AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.15612 of 2021 (CNR No. ODHC010315202021),
W.P.(C) No.15609 of 2021 (CNR No. ODHC010315142021)
&
W.P.(C) No.15614 of 2021 (CNR No. ODHC010315232021)

(Under Article 226 and 227 of the Constitution of India)

In W.P.(C) No.15612 of 2021

TP Southern Odisha Distribution Limited, Kamapalli, Court Peta, Berhampur .... ***Petitioner***

-versus-

Micro and Small Enterprises Facilitation Council, Buxi Bazar, Cuttack and others .... ***Opposite Parties***

In W.P.(C) No.15609 of 2021

M/s.Southern Electricity Supply Company of Orissa Limited, Berhampur .... ***Petitioner***

-versus-

Micro and Small Enterprises Facilitation Council, Buxi Bazar, Cuttack and others .... ***Opposite Parties***

In W.P.(C) No.15614 of 2021

TP Southern Odisha Distribution Limited, Kamapalli, Court Peta, Berhampur .... ***Petitioner***

-versus-

Micro and Small Enterprises Facilitation Council, Buxi Bazar, Cuttack and another .... ***Opposite Parties***

Advocate(s) appeared in this case:-

For Petitioner : Mr. Gautam Mishra, Sr. Advocate
along with Mr. J.R. Deo, Advocate

For Opp. Parties : Mr. S.K. Acharya, Advocate for O.P. No.2 (in WP(C) No.15612 of 2021)

Mr. M. Bose, learned senior counsel along with Mr. S.S. Padhy, Advocate for O.P. No.2 (in WP(C) No.15609 & 15614 of 2021)

Mr. A.K. Ray, Sr. Panel Counsel for Union of India (in WP(C) No.15612 of 2021)

Mr. D. Patnaik, Sr. Panel Counsel for Union of India (in WP(C) No.15609 of 2021)

Mr. D. Satapathy, Sr. Panel Counsel for Union of India (in WP(C) No.15614 of 2021)

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT

Date of hearing :7th July, 2026

Date of Judgment :28th August, 2026

B.P. Routray, J.

1. All the three writ petitions have been filed challenging the order of the Micro and Small Enterprises Facilitation Council (MSEFC), Cuttack under different annexures in above three writ petitions. All the impugned orders are dated 30th December, 200 passed in different cases, Viz. MSEFC Case No.23 of 2019, MSEFC Case No.21 of 2018 and MSEFC Case No.25 of 2018 under Annexure-4, 5 and 3 respectively in the above writ petitions. These orders are purportedly passed under Section 18 of the Micro, Small, Medium, Enterprises Development Act,

2006 (herein referred as 'MSMED Act' in short) on the reference raised by opposite party No.2 (hereinafter referred as supplier) against the petitioner-entity claiming payment of such sum along with interest. The details of dispute between the parties are not adverted here keeping in view the limited nature of adjudication concerned here.

2. Before entering into the merits of the real dispute, a preliminary objection has been raised by opposite party No.2 regarding maintainability of the writ petitions.

According to opposite party No.2 before the MSEF Council, the order passed under Section 18 of the MSMED Act is required to be challenged as per Section 34 of the Arbitration and Conciliation Act and when such clear mandate is available to challenge the impugned orders / awards, the attempt of present petitioner to prefer the writ petitions surpassing such statutory recourse provided under the Arbitration and Conciliation Act is not at all maintainable. Further, the petitioners have approached this Court only to avoid the pre-deposit of 75% of the award amount in terms of Section 19 of the MSMED Act and this is deprecated by the settled principles of law propounded in ***India Glycols Limited and Another v. Micro and Small Enterprises Facilitation Council, Medchal***

– ***Malkajgiri and Others, (2025) 5 SCC 780***. It is further stated that, whatever may be the reason advanced to justify the contentions of the petitioners for maintaining the writ petitions before this Court surpassing the statutory remedy, nothing could not stand in support of the petitioners in view of the clear observation of the Hon'ble Supreme Court in ***India Glycols Limited*** (supra) as no writ petition under Article 226/227 of the Constitution is maintainable where recourse of a statutory remedy is available for challenging the award under Section 18 of the MSMED Act as per Section 34 of the Arbitration and Conciliation Act.

3. Conversely, it is the contention of the petitioner that the impugned orders of the MSEF Council, as challenged in present writ petitions, along with other reliefs, have been passed without granting sufficient opportunity of hearing and when the basic principle of natural justice is violated, the writ petitions at the instance of the petitioners cannot be said to be not maintainable.

According to the petitioners, they have not been granted due or sufficient opportunity of hearing before passing the impugned orders dated 30th December 2020 in afore-stated proceedings before the MSEF Council and it is their specific contention that in all these three cases the

petitioners were not duly noticed for their appearance on the date of hearing. It is stated that on record there has been violation of principle of natural justice because on 23rd September 2020, when the cases were posted, it was intimated by the petitioners that their counsel Sri Basanta Kumar Nayak had passed away (due to COVID) and they need an adjournment of two months to engage a fresh counsel. The next sitting of MSEFC was fixed to 30th December 2020 without the knowledge of petitioner and the notice to attend hearing on said date was sent by post on 29th December 2020 at 03.29 pm in the afternoon where the petitioners' office is based in Ganjam district. As a result of delayed issuance of notice, the petitioners received the same on 31st December 2020 whereas the hearing in the absence of petitioners was conducted on 30th December 2020 resulting passing of the impugned orders. In order to substantiate that the petitioners received the notice on 31st December 2020, the photocopies of postal envelopes have been produced. Thus, what is specifically contended by the petitioners that, for violation of grant of due opportunity of hearing, the most important canon of natural justice, present writ petitions at the instance of the petitioners cannot be just thrown away for availability of alternative remedy in terms of Section 34 of the Arbitration and Conciliation Act.

Apart from this it is significantly pointed out by Mr. G. Mishra, learned senior counsel for the petitioners, that so far as the pre-deposit part is concerned, in terms of requirement under Section 19 of the MSMED Act, the petitioners are always ready and willing to deposit the same and as per the direction of this Court they have already deposited the award amount pursuant to the interim direction of this court in each of the case. Therefore, it is never the concern of petitioners to avoid the pre-deposit requirement of 75% of the award amount in terms of Section 19 of the MSMED Act.

4. Mr. S.K. Acharya, learned counsel appearing for opposite party No.2 in WP(C) No.15612 of 2021, stated in his reply that the copy of the postal envelope as produced by the petitioner in respect of MSEFC Case No.23 of 2019 has been mentioned as 23 of 2018 and therefore is not a credible document to be accepted in support of contention of the petitioner. It is also submitted that when the petitioner took part in the hearing before the MSEF Council on all the dates, except on the final date on 30th December 2020, it would be improper on the part of the petitioners to contend violation of principle of natural justice, particularly when the petitioner has filed his reply to the pleadings and participated in the hearing on all such previous dates. The petitioner skipped his

appearance before the Council on 30th December 2020 despite it had the knowledge of death of his counsel on the previous date, i.e. on 23rd September 2020.

5. It is stated by the petitioners in reply to such contention of opposite party No.2 that, mentioning the number as 23 of 2018 instead of 23 of 2019 on the postal envelope is an inadvertent mistake of the postal department and that apart, if the serial number of the envelope is compared it would be clear that the postal department wrote 23 of 2018 in place of 23 of 2019 mistakenly. So no benefit can be gained by the opposite parties on that score. Further, the impugned order is clear to the effect that the petitioners did not participate in the hearing on that date. Therefore as a matter of right under the principles of natural justice, the petitioners are entitled to fair opportunity of hearing particularly on the final date when the hearing was concluded and orders were pronounced.

6. From the above narration of facts and submissions on the limited question of maintainability of the writ petitions, the issue arose for determination on the question of maintainability of the writ petition, is to the effect that;

i) Whether there is violation of principle of natural justice; and

ii) Secondly, for violation of principle of natural justice can the writ petitions be entertained despite availability of alternative remedy as per Section 34 of the Arbitration and Conciliation Act.

7. In ***India Glycols Limited*** (supra), the Hon'ble Supreme Court have observed as follows:

> **"7.** Section 18 ["**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 it to 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."] of the MSMED Act provides for a reference to the Facilitation Council. Sub-section (2) of Section 18 provides for the conduct of conciliation proceedings. Sub-section (3) empowers the Council to thereafter take up the dispute for arbitration or to refer it to an institution or centre providing for alternative dispute resolution services "for such arbitration". Sub-section (3) of Section 18 stipulates that the provisions of the 1996 Act "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".

Xxxx xxxxx xxxxxxxx

10. However, there is a super added condition which is imposed by Section 19 of the MSMED Act, 2006 to the effect that an application for setting aside an award can be entertained only upon the appellant depositing with the Council seventy-five per cent of the amount in terms of the award. Section 19 has been introduced as a measure of security for enterprises for whom a special provision is made in the MSMED Act by Parliament. In view of the provisions of Section 18(4), the appellant had a remedy under Section 34

of the 1996 Act to challenge the award which it failed to pursue.

Xxxx xxxxxx xxxx

12. The appellant failed to avail of the remedy under Section 34. If it were to do so, it would have been required to deposit seventy-five per cent of the decretal amount. This obligation under the statute was sought to be obviated by taking recourse to the jurisdiction under Articles 226/227 of the Constitution. This was clearly impermissible.

13. For the above reasons, we are in agreement with the view [*S.R. Technologies Unit II* v. *MSEFC, Telangana*, 2023 SCC OnLine TS 4394] of the Division Bench of the High Court that the writ petition which was instituted by the appellant was not maintainable.

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 [*S.R. Technologies Unit II* v. *Msefc, Telangana*, 2023 SCC OnLine TS 4394] , 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 1996 Act. 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 by Parliament.

15. For the above reasons, we affirm the decision [*S.R. Technologies Unit II* v. *Msefc, Telangana*, 2023 SCC OnLine TS 4394] of the Division Bench by holding that it was justified in coming to the conclusion that the petition under Articles 226/227 of the Constitution instituted by the appellant was not maintainable. Hence, it was unnecessary for the High Court, having come to the conclusion that the petition was not maintainable, to enter upon the merits of the controversy which arose before the Facilitation Council.

xxxxxx xxxxxx xxxxx

17. For the above reasons, we affirm the impugned judgment of the High Court of Telangana dated 21.3.2023 [*S.R. Technologies Unit II* v. *Msefc, Telangana*, 2023 SCC OnLine TS 4394] by affirming the finding that the petition which was instituted by the appellant to challenge the award of the Facilitation Council was not maintainable, in view of the provisions of Section 34 of the 1996 Act."

8. Again the Hon'ble Supreme Court in ***Tamil Nadu Cements Corporation Ltd. v. Micro and Small Enterprises Facilitation Council and Others, (2025) 4 SCC 1,*** taking note of the decision of India Glycol Limited and having reservation on the same, referred the question to a Larger Bench of five Judges. It would be important to reproduce some relevant part of the observations, which are as follows:

49. In our opinion, there is a direct confrontation between the judgment of the two-Judge Bench of this Court in *Jharkhand Urja Vikas Nigam*, (2021) 19 SCC 206 and *Gujarat State Civil Supplies Corpn. Ltd.* v. *Mahakali Foods (P) Ltd.*, (2023) 6 SCC 401.

xxxxx xxxxx xxxxx

55. It has been well-settled through a legion of judicial pronouncements of this Court that the writ courts, despite the availability of alternative remedies, may exercise writ jurisdiction at least in three contingencies — (*i*) where there is a violation of principles of natural justice or fundamental rights; (*ii*) where an order in a proceeding is wholly without jurisdiction; or (*iii*) where the vires of an Act is challenged. Noticeably, MSEFC as a statutory authority performs a statutory role and functions within the four corners of the law.

xxxxxx xxxxxx xxxxxx

61. Equally important are the observations with reference to the right to file a writ petition under Articles 226 and 227 of the Constitution in certain situations. In this regard, this Court in *Shyam Kishore* v. *MCD*, (1993) 1 SCC 22 has observed : (SCC pp. 46-47, para 45)

"*45*. If the provision is interpreted in the manner above suggested, one can steer clear of all problems of constitutional validity. The contention on behalf of the Corporation to read the provision rigidly and seek to soften the rigour by reference to the availability of recourse to the High Courts by way of a petition under Articles 226 and 227 in certain situations and the

departmental instructions referred to earlier does not appear to be a satisfactory solution. The departmental instructions may not always be followed and the resort to Articles 226 and 227 should be discouraged when there is an alternative remedy. A more satisfactory solution is available on the terms of the statute itself. The construction of the section approved by us above vests in the appellate authority a power to deal with the appeal otherwise than by way of final disposal even if the disputed tax is not paid. It enables the authority to exercise a judicial discretion to allow the payment of the disputed tax even after the appeal is filed but, no doubt, before the appeal is taken up for actual hearing. The interpretation will greatly ameliorate the genuine grievances of, and hardships faced by, the assessee in the payment of the tax as determined. Though an assessee may not be able to acquire an absolute stay of the recovery of the tax until the dispute is resolved, he will certainly be able to get breathing time to pay up the same where his case deserves it. If this interpretation is placed on the provision, no question of unconstitutionality can at all arise."

62. In *Govind Parameswar Nair* v. *Municipal Corpn., Greater Bombay*, (2001) 9 SCC 166, a Constitution Bench of five Judges agreed with the interpretation given by the three-Judge Bench in *Shyam Kishore* v. *MCD*, (1993) 1 SCC 22 .

63. Recently, in *Tecnimont (P) Ltd.* v. *State of Punjab*, (2021) 12 SCC 477, in regard to the question relating to alternative remedy where the disputed amount is required to be deposited to avail the statutory remedy, this Court

observed that there is some divergence of opinion, albeit several cases like *Shyam Kishore* v. *MCD*, (1993) 1 SCC 22 have attempted to find a solution to provide some support in cases involving extreme hardship where the writ petition would not be dismissed on the ground of equally efficacious alternative remedy.

64. In the light of the aforesaid decisions, we deem it appropriate to refer the following questions raised in the present appeal to a larger Bench of five Judges, namely:

64.1. (*i*) Whether the ratio in *India Glycols Ltd.* v. *S.R. Technologies*, (2025) 5 SCC 780 that a writ petition could never be entertained against any order/award of MSEFC, completely bars or prohibits maintainability of the writ petition before the High Court?

64.2. (*ii*) If the bar/prohibition is not absolute, when and under what circumstances will the principle/restriction of adequate alternative remedy not apply?

64.3. (*iii*) Whether the members of MSEFC who undertake conciliation proceedings, upon failure, can themselves act as arbitrators of the Arbitral Tribunal in terms of Section 18 of the MSMED Act read with Section 80 of the A&C Act?

The first and second question will subsume the question of when and in what situation a writ petition can be entertained against an order/award passed by MSEFC acting as an Arbitral Tribunal or conciliator.

9. Here it would not be out of place to reproduce the principles culled out from several decisions of Hon'ble Supreme Court. Taking note of the decisions in ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others, (1998) 8 SCC 1***, ***Harbanslal Sahnia and Another v. Indian Oil Corpn. Ltd. and Others, (2003) 2 SCC 107*** and ***Radha Krishan Industries v. State of Himachal Pradesh and Others, (2021) 6 SCC 771,*** the logical conclusion can be arrived that availability of alternative remedy may not operate as a bar to exercise writ jurisdiction, where there is a violation of principles of natural justice or fundamental rights, or where an order in a proceeding is wholly without jurisdiction, or where vires of an Act is challenged.

10. In ***Bhaven Construction through Authorised Signatory Premjibhai K. Shah v. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Another, (2022) 1 SCC 75,*** it has been held as follows:

> *"11. Having heard both parties and perusing the material available on record, the question which needs to be answered is whether the arbitral process could be interfered under Article 226/227 of the Constitution, and under what circumstance?"*
>
> *xxxxxx xxxxxx*

"18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In Nivedita Sharma v. COAI, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947, this Court referred to several judgments and held : (SCC p. 343, para 11)

11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation — L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

*"**19.** In this context we may observe Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706, wherein interplay of Section 5 of the Arbitration Act and Article 227 of the*

Constitution was analysed as under : (SCC p. 714, paras 16-17)

'16. Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].

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."

11. As stated above, in the instant case, it is admitted that the petitioners have deposited the award amount as per the interim orders made in requirement of the pre-deposit mandated as per Section 19 of the MSMED Act. The challenge of the petitioners includes violation of

principles of natural justice as due opportunity of hearing has not been granted to them before the Council on the date of final hearing. There is no dispute about the death of previous counsel engaged by the petitioners before the Council to represent them as on 23rd September 2020, for which they sought for two months adjournment. So far as the contention of the petitioner regarding service of notice on the date of hearing on 30th December 2020, undisputedly it was served on them on 31st December 2020, as reveals from postal endorsement made on the envelops. It is thus opined *prima facie*, for the purpose of limited question of maintainability of the writ petitions, that, the petitioner was absent in the final hearing on 30th December 2020 without any fault on their part due to non-receipt of notice before time. When the petitioners have shown their bona-fideness in making deposit of the award amount before the Registry of this Court, it cannot be said that the petitioners in order to avoid the requirement of Section 19 of the MSMED Act have approached this court. At the same time finding violation of principles of natural justice for want of due opportunity of hearing, the writ petitions are held maintainable in the present form.

12. It cannot be also placed out of sight that these writ petitions are pending since 2021, where the petitioners have already deposited the

award amount with an expectation to be heard on merit. Therefore, after keeping the writ petitions pending for around five years, it would not be justified for this court to refuse to entertain these on the question of maintainability to avail alternative remedy.

13. List all the writ petitions on 2nd September 2026 for hearing.

(B.P. Routray)
Judge

M.K. Panda,P.A.