006, making applicable provisions in the Act of 1996, where there is nothing required on registration of an award. He seeks striking down of clause (xii) under rule 6 in the rules notified on 19th January, 2007.

5. Dr. D.K. Tiwari, learned advocate, Additional Chief Standing Counsel appears on behalf of State and submits, the clause in the rule has been provided to make the award enforceable, in line with requirement under entry 12 in schedule I-B of the Stamp Act. No interference is warranted.

6. Impugned clause under rule 6 requires the award to be stamped in accordance with the relevant law in force. The requisition precedes mandate for copies of the award to be made available within seven days of filing of any application. Wording of the clause carrying requirement of stamp duty preceding requirement of making available copy of the award appears to be basis for the requisition, questioned by petitioner. Petitioner has applied for copy of the award. It has been told to pay on stamp duty. Considering the clause as a whole, it is seen that the council is to make an arbitral award in accordance with section 31 of the Arbitration and Conciliation Act, 1996. Sub-section (1) in section 31 provides for the award to be made in writing and signed by the members of the arbitral tribunal. Sub-section (5) mandates, the arbitral award, on its making, signed copy thereof be delivered to each party. Section 36 provides for enforcement of the award. It follows that the award, when made, signed copy of it must be made available to a party to the reference. Requirement for payment of stamp duty will arise, when the award is sought to be enforced.

7. In *M. Anasuya Devi (supra)*, the Supreme Court noticed that it was urged by respondent before it, the award in that case did create rights in favour of the parties and it required registration. The Court said, view taken by the High Court was in conformity with the law. In this case petitioner says, he is not aware of contents in the award. Mr. Kumar reiterates, question of payment of stamp duty will only arise at or prior to execution. We accept his submission but are of the view that the vires challenge is unfounded.

8. Section 30 in the Act of 2006 empowers the State Government to make rules to carry out provisions of the Act. Impugned clause under rule 6 is for purpose of enforcement of an award. Petitioner's case must result in award for money and hence, petitioner is referring to entry 12 in schedule I-B of the Stamp Act as applicable in the State. In some other case, it may be an award on interest in respect of immovable property, to make it compulsorily registrable under section 17 in Registration Act, 1908. Whatever be the case, the State Government in requiring an arbitral award, made by the council, enforceable is seen to have duly exercised the power in promulgating, inter alia, clause (xii) under rule 6 of the 2006 Rules, applicable in this State. However, the communication requiring stamp duty to be paid for making signed copy of the award available to petitioner, who was party in the reference, cannot stand inasmuch as referred to sub-sections in section 31 of the 1996 Act mandate signed copy of the award being made available to it. The 1996 Act has been made applicable in this case on invocation of chapter V in the MSME Act, 2006.

9. Petitioner will produce certified copy of this judgment before respondent no.2, whereupon signed copy of the award is to be made available to it.

10. The writ petition is allowed and disposed of as above.