

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C). NO.10410 OF 2014**

***National Small Scale Industries Corporation Limited*** .... ***Petitioner***

Mr. Jagannath Pattanaik, Senior Advocate,  
being assisted by Ms. Soma Pattanaik, Advocate  
and Mr. Smita Ranjan Pattanaik, Advocate

*-versus-*

***State of Odisha and others*** .... ***Opp. Parties***

Mr. Prasanna Kumar Parhi, DSGI along  
with Mr. Achyutananda Routray, Sr. panel Counsel

Mr. Saswat Kumar Acharya, Advocate  
along with Mr. K.R. Thakker, Advocate  
(For Opp. Party No.4)

**CORAM:  
JUSTICE K.R. MOHAPATRA**

**ORDER**  
**14.03.2024**

**Order No.**

11. 1. This matter is taken up through hybrid mode.
2. Order dated 6<sup>th</sup> May, 2014 (Annexure-9) passed by the Micro & Small Enterprises Facilitation Council, Cuttack (for brevity 'the Council') in MSEFC Case No.25 of 2012 is under challenge in this writ petition whereby, entertaining an application filed by the petitioner challenging the maintainability of the reference, the Council held the Petitioner to be a "Buyer" and directed the parties to participate in the conciliation proceeding.
3. Mr. Pattanaik, learned Senior Advocate appearing for the petitioner opened his argument referring to Section 2 (n) of the Micro, Small And Medium Enterprises Development Act, 2006 (for brevity 'the Act'), which reads as under:

*"supplier means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,—*

*“(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);*

*(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);*

*(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises.”*

4. He, therefore, submits that the National Small Industries Development Cooperation (Petitioner) is a supplier under the provisions of the 2(n) of the Act. Thus, the reference against the Petitioner, who is a supplier, is not maintainable. It is submitted that the Petitioner is only a facilitator, which facilitate the manufacturer or supplier to market their products. In that process, it has facilitated the sale of the products of Gupta Cables Pvt. Ltd., Cuttack Road, Bhubaneswar-Opposite Party No.4 to Karnataka State Electricity Board (Karnataka Power Transmission Co. Ltd.). Thus, it cannot be named as a buyer within the meaning of Section 2(d) of the Act. As such, the reference made at the instance of Opposite Party No.4 is not maintainable. The Council without taking into consideration the object and intent of Section 2(n) of the Act held the Petitioner to be a ‘buyer’. Hence, he prays for setting aside the impugned order and to remit the matter to the Council to adjudicate the petition assailing the maintainability of the reference afresh keeping in mind the provision under Section 2 (n) of the Act.

5. Mr. Acharya, learned counsel along with Mr. Thakker, learned counsel appearing for Opposite Party No.4, at whose instance the reference is made, submit that it is at the instance of the Petitioner, the impugned order has been passed. Without

participating in the conciliation proceeding, the Petitioner raised issue of maintainability of the reference before the Council. It is, however, submitted that the role played by the Petitioner is squarely covered under Section 2(d) of the Act. Thus, the Council has committed no error in holding that the Petitioner is a buyer. The impugned order has been passed pursuant to the petition filed under Annexure-8. Answering the issue with regard to the maintainability of the reference, the Council allowed the second prayer for conciliation of the matter in terms of Section 18 (2) of the Act. Thus, the Petitioner should participate in the conciliation without causing any hurdle in the process of smooth disposal of the reference.

6. Taking note of the submission made by learned counsel for the parties and the provisions of the Act, it is apparent that the conciliation as required under Section 18(2) of the Act has not yet been taken up by the Council. Section 18(2) of the Act mandates that on receipt of the reference, the Council shall either conduct the conciliation itself or seek assistance of any institution or center providing alternate dispute resolution service by making a reference to institution or center. At that stage, there is no scope for the Council to entertain an application with regard to the maintainability of the reference. The question of maintainability can only be adjudicated if arbitration is taken up by the Council. Since the impugned order has been passed before taking up the conciliation proceeding, the same is without jurisdiction and is not sustainable. It would have been proper for the Council to entertain the application challenging the maintainability of the reference, if arbitration of the dispute is taken up under Section 18 (3) of the Act.

7. It further appears that the Council directed both the parties to go for conciliation within one month, without adhering to the mandatory requirement of Section 18(2) of the Act, whereby it is mandated that the Council shall either conduct the conciliation itself or take assistance of an institution or centre providing alternate resolution service.

8. Accordingly, the impugned order under Annexure-9 is set aside and the matter is remitted to the Council to proceed with the conciliation either by itself or by referring it to an institution for center providing alternative dispute resolution service. If the conciliation proceeding is terminated without any amicable settlement, then the Council will proceed under Section 18(3) of the Act and at that stage, the issue with regard to maintainability of the reference, if raised, can be adjudicated upon.

9. Although the impugned order is set aside, it will not stand as a bar for the Council to adjudicate the issue of maintainability if raised at the stage of arbitration of the dispute, if any.

10. Parties are at liberty to raise their all contentions on facts and law before the Council permissible under law.

11. It is made clear that this Court has not expressed any opinion on the merit of the case of either of the parties.

12. Both the parties shall also ensure timely disposal of the reference made to the Council.

Urgent certified copy of this order be granted on proper application.

**(K.R. Mohapatra)**  
**Judge**