

(2026) 02 RAJ CK 1725

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Writ Petition No. 16944 Of 2021

National Co-Operative Consumers Federation Of India Limited	APPELLANT
Vs	
Micro and Small Enterprises Facilitation Council	RESPONDENT

Date of Decision : 13-02-2026

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Arbitration and Conciliation Act, 1996 — Section 34, 65, 81
Enterprises Development Act, 2006 — Section 18

Citation : (2026) 02 RAJ CK 1725

Hon'ble Judges : Rekha Borana, J

Bench : Single Bench

Advocate : Vinay Jain, Darshan Jain, Mudit Balia, Rajat Arora, Lucky Rajpurohit, Vishan Das

Final Decision : Disposed Of

Judgement

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Rekha Borana, J

1. The present petition has been filed aggrieved of order dated 05.08.2021 (Annex.8) (wrongly mentioned to be 31.08.2021 in the prayer) whereby an Award/order has been passed against the petitioner firm by respondent No.1- Council.

2. A preliminary objection has been raised by Counsel for the respondents regarding maintainability of the present petition. Counsel submits that the impugned order is an 'Award' and hence, amenable to challenge under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996').

3. Counsel while relying upon the Apex Court judgment in M/s India Glycols Limited and Another Vs. Micro and Small Enterprises Facilitation Council, Medchal - Malkajgiri and Others; AIR 2024 SC 285 submits that no order/award/decre

passed in terms of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the 'Act of 2006') can be assailed in a writ petition.

4. Responding to the above preliminary objection, counsel for the petitioners submits that Order dated 05.08.2021 is in fact not an 'Award' in terms of the Act of 1996. It is an order passed by the Council and hence, is not amenable to challenge in terms of Section 34 of the Act of 1996.

5. Counsel submits that in terms of Section 18(2) of the Act of 2006, conciliation proceedings ought to have been undertaken by the Council and it is only after the conciliation proceedings having failed that the dispute could have been referred to arbitration. Herein, there was no report to the effect that conciliation proceedings failed and hence, without any reference to arbitration been made, the order impugned cannot be termed to be an 'Award' in terms of the Act of 1996.

6. Further, the process as prescribed under Section 18 of the Act of 2006 having not been followed prior to passing of the impugned order, the same is definitely amenable to writ jurisdiction.

7. Heard the Counsels. Perused the Record.

8. Before proceeding further, reproduction of Section 18 of the Act of 2006 would be apt:

"18. Reference to Micro and Small Enterprises Facilitation Council.—

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(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.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.”

9. A bare perusal of the above provision reflects that it provides for three stages: First, a reference to be made to the Council by one of the parties, if any dispute arises. Second, on such reference been made, the Council shall either itself or by referring to some institute, conduct conciliation in terms of Sections 65 to 81 of the Act of 1996 i.e. the stage of Conciliation. The third stage arises when conciliation between the parties fail. It is only when conciliation in terms of sub-section (2) is not successful and stands terminated without settlement between the parties that, the Council shall take the dispute for arbitration either itself or refer to any institution/Centre. It is then that the provisions of the Act of 1996 pertaining to arbitration come into effect.

10. Sub-section (4) of Section 18 of the Act of 2006 provides that the Council or the center providing alternate dispute resolution, has the jurisdiction to act as an arbitrator or conciliator. Meaning thereby, the Council itself, can first conciliate and on failure thereof, can act as an arbitrator too.

11. Section 34 (2) of Act of 1996 provides for the grounds on which an arbitral award can be set aside by the Court. Sub-clause (a)(v) of the said provision provides for the following ground:

“(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part;”

12. A bare perusal of the above provision reflects that the ground of the arbitral procedure not being in accordance with the agreement of the parties, is a ground available under Section 34, so as to set aside the arbitral award. Herein, the primary ground raised in the writ petition is to the effect that the procedure as provided under Section 18 of the Act of 2006 was not followed by the Council. It has been averred that as the prescribed procedure was not followed, the order impugned cannot be termed to be an ‘Award’.

13. This Court is of the clear opinion that even if it is assumed that there was no finding of the conciliation proceedings having failed been recorded by the council, the same would be a ground to the effect that the specific procedure laid down in Section 18 of the Act of 2006 was not followed. As observed in the preceding para, any ground pertaining to the non following of the procedure as prescribed under the statute would definitely fall within the ambit of Section 34 of the Act of 1996. If the Court reaches to a conclusion that the procedure as prescribed was not followed, the Court definitely would be under a jurisdiction to set aside the Award on the said sole ground. But then, the said jurisdiction is of the Court

hearing the objections in terms of Section 34 of the Act

of 2006 only. Writ jurisdiction cannot be exercised where a specific alternative remedy under a specific statute is provided.

14. The issue rests covered by the Hon'ble Apex Court in M/s India Glycols Limited (supra) wherein while dealing with the issue whether a writ petition would be maintainable against an order passed under Section 18 of the Act of 2006, the Court observed and held as under :

"14. Mr Parag P. Tripathi, senior counsel appearing on behalf of the appellant sought to urge that the view of the Facilitation Council to the effect that the provisions of the Limitation Act 1963 have no application, which has been affirmed by the Division Bench in the impugned judgment, suffers from a perversity, and hence a petition under Article 226 of the Constitution ought to have been entertained. We cannot accept this submission for the simple reason that Section 18 of the MSMED Act 2006 provides for recourse to a statutory remedy for challenging an award under the Act of 1996. However, recourse to the remedy is subject to the discipline of complying with the provisions of Section 19. The entertaining of a petition under Articles 226/227 of the Constitution, in order to obviate compliance with the requirement of pre-deposit under Section 19, would defeat the object and purpose of the special enactment which has been legislated upon the Parliament."

15. True it is that subsequently the issue has been referred to a Larger Bench by Hon'ble the Apex Court in the matter of Tamil Nadu Cements Corporation Limited Vs. Micro and Small Enterprises Facilitation Council & Anr; (2025) 4 SCC 1 but then, the decision of Hon'ble the Larger Bench is still awaited.

16. The issue therefore would be whether this Court should keep the matter pending awaiting the Larger Bench pronouncement or to decide the matter in accordance with the precedential law governing the field as of date.

17. The answer to the above issue may be found in Hon'ble the Apex Court Judgment in the case of Union Territory of Ladakh & Ors. vs. Jammu & Kashmir National Conference & Anr.; (2024) 18 SCC 643 wherein the Court held as under :

"35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court

on the score that a later coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an

outcome of a reference or a review petition, as the case may be. It is also not

open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is

to be followed by the High Courts....”

18. In view of above ratio, the judgment passed in M/s India Glycols Limited’s case (supra) shall be binding on this Court as the same holds the field as of date.

19. In view thereof, this Court is of clear opinion that the present writ petition cannot be entertained being not maintainable before this Court.

20. The writ petition is hence dismissed as not maintainable. The petitioners shall however, be at liberty to take appropriate remedy before the appropriate forum.

21. Stay application and pending application(s), if any, also stand disposed of.