HC-KAR

NC: 2026:KHC:48184-DB
WA No. 1490 of 2024

CNR: KAHC010578742024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT APPEAL NO.1490 OF 2024 (GM-RES)

BETWEEN:

THE COMMISSIONER
BHOOMI MONITORING CELL,
REVENUE DEPARTMENT,
GOVERNMENT OF KARNATAKA,
SSLR BUILDING, K.R.CIRCLE,
BENGALURU - 560 001. …APPELLANT

(BY SRI. S.R. KHAMROZ KHAN, AGA)

AND:

1. THE KARNATAKA MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL
KHANIJA BHAVAN,
RACE COURSE ROAD,
NO.49, 2ND FLOOR, SOUTH BLOCK,
REPRESENTED BY ITS CHAIRMAN,
BENGALURU - 560 001.

2. M/S CONNOINSEUR ELECTRONICS PVT. LTD.,
NO.12, 13TH MAIN, 12TH CROSS,
HAL 2ND STAGE,
BENGALURU - 560 008.
REPRESENTED BY ITS
MANAGING DIRECTOR. …RESPONDENTS

(BY SRI. N. DINESH RAO, ADVOCATE FOR R2;
R1 SERVED)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THIS WRIT APPEAL AND SET ASIDE THE IMPUGNED ORDER DATED 25.06.2024 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN WRIT PETITION NO.36552/2017 AND ETC.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant has filed the present appeal impugning an order dated 25.06.2024 [**impugned order**] passed by the learned Single Judge in Writ Petition No. 36552/2017 [GM-RES] captioned **'The Commissioner vs The Karnataka Micro and Small Enterprises Facilitation Council and Another**'.

2. The petitioner (Government of Karnataka) had filed the said petition impugning an award dated 08.01.2017 passed by the Karnataka Micro and Small Enterprises Facilitation Council

[**Facilitation Council**] under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 [**the MSMED Ac**t] directing the appellant to pay the outstanding dues of ₹29,32,813. The said award was rendered in the context of disputes that had arisen between the appellant and respondent No.2 (**the supplier**) in the following context.

3. On 25.08.2011, the appellant had issued a notification inviting tenders for supply of handheld devices for its Bhoomi Project. The supplier had participated in the bidding process and was declared the successful bidder. Accordingly, on 09.01.2012, the appellant issued a work order to respondent No.2 for supply of universal handheld devices.

4. The supplier supplied 100 devices and raised an invoice dated 22.03.2012 aggregating ₹ 46,90,900. Thereafter, respondent No.2 delivered the second tranche of the devices and raised the invoices for the same. The appellant states that concerns regarding the working of the devices were raised by a letter dated 03.09.2012.

5. On 01.03.2013, the Government of Karnataka approved payment of ₹ 17,58,087, which was credited to respondent No. 2's account. However, the balance payment was not made. In this context, respondent No. 2 approached the Facilitation Council for recovery of a sum of ₹ 29,32,813. The said proceedings culminated in an award dated 08.01.2017 under Section 18 of the MSMED Act, whereby the appellant was directed to pay an amount of ₹29,32,813 along with interest at the rate of 8% p.a.

6. The appellant did not avail of its remedy under Section 34 of the Arbitration and Conciliation Act, 1996 [**A&C Act**] within the stipulated period. After the time for filing an application under Section 34 of the A&C Act had expired, the appellant filed a Writ Petition on 11.08.2017 in this Court.

7. It is material to note that the appellant's challenge to the award in the writ petition was on the merits and not on any ground of jurisdiction. A plain reading of the writ petition also indicates that there were no reasons set out by the appellant for not availing the remedy under Section 34 of the A&C Act. The appellant merely stated that the appellant had no other alternate and efficacious

remedy except to approach this Court by invoking its extraordinary jurisdiction.

8. The learned Single Judge examined the dispute on merits and found no error in the award rendered by the Facilitation Council and accordingly dismissed the petition.

9. Aggrieved by the impugned order, the appellant has preferred this appeal and seeks a merit review of the award.

10. We may at this stage note that the Supreme Court in **M/s India Glycols Limited and Another vs Micro and Small Enterprises Facilitation Council, Medchal - Malkajgiri and Others**[1] had referred to its earlier decision in **Gujarat State Civil Supplies Corporation Limited vs Mahakali Foods Private Limited (Unit 2) and Another**[2] and held that a writ petition under Articles 226 and 227 of the Constitution of India is not maintainable against an award under Section 18 of the MSMED Act as the said Act provides for recourse to the statutory remedy for setting aside the award under Section 34 of the A&C Act. In this view, the writ petition filed by the appellant is not maintainable.

[1] 2023 SCC Online SC 1852
[2] (2023) 6 SCC 401

11. The learned AGA for the appellant submits that the decision rendered in **M/s India Glycols Limited** (*supra*) was doubted by the Supreme Court in its subsequent decision. In **M/s Tamil Nadu Cements Corporation Limited vs Micro and Small Enterprises Facilitation Council and Another**[3], the Supreme Court expressed reservation as to the view in **M/s India Glycols Limited** (*supra*), and the question of whether the petition could be maintained against the award was referred to a larger Bench.

12. It is relevant to refer to the following passage from the said decision :

> "19. 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:
>
> (i) Whether the ratio in **M/s India Glycols Limited** (supra) that a writ petition could never be entertained against any order/award of the MSEFC, completely bars or prohibits maintainability of the writ petition before the High Court?
>
> (ii) If the bar/prohibition is not absolute, when and under what circumstances will the principle/restriction of adequate alternative remedy not apply?
>
> (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?

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[3] 2025 INSC 91

> 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."

13. A plain reading of the aforesaid passage indicates that the Supreme Court has expressed some reservation regarding whether a petition under Article 226 or 227 of the Constitution of India would be totally barred. The Supreme Court noted that the remedy under Article 226 of the Constitution of India is not just a constitutional right, but also a part of the basic structure. It was also observed that this was an inalienable right and the rule of availability of alternative remedy was not an *omnibus* rule of exclusion of the writ jurisdiction. It was also observed that the principle of alternate remedy is applied by the High Courts as a form of judicial restraint. Paragraphs 13 and 14 of the said decision are set out below :

> "13. The access to High Courts by way of a writ petition under Article 226 of the Constitution of India, is not just a constitutional right but also a part of the basic structure. It is available to every citizen whenever there is a violation of their constitutional rights or even statutory rights. This is an inalienable right and the rule of availability of alternative remedy is not an omnibus rule of exclusion of the writ jurisdiction, but a principle applied by the High Courts as a form of judicial restraint and refrain in exercising the jurisdiction. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and the same is not limited by any provision of the Constitution and

cannot be restricted or circumscribed by a statute. 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, the MSEFC as a statutory authority performs a statutory role and functions within the four corners of the law.

14. Following the aforesaid dictum, this Court in **Harbanslal Sahnia and Another** v. **Indian Oil Corporation and Others**, had taken notice of the fact that the High Court had referred to the arbitration clause which the writ petitioner could take recourse to, to hold that the rule of exclusion of writ jurisdiction is a rule of discretion and not of compulsion. In an appropriate case, in spite of availability of alternative remedy, the writ courts can exercise its jurisdiction at least in three contingencies, as referred to above. In the facts of the said case, this Court interfered observing that there were peculiar circumstances as the dealership had been terminated on an irrelevant and non-existence cause. Therefore, there was no need to drive the parties to initiate arbitration proceedings. Following the judgments in **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others**" and Harbanslal Sahnia (supra), this Court in **Radha Krishan Industries** v. **State of Himachal Pradesh and Others** laid down the following principles:

> "27. The principles of law which emerge are that:
>
> 27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.
>
> 27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.
>
> 27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the

enforcement of a fundamental right protected by Part III of the Constitution, (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

14. The appellant did not file the writ petition seeking recourse on any of the grounds as enunciated above. As noted above, a plain reading of the writ petition indicates that the appellant seeks to agitate the dispute on merits.

15. It is well settled that recourse to remedies under Article 226 of the Constitution of India is not available for merits review of an arbitral award. Thus, even without going into the question as to whether in certain circumstances, a writ petition can be maintained

against an award passed under Section 18 of the MSMED Act, the petition preferred by the appellant ought not to have been entertained as it sought merits review of the award passed by the Facilitation Council.

16. We may also at this stage say that even though the Supreme Court in **M/s Tamil Nadu Cements Corporation Limited** (*supra*) has expressed certain reservations as to the decision in the case of **M/s India Glycols Limited** (*supra*) and has referred the question regarding the maintainability of a writ petition to a larger Bench of five Judges; the decision in the case of ***M/s India Glycols Limited*** is a binding precedent as far as this Court is concerned.

17. We may before concluding also note that the appellant had filed the writ petition after the award had become final and the time period during which an application to set aside the same was required to be filed had expired. There is no explanation whatsoever in the petition in this regard. Plainly, the appellant cannot be permitted to overcome the period of limitation by avoiding the statutory remedy and seeking the extraordinary remedy under Article 226 of the Constitution of India.

18. We do not concur with the learned Single Judge's decision to entertain the writ petition on merits; the writ petition ought to have been rejected at the threshold.

19. In view of the above, the appeal is dismissed.

20. The interlocutory applications stand disposed of.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

CKL
List No.: 1 Sl No.: 23